

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
WEDNESDAY, MARCH 20, 2013**

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, Lloyd Denman, Asst., Director, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Lloyd Denman, Asst., Director, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 19, 2013 docket.**

1:03 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 February 20, 2013 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 20, 2013

MOTION: Leone

I move approval of the **Wednesday, February 20, 2013** 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 123-011

BUILDING OFFICIAL’S REPORT: Application of Jaime Lopez for special exceptions to the fence height and visual obstruction regulations at 7703 Fairport Road. This property is more fully described as Lot 3 in City Block 7971, and is zoned R-7.5(A), which (1) limits the height of a fence in the front yard to 4 feet and (2) requires 20-foot visibility triangles at drive approaches. The applicant proposes to construct and/or maintain a 6-foot-high fence in the front yard and in the required visibility triangles, which will require special exceptions to the fence height regulations of 2 feet and the visual obstruction regulations.

LOCATION: 7703 Fairport Road

APPLICANT: Jaime Lopez

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 2’ in conjunction with maintaining an arched open iron picket fence ranging from 4’ - 4” 8” in height 5’ – 6’ high stone columns and an arched open iron picket gate 6’ in height flanked by 6’ high stone entry columns.
 2. Special exceptions to the visual obstruction regulations in conjunction with maintaining two of the aforementioned 6’ high stone entry columns in the 20-foot visibility triangles on either side of the driveway into the site from Fairport Road. (Note that this application abuts a property to the west where the same applicant seeks similar fence height and visual obstruction special exceptions. See BDA 123-012).

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.

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 requests, 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 items (two 6’ high stone entry columns) in the 20-foot visibility triangles on either side of the driveway into the site from Fairport Road does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 123-012, Property at 7609 On March 20, 2013, the Board of Adjustment

Fairport Road (the lot immediately west of subject site)

Panel B will consider requests for a special exception to the fence height regulations of 2' requested in conjunction with maintaining an arched open iron picket fence ranging from 4' - 4' 8" in height 5' - 6' high stone columns, and constructing and maintaining an arched open iron picket gate 4' - 4' 8" in height; and special exceptions to the visual obstruction regulations requested in conjunction with maintaining lengths of a 4' - 4' 8" high open iron picket fence, and constructing and maintaining a 4' - 4' 8" high open iron picket gate in the 20-foot visibility triangles on either side of the driveway that is proposed to lead into the site from Fairport Road.

Timeline:

- December 18, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- February 13, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- February 13, 2013: The Board Administrator emailed a family member of the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

March 8, 2013: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

GENERAL FACTS/STAFF ANALYSIS (fence height special exception):

- This request focuses on maintaining an arched open iron picket fence ranging from 4' - 4" 8" in height 5' – 6' high stone columns and an arched open iron picket gate 6' in height flanked by 6' high stone entry columns on a lot developed with a single family home.
- The Dallas Development Code 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 6'.
- The following additional information was gleaned from the submitted site plan:
 - The existing fence/gate located in the required front yard over 4' in height is represented on the site plan as being approximately 92' in length parallel to the street and approximately 25' perpendicular to the street on the east side of the site in the front yard setback.
 - The existing fence is shown to be located on the site's front property line or 12' from the pavement line.
 - The existing gate is shown to be located approximately 10' from the site's front property line or 22' from the projected pavement line.
- One single family home "fronts" to the existing fence on the subject site, a home with what appears to be a 4' high fence with an approximately 6' high gate.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences other than the fence to the west that is the issue at hand of BDA 123-012 significantly above four feet high that appeared to be located in a front yard setback.
- As of March 11, 2012, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting this special exception of 2' 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.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- These requests focus on maintaining two 6' high stone entry columns in the 20-foot visibility triangles on either side of the driveway into the site from Fairport Road.
- The Dallas Development Code states the following: 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 only two 6' high stone columns are located in the 20-foot visibility triangles on either side of the driveway into the site from Fairport 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 requests for special exceptions to the visual obstruction regulations to maintain two, 6' high stone columns in the visibility triangles at the drive approaches into the site from Fairport Road does not constitute a traffic hazard.
 - Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the items in the 20-foot visibility triangles on either side of the driveway into the site from Fairport Road would be limited to the location, height and materials of those items as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 123-011**, on application of Jaime Lopez, **grant** the request to construct and maintain a 6 foot high fence as a special exception to height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that the special exception will not adversely affect neighboring property. 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 and elevation is required.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 123-011**, on application of Jaime Lopez, **grant** the requests to maintain items in the visibility triangle as special exceptions to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that the special exception will not constitute a traffic hazard. 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 and elevation is required.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-012

BUILDING OFFICIAL’S REPORT: Application of Jaime Lopez for special exceptions to the fence height and visual obstruction regulations at 7609 Fairport Road. This property is more fully described as Lot 2 in City Block 7971, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires 20-foot visibility triangles at drive approaches. The applicant proposes to construct and/or maintain a 6-foot-high fence in the front yard and within the required visibility triangles, which will require special exceptions to the fence height regulations of 2 feet; and the visual obstruction regulations.

LOCATION: 7609 Fairport Road

APPLICANT: Jaime Lopez

REQUESTS:

- The following appeals have been made on a site that is currently undeveloped:
 1. A special exception to the fence height regulations of 2’ in conjunction with maintaining an arched open iron picket fence ranging from 4’ - 4” 8” in height with 5’ – 6’ high stone columns, and constructing and maintaining an arched open iron picket gate 4’ – 4’ 8” in height.
 2. Special exceptions to the visual obstruction regulations in conjunction with maintaining lengths of a 4’ – 4’ 8” high open iron picket fence, and constructing and maintaining a 4’ – 4’ 8” high open iron picket gate in the 20-foot visibility triangles on either side of the driveway that is proposed to lead into the site from Fairport Road.

(Note that this application abuts a property to the west where the same applicant seeks similar fence height and visual obstruction special exceptions. See BDA 123-011).

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.

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 requests, 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 items (4' – 4' 8" high open picket fence and open picket gate) in the 20-foot visibility triangles on either side of the driveway into the site from Lolita Drive would not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 123-011, Property at 7703 Fairport Road (the lot immediately east of subject site) On March 20, 2013, the Board of Adjustment Panel B will consider a special exception to the fence height regulations of 2' is requested

in conjunction with maintaining an arched open iron picket fence ranging from 4' - 4" 8" in height 5' high stone columns and an arched open iron picket gate 6' in height flanked by 6' high stone entry columns; and special exceptions to the visual obstruction regulations requested in conjunction with maintaining two of the aforementioned 6' high stone entry columns in the 20-foot visibility triangles on either side of the driveway into the site from Fairport Road.

Timeline:

- December 18, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- February 13, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- February 13, 2013: The Board Administrator emailed a family member of the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- March 8, 2013: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

GENERAL FACTS/STAFF ANALYSIS (fence height special exception):

- This request focuses on maintaining an arched open iron picket fence ranging from 4' - 4' 8" in height with 5' – 6' high stone columns, and constructing and maintaining an arched open iron picket gate 4' – 4' 8" in height on a undeveloped site.
- The Dallas Development Code 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 6'.
- The following additional information was gleaned from the submitted site plan:
 - The existing fence/proposed gate in the required front yard over 4' in height is represented on the site plan as being approximately 92' in length parallel to the street and approximately 25' perpendicular to the street on the west side of the site in the front yard setback.
 - The existing fence/proposed gate is shown to be located on the site's front property line or 12' from the pavement line.
- One single family home "fronts" to the existing fence on the subject site, a home with what appears to be a 4' high fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences other than the fence to the west that is the issue at hand of BDA 123-011 significantly above four feet high that appeared to be located in a front yard setback.
- As of March 11, 2012, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting this special exception of 2' 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.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception):

- These requests focus on maintaining lengths of a 4' – 4' 8" high open iron picket fence, and constructing and maintaining a 4' – 4' 8" high open iron picket gate in the 20-foot visibility triangles on either side of the driveway that is proposed to lead into the site from Fairport Road.
- The Dallas Development Code states the following: 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 approximately 12 lengths of the 4' – 4' 8" high open iron picket fence and gate to be located in 20-foot visibility triangles on either side of the proposed driveway into the site from Fairport 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 requests for special exceptions to the visual obstruction regulations to maintain lengths of an open iron picket fence and gate in the visibility triangles at proposed drive approaches into the site from Fairport Road does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the items in the 20-foot visibility triangles on either side of the proposed driveway into the site from Fairport Road would be limited to the location, height and materials of those items as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 123-012**, on application of Jaime Lopez, **grant** the request to construct and maintain a 6 foot high fence as a special exception to height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that the special exception will not adversely affect neighboring property. 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 and elevation is required.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Wilson

I move that the Board of Adjustment, in Appeal No. **BDA 123-012**, on application of Jaime Lopez, **grant** the requests to maintain items in the visibility triangle as special exceptions to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that the special

exception will not constitute a traffic hazard. 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 and elevation is required.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-020

BUILDING OFFICIAL’S REPORT: Application of Karl A. Crawley of Masterplan for a special exception to the off-street parking regulations and variances to the front yard setback and off-street parking regulations at 4232 Delano Place. This property is more fully described as Lot 26A in City Block B/657 and is zoned MF-2(A), which requires (1) 2 off-street parking spaces; (2) a front yard setback of 15 feet; and (3) a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a single family residential structure and provide (1) 1 of the required 2 parking spaces, which will require a special exception to the off-street parking regulations of 1 space; (2) a 5 foot front yard setback, which will require a variance to the front yard setback regulations of 10 feet; and (3) an enclosed parking space with a setback of 10 feet, which will require a variance to the off-street parking regulations of 10 feet.

LOCATION: 4232 Delano Place

APPLICANT: Karl A. Crawley of Masterplan

REQUESTS:

The following appeals have been made in conjunction with constructing and maintaining a single-story approximately 1,700 square foot single family home structure on a site that is currently undeveloped:

1. A variance to the front yard setback regulations of 10’ is requested to locate the proposed home in one of the site’s two 15’ front yard setbacks (Peak Street)- more specifically a structure proposed to be located 5’ from the Peak Street front property line or 10’ into the 15’ front yard setback on Peak Street.
2. A variance to the off-street parking regulations of 10’ is requested as the proposed home is proposed to have a parking space enclosed in a garage that would be located 10’ from the Peak Street property/right-of-way line or as much as 10’ into the required 20’ distance from the street right-of-way line.
3. A special exception to the off-street parking regulations of 1 parking space (or a 50 percent reduction of the 2 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining the proposed single family home with one of the required two off-street parking spaces.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.

- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION (front yard setback variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The lot's restrictive area (a lot size that is approximately 2,000 square feet less than other adjacent lots in the area/same zoning district) precludes its development in a manner commensurate with other developments found on similarly-zoned MF-2(A) lots.
- In this case, according to the applicant's submittals, a one-story approximately 1,700 square foot single family home with a one-car garage is proposed on the subject site.

STAFF RECOMMENDATION (off-street parking variance):

Approval, subject to the following condition:

1. Compliance with the submitted site plan is required.
2. An automatic garage door must be installed and maintained in working order at all times.
3. At no time may the area in front of the garage be used for parking of vehicles.
4. All applicable permits must be obtained.

Rationale:

- The lot's restrictive area (a lot size that is approximately 2,000 square feet less than other adjacent lots in the area/same zoning district) precludes its development in a

manner commensurate with other developments found on similarly-zoned MF-2(A) lots. In this case, according to the applicant's submittals, a one-story approximately 1,700 square foot single family home with a one-car garage is proposed on the subject site.

- Granting this request is not contrary to the public interest because: 1) the submitted site plan denotes the location of the enclosed parking space, which is 10' from the street right-of-way line or 24' from the projected pavement line, and 2) the Sustainable Development and Construction Department Engineering Division Assistant Director has indicated with no objections to this request.

STAFF RECOMMENDATION (off-street parking special exception):

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the single family use is changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed single family use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the property were zoned single family and not multifamily, the applicant would be in compliance with the off-street parking requirements for the proposed single family use).
- Additionally, the subject site is located on Peak Street where public transit is readily available.
- The Sustainable Development and Construction Department Project Engineer has no objections to the applicant's request.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: MF-2(A) (Multifamily)
South: MF-2(A) (Multifamily)
East: MF-2(A) (Multifamily)
West: MF-2(A) (Multifamily)

Land Use:

The subject site is undeveloped. The areas to the north, south, east, and west are mostly developed with what appears to be single family or duplex 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:

January 23, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 13, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 13, 2013: 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 February 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 26, 2013: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

March 8, 2013: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on constructing and maintaining a single-story approximately 1,700 square foot single family home on an undeveloped site, part of which is proposed to be located in the one of the site’s two 15’ front yard setbacks (Peak Street). (No part of the application is made to construct or maintain any structure in the site’s Delano Place front yard setback).

- Structures on lots zoned MF-2(A) are required to provide a minimum front yard setback of 15’.
- The corner property with two street frontages has two front yard setbacks as any property with two street frontages would that is not zoned agricultural, single family, or duplex.
- A site plan has been submitted denoting a portion of the proposed single family home to be located 5’ from the site’s Peak Street front property line (or 10 into this 15’ front yard setback).
- Approximately 1/4 (or approximately 400 square feet) of the proposed approximately 1,700 square foot building footprint is to be located in the site’s 15’ Peak Street front yard setback.
- DCAD records indicate “no improvements” for the property at 4232 Delano Place.
- The subject site is generally rectangular in shape (approximately 50’ x 65’) and according to the application, is 0.078 acres (or 3,398 square feet) in area. The site is zoned MF-2 (A).
- The applicant notes the following: that the lots immediately north of the subject site in the same zoning district are approximately 2,000 square feet larger than that of the subject site; that the proposed single family home on the subject site would be in alignment with the existing house to the south that faces Munger Street; and most of the streets in this area have houses that “side” onto Peak Street and front other streets with varying setbacks usually less than 15’ depending on when the residence was built.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The 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 MF-2(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2 (A) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which is a structure to be located 5’ from the site’s Peak Street front property line (or 10’ into this 15’ front yard setback).

GENERAL FACTS/STAFF ANALYSIS (off-street parking variance):

- This request focuses on enclosing a parking space with a garage door in the proposed garage that is attached to the proposed single family home, where the parking space entered from Peak Street would be located less than the required 20’ distance from the street right-of-way line.

- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan denotes the location of an enclosed parking space in the proposed structure that is 10' from the street right-of-way line or 24' from the projected pavement line.
- DCAD records indicate “no improvements” for the property at 4232 Delano Place.
- The subject site is generally rectangular in shape (approximately 50' x 65') and according to the application, is 0.078 acres (or 3,398 square feet) in area. The site is zoned MF-2 (A).
- The applicant notes that the proposed garage door setback will allow enough room for a vehicle to pull off the street and be in front of the garage door with enough distance (18 feet) such that a normal vehicle will not overhang the sidewalk while opening the garage door.
- 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 the following:
 - That granting the variance to the parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same (MF-2(A) zoning classification).
- If the Board were to grant the variance request, staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be used for parking of vehicles.
 4. All applicable permits must be obtained.
 (These conditions are imposed to help assure that the variance will not be contrary to public interest).

GENERAL FACTS/STAFF ANALYSIS (off-street parking special exception):

- This request focuses on constructing and maintaining a single family home structure and providing one of two required off-street parking spaces.

- The Dallas Development Code states that the off-street parking requirement for “single family” use is one space in R-7.5(A), R-5(A), and TH districts, and two spaces in all other districts.
The applicant proposes to provide 1 (or 50 percent) of the required 2 off-street parking spaces in conjunction with the site being developed with the single family use on the property zoned MF-2(A).
- The applicant states that the proposed residence will be owned and leased by DHA with income restrictions on the tenant which tends to lower the number of vehicles on the site. Additionally, the applicant states that the lot is located on Peak Street, which has very good bus service and many routes that feed into the nearby City Place rail station.
- 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 the following:
 - The parking demand generated by the single family use does not warrant the number of off-street parking spaces required, and
 - The special exception of 1 space (or a 50 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 1 space shall automatically and immediately terminate if and when the single family use is changed or discontinued, the applicant would be allowed to construct/maintain the single family home on the site with providing only 1 of 2 required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: MARCH 20, 2013

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment grant application **BDA 123-020** 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be used for parking for vehicles.
- The special exception of 1 space shall automatically and immediately terminate if and when the single family use is changed or discontinued.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone
NAYS: 0 –
MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-023

BUILDING OFFICIAL’S REPORT: Application of Maxwell Fisher of Masterplan for variances to the front and rear yard setback regulations and a special exception to the fence height regulations at 8408 Menier Street. This property is more fully described as a 0.181 acre parcel in City Block 5673 and is zoned R-16(A), which requires a front yard setback of 35 feet, a rear yard setback of 10 feet, and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a structure and provide (1) a 6-foot front yard setback, which will require a variance to the front yard setback regulations 29 feet and (2) a 4 foot rear yard setback, which will require a variance to the rear yard setback regulations of 6 feet. The applicant also proposes to construct and maintain an 8-foot-high fence, which will require a special exception to the fence height regulations of 4 feet.

LOCATION: 8408 Menier Street

APPLICANT: Maxwell Fisher of Masterplan

REQUESTS:

The following appeals have been made on a site that is currently undeveloped:

1. A variance to the front yard setback regulations of 29’ is requested in conjunction with constructing and maintaining a 1-2 story single family home structure (and pool structure), either part (or all) of which would be located in the site’s 35’ front yard setback.
2. A variance to the rear yard setback regulations of 6’ is requested in conjunction with constructing and maintaining a single family home structure, part of which would be located in the site’s 10’ rear yard setback.
3. A special exception to the fence height regulations of 4’ is requested in conjunction with replacing an existing 6’ high open chain link fence (that was a result of a previously approved fence height special exception on the subject site) with an 8’ high solid stucco veneer wall in the site’s front yard setback.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

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.

STAFF RECOMMENDATION (front and rear yard setback variances):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-16(A) in that it is of a restrictive area due to its width of only 53 feet and its total square footage of approximately 7,900 square feet. Staff has concluded that the 8' width of developable space remaining once a 35' front yard setback and a 10' rear yard setback is be accounted for on this 53' wide site does not allow development of a reasonably-sized single family home (and pool) structure on it. Most lots in R-16(A) zoning are 16,000 square feet in area; the subject site has about half that amount at approximately 7,900 square 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.

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-7.5(A) (Single family district 7,500 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 989-190, Property at 8408 Menier Street (the subject site)

On March 16, 1999, the Board of Adjustment Panel B granted requests for a front yard variance of 27', a rear yard variance of 1' 4", and a request for a special exception to the fence height regulations of 2'. The board denied a request for special exception to the visual obstruction regulations. The board imposed the submitted site plan as a condition to the variance requests, and imposed the submitted site plan and elevation as a condition to the special exception request.

The case report stated that the requests were made to construct/maintain an approximately 2,000 square foot single family home and an approximately 500 square foot garage, and to maintain an existing open chain link fence in the front yard setback and in drive approach visibility triangles.

2. BDA 91-074, Property at 8404 Menier Street (the lot immediately north of the subject site)

On December 10, 1991, the Board of Adjustment granted requests for a front yard variance of 24.7' and side and rear yard variances of 2'. The board imposed the following condition: "subject to a landscape plan being submitted to and approved by the Board prior to final inspection. Landscaping should be used to soften the structures appearances along Menier Street.

The case report stated that the requests were made to "permit the improvement of a structure into a single family use. The structure was built on a separately parcel of land and was used for storage. The property owner did obtain an electrical permit but not the required building permit to erect the structure. As a consequence, the required setbacks for the structure were not provided."

Timeline:

- January 23, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 13, 2013: 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."

February 13, 2013: 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 February 29th deadline to submit additional evidence for staff to factor into their analysis; and the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 5, 2013: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March 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 Board Administrator, the Building Inspection Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses primarily on constructing and maintaining a single family home structure, part of which would be located in the site's 35' front yard setback. Part of this request is to locate and maintain a pool structure in the front yard setback as well.
- Structures on lots zoned R-16(A) are required to provide a minimum front yard setback of 35'.
- A site plan has been submitted denoting the proposed pool structure and part of the main single family home structure located 6' from the site's front property line or 29' into this 35' front yard setback.
- The site plan shows all of the 270 square foot pool structure and the majority of the proposed approximately 3,200 square foot building footprint is located in the site's 35' front yard setback.
- According to DCAD records, there are no "main improvements" at 8408 Menier Street.

- The subject site is rectangular in shape (53' x 150') and is according to the application, 0.181 acres (or approximately 7,900 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- Only an 8' width of developable space would remain once a 35' front yard setback and a 10' rear yard setback would be accounted for on the 53' wide site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The 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 same R-16(A)) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document– which are structures to be located 6 from the site's front property line (or as much 29' into this 35' front yard setback).

GENERAL FACTS/STAFF ANALYSIS (rear yard variance):

- This request focuses on constructing and maintaining a single family home structure, part of which would be located in the site's 10' rear yard setback.
- Structures on lots zoned R-16(A) are required to provide a minimum rear yard setback of 10'.
- A site plan has been submitted denoting the proposed single family home structure located 4' from the site's front property line or 6' into this 10' rear yard setback.
- The submitted site plan shows that approximately ¼ of the approximately 3,200 square foot building footprint is located in the site's 10' rear yard setback.
- According to DCAD records, there are no "main improvements" at 8408 Menier Street.
- The subject site is rectangular in shape (53' x 150') and is according to the application, 0.181 acres (or approximately 7,900 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- Only an 8' width of developable space would remain once a 35' front yard setback and a 10' rear yard setback would be accounted for on the 53' wide site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the rear yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same 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 same R-16(A) zoning classification.
- If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the rear yard setback would be limited to what is shown on this document– which is a structure to be located 4 from the site’s rear property line (or as much 6’ into this 10’ front yard setback).

GENERAL FACT /STAFF ANALYSIS (fence height special exception):

- This request focuses replacing an existing 6’ high open chain link fence (that was a result of a previously approved fence height special exception on the subject site) with an 8’ high solid stucco veneer wall in the site’s 35’ front yard setback.
- The Dallas Development Code 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 had submitted a scaled site plan and elevation that shows the proposal in the front yard setback reaching a maximum height of 8’.
- The following additional information was gleaned from the submitted site plan:
 - Approximately 90’ in length parallel to the street (and 16’ in length perpendicular on the south side of the site in the required front yard), approximately on the front property line or approximately 4’ from the pavement line where one home has direct frontage to the proposal - a home with an approximately 5’ high solid board fence with no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area and noted several other fences higher than 4’ in the immediate area none with recorded BDA history other than that of the subject site.
- As of March 11, 2013, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8’ in height) will not adversely affect neighboring property.
- Granting this special exception of 4’ with a condition imposed that the applicant complies with the submitted site plan and fence elevation would require the proposal to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 20, 2013

APPEARING IN FAVOR:

Maxwell Fisher, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 123-023**, on application of Maxwell Fisher of Masterplan, **grant** a 29 foot variance to the minimum front yard setback regulations and a 6 foot variance to the minimum rear yard setback regulations, 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 result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 123-023**, on application of Maxwell Fisher of Masterplan, **grant** the requests to maintain an 8 foot high fence as a special exception the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 123-014

BUILDING OFFICIAL'S REPORT:

Application of Edward Harbour for a variance to the front yard setback regulations and a special exception to the fence height regulations at 2020 Lakeland Drive. This property is more fully described as Lot 6, Block 17/5244, and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a structure and provide a 10 foot front yard setback, which will require a variance to the front yard setback regulations of 15 feet; and to construct an 8 foot 3 inch high fence, which will require a special exception to the fence regulations of 4 feet 3 inches.

LOCATION: 2020 Lakeland Drive

APPLICANT: Edward Harbour

March 20, 2013 Public Hearing Notes:

- The applicant submitted a revised site plan/elevation to the Board at the public hearing.

REQUESTS:

The following appeals have been made on a site that is currently undeveloped:

1. A variance to the front yard setback regulations of 15' is requested in conjunction with constructing and maintaining a single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue).
2. Special exceptions to the fence height regulations of 4' 3" are requested in conjunction with constructing and maintaining an 8' 3" high solid wood fence in the site's two 25' front yard setbacks along Lakeland Drive and Eustis Avenue.

(No part of this application is made to construct and/or maintain a structure in the site's Lakeland Drive front yard setback).

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

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.

STAFF RECOMMENDATION (front yard setback variance):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-7.5(A) in that it is a corner lot with a restrictive area due to its two front yard setbacks. The atypical two front yard setbacks on this lot precludes it from being developed in a manner commensurate with development on other similarly zoned properties - in this case, the development on the property with a single family home.
- This site with the atypical two 25' front yard setbacks leaves only a 20' width of developable space on the 50' wide site once a 5' side yard setback and a 25' front yard setback would be accounted for.
- The requested variance would not be necessary if the lot was similar to most R-7.5(A) zoned lots with just *one* 25', two 5' side yard setbacks, and one 5' rear yard setback.

STAFF RECOMMENDATION (fence height special exceptions):

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

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>North:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>South:</u>	R-10 (A) (Single family district 10,000 square feet)
<u>East:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>West:</u>	R-10 (A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 112, 067, Property at 8610 On June 18, 2012, the Board of Adjustment

Eustis Avenue (the lot directly southeast of the subject site)

Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (No request was made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

2. BDA 101-124, Property at 8610 Eustis Avenue (the lot directly southeast of the subject site)

On December 12, 2011, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a two-story single family home structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue) on a site that is currently undeveloped. (No request was made in this application to construct/maintain any structure in the site's Lakeland Avenue front yard setback).

Timeline:

December 21, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 14, 2013: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

January 14, 2013: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the February 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 5, 2013: 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 Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, 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.

February 20, 2013: The Board of Adjustment Panel B conducted a hearing on this application where the applicant submitted a revised site plan to the Board at this public hearing (see Attachment A). (Note that while this amended site plan made changes to the requested fence height special exception request, it made no changes to the front yard variance request). The Board moved to hold the matter under advisement until March 20, 2013.

February 26, 2013: The Board Administrator emailed the applicant the information related to the action of the board and the March 8th deadline to submit additional evidence to be incorporated into the Board's docket materials. As of March 8th, no new materials had been submitted to staff by the applicant.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on constructing and maintaining a single family structure, part of which would be located in one of the site's two 25' front yard setbacks (Eustis Avenue).
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the north corner of Lakeland Drive and Eustis Avenue. Regardless of how the proposed single family structure is to be oriented, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Lakeland Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Eustis Drive, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required. But the site's Eustis Drive frontage is deemed a front yard setback nonetheless to maintain the continuity of the established front yard setbacks established by the lots developed with single family homes to the northeast along Eustis Drive that front southeastward.
- A revised site plan has been submitted denoting a portion of the proposed single family structure located 10' from the site's front property line along Eustis Avenue (or

15' into this 25' front yard setback). (No encroachment is proposed in the Lakeland Drive 25' front yard setback).

- The submitted revised site plan shows approximately 37 percent (or approximately 1,150 square feet) of the proposed approximately 3,150 square foot building footprint to be located in the site's Eustis Avenue 25' front yard setback.
- DCAD records indicate "no main improvements" for the property at 2020 Lakeland Drive.
- The subject site is rectangular in shape (50' x 155') and is 7,750 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- Only a 20' width of developable space would remain on the 50' wide site once a 5' side yard setback and a 25' front yard setback would be accounted for.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The 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-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document— which in this case is a structure to be located 10' from the Eustis Avenue front property line (or 15' into this Eustis Avenue 25' front yard setback).

GENERAL FACT /STAFF ANALYSIS (fence height special exceptions):

- These requests focus on constructing and maintaining an 8' 3" high solid wood fence in the site's Lakeland Drive and Eustis Avenue front yard setbacks.
- As described preciously in this case report, the subject site located at the north corner of Lakeland Drive and Eustis Street has two 25' front yard setbacks.
- If it were not for the lots immediately northeast of the subject site that actually front onto Eustis Drive, the proposed 8' 3" high fence along Eustis Drive could be constructed/maintained by right since this frontage of the corner subject site is the longer of the subject site's two street frontages.
- The Dallas Development Code 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 submitted a revised scaled site plan/partial elevation at the February 20th public hearing (see Attachment A). This revised plan shows the proposed fence in the Lakeland Drive and Eustis Avenue front yard setbacks being “wood” and reaching a maximum height of 97 ½” or 8’ 3”.
- With regard to the proposed fence along Lakeland Drive, the following additional information was gleaned from the submitted revised site plan/elevation:
 - Approximately 45’ in length parallel to the street (and 25’ in length perpendicular on the sides of the site in the required front yard), approximately on the front property line or approximately 34’ from the pavement line where no home has direct frontage to the proposal since the home directly across Lakeland Drive fronts Eustis Avenue.
 - The Board Administrator conducted a field visit of the site and surrounding area and noted no other *front yard* fences higher than 4’ in the immediate area.
- With regard to the proposed fence along Eustis Avenue, the following additional information was gleaned from the submitted revised site plan/elevation:
 - Approximately 26’ and 30’ in length parallel to the street (and 10’ and 25’ in length perpendicular on the sides of the site in the required front yard), approximately on the front property line or approximately 14’ from the pavement line where no home would have direct frontage to the proposal since the property directly across Eustis Avenue is undeveloped).
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences higher than 4’ northeast of the site. These two fences were approximately 6’ high solid board fences, neither with recorded board of adjustment history.
- As of March 11, 2013, three letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 4’ 3” (whereby the proposal that would reach 8’ 3” in height) will not adversely affect neighboring property.
- Granting these special exceptions of 4’ 3” with a condition imposed that the applicant complies with the submitted revised site plan/partial elevation would require the proposal exceeding 4’ in height in these front yard setbacks to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 20, 2013

APPEARING IN FAVOR: Edward Harbour, 1744 Meraposa , Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 123-014**, hold this matter under advisement until **March 20, 2013**.

SECONDED: Wilson

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

NAYS: 0 –
MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 20, 2013

APPEARING IN FAVOR: Edward Harbour, 1744 Meraposa, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 123-014**, on application of Edward Harbour, **grant** a 15 foot variance to the minimum front yard setback regulations 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 result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 123-014**, on application of Edward Harbour, **grant** the request to maintain an 8 foot 3 inch high fence (in both front yards/in the Eustis Avenue front yard/in the Lakeland Drive front yard) as a special exception the fence height requirements 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/partial elevation submitted on 3-20-13 is required.

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: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:55 P.M. Board Meeting adjourned for **March 20, 2013.**

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.