

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, FEBRUARY 14, 2007**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Chau Nguyen, Traffic Engineer, and Trena Law, Board Secretary

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10:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 14, 2007 docket.**

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B January 17, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

MOTION: Chernock

I move approval of the Wednesday, January 17, 2007 Board of Adjustment Public Hearing minutes.

SECONDED: Beikman

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-032

BUILDING OFFICIAL'S REPORT:

Application of Ed Simons for a variance to the front yard setback regulations at 4315 Crowley Drive. This property is more fully described as Lot 22 in City Block 2/5537 and is zoned R-16(A) which requires a front yard setback of 35 feet. The applicant proposes to construct a structure and provide a 25 foot front yard setback which would require a variance of 10 feet.

LOCATION: 4315 Crowley Drive

APPLICANT: Ed Simons

REQUEST:

- A variance to the front yard setback regulations of 10' is requested in conjunction with adding and maintaining an attached two-vehicle garage to an existing single family home that would be located in the site's 35' front yard setback.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted revised site plan

Rationale:

- This request parallels a variance request to the front yard setback regulations of 10' that was granted on the subject site by the Board of Adjustment Panel B on January 18, 2006 (BDA056-070). The January 2006 request was for a variance to the front yard setback regulations made in conjunction with constructing/maintaining an attached two-vehicle garage where the proposed attached garage was proposed to be located 25' from the site's front property line. (The case returns to the board since an application for a building permit was not applied for within 180 days from the board's favorable action in 2006, and since the submitted plans have been slightly altered from what was imposed as a condition in 2006)
- The site is encumbered with an irregular shape (38' on the north, 114' on the south, 136' on the east, and 120' on the west), and a lot size that is smaller than those lots typically found in the R-16(A) zoning district.

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:

- Lots located in an R-16(A) zoning district are required to provide a 35' front yard setback.
The applicant has submitted a scaled site plan that indicates that the proposed garage is to be located 25' from the front property line (or 10' into the 25' front yard setback).
- According to calculations taken from the submitted site plan by the Board Administrator, it appears that roughly half of the proposed approximately 625 square foot garage would be located in the site's 35' front yard setback.
- The site is flat, irregular in shape (38' on the north, 114' on the south, 136' on the east, and 120' on the west), and approximately 10,000 square feet in area. The lot is zoned R-16(A) zoning district where the typical lot size is 16,000 square feet.
- The applicant's representative has informed staff that the site has a 40' building line that will be dealt with through the re-plat process with the City Plan Commission.

- DCAD records indicate that the site is developed with a single family residence in fair condition that was built in 1952 and has 2,638 square feet of living area.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request, and a copy of a slightly revised site plan from what was originally submitted to Building Inspection in December of 2006.

BACKGROUND INFORMATION:

Zoning:

- Site: R-16(A) (Single Family District 16,000 Square Feet)
- North: R-16(A) (Single Family District 16,000 Square Feet)
- South: R-16(A) (Single Family District 16,000 Square Feet)
- East: R-16(A) (Single Family District 16,000 Square Feet)
- West: R-16(A) (Single Family District 16,000 Square Feet)

Land Use:

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

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 067-070, 4315 Crowley Drive (the subject site) | <p>On January 18, 2006, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 10 feet. The board imposed the following condition in conjunction with this request: compliance with the submitted site plan/elevation is required. The case report stated that the request was made in conjunction with constructing an addition.</p> |
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Timeline:

- Dec. 20, 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.
- Jan. 19, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

- Jan. 19, 2007: 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 23, 2007: The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- Feb. 8, 2007: A Code Compliance staff person from North District submitted a Review Comment Sheet marked "Has no objections" and "No comments."

STAFF ANALYSIS:

- The site is flat, irregular in shape (38' on the north, 114' on the south, 136' on the east, and 120' on the west), and approximately 10,000 square feet in area. The lot is zoned R-16(A) zoning district where the typical lot size is 16,000 square feet.
- According to calculations taken from the submitted site plan by the Board Administrator, it appears that roughly half of the proposed approximately 625 square foot garage would be located in the site's 35' front yard setback.
- The applicant's representative has informed staff that the site has a 40' building line that will be dealt with through the re-plat process with the City Plan Commission.

- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 10' requested in conjunction with adding and maintaining an attached two-vehicle garage to an existing single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-16(A) zoning classification.
- If the Board were to grant the front yard variance request of 10', imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure encroaching into the front yard setback would be limited to what is shown on this plan – a structure that would be located as close as 25' from the site's front property line (or 10' into the site's 25' front yard setback).
- Granting this request to the front yard setback regulations, subject to the submitted revised site plan, would not provide the applicant any relief from adhering to all other setback and plat requirements.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-038

BUILDING OFFICIAL'S REPORT:

Application of Mary Bell represented by Anita and Ricky Bell, for a special exception to the flood plain regulations at 2423 Tune Avenue. This property is more fully described as Lot 26 in City Block 3/7987 and is zoned IR which limits construction within a flood plain. The applicant proposes to reconstruct a structure within a flood plain which would require a special exception.

LOCATION: 2423 Tune Avenue

APPLICANT: Mary Bell
Represented by Anita and Ricky Bell

REQUEST:

- A special exception to the floodplain regulations is requested in conjunction with rebuilding/reconstructing a single family home in a floodplain overlay that has been partially destroyed by fire.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site plan

Rationale:

- The City of Dallas Floodplain Management Program Manager has commented that this case meets the following specific criteria for granting of a special exception: The reconstruction of the house on the footprint of the original house would not increase flood levels during the base flood discharge.

Note: The Floodplain Management Program Manager recommends denial of this application because they typically do not support new construction in the floodplain. If the Board rules that the reconstruction will be allowed, they would ordinarily recommend that the structure be built so that the finished floor is above the base flood elevation. In this case, that is not reasonable because of the depth of flooding. They do recommend that the structure be flood-proofed to the extent that is practical. If the Board grants the relief, they can assist the applicant in determining appropriate flood-proofing techniques.

STANDARD FOR A SPECIAL EXCEPTION TO RECONSTRUCT A STRUCTURE IN A FLOODPLAIN:

The board of adjustment may grant a special exception to allow the reconstruction of a structure in an FP area upon a showing of good and sufficient cause, a determination that failure to allow the reconstruction would result in exceptional hardship to the property owner, and a determination that the reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other local laws.

The board may not grant a special exception to authorize reconstruction within any designated floodway if any increase in flood levels during the base flood discharge would result. Any special exception granted must be the minimum necessary, considering the flood hazard, to afford relief. The reconstruction of a structure in an FP area may not increase the lot coverage of the structure.

GENERAL FACTS:

- The subject site is located within a flood plain overlay area.
- The Dallas Development Code defines FLOOD PLAIN (FP) as “any land area susceptible to inundation by the design flood.”
- The Dallas Development Code states that the owner of a structure in an FP area shall not make any improvements to the structure without first obtaining approval from the director of public works.
The applicant has submitted an application to “rebuild/reconstruct my property listed above due to house fire.” The applicant has submitted a site plan denoting the building footprint of the “remodeling house,” a floor plan, and elevations of the proposal. The building footprint indicates that the dimensions of the home are approximately 41’ x 35’ (or 1,435 square feet in area).
- The Dallas Development Code requires that the director of public works and transportation shall notify the owner of a structure in an FP area that:
 - (i) the granting of a special exception to reconstruct the structure below the base flood level will result in increased premium rates for flood insurance that will be commensurate with the increased risk; and
 - (ii) the construction below the base flood level increases risks to life and property.
The notification letter must be maintained with the record of the board's action.
- The subject site is 7,000 square feet in area and developed with, according to DCAD records, a single family home built in 1960 with 1,523 square feet of living area.
- On February 2, 2006, the City of Dallas Floodplain Management Program Manager has commented in an email to the Board of Adjustment Chief Planner that reconstruction of the house on the footprint of the original house would not increase flood levels during the base flood discharge, that rebuilding a structure on the site to the same dimensions would have no impact on flooding, and that this case meets all criteria for granting of a special exception.
- The single family use on the IR zoned subject site is a nonconforming use (i.e. a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time). Prior to the creation of the IR zoning district in 1989, this single family use was permitted as a legal conforming use in the I-2 (Industrial) zoning district. Given provisions set forth in the Dallas Development Code, this use can obtain “conforming use” status upon attaining a different zoning district from the City Council.
- The nonconforming single family use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.

BACKGROUND INFORMATION:

Zoning:

Site: IR (FP) (Industrial Research, Flood Plain)
North: IR (FP) (Industrial Research, Flood Plain)
South: IR (FP) (Industrial Research, Flood Plain)
East: IR (FP) (Industrial Research, Flood Plain)
West: IR (FP) (Industrial Research, Flood Plain)

Land Use:

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

Zoning/BDA History:

1. Unassigned, 2423 Tune Avenue (the subject site) On January 17, 2007, the Board of Adjustment Panel B waived the filing fee to be submitted in conjunction with a potential board appeal.

Timeline:

- Dec. 18, 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.
- Jan. 19, 2007: 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."
- Jan. 19, 2007: The Board Administrator wrote the applicant's representative a letter that 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;

- the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 22, 2007: The Board Administrator emailed the program manager of the City’s Floodplain Management Division specifically enquiring as to his comments on this appeal.

Jan. 26, 2007 The Assistant City Attorney informed the Board Administrator that the single family use on the subject site appears to be a nonconforming use since it lies in an IR zoning district.

Jan. 26, 2007: The Board Administrator wrote the applicant’s representative a letter that provided the Dallas Development Code provisions related to nonconforming uses.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

Feb. 2, 2007: The City’s Floodplain Management Program Manager emailed the Board of Adjustment Chief Planner his comments on this appeal: that this case meets all specific criteria for granting of a special exception.

STAFF ANALYSIS:

- A site plan has been submitted that denotes the building footprint of the “remodeling house,” a floor plan, and elevations of the proposal. The building footprint indicates that the dimensions of the home are approximately 41’ x 35’ (or 1,435 square feet in area) which is slightly smaller than the space of “living area” in DCAD records at 1,523 square feet.
- The City of Dallas Floodplain Management Program Manager has commented that this case meets specific criteria for granting of a special exception.

- The applicant has the burden of proof in establishing the following in the reconstruction of a structure in an FP area that:
 - failure to allow the reconstruction would result in exceptional hardship to the property owner;
 - the reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other local laws;
 - reconstruction will not increase in flood levels during the base flood discharge;
 - the special exception granted is the minimum necessary, considering the flood hazard, to afford relief;
 - the reconstruction of a structure in an FP area does not increase the lot coverage of the original structure.
- If the Board were to approve the special exception request, subject to imposing a condition that the applicant complies with the submitted site plan, the applicant could reconstruct an approximately 1,400 square foot single family home on the lot.
- Granting this special exception does not impact/effect the nonconforming use status of the existing/proposed single family use on the IR zoned lot.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056-236

BUILDING OFFICIAL'S REPORT:

Application of Robert M. Edsel, represented by William Cothrum of Masterplan, 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 William Cothrum of Masterplan

February 14, 2007 Public Hearing Notes:

- The Board Administrator circulated a revised site plan/landscape plan/elevation document submitted by the applicant on February 12th to the board members at their briefing (see Attachment F).
- The applicant's representative submitted a revised site plan/landscape plan/elevation document at the public hearing (see Attachment G). The applicant's representative stated that this plan specified the materials of the fence and wall, and moved the location of the solid wall 10 feet further from the street than what had originally been proposed.

REQUEST:

- A special exception to the fence height regulations of 3' had been 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 that were considered by Board of Adjustment Panel B on November 15th and delayed until February 14th located immediately south of the subject site: BDA056-237 and 238).
- However, on January 29 and February 2, 2007, the applicant's representative submitted letters to the Board Administrator requesting that this request be denied without prejudice since the applicant had decided to leave the fence on the site as it is: a 7' high "open face iron fence" (see Attachment D and E).

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 had 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 approximately on the front property line or about 3' 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 had 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 indicated 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 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.
- On November 15, 2006, the Board of Adjustment conducted a public hearing on this application and delayed action until February 14, 2007.
 - On December 22, 2006, the applicant's original representative submitted a letter to staff stating that his firm was withdrawing their representation of the owner/applicant on this request (see Attachment C).
 - The applicant's representative submitted additional information beyond what was submitted with the original application, beyond what was discussed at the October 27th staff review team meeting, and beyond what was submitted at the November 15, 2006 public hearing (see Attachments D and E). This information included the following:
 - letters that provide additional details about the request;
 - a copy of a revised submitted site plan/elevation;
 - a copy of a document entitled "Presentation Material" that includes maps, photos of the site and surrounding area, site plans, a comparison chart, and letters in support of the request.

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:

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| <ol style="list-style-type: none"> 1. BDA 056-237, 3828 Turtle Creek Drive (the lot south of the subject site) | <p>On November 15, 2006, the Board of Adjustment Panel B delayed action on 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 until February 14, 2007.</p> |
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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 delayed action on 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 until February 14, 2007.
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 delayed action on 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 until February 14, 2007.
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).

November 15, 2006 The Board of Adjustment conducted a public hearing on this matter and delayed action until February 14, 2007.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

Jan. 29 & Feb. 2, 2007 The applicant’s representative submitted additional information (see Attachments D and E).

STAFF ANALYSIS:

- On January 29 and February 2, 2007, the applicant’s representative submitted letters to the Board Administrator requesting that this request be denied without prejudice since the applicant had decided to leave the fence on the site as it is: a 7’ high “open face iron fence” (see Attachment D and E).

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2006

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Robert M. Edsel, 3811 Turtle Creek #590, Dallas, TX

APPEARING IN OPPOSITION: Kenneth Salyer, 3840 Turtle Creek Dr, Dallas, TX
Melvin Douglas, 3800 Normandy, Dallas, TX
David McAtee, 3844 Turtle Creek Dr, Dallas, TX
Martha Ann Schneider, 3848 Turtle Creek, Dallas,

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-236**, hold this matter under advisement until **January 17, 2007**.

SECONDED: Gillespie
AYES: 5 – Cox, Gillespie, Chernock
NAYS: 0 – Brannon, Beikman
MOTION PASSED – 3-2

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-236**, reconsider the previous motion made on this case.

SECONDED: Beikman
AYES: 5 – Cox, Brannon, Gillespie, Beikman, Chernock
NAYS: 0 –
MOTION PASSED – 5-0 (unanimously)

MOTION #3: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 056-236**, hold this matter under advisement until **February 14, 2007**.

SECONDED: Beikman
AYES: 5 – Cox, Brannon, Gillespie, Beikman, Chernock
NAYS: 0 –
MOTION PASSED – 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR: Willie Cothrum, 900 Jackson St., Dallas, TX
John Ridings Lee, 3827 Turtle Creek, Dallas, TX
Will Terry, 5200 Maple Avenue, 17A, Dallas, TX
J Anthony Sosebee, 4232 Allencrest Ln, Dallas, TX
David McAtee, 3844 Turtle Creek Dr., Dallas, TX
Melvyn Douglas, 3800 Normandy, Highland Pk, TX
75205

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 056-236**, on application of Robert M. Edsell, represented by William Cothrum of Masterplan, **deny** the special exception requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Brannon

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056-237

BUILDING OFFICIAL'S REPORT:

Application of Robert M. Edsel, represented by William Cothrum of Masterplan, 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
Represented by William Cothrum of Masterplan**

February 14, 2007 Public Hearing Notes:

- The Board Administrator circulated a revised site plan/landscape plan/elevation document submitted by the applicant on February 12th to the board members at their briefing (see Attachment F).
- The applicant’s representative submitted a revised site plan/landscape plan/elevation document at the public hearing (see Attachment G). The applicant’s representative stated that this plan specified the materials of the fence and wall, and moved the location of the solid wall 10 feet further from the street than what had originally been proposed.

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 that were considered by

Board of Adjustment Panel B on November 15, 2006, and delayed until February 14th 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 submitted a site plan/elevation with the original application and a revised site plan/elevation on January 29th indicating walls (of unspecified building materials) that reach a maximum height of 10'.
- The following additional information was gleaned from the originally submitted 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 approximately on the front property line or 6' 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 ."
- The following additional information was gleaned from the revised site plan submitted on January 29, 2007:
 - The proposed walls/pedestrian gate are approximately 153' in length parallel to Turtle Creek Drive and will connect to existing 7' high open wrought iron fences north and south of the subject site. (Of the approximately 153' length, approximately 28' is shown to be a wall that reaches 10' in height. The remaining 125' length is to be a 7' high wall).
 - The proposed wall/pedestrian gate are to be located at a range of 0' – 6' from the front property line or 2' - 8' from the pavement line.
- Specifications pertaining to the building materials of the proposed walls/pedestrian gate were not specified on the originally submitted plans or the revised submitted plans.
- Both the originally submitted wall elevation and revised 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.
- On November 15, 2006, the Board of Adjustment conducted a public hearing on this application and delayed action until February 14, 2007.
- On December 22, 2006, the applicant's representative submitted a letter to staff stating that his firm was withdrawing their representation of the owner/applicant on this request (see Attachment C).
- The applicant's representative submitted additional information beyond what was submitted with the original application, beyond what was discussed at the October 27th staff review team meeting, and beyond what was submitted at the November 15, 2006 public hearing (see Attachments D and E). This information included the following:
 - letters that provide additional details about the request;
 - a copy of a revised submitted site plan/elevation;
 - a copy of a document entitled "Presentation Material" that includes maps, photos of the site and surrounding area, site plans, a comparison chart, and letters in support of the request.

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 delayed action 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 until February 14, 2007.
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 delayed action on 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 until February 14, 2007.
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 delayed action on 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 until February 14, 2007.

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).

November 15, 2006 The Board of Adjustment conducted a public hearing on this matter and delayed action until February 14, 2007.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

Jan. 29 & Feb. 2, 2007 The applicant's representative submitted additional information (see Attachments D and E).

STAFF ANALYSIS:

- The applicant's representative submitted a letter on January 29th stating that the request at 3838 Turtle Creek Drive "remains the same – change iron fence to solid fence seven feet in height with a 10-foot tall entry feature."
- A revised scaled site plan/elevation document has been submitted that documents the location of the entire proposed wall/gate proposal in the site's front yard setback (about 153' long parallel to Turtle Creek Drive), and its location relative to the front property line (approximately 0'- 6' from the property line) and pavement line (about 2' – 8' from the pavement line). The revised site plan/elevation indicates that the wall is 7' in height for about 125' of its length, and 10' in height for the remaining 28' in length.
- The originally submitted scaled site plan/elevation document and revised site plan/elevation document indicate the maximum height of the proposed wall/gate (10' max.) but do not provide any documentation with regard to building materials.
- The originally submitted scaled site plan/elevation document and revised site plan/elevation document 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 February 5, 2007, 6 letters had been submitted in support of the request and 5 letters had been submitted in opposition.
- 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 originally submitted or revised site plan/elevation would provide assurance 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.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2006

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., Dallas, TX
Robert M. Edsel, 3811 Turtle Creek #590, Dallas, TX

APPEARING IN OPPOSITION: Kenneth Salyer, 3840 Turtle Creek Dr, Dallas, TX
Melvin Douglas, 3800 Normandy, Dallas, TX
David McAtee, 3844 Turtle Creek Dr, Dallas, TX
Martha Ann Schneider, 3848 Turtle Creek, Dallas,

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-237**, hold this matter under advisement until **January 17, 2007**.

SECONDED: Gillespie
AYES: 5 – Cox, Gillespie, Chernock
NAYS: 0 – Brannon, Beikman
MOTION PASSED – 3-2
MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-237**, reconsider the previous motion made on this case.

SECONDED: Beikman
AYES: 5 – Cox, Brannon, Gillespie, Beikman, Chernock
NAYS: 0 –
MOTION PASSED – 5-0 (unanimously)

MOTION #3: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 056-237**, hold this matter under advisement until **February 14, 2007**.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED – 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR:

Willie Cothrum, 900 Jackson St., Dallas, TX
John Ridings Lee, 3827 Turtle Creek, Dallas, TX
Will Terry, 5200 Maple Avenue, 17A, Dallas, TX
J Anthony Sosebee, 4232 Allencrest Ln, Dallas, TX
David McAtee, 3844 Turtle Creek Dr., Dallas, TX
Melvyn Douglas, 3800 Normandy, Highland Pk, TX
75205

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 056-237**, on application of Robert M. Edsell, represented by William Cothrum of Masterplan, **grant** the request of this applicant construct a 10 foot fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/elevation dated 2-14-07 document is required.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056-238

BUILDING OFFICIAL'S REPORT:

Application of Robert M. Edsel, represented by William Cothrum of Masterplan, 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 William Cothrum of Masterplan

February 14, 2007 Public Hearing Notes:

- The Board Administrator circulated a revised site plan/landscape plan/elevation document submitted by the applicant on February 12th to the board members at their briefing (see Attachment F).
- The applicant's representative submitted a revised site plan/landscape plan/elevation document at the public hearing (see Attachment G). The applicant's representative stated that this plan specified the materials of the fence and wall, and moved the location of the solid wall 10 feet further from the street than what had originally been proposed.

ORIGINAL REQUESTS:

- The following appeals had been made in this application on a site that is currently undeveloped:
 1. A special exception to the fence height regulations of 3' had been 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 had been 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' had been requested in conjunction with constructing and maintaining an approximately 1,300 square foot "Dwelling Unit."

AMENDED REQUEST:

- On January 29, 2007, the applicant's representative wrote a letter stating his intent to "drop requests for variance to visibility triangle and for structure setback. Amend existing special exception for a seven-foot iron fence to install a seven-foot entry gate" for the subject site located at 3824 Turtle Creek Drive (see Attachment D). As a result, the only request left for an action other than "denial without prejudice" is a request for a special exception to the fence height regulations of 3' requested in conjunction with constructing and maintaining a 7' high vehicular gate and a 7' high wall of unspecified building materials that would be located in the site's 40' front yard setback. The applicant states in a February 2, 2007 letter (Attachment E) that in

1992, a special exception for an “open face iron fence 7 feet in height was granted for the entire site” (a site that encompasses the sites in BDA056-236, 237, and 238). The applicant notes that the fence approved in 1992 for property at 3824 Turtle Creek Drive would not meet the visibility triangle rule, so in order to comply, the applicant is moving a portion of the fence further from the street, and needing a fence height special exception to deviate from specific plans that were imposed as conditions with the special exception approved in 1992.

(This site is part of two other Board of Adjustment cases that share boundaries/property owner that were considered by Board of Adjustment Panel B on November 15, 2006, located immediately north of the subject site: BDA056-236 and 237, and delayed until February 14, 2007).

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 without prejudice

Rationale:

- The applicant’s representative has written a letter requesting that this appeal be dropped since he intends to comply with the visibility obstruction regulations.

STAFF RECOMMENDATION (front yard variance):

Denial without prejudice

Rationale:

- The applicant’s representative has written a letter requesting that this appeal be dropped since “any new structure will be set back the required distance from Turtle Creek Drive.”

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 original and revised site plans/elevations indicating a fence/wall and gate (of unspecified building materials) that reaches a maximum height of 7'. (The originally submitted site plan differentiated 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 originally submitted 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 approximately on the front property line or 6' from the pavement line.
- The following additional information was gleaned from the revised submitted site plan:
 - The proposed 7' high fence/wall/gate is approximately 80 in length parallel to Turtle Creek Drive with a recessed ingress/egress point.
 - The proposed fence/wall is to be located approximately 9' – 21' from the front property line or 12'- 24' from the pavement line.
- Specifications pertaining to the building materials of the proposed fence/wall/gate have not been specified on either the originally submitted site plan/elevation or the revised site plan/elevation.
- The fence/wall elevation does not show any landscape materials to be placed on the site in conjunction with the proposal.
- 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.
- On November 15, 2006, the Board of Adjustment conducted a public hearing on this application and delayed action until February 14, 2007.
- On December 22, 2006, the applicant's representative submitted a letter to staff stating that his firm was withdrawing their representation of the owner/applicant on this request (see Attachment C).
- The applicant's representative submitted additional information beyond what was submitted with the original application, beyond what was discussed at the October 27th staff review team meeting, and beyond what was submitted at the November 15, 2006 public hearing (see Attachments D and E). This information included the following:
 - letters that provide additional details about the request;
 - a copy of a revised submitted site plan/elevation;
 - a copy of a document entitled "Presentation Material" that includes maps, photos of the site and surrounding area, site plans, a comparison chart, and letters in support of the request.

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

- On January 29, 2007, the applicant's representative wrote a letter stating his intent to "drop requests for variance to visibility triangle and for structure setback (see Attachment D). The applicant's representative has written a letter stating that he intends to comply with the visibility obstruction regulations.

GENERAL FACTS (related to the variance):

- On January 29, 2007, the applicant’s representative wrote a letter stating his intent to “drop requests for variance to visibility triangle and for structure setback (see Attachment D). The applicant’s representative has written a letter requesting that this appeal be dropped since “any new structure will be set back the required distance from Turtle Creek Drive.”

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 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 delayed action on 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 until February 14, 2007. |
| 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 delayed action on 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 until February 14, 2007. |

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 delayed action on 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 until February 14, 2007.

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).

November 15, 2006 The Board of Adjustment conducted a public hearing on this matter and delayed action until February 14, 2007.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

Jan. 29 & Feb. 2, 2007 The applicant's representative submitted additional information (see Attachments D and E).

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

- Originally submitted and revised scaled site plan/elevation documents have been submitted that documents the location of the entire proposed fence/wall/gate proposal in the site's front yard setback (about 80' long parallel to Turtle Creek Drive with a recessed ingress/egress point), and its location relative to the front property line (approximately 9' – 21" from the front property line) and pavement line (about 12' – 24' from the pavement line).
- Both the originally submitted and revised scaled site plan/elevation documents indicate the maximum height of the proposed fence/wall/gate (7' max.) but neither provide any documentation with regard to building materials.
- The fence/wall elevation does not show any landscape materials to be placed on the site in conjunction with the proposal.
- 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 February 5, 2007, 4 letters had been submitted in support of the request and 5 letters had been submitted in opposition.
- 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 fence/wall and gate of unspecified building 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 assurance that the proposed fence/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).

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

- On January 29, 2007, the applicant's representative wrote a letter stating his intent to "drop requests for variance to visibility triangle and for structure setback (see Attachment D). The applicant's representative has written a letter stating that he intends to comply with the visibility obstruction regulations.

STAFF ANALYSIS (related to the variance):

- On January 29, 2007, the applicant's representative wrote a letter stating his intent to "drop requests for variance to visibility triangle and for structure setback (see Attachment D). The applicant's representative has written a letter requesting that this appeal be dropped since "any new structure will be set back the required distance from Turtle Creek Drive."

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2006

APPEARING IN FAVOR:

Jonathan Vinson, 901 Main St., Dallas, TX
Robert M. Edsel, 3811 Turtle Creek #590, Dallas, TX

APPEARING IN OPPOSITION:

Kenneth Salyer, 3840 Turtle Creek Dr, Dallas, TX
Melvin Douglas, 3800 Normandy, Dallas, TX
David McAtee, 3844 Turtle Creek Dr, Dallas, TX
Martha Ann Schneider, 3848 Turtle Creek, Dallas,

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-238**, hold this matter under advisement until **January 17, 2007**.

SECONDED: Gillespie

AYES: 5 – Cox, Gillespie, Chernock

NAYS: 0 – Brannon, Beikman
MOTION PASSED – 3-2

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 056-238**, reconsider the previous motion made on this case.

SECONDED: Beikman
AYES: 5 – Cox, Brannon, Gillespie, Beikman, Chernock
NAYS: 0 –
MOTION PASSED – 5-0 (unanimously)

MOTION #3: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 056-238**, hold this matter under advisement until **February 14, 2007**.

SECONDED: Beikman
AYES: 5 – Cox, Brannon, Gillespie, Beikman, Chernock
NAYS: 0 –
MOTION PASSED – 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR: William Cothrum, 900 Jackson St., Dallas, TX
John Ridings Lee, 3827 Turtle Creek, Dallas, TX
Will Terry, 5200 Maple Avenue, 17A, Dallas, TX
J Anthony Sosebee, 4232 Allencrest Ln, Dallas, TX
David McAtee, 3844 Turtle Creek Dr., Dallas, TX
Melvyn Douglas, 3800 Normandy, Highland Pk, TX
75205

APPEARING IN OPPOSITION: No one

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 056-238**, on application of Robert M. Edsell, represented by William Cothrum of Masterplan, **grant** the request of this applicant construct a seven-foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised scaled site plan/elevation dated 2-14-07 is required.

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 056-238**, on application of Robert M. Edsell, represented by William Cothrum of Masterplan, **deny** the variance requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Brannon

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MOTION #3: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 056-238**, on application of Robert M. Edsell, represented by William Cothrum of Masterplan, **deny** the special exception to the visibility obstruction regulations requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Brannon

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056-243

BUILDING OFFICIAL'S REPORT:

Application of Michael Vaughan 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: Michael Vaughan

February 14, 2007 Public Hearing Notes:

- The Board Administrator circulated a letter, a revised site plan, and revised elevation to the board at the briefing (see Attachment B). The administrator informed the board that these plans, according to the applicant, reflected amendments that were made on February 13th to reflect comments that he had received from neighboring property owners.
- The applicant provided testimony at the hearing that he would comply with any City-requirements related to locating his fence inside a City easement, and additionally comply with visibility obstruction regulations.

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' open wrought iron fence (with a 2.5' high concrete footer) with approximately 8.5' high stucco columns, and two, 8' - 12' high arched entry gates (of unspecified 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 portions of the 8' open wrought iron fence (with a 2.5' high concrete footer) with approximately 8.5' high stucco columns in the site's four 20' visibility triangles at the two drive approaches.

(This site is immediately south of three other Board of Adjustment cases considered by Board of Adjustment Panel B on November 15, 2006 and delayed until February 14, 2007: 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 items (fence and columns) 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 had originally submitted a site plan and elevation indicating a fence and/or wall and two gates (of unspecified building materials) that reached a maximum height of 12'. On February 1, 2007, the applicant's representative submitted a revised site plan and elevation that provided clarity to what was shown on the originally submitted plan and elevation.
- The following additional information was gleaned from the originally submitted 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).
- The following additional information was gleaned from the revised submitted site plan:
 - The proposal appears to be approximately 210' in length parallel to Turtle Creek Drive.
 - The proposed fence and gates appear to be located on the front property line or about 6' from the Turtle Creek Drive 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."
- The revised elevation denoted the materials of the fence (open wrought iron fence atop a concrete footer) and the columns (stucco over haddock block).
- 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

- On November 15, 2006, the Board of Adjustment conducted a public hearing on this application and delayed action until February 14, 2007.
- The applicant's representative submitted additional information beyond what was submitted with the original application, beyond what was discussed at the October 27th staff review team meeting, and beyond what was submitted at the November 15, 2006 public hearing (see Attachment A). This information included the following:
 - a letter that provide additional details about the requests;
 - a copy of a revised submitted site plan and a revised fence elevation; and
 - photos of the site and surrounding area.

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).It appears from the submitted revised site plan and elevations that the applicant requests to construct and maintain portions of an 8' high open wrought iron fence and stucco columns in the four 20' visibility triangles at the two drive approaches into the subject site from Turtle Creek Drive.
- The applicant's representative submitted additional information beyond what was submitted with the original application, beyond what was discussed at the October 27th staff review team meeting, and beyond what was submitted at the November 15, 2006 public hearing (see Attachment A). This information included the following:
 - a letter that provide additional details about the requests;
 - a copy of a revised submitted site plan and a revised fence elevation; and
 - photos of the site and surrounding area.

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 delayed action 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 until February 14, 2007.
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 delayed action on 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 until February 14, 2007.
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 delayed action on 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 until February 14, 2007.
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 (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."

November 15, 2006 The Board of Adjustment conducted a public hearing on this matter and delayed action until February 14, 2007.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

Feb. 1, 2007

The applicant's representative submitted additional information (see Attachment A).

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

- A revised site plan has been submitted that indicates the proposed fence/columns/gates to be located in the site's front yard setback. This plan shows the approximately 210' long proposal to be located on the site's front property line or about 6' from the pavement line.
- A revised fence elevation has been submitted that indicates the maximum height of the fence (8'), columns (8.5'), and arched gates (8' - 12'). The revised elevation denotes the materials of the fence (open wrought iron atop a concrete footer) and columns (stucco over haddock). Gate materials have not been noted.
- 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.
- As of February 5th, no letters had been submitted in support of the request and 5 letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 8' (whereby the proposal over 4' in height in the front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 8' with conditions imposed that the applicant complies with the submitted revised site plan and revised elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

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 revised site plan and revised elevation, portions of an 8' high open wrought iron fence and stucco columns are 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 revised site plan and revised elevation, portions of the 8' high open wrought iron fence and 8.5' high

stucco columns would be “excepted” into the four 20’ visibility triangles at the two drive approaches into the site.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2006

APPEARING IN FAVOR: Braden Power, 3816 Turtle Creek, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Branno**

I move that the Board of Adjustment, in Appeal No. **BDA 056-243**, hold this matter under advisement until **February 14, 2007**.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED – 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR: Braden Power, 5923 Gaston, Dallas, TX
Marilee Sartain, 3802 Turtle Creek, Dallas, TX
David McAtee, 3844 Turtle Creek Dr., Dallas, TX
Melvyn Douglas, 3800 Normandy, Highland Pk, TX
75205

APPEARING IN OPPOSITION: No one

MOTION #1: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 056-243**, on application of Michael Vaughan, **grant** the request of this applicant to construct a 9 foot, 6 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised elevation dated 2-14-07* is required.

* The applicant provided testimony at the hearing that he would comply with any City-requirements related to locating his fence inside a City easement, and additionally comply with visibility obstruction regulations.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MOTION #2: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 056-243**, on application of Michael Vaughan, **deny** the special exception requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Beikman

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

NAYS: 0 – None

MOITION PASSED 5-0 (Unanimously)

FILE NUMBER: BDA 067-013

BUILDING OFFICIAL'S REPORT:

Application of Avida Custom Homes, represented by David Samei, for special exceptions to the fence height and visibility obstruction regulations at 10011 Strait Lane. This property is more fully described as Lot 4 in City Block 3/5531 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct a 12 foot fence in the required front yard setback, and to maintain items in the 45 foot visibility triangle at an intersection which would require a special exception of 8 feet to the fence regulations and a special exception to the visibility obstruction regulations.

LOCATION: 10011 Strait Lane

APPLICANT: Avida Custom Homes
Represented by David Samei

February 14, 2007 Public Hearing Notes:

- The applicant submitted a landscape plan at the public hearing.

REQUESTS:

- The following appeals have been made in this application on a site that is currently being developed with a single family home:
 1. A special exception to the fence height regulations of 5.5 feet* is requested in conjunction with constructing and maintaining the following:
 - In the site’s 40’ front yard setback along Strait Lane: both an 8’ high solid stucco wall with 9’ high columns (about 28’ in length) and a 6’ high open iron fence with 7’ high columns, and two 9’ high open iron gates with 9.5’ high entry columns (about 128’ in length); and

- In this site's 40' front yard setback along Walnut Hill Lane: an 8' high solid stucco wall with 9' high stucco columns, and an 8.5' high solid iron gate (with 9.5' high columns).
2. A special exception to the visibility obstruction regulations is requested in conjunction with constructing and maintaining portions of the 8' solid stucco wall with approximately 9' high stucco columns in the site's 45 visibility triangle at the intersection of Strait Lane and Walnut Hill Lane.

* Although the applicant had originally applied for a fence height special exception of 8' to accommodate originally proposed 12' high gates/columns, the applicant submitted a revised site plan/elevation document on January 25, 2007 where it appears that the highest component of the proposal is 9.5 feet, creating a fence height special exception need of 5.5 feet.

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):

Approval, subject to the submitted revised site plan/elevation

Rationale:

- The City's Development Services Senior Engineer has no objections to 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 subject site is located at the intersection of Strait Lane and Walnut Hill Lane. The site has two front yard setbacks along both of these streets. Even though the site's longer frontage is along Walnut Hill Lane which in most cases would be deemed a side yard where a 9' high fence would be permitted by right, the site's Walnut Hill Lane frontage is deemed a front yard in order to maintain continuity of an established front yard setback created by the lot immediately west of the site that faces south to Walnut Hill Lane.

- 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 revised site plan/elevation document indicating a fence/wall, column, and gate proposal that would reach a maximum height of 9.5'.
- The applicant had originally only submitted a reduction of what appeared to be a full scale site plan of the subject site. This site plan denoted two lines (one of which appeared to have been made by hand without a straight edge) that may or may not had been the proposed fence location with hand written notations and arrows pointing to "8' wall" and "6' wall." This reduced site plan did not clearly delineate the location of the proposal given that there are two lines on this plan that may or may not be the location of the proposed fence/wall. The reduced plan did not allow staff to describe the length of the proposal, the distances of the proposal from the property lines, pavement lines, or whether or not the proposal was in compliance with the visibility obstruction regulations.
- Separate partial elevations were originally submitted of the proposal on Walnut Hill Lane and Strait Lane. A gate elevation had been submitted but was not labeled as to whether or not it was a gate that is proposed along Strait Lane, Walnut Hill Lane or both.
- The Board Administrator emailed the applicant on several occasions in mid-December informing him of the standard in which the requests will be considered, informing him of a more typical site plan/elevation that he may want to consider preparing for the board's consideration, encouraging him to submit a full scale plan in order for certain characteristics to be described to the board, including but not limited to whether or not his fence proposal complies with the City's visibility obstruction regulations (see Attachment A).
- On January 26, 2007, the applicant submitted a revised scaled site plan/elevation document. (see Attachment D). This revised document allowed staff to determine the length of the proposal, the distances from the property lines, pavement lines, the heights and materials of the proposal.
- The following additional information was gleaned from the revised submitted site plan:
 - The proposal appears to be approximately 224' in length parallel to Walnut Hill Lane and approximately 160' in length along Strait Lane.
 - The proposal appears to be located on the site's Walnut Hill Lane and Strait Lane front property lines (with recessed ingress/egress points at drive approaches).
 - The proposal appears to be in compliance with the required 20' visibility triangles at drive approaches but not in compliance with the 45' visibility triangle at the intersection of Walnut Hill Lane and Strait Lane (hence the applicant's added requests since January of 2007 for a special exception to the visibility obstruction regulations: see Attachment E for a copy of the amended Building Official's Report).
- There are no single family homes that would have direct frontage to the proposed fence/wall/gate/columns to be located in the site's Strait Lane front yard setback.
- There are no single family homes that would have direct frontage to the proposed fence/wall/gate/columns to be located in the site's Walnut Hill Lane front yard setback.

- The Board Administrator conducted a field visit of the site and surrounding area along Strait Lane (from Walnut Hill Lane north to South Lindhurst Drive) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence, located immediately north of the subject site, is an approximately 6' high open iron fence with approximately 6.5' high columns and approximately 7.5' high open iron entry gates. (The Board of Adjustment granted a fence special exception on this site in December of 1997 to construct 6' high open metal fence with 6' 4" high masonry columns and 7.5' high open metal entry gates in the site's Strait Lane and South Lindhurst Drive front yard setbacks (BDA 978-013).
- The Board Administrator conducted a field visit of the site and surrounding area along Walnut Hill Lane (approximately 500' east and west of the subject site) and noted the following fences above four (4) feet high which appeared to be located in the front yard setback (Note that the following dimensions and descriptions are *approximate* heights):
 - A 5' high solid board fence atop a 2' high retaining wall immediately west of the subject site.
 - An 8' high solid brick wall with 9' high columns behind a full hedge two lots west of the subject site. (This Board of Adjustment granted a fence special exception on this site in November of 1997 to construct/maintain a fence that was to be a combination of solid brick panels and wrought iron/brick panels along Walnut Hill Lane, and wrought iron with brick columns along Lennox Lane (BDA 87-246).
- On January 4, 2007, the applicant submitted additional information beyond what was submitted with the original application, and beyond the January 2nd staff review team meeting (see Attachment B). This information included photos of the site and surrounding area.
- The Board of Adjustment conducted a public hearing on the matter on January 17, 2007. Board Administrator read an email and letter from the applicant at the public hearing. The email stated that staff had told the applicants not to post the notification sign on the site (since a request for a visibility obstruction special exception had been added at a date where this request could not be advertised for the January public hearing). The letter requested a delay of the fence height special exception request until February to allow consideration of that request along with the added visibility obstruction special exception request (See Attachment C). The board delayed action on the request until February 14, 2007.
- On January 26, 2007, the applicant submitted a revised site plan/elevation document (see Attachment D).

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).

It appears from the submitted revised site plan/elevation document that the applicant requests to construct and maintain a portion of the 8' high solid stucco wall in the 45' visibility triangle at the intersection of Strait Lane and Walnut Hill Lane.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 978-013, 10095 Strait Lane (the lot immediately north of the subject site) On December 16, 1997, the Board of Adjustment Panel C granted a request for a fence height special exception of 3.5' and imposed the following condition: Compliance with the submitted site plan and elevation plans is required. The case report stated that the request was made to construct/maintain a 6' high open metal fence with 6' 4" high masonry columns and 7.5' high open metal entry gates in the site's Strait Lane and South Lindhurst Drive front yard setbacks.
2. BDA 87-246, 10015 Lennox Lane (two lots west of the subject site) On November 10, 1987, the Board of Adjustment granted a request for a fence height special exception of 3' and imposed the following condition: "Submit a revised site plan showing the 55 foot visibility triangle, increasing the wrought iron along Walnut Hill Lane and tapering the level of the fence on the east side of Walnut Hill Lane from the building line to the property line. The plan should be submitted for approval on the December 8, 1987 docket." The case report stated that the request was made to construct/maintain a fence that was to be a combination of solid brick panels and wrought iron/brick panels along Walnut Hill Lane, and wrought iron with brick columns

along Lennox Lane.

Timeline:

- Nov. 13, 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. (Loose photographs submitted with the application will be available for review at the briefing/public hearing).
- Dec. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 12, 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 December 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 5th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 12, 18, 19, 2006: The Board Administrator emailed the applicant's representative with concerns related to the submitted elevations and site plan, and the lack of a submitted full scale scaled site plan that clearly delineates the fence proposal on the site (see Attachment A).
- January 2, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

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

January 4, 2007: The applicants met with the Board Administrator and Board of Adjustment Chief Planner. The applicant submitted photos of the site and surrounding area (see Attachment B). The applicants brought a full scale plan and elevation for staff's review where it could be determined that the proposed fence/wall was to be located in the visibility triangle at the intersection of Walnut Hill Lane and Strait Lane. Staff explained that the applicant had the option of relocating the proposed fence/wall out of the visibility triangle, or to make application for a special exception to the visibility obstruction regulations which (given time constraints related to statute requirements for advertising appeals) could be administered no earlier than Panel B's February 14th public hearing. The applicants informed staff that they intended to: 1) ask the board to delay action on their fence height special exception until February, 2) consider making revisions to the scaled site plan/elevation, and 3) make application for a special exception to the visibility obstruction regulations.

January 5, 2007 Although no application had been made for a special exception to the visibility obstruction regulations, the Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting:

- A minimum of 30' x 30' intersection visibility triangles (instead of 25' x 25' as shown)
- Intersection sight distance (right side) is limited by the vertical curve of Walnut Hill Lane but it is not affected by the proposed wall."

Jan. 17, 2007 The Board of Adjustment conducted a public hearing on this matter and delayed action until February 14, 2007.

Jan. 26, 2007 The applicant submitted additional information to staff (see Attachment D).

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

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

- Feb. 5, 2007 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections.”
- Feb. 8, 2007: A Code Compliance staff person from North District submitted a Review Comment Sheet marked “Has no objections” and “No comments.”

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

- A revised site plan/elevation document has been submitted that indicates the proposed fence/wall/columns/gates to be located in the site’s front yard setbacks. The site plan shows that the proposal is about 225’ in length along Walnut Hill Lane and about 160’ in length along Strait Lane. The site plan also shows that the fence/wall proposal is shown to be located on the site’s front property line with recessed ingress/egress points at drive approaches.
- The revised fence elevation on the site plan/elevation document indicates the maximum height of the fence (8’), columns (9’), and gates (9’). The revised elevation denotes the materials of the fence and wall (open wrought iron and stucco), and gates (open wrought iron on Strait Lane and solid iron on Walnut Hill Lane).
- There are no single family homes that would have direct frontage to the proposed fence/wall/gate/columns to be located in the site’s Strait Lane or Walnut Hill Lane front yard setbacks.
- One other fence above four (4) feet high which appeared to be located in the front yard setback was noted in a field visit of the site and surrounding area along Strait Lane (from Walnut Hill Lane north to South Lindhurst Drive). This fence, located immediately north of the subject site, is an approximately 6’ high open iron fence with approximately 6.5’ high columns and approximately 7.5’ high open iron entry gates. (The Board of Adjustment granted a fence special exception on this site in December of 1997 to construct 6’ high open metal fence with 6’ 4” high masonry columns and 7.5’ high open metal entry gates in the site’s Strait Lane and South Lindhurst Drive front yard setbacks (BDA 978-013).
- The following fences above four (4) feet high which appeared to be located in the front yard setback were noted in a field visit of the site and surrounding area along Walnut Hill Lane (approximately 500’ east and west of the subject site). (Note that the following dimensions and descriptions are *approximate* heights):
 - A 5’ high solid board fence atop a 2’ high retaining wall immediately west of the subject site.
 - An 8’ high solid brick wall with 9’ high columns behind a full hedge two lots west of the subject site. (This Board of Adjustment granted a fence special exception on this site in November of 1997 to construct/maintain a fence that was to be a combination of solid brick panels and wrought iron/brick panels along Walnut Hill Lane, and wrought iron with brick columns along Lennox Lane (BDA 87-246).
- As of February 5, 2007, one letter had been submitted in opposition to the request and no letters had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5.5’ (whereby a proposal that would reach a maximum 9.5 in height) will not adversely affect neighboring property.

- Granting this special exception to the fence height regulations of 5.5' with conditions imposed that the applicant complies with the submitted revised site plan/elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

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

- The Development Services Senior Engineer has submitted a review comment sheet indicating that he recommends that he has no objections to this request.
- 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 revised site plan/ elevation, portions of a solid 8' high stucco wall is proposed to be located in 45' visibility triangle at Walnut Hill Lane/Strait Lane intersection will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted revised site plan/ elevation, portions of the 8' high solid stucco wall would be "excepted" into the 45' visibility triangle at Walnut Hill Lane/Strait Lane intersection.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Paul Nagler, 5742 Berkshire Ln., Dallas, TX

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 067-013**, hold this matter under advisement until **February 14, 2007**.

SECONDED: **Beikman**

AYES: 4– Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR: Rozie Samei, 5953 King William, Plano, TX

APPEARING IN OPPOSITION: Paul Nagler, 5742 Berkshire Ln., Dallas, TX

MOTION #1: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 067-013**, on application of Avida Custom Homes, represented by David Samei, **grant** the request of this applicant to construct a 9 foot 6 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/elevation is required.
- Compliance with the submitted landscape plan (with regard to the landscape materials indicated on this plan on the street-side of Walnut Hill Lane) is required.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MOTION #2: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 067-013**, on application of Avida Custom Homes, represented by David Samei, **grant** the request of this applicant to construct portions of a fence in a visibility triangle as a special exception to the visibility obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/elevation is required.
- Compliance with the submitted landscape plan (with regard to the landscape materials indicated on this plan on the street-side of Walnut Hill Lane) is required.

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056-258

BUILDING OFFICIAL'S REPORT:

Application of Jeff and Sigrun Hukill for a special exception to the fence height regulations at 8603 Angora Street. This property is more fully described as Lot 30 in City Block 1/5222 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: 8603 Angora Street

APPLICANT: Jeff and Sigrun Hukill

REQUEST:

- A special exception to the fence height regulations of 2' is requested in conjunction with reconfiguring/maintaining a 6' high solid wood fence/wall and pedestrian gate in the site's 25' front yard setback along Angora Street. (The applicant has proposed to relocate the existing fence/wall to be in compliance with the City's visibility obstruction regulations).

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 subject site is located at the intersection of Angora Street and Lakeland Drive. The site has a front yard setback along Angora Street given that this frontage is the shorter of the two street frontages, and a side yard setback along Lakeland Drive given that there is no continuity of an established setback that must be maintained on this street since the lot immediately northwest of the subject site faces north to Garland Road.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant submitted a site plan and elevation with the original application and a revised site plan and elevation on January 8, 2007 all of which indicate a solid wood

fence/wall and pedestrian gate proposal that reaches a maximum height of 6' in the site's Angora Street front yard setback.

- The site plan submitted with the application indicated that the proposal in the site's Angora Street 25' front yard setback has the following additional characteristics:
 - Approximately 52' in length parallel to Angora Street and 25' on the "sides" perpendicular to Angora Street;
 - Located approximately on the site's front property line or about 18' from the pavement line;
 - Linear in design;
 - Portions of the fence located in the required visibility triangles at the Lakeland Drive/Angora Street intersection and the drive approach to the lot immediately to the northeast.
- On January 8, 2007, the applicant submitted a revised site plan and elevation that showed the fence location to be in compliance with the visibility obstruction regulations.
- There are two single family homes that would have direct/indirect frontage to the existing fence/wall located in the site's Angora Street front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Angora Street and noted no other fence 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 the following:
 - a petition signed by 20 neighbors/owners who support the request;
 - copies of letters that the applicant wrote to code enforcement;
 - a copy of a letter addressed to the Building Inspection Development Code Specialist; and
 - photos of the site and surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: CR (Community Retail)
South: PD No. 575 (Planned Development District)
East: R-7.5 (A) (Single family district 7,500 square feet)
West: R-10 (A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- Sept. 14, 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.
- Dec. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 19, 2006: The Board Administrator contacted the applicant and shared the following information:
- the fact that the submitted site plan showed the existing fence in the 45' visibility triangle at the intersection of Angora Street and Lakeland Drive, and in the 20' visibility triangle at the drive approach to the neighboring property immediately northeast of the subject site;
 - Building Inspection's inability to permit the fence if only the fence height were to be "special excepted;"
 - A deadline of December 22nd to either submit a revised site plan and elevation (that shows the fence in compliance with the visibility obstruction regulations) or an additional \$600.00 filing fee for the board to consider a special exception to the visibility obstruction regulations;
 - the criteria/standard that the board will use in their decision to approve or deny the request for both a fence height special exception and a visibility obstruction special exception;
 - 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 December 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 5th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 19, 2006: The applicant emailed the Board Administrator requesting that this appeal be postponed from Panel B's January 17th public hearing to Panel B's February 14th public hearing.
- Jan. 8, 2007: The applicant submitted a revised site plan and elevation "showing fence cutbacks on the east side of the property to be in compliance with the visibility obstruction requirements."

Jan. 24, 2007: The applicant submitted additional information to staff (see Attachment A).

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

The District Manager of Code Compliance submitted a Review Comment Sheet marked "Has no objections," and the Development Services Senior Engineer submitted a Review Comment Sheet marked "No comments."

STAFF ANALYSIS:

- A revised site plan has been submitted that indicates the proposed wall/gate to be located in the site's front yard setback. This plan shows that the wall will be reconfigured outside required visibility triangles whereby the wall will be about 52' in length parallel to Angora Street (approximately on the property line) and about 25' on either side of the site in the front yard setback.
- A revised fence elevation has been submitted that indicates the maximum height of the fence/wall and pedestrian gate (6'). The revised elevation denotes the materials of the fence/wall and pedestrian gate (solid wood).
- There are two single family homes that would have direct/indirect frontage to the existing fence/wall located in the site's Angora Street front yard setback.
- No other fence above four (4) feet high which appeared to be located in the front yard setback was noted in the immediate area.
- As of February 5th, no letters had been submitted in opposition to the request, and one petition signed by 20 neighbors/owners and one letter had been submitted in support of the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposal in the front yard setback that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 2' with conditions imposed that the applicant complies with the submitted revised site plan and revised elevation would provide assurance that the fence/wall and gate located in the site's Angora Street front yard setback would be reconfigured and maintained in the location and of the heights and materials as shown on these documents.
- Granting the special exception to the fence height special exception would not provide any relief to the applicant with regard to City's visibility obstruction regulations. The existing fence that is located in required visibility triangles would only be able to achieve a permit if the fence is reconfigured (per the submitted revised plan and elevation) to comply with the City's visibility obstruction regulations.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR:

Sigrun Hukill, 8603 Angora St., Dallas, TX
Jeff Hukill, 8603 Angora St, Dallas, TX

APPEARING IN OPPOSITION:

No one

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 056-258**, hold this matter under advisement until **March 21, 2007**.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER:

BDA 067-029

BUILDING OFFICIAL'S REPORT:

Application of Metro PCS Texas LLC, represented by Crafton Communications, for a variance to the height regulation at 4119 2nd Avenue. This property is more fully described as Lot 1A in City Block A/1791 and is zoned PD-595 (Subdistrict CC) which limits the height of a structure to 26 feet due to the residential proximity slope regulations. The applicant proposes to construct a structure with a height of 73 feet which would require a variance of 47 feet.

LOCATION:

4119 2nd Avenue

APPLICANT:

Metro PCS Texas LLC
Represented by Crafton Communications

REQUEST:

- A variance to the height regulations (specifically to the residential proximity slope or RPS) of 47' is requested in conjunction with constructing/maintaining a 73' high monopole tower on a site developed with a commercial use (Walker Auto Body Detail).

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the applicable development standards height regulations created by the residential

proximity slope) in a manner commensurate with other developments found on other similarly PD No. 595 (CC Subdistrict) zoned lots.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- PD No. 595 establishes the following provisions related to height for lots located in the CC Community Commercial Subdistrict:
Maximum structure height is 54 feet unless further restricted under Subparagraph (A).
Subparagraph (A) states that if any portion of a structure is over 26 feet in height, that portion may not be located a 1-to-3 residential proximity slope.
The Dallas Development Code establishes a residential proximity slope that limits height to 1 foot in height for every 3 feet away from private property in a residential zoning district (or a portion of a PD district which is restricted to residential uses).
The application states that a request has been made to “approve 70’ monopole (73’ overall height) for telecommunications. A 19’ height variance is requested.”
The information submitted on the application by the applicant differs from that what has been assessed in the Building Official’s Report. The Building Official’s Report states that the CC Subdistrict of PD No. 595 limits the height of a structure to 26’ due to the residential proximity slope regulation, and because the applicant proposed to erect a 73’ high structure, a variance of 47 feet is required. (The Board Administrator informed the applicant’s representative of this discrepancy on January 19th and encouraged him to reconcile any corrections that would need to be made to the Building Official’s Report by January 26th. The applicant’s representative informed the Board Administrator on January 26th that he understood the interpretation of the Building Official and conceded that his request was for a variance of 47 feet).
- The subject site is flat, irregular in shape, and according to the application, 1.107 acres in area.
- On January 26, 2006, the applicant’s representative submitted additional information to the Board Administrator beyond what was submitted with the application (see

Attachment A). This information included propagation maps of the site and surrounding area with and without MetroPCS DFW coverage.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
North: PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
South: PD No. 595 (R-5 Subdistrict) (Planned Development District, Single family)
East: PD No. 595 (NC Subdistrict) (Planned Development District, Neighborhood Commercial)
West: PD No. 595 (R-5 Subdistrict) (Planned Development District, Single family)

Land Use:

The subject site is developed with a commercial use (Walker Auto Body Detail). The areas to the north and east are developed with a commercial uses; and the areas to the south and west are developed with either vacant lots or 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:

- Dec. 28, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Jan. 19, 2007: 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 26, 2007 The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The subject site is flat, irregular in shape, and according to the application, 1.107 acres in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations due to the residential proximity slope requested to construct and maintain a 73’ high monopole tower structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 595 (CC Subdistrict) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 595 (CC Subdistrict) zoning classification.
- If the Board were to grant the height variance of 47’, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure encroaching above and beyond the residential proximity slope would be limited to what is shown on the submitted plan and elevation which in this case is a 73’ high monopole structure that is 47’ above the residential proximity slope line.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 14, 2007

APPEARING IN FAVOR: Russell Seay, 912 Summertrail Ct., Highland Village, TX
Mark Walker, P.O. Box 191, Forresteron, TX 76041

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 067-029**, on application of Metro PCS Texas, LLC, represented by Crafton Communications, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

3:35 P.M. - Board Meeting adjourned for February 14, 2007.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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