

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, FEBRUARY 15, 2012**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member David Wilson, regular member, and Paula Leone, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member David Wilson, regular member, and Paula Leone, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Theresa O' Donnell, Director, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Theresa O' Donnell, Director, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer, and Trena Law, Board Secretary

11:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 15, 2012 docket.**

1:05 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 18, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 15, 2012

MOTION: Wilson

I move approval of the **Wednesday, January 18, 2012** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-017

BUILDING OFFICIAL’S REPORT:

Application of David Fandrich for special exceptions to the fence height and visual obstruction regulations at 6006 Azalea Lane. This property is more fully described as Lot 1 in City Block 4/5500-1/2 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at alley approaches. The applicant proposes to construct and/or maintain an 8 foot 6 inch high fence in a required front yard, which will require a 4 foot 6 inch special exception to the fence height regulations, and to construct and/or maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 6006 Azalea Lane

APPLICANT: David Fandrich

REQUESTS:

- The following appeals have been made on a site that is currently developed with a single family home:
 1. A special exception to the fence height regulations of 4’ 6” is requested in conjunction with maintaining an approximately 8’ high solid board-on-board fence with 8’ 6” high columns in the site’s front yard setback on Azalea Lane; and
 2. a special exception to the visual obstruction regulations is requested in conjunction with maintaining an approximately 4’ length of the solid 8’ high board-on-board fence and one 8’ 6” high column in the 20-foot visibility triangle at the intersection of the alley immediately south of the site at Preston Road.

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval of the request, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.
- The applicant has substantiated how the location of the item (fence/column) in the alley/street intersection visibility triangle does not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (fence height special exception):

- The subject site is located at the southeast corner of Azalea Lane and Preston Road. The site has one front yard setback on Azalea Lane.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation of the proposal/existing fence in the front yard setback that reaches a maximum height of 8' 6".
- The following additional information was gleaned from the submitted site plan:
 - The existing fence located in the required front yard over 4' in height is represented on the site plan as being approximately 24' in length perpendicular to Azalea Lane and/or parallel to Preston Road. No part of the existing fence in the front yard setback is oriented parallel to Azalea Lane.
 - The proposal is shown to be located 14' from the site's front property line or 26' from the curb line.

GENERAL FACTS (visual obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A site plan and elevation has been submitted indicating an approximately 4' length of the solid 8' high board-on-board fence and one 8' 6" high column in the 20-foot visibility triangle at the intersection of the alley immediately south of the site at Preston Road.

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-1ac(A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 101-081, Property at 6007 Azalea Lane (the lot immediately north of subject site) | <p>On September 21, 2011, the Board of Adjustment Panel B granted a request for a special exception to fence height regulations of 4' 6" imposing the submitted site plan and elevation as a condition to the request. The case report stated that the request was made in conjunction with maintaining a solid cedar fence ranging from approximately 7' 3" – 8' in height with stone columns ranging from 7' 3" – 8' 6" in height in the site's front yard setback on a site developed with a single family home.</p> |
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Timeline:

- November 30, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 12, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 12, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 25th deadline to submit additional evidence for staff to factor into their analysis; and the February 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- February 1, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS (fence height special exception):

- This request focuses on maintaining an approximately 8' high solid board-on-board fence with 8' 6" high columns in the site's front yard setback on Azalea Lane on a site developed with a single family home.
- The subject site is located at the northeast corner of Azalea Lane and Preston Road. The site has one front yard setback on Azalea Lane.
- The submitted site plan and elevation documents the location, height, and material of the fence over 4' in height in the front yard setback. The site plan shows the existing fence located in the required front yard over 4' in height is approximately 24' in length perpendicular to Azalea Lane and/or parallel to Preston Road. No part of the existing fence in the front yard setback is oriented parallel to Azalea Lane. The fence is shown to be located 14' from the site's front property line or 26' from the curb line.

- One single family home “fronts” to the existing fence on the subject site. This property has what appears to be virtually the same type of fence in terms of location and height as is on the subject site – a fence higher than 4’ in height in what appears to be in the front yard setback with recorded BDA history- BDA 101-081- an application that was approved by Board of Adjustment Panel B in September of 2011.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four feet high that appeared to be located in a front yard setback other than the one described above immediately north of the subject site at the northeast corner of Azalea Lane and Preston Road.
- As of February 6, 2012, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ 6” will not adversely affect neighboring property.
- Granting this special exception of 4’ 6” with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4’ in height in the front yard setback (in this case, an existing fence) to be maintained in the location and of the height and material as shown on these documents.

STAFF ANALYSIS (visual obstruction special exception):

- The request for a special exception to the visual obstruction regulations focus on maintaining an approximately 4’ length of the solid 8’ high board-on-board fence and one 8’ 6” high column in the 20-foot visibility triangle at the intersection of the alley immediately south of the site at Preston Road.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to maintain a relatively small length of a solid fence and column in the visibility triangle at where the alley on the south side of the site meets Preston Road does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the items located in the visibility triangle at where the alley on the south side of the site meets Preston Road would be limited to the location, height and materials of those items as shown on these documents.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 15, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment grant application **BDA 112-017** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas

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

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

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-020

BUILDING OFFICIAL’S REPORT:

Application of Mark Hughston, represented by Peter Kavanagh, for a special exception to the single family use regulations at 11575 E. Ricks Circle. This property is more fully described as Lot 5 in City Block 1/7490 and is zoned R-1ac(A), which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit, which will require a special exception to the single family use regulations.

LOCATION: 11575 E. Ricks Circle

APPLICANT: Mark Hughston
Represented by Peter Kavanagh

REQUEST:

- A request for a special exception to the single family use development standard regulations is requested in conjunction with constructing and maintaining an additional dwelling unit structure (a one-story, detached “cabana” structure) on a site currently developed with a one-story dwelling unit/single family home structure to be demolished and replaced with another dwelling unit/single family home structure.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

GENERAL FACTS:

- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- A site plan has been submitted denoting the locations of the two building footprints, the larger of the two located closer to Rick Circle Drive but unlabeled and the other located near the back of the property labeled “cabana.” The site plan represents the sizes and locations of the two building footprints relative to the entire lot/property.
- An elevation has been submitted of the second/additional dwelling unit/ “cabana” structure denoting a one-story structure that is approximately 18’ in height. A floor plan has been submitted of the second/additional dwelling unit/ “cabana” structure denoting the following rooms/spaces: “family,” “bar,” “closet,” “bedroom,” “bath,” “pool stor.,” “ and “mechanical.”
- DCAD records indicate that the property at 11575 E. Ricks Circle has the following improvements:
 - “main improvement:” a structure built in 1953 with 3,064 square feet of living area; and
 - “additional improvement:” 483 square foot attached garage.

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

December 13, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 12, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 12, 2012: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 25th deadline to submit additional evidence for staff to factor into their analysis; and the February 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an additional dwelling unit structure (a one-story, detached "cabana" structure) on a site currently developed

with a one-story dwelling unit/single family home structure to be demolished and replaced with another dwelling unit/single family home structure.

- The site is zoned R-1ac(A) (Single family district 1 acre) where the Dallas Development Code permits one dwelling unit per lot. The site is proposed to be developed with a new single family home/dwelling unit and an additional dwelling unit/“cabana” structure on the site hence the special exception request.
- Building Inspection staff has reviewed the submitted floor plan of the proposed “cabana” structure and deemed it a “dwelling unit” - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.” The submitted floor plan denotes the following rooms/spaces: “family,” “bar,” “closet,” “bedroom,” “bath,” “pool stor.,” “ and “mechanical.”
- This request appears to center on the function of what is proposed to be located inside the proposed “cabana” structure. If the board were to deny this request, it appears that this structure could be constructed and maintained with merely modifications to the function/use inside it (or to the floor plan) since the proposed structure appears (and is represented by the applicant’s representative) to comply with the applicable zoning code development standards (i.e. no application has been made for variance to setbacks or any other zoning code provision). According to the applicant’s representative, the cabana could be built in its current configuration but “without the plumbing and/or appliances that make it a second dwelling unit.”
- As of February 6, 2012, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, the Board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan and/or floor plan are necessary in assuring that the special exception will not adversely affect neighboring properties. Note that granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements including but not limited to setback and coverage requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 15, 2012

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley Dr., Dallas, TX
Bruce Bernbaum, 4645 N. Central Expwy., Ste 200,
Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 112-020** on application of Mark Hughston, represented by Peter Kavanagh, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations or adversely affect neighboring properties. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development:

- The property must be deed-restricted to prohibit the additional dwelling unit from being used as rental accommodations.

SECONDED: Gillespie

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 1 – Leone

MOTION PASSED 4 – 1

FILE NUMBER: BDA 112-022

BUILDING OFFICIAL’S REPORT:

Application of Rob Farrington for special exceptions to the sign regulations at 3565 Frankford Road. This property is more fully described as Lot 2 in City Block A/8747 and is zoned CR, which limits the number of detached signs on a premises to one per street frontage other than expressways and limits the setback, effective area, and height. The applicant proposes to construct one additional detached premise sign on a nonresidential premise, and for this proposed sign to be up to 10 percent larger in effective area and 10 percent higher in height than permitted by code, which will require special exceptions to the sign regulations.

LOCATION: 3565 Frankford Road

APPLICANT: Rob Farrington

REQUESTS:

- The following appeals have been made in conjunction with erecting and maintaining a 38’ 6” high, 220 square foot detached single tenant non-monument sign to advertise one of four retail uses on the subject site, specifically a sign to advertise an existing restaurant use on the subject site (Applebee’s):
 1. A special exception to the sign regulations related to the number of signs allowed per street frontage is requested in conjunction with the sign mentioned above being located on the site in addition to the one existing sign permitted by right along the site’s Frankford Road frontage (in this case, an existing single tenant non-monument sign for a bank use on the subject site);
 2. A special exception to the sign regulations of 20’ related to the required effective area of 200 square feet is requested in conjunction with constructing and

maintaining a detached single tenant non-monument sign with an effective area 10 percent larger than what is permitted by code; and

3. A special exception to the sign regulations of 3' 6" related to the required height of 35' is requested in conjunction with constructing and maintaining a detached single tenant non-monument sign with a height 10 percent higher than what is permitted by code.

(Note that the applicant has informed the Board Administrator that he intends to remove an existing monument sign advertising the restaurant on the site if this sign has not gone through the necessary permitting with a proposed detached single tenant non-monument sign advertising the restaurant).

STAFF RECOMMENDATION:

Approval of the request for a special exception to the sign regulations for an additional sign

Denial of the requests for special exceptions to the sign regulations for a sign to be 10 percent larger in effective area and 10 percent higher than in height than what is permitted by code

Rationale:

- Staff has concluded that strict compliance with the code, which limits the subject site to one sign for its approximately 600 feet of frontage along Frankford Road, would result in an inequity to the applicant as each of the three pads within this site with frontage along Frankford Road would not be permitted to have a detached single tenant premise sign unless this special exception for an additional sign is approved.
- Staff has further concluded that the applicant has not substantiated how compliance with the code permitted effective area (200 square feet) and height (35 feet) would result in substantial financial hardship or inequity to the applicant without corresponding benefit to the city and citizens in accomplishing the objectives of this article.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR ONE ADDITIONAL DETACHED PREMISE SIGN, AND FOR A DETACHED PREMISE SIGN WITH AN INCREASE OF 10 PERCENT IN THE EFFECTIVE AREA AND HEIGHT:

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

GENERAL FACTS:

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways; that the effective area of a single-tenant

sign may not exceed 200 square feet; and that the height of a single-tenant sign may not exceed 35 feet.

A document has been submitted entitled “Alta/ACSM Land Title Survey” that represents the entire area encompassing the subject site. This document shows that the site is made up of a number of pad sites that includes the following with frontage along Frankford Road from the site’s western boundary on the President George Bush Highway to the site’s eastern boundary on Marsh Lane: a pad labeled “Steak & Shake” (now vacant); a pad that is unlabeled (but is the area on which the proposed additional/larger/higher sign is to be located - Applebee’s); and a pad labeled “Hybernia Bank” (now an existing Capital One bank). This plan shows the location of the one sign that the property is permitted to have on Frankford Road – a sign located on the pad labeled as “Hybernia Bank” on easternmost side of the subject site.

- A site plan and sign elevation has been submitted representing the pad on the subject site to which the proposed sign that is the nature of this request is to be located – the pad on which the existing restaurant (Applebee’s) is located. The site plan indicates the “location of large pylon” past the 55’ setback required for the sign from the Frankford Road property line. This proposed sign would be an additional sign to the one sign that the site’s Frankford Road frontage is permitted to have by right which is in this case is the existing detached sign advertising the existing bank use on the pad to the east. The elevation notes a detached single-tenant sign that is 38’ 6” high (or 10 percent higher than what is permitted by right) and that is 220 square feet in effective area (or 10 percent larger than what is permitted by right).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR (Community Retail)
<u>North:</u>	CR (Community Retail)
<u>South:</u>	CR (Community Retail)
<u>East:</u>	CR (Community Retail)
<u>West:</u>	CR (Community Retail)

Land Use:

The site is currently made up of a number of pad sites that includes the following with frontage along Frankford Road from the site’s western boundary on the President George Bush Highway to the site’s eastern boundary on Marsh Lane: a pad labeled “Steak & Shake” (now vacant); a pad that is unlabeled (but is the area on which the proposed sign is to be located (Applebee’s); and a pad labeled “Hybernia Bank” (now an existing Capital One Bank). The areas to the north, east, and south are developed with retail uses; and the area to the west is developed as the George Bush Highway (SH 190).

Zoning/BDA History:

1. BDA 067-166, Property at 3010 Frankford Road (the property located south and west of the subject site)

On November 13, 2007, the Board of Adjustment Panel A denied requests for special exceptions to the setback, effective area, and height regulations without prejudice. The case report stated that the requests were made to erect/maintain a 44' high expressway sign with a 440 square foot effective area located 22.5' from the site's Bush Turnpike service road front property line for a property being developed at the time as an office use (American Mortgage Funds Office Building).

Timeline:

November 10, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 12, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 19, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 25th deadline to submit additional evidence for staff to factor into their analysis; and the February 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The focus of these requests is to erect and maintain a single tenant non-monument sign that would advertise an existing restaurant on the subject site (Applebee's) located on one of three existing pads fronting Frankford Road. This proposed sign would be an additional sign beyond the one sign that is permitted by right along the site's approximately 600 feet of Frankford Road street frontage, and is proposed to be 10 percent greater in effective area (220 square feet as opposed to 200 square feet permitted by code) and 10 percent higher in height (38' 6" as opposed to 35 feet permitted by code).
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirements of the sign regulations (related to the site being limited to one sign along its approximately 600 feet of Frankford Road street frontage with a maximum effective area of 200 square feet and with a maximum height of 35 feet) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting any or all of these special exceptions would allow an additional sign to be erected and maintained on the site with an effective area and height that is 10 percent larger and higher than what is permitted by code.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 15, 2012

APPEARING IN FAVOR: Rob Farrington, 6133 Chelsey Lane, Dallas, TX

APPEARING IN OPPOSITION: Marla Beikman, 5739 Preston Rd., Dallas, TX
Ann Murphy, 19126 Windmill Lane, Dallas, TX

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 112-022**, on application of Rob Farrington, **grant** the special exception to allow an additional detached premise sign, because our evaluation of the property and the testimony shows that strict compliance with the provisions of Article VII of the Dallas Development Code will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the City of Dallas and its citizens in accomplishing the objectives of that article.

SECONDED: Wilson

AYES: 4– Reynolds, Gillespie, Chernock, Wilson,

NAYS: 1 – Leone

MOTION PASSED 4– 1

MOTION #2: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 112-022**, on application of Rob Farrington, **deny** the special exception to allow the additional detached premise sign to be 10 percent larger in effective area and the height to be 10 percent higher **with**

prejudice, because our evaluation of the property and the evidence shows that any financial hardship or inequity that may result from strict compliance with the provisions of Article VII of the Dallas Development Code is outweighed by the benefit to be received by the citizens of the City of Dallas in promoting the health, safety, and welfare of the public in accomplishing the objectives of that article.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5– 0 (unanimously)

1:55 P.M. - Board Meeting adjourned for **February 15, 2012.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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