

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, MAY 16, 2007**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

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

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

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 16, 2007 docket.**

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B April 18, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2007

MOTION: Chernock

I move approval of the Wednesday, April 18, 2007 Board of Adjustment Public Hearing minutes.

SECONDED: Beikman

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-072

BUILDING OFFICIAL'S REPORT:

Application of Richard and Trea Yip, represented by Robert Baldwin, for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 4949 Calleja Way. This property is more fully described as Lot 3A in City Block 5524 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 12 foot high fence in the required front yard setback which would require a special exception of 8 feet to the fence regulations, and to construct a fence within required visibility triangles which would require a special exception to the visibility obstruction regulations.

LOCATION: 4949 Calleja Way

**APPLICANT: Richard and Trea Yip
Represented by Robert Baldwin**

REQUESTS:

- The following appeals have been made in this application on a site that is currently being developed with a single family home:

1. A special exception to the fence height regulations of 8' is requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback:
 - a 7' 11" – 8' high iron picket fence with 10' high cast stone columns; and
 - an 11' 6" iron picket entry gate with 12' high entry columns.
2. A special exception to the visibility obstruction regulations is requested in conjunction with constructing and maintaining a portion of the fence and/or columns in the site's 20' visibility triangles at the drive approach into the site from Calleja Way.

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visibility obstruction special exception):

Approval, subject to the submitted revised site plan/elevation

Rationale:

- The City's Development Services Senior Engineer has no objections to this request.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan/elevation document indicating a fence, column, and gate proposal that would reach a maximum height of 12 feet.
- The following additional information was gleaned from the submitted site plan:
 - The proposal appears to be approximately 144' in length parallel to Calleja Way, approximately 2' from the front property line, and approximately 7' – 14' from the pavement line.
- The following additional information was gleaned from the submitted revised full elevation:

- Seven “curved iron fence” panels ranging in length from 12’ – 16’ 9”. (Although there was a notation on the originally submitted elevation that mentioned “see plan for curved sections,” with no details provided, a revised elevation was submitted that denoted an iron picket fence with the pickets being 4” on center between the columns);
 - Seven, 8’ high “24” sq. stone columns with cast stone cap;”
 - An 11’ 6” high “Decorative Entry Gate. See detail.” (Although no detail was submitted with the original application, the revised submitted elevation denotes a iron picket gate with solid iron panels at the base);
 - Two, 12’ high “cast stone column w/ cast stone base and cape gas lantern T.B.D.”
- There are no single family homes that would have direct frontage to the proposed fence/gate/columns to be located in the site’s front yard setback since the site is located at the end of a cul-de-sac where only one other home other than the home on the subject site is located.
 - The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in the front yard setback. (The Board of Adjustment, however, granted a fence special exception on the lot immediately west of the subject site in June of 2004 to construct a 9’ high open wrought iron fence with 9’ 8” high columns, 8’ 8” high solid masonry wing walls on either side of 14’ 2” high entry gates on Calleja Way (BDA 034-154). (This fence has not been constructed as of April 2007).
 - The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter provided additional details about the request, photos of the site and surrounding area, and a revised site plan/elevation.

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

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 The applicant’s representative has submitted a revised site plan/elevation document that shows a portion of the 7’ 11” – 8’ high iron picket fence and the two, 12’ high stone entry gate columns located in the two, 20’ visibility triangles at the drive approach into the site from Calleja Way.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter provided additional details about the request, photos of the site and surrounding area, and a revised site plan/elevation.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 034-154, 10430 Strait Lane (the lot immediately west of the subject site)

On June 22, 2004, the Board of Adjustment Panel A took the following actions:

1. Granted a request to preserve an existing tree as a special exception to the minimum front yard requirements (subject to compliance with a submitted plan).
2. Denied a request for a variance to the front yard setback regulations without prejudice.
3. Granted a request for a variance to the height regulations (subject to compliance with a plan and elevation).
4. Granted a request to maintain a 14' 2" fence as a special exception along Calleja Way (subject to compliance with a site plan, "Planting Plan," and fence elevation).
5. Denied a request for a fence height special exception along Strait Lane without prejudice.

The case reports states that the requests were made in conjunction with constructing a 51.5'-high single family home partially located in the Calleja Way front yard setback, and a 9' high open wrought iron fence with 9'8" high columns, 8' 8" high masonry wing walls on either side of 14' 2" high entry gates (with 10' 10" high entry columns) along Strait Lane and Calleja Way.

Timeline:

- March 20, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 19, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 27, 2007 The applicant's representative submitted additional information to staff (see Attachment A).
- April 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Assistant Director for Current Planning, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- May 4, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections."

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

- A revised full site plan/elevation document has been submitted that indicates the proposed fence/wall/columns/gate to be located in the site's front yard setback. The site plan shows that the proposal is about 144' in length curved/parallel to Calleja Way, approximately 2' from the property line (or about 7' – 14' from the pavement line).
- The revised elevation on the site plan/elevation document indicates the maximum height of the fence (7' 11" – 8'), columns (10'), gate (11' 6"), and entry gate columns (12'). The revised elevation denotes the materials of the fence (open iron picket), columns (cast stone), and gate (open iron picket with solid iron base).
- There are no single family homes that have direct frontage to the proposal since it is located at the end of a cul-de-sac where only one other home other than the one on the subject site is located.
- No other fences were noted in the immediate area above 4' in height in a front yard setback. (The Board of Adjustment, however, granted a fence special exception on the lot immediately west of the subject site in June of 2004 to construct and maintain a 9' high open wrought iron fence with 9' 8" high columns, 8' 8" high solid masonry wing walls on either side of 14' 2" high entry gates on Calleja Way (BDA034-154).
- As of May 7th no letters had been submitted to staff either in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 8' (whereby a proposal that would reach a maximum 12' in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 8' with conditions imposed that the applicant complies with the submitted revised site plan/elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

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

- The applicant's representative has submitted a revised site plan/elevation document that shows a portion of the 7' 11" – 8' high iron picket fence and the two, 12' high stone entry gate columns located in the two, 20' visibility triangles at the drive approach into the site from Calleja Way.
- The Development Services Senior Engineer has submitted a review comment sheet marked "Has no objections" to this request.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted revised site plan/ elevation, a portion of an iron picket fence and entry columns proposed to be located in the two, 20' visibility triangles at drive approach into the site from Calleja Way) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted revised site plan/ elevation, a portion of the 7' 11" – 8' high iron picket fence and two 12' high stone entry columns would be "excepted" into the two, 20' visibility triangles at the drive approach into the site from Calleja Way.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

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

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

SECONDED: **Brannon**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-070

BUILDING OFFICIAL'S REPORT:

Application of Yigal Lelah, represented by Vernon Smith, Jr., for a special exception to the fence height regulations at 4627 Kelsey Road. This property is more fully described as Lot 2 in City Block A/5532 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard which would require a special exception of 4 feet.

LOCATION: 4627 Kelsey Road

APPLICANT: Yigal Lelah
Represented by Vernon Smith, Jr.

May 16, 2007 Public Hearing Notes:

- The applicant’s representative submitted additional evidence at the public hearing. The evidence included photographs of and a map indicating other fences/walls in the area.

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining an 8’ high iron fence with 8’ high masonry

columns, and an approximately 6.5' – 7.5' high wrought iron and wood gate on a site being developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the intersection of Lennox Lane and Kelsey Road. The site has a 40' front yard setback along Lennox Lane (since this frontage is the shorter of the site's two frontages) and a 40' front yard setback along Kelsey Road in order to maintain continuity of an established front yard setback on this street.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

Although the applicant's representative had originally submitted three site plans and two partial elevations which indicated a fence/column proposal that would reach a maximum height of 8' (where no elevation or notations of a gate had been submitted), the applicant's representative submitted a revised site plan/elevation document on May 7th that he requested to replace any previously submitted plans/materials (see Attachment A).

- The site plan on the revised May 7th site plan/elevation document shows that the proposal is in compliance with visibility obstruction regulations. The following additional information was gleaned from the site plan:
 - Notes of an "8 ft tall iron fence panel (typical)," "2 ft x 2 ft x 8 ft tall masonry column (typical) painted to match house color;" and "8 ft tall wrought iron and wood gates;"
 - Approximately 220' in length parallel to Lennox Lane;
 - Approximately 230' in length parallel to Kelsey Road (and approximately 40' in length perpendicular to Kelsey Road);
 - Located about 2' from the site's Lennox Lane and Kelsey Road front property lines or about 20' from the pavement lines; and
 - Generally linear in design with a recessed entry way on Lennox Lane
- The May 7th site plan/elevation document includes a partial fence panel elevation denoting a typical fence panel that is 8' high with 8' high stucco columns. In addition, the May 7th site plan/elevation document includes a full fence elevation of Lennox Lane (that the applicant states will be echoed on Kelsey Lane with the exception of the gate provision). This full fence elevation denotes an 8' high fence with 8' high stucco columns, and a gate that ranges in height from approximately 6.5' – 7.5'.

- Although the May 7th revised full and partial elevations appear to depict an open iron fence and gate, there is no specific description of the proposed fence other than it being “iron.” (The originally submitted partial fence elevation had provided notations of the fence being comprised of ¾” pickets).
- There is one single family home that would have direct frontage to the proposal to be located in the site’s Lennox Lane front yard setback, and one single family home that would have direct frontage to the proposal to be located in the site’s Kelsey Road front yard setback. Neither of these homes have fences in a front yard setback that appears to exceed 4’ in height.
- The Board Administrator conducted a field visit of the site and surrounding area along both Lennox Lane and Kelsey Road and noted no other fences above four (4) feet high which appeared to be located in the front yard setback other than a 6’ high open metal fence on the subject site which the applicant states that he proposes to replace with an 8’ high fence. (There is no recorded Board of Adjustment history of the 6’ fence on the subject site).
- On May 7, 2007, the applicant’s representative submitted a revised site plan/elevation document that he requested to replace any previously submitted document/elevation (see Attachment A). While the revised site plan/elevation document provides a full Lennox Lane fence elevation (that had not been submitted with the original application), the revised site plan/elevation does not provide a specific reference to the proposed fence material other than it being “iron.”

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

March 29, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 19, 2007: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 27th deadline to submit additional evidence for staff to discuss at the staff review team meeting;
- the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

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

May 7, 2007: The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- A revised scaled site plan/elevation document has been submitted that documents the location of the proposed 8' tall iron fence, 8' tall stucco columns, and "wrought iron and wood gates" relative to their proximity to the front property lines and pavement lines (the fence is shown to be located about 2' from the site's two front property lines or about 20' from the pavement lines). The site plan clearly shows the

length of the proposal relative to the entire lot (the proposal is to be about 220' long parallel to Lennox Lane and about 230' long parallel to Kelsey Road).

- The revised scaled site plan/elevation document includes both a partial and full Lennox Lane fence elevation. Both elevations denote the columns to be stucco but neither elevation denotes the materials of the fence (although the fence *appears* to be comprised of an open iron picket fence on these elevations).
- There is one single family home that would have direct frontage to the proposal to be located in the site's Lennox Lane front yard setback, and one single family home that would have direct frontage to the proposal to be located in the site's Kelsey Road front yard setback. Neither of these homes have fences in a front yard setback that appears to exceed 4' in height.
- No other fences were noted in the immediate area above four (4) feet high which appeared to be located in the front yard setback other than a 6' high open metal fence on the subject site which the applicant states that he proposes to replace with an 8' high fence. (There is no recorded Board of Adjustment history of the 6' fence on the subject site).
- As of May 7th no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed fence, columns, and gate to exceed 4' in height in the site's two front yard setbacks) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' with conditions imposed that the applicant complies with the submitted revised site plan/elevation document would provide assurance that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents. (If the Board were to grant this request, they may want to additionally specify that the fence on the site in the front yard setback exceeding 4' in height be comprised of open iron picket materials since this is not denoted on the May 7th revised site plan/elevation document).

BOARD OF ADJUSTMENT ACTION: MAY 16, 2007

APPEARING IN FAVOR: Vernon Smith, Jr. 17403 Energy Ln, Dallas, TX

APPEARING IN OPPOSITION: Jan Godat, 10427 Lennox Ln., Dallas, TX

MOTION: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 067-070**, on application of Yigal Lelah, represented by Vernon Smith, Jr., **deny** the special exception requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Beikman**

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

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 067-074

BUILDING OFFICIAL'S REPORT:

Application of Charles W. Barnett, represented by Charles Barnett and Patrick McIntyre, for a special exception to the fence height regulations at 6636-38 Del Norte Lane. This property is more fully described as Lot 7 in City Block 6/5464 and is zoned D(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which would require a special exception of 4 feet.

LOCATION: 6636-38 Del Norte Lane

APPLICANT: Charles W. Barnett
Represented by Charles Barnett and Patrick McIntyre

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining a 7' 9" high cedar board-on-board fence with 8' high masonry columns in the site's Turtle Creek Boulevard front yard setback on a site developed with a duplex.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the intersection of Del Norte Lane and Turtle Creek Boulevard. The site has a front yard setback along Del Norte Lane (since this frontage is the shorter of the site's two frontages) and along Turtle Creek Boulevard in order to maintain continuity of an established front yard setback on this street.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a site plan and fence elevations that denote a fence/column proposal that would reach a maximum height of 8' in the site's Turtle Creek Boulevard front yard setback. (The site plan shows a 10' building line along Turtle Creek Boulevard, and no fence located in the site's Del Norte front yard setback).

- The following information was gleaned from the submitted site plan:
 - Notes of an "8 ft. stone & cedar fence just inside property line;"
 - Approximately 72' in length parallel to Turtle Creek Boulevard (and approximately 10' in length perpendicular to this street);
 - Located about 1' from the site's Turtle Creek Boulevard front property line or about 12' from the pavement line.
- The following information was gleaned from the four submitted elevations:
 - "7' 9" Cedar Board on Board fence;"
 - "Metal post 8' hidden;" and
 - "7' 9" Masonry Columns spaced 11' 9" apart" with "3" cap (masonry)."
- There are no single family homes that would have direct frontage to the proposed fence. There is a multifamily development that has direct frontage to the proposed fence. This multifamily development immediately east of the site is zoned MF-1(A) where a 6' high fence is permitted by right. This multifamily development is located atop an approximately 9' high retaining wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no fence/walls that appeared to be located in the front yard setback and to exceed either 4' or 6' in height.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	D (A) (Duplex)
<u>North:</u>	D (A) (Duplex)
<u>South:</u>	MF-1 (A) (Multifamily district)
<u>East:</u>	MF-1 (A) (Multifamily district)
<u>West:</u>	D (A) (Duplex)

Land Use:

The subject site is being developed with a duplex. The areas to the north and west are developed with single family uses; the area to the east is developed with multifamily uses; and the area to the south is under development.

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:

- March 29, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 20, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 27th deadline to submit additional evidence for staff to discuss at the staff review team meeting;
 - the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Assistant Director for Current Planning, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting 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:

- A scaled site plan has been submitted that documents the location of the proposed fence, columns, and pedestrian gate relative to their proximity to the property line (about 1' off) and pavement line (about 12' off). The site plan shows the length of the proposal relative to the entire lot (about 72' in length parallel to Turtle Creek Boulevard and about 9' in length perpendicular to the street). The site plan shows

that the fence to exceed 4' in height is limited to the site's Turtle Creek Boulevard front yard setback which, according to the submitted site plan, is a 10' building line).

- Four scaled full elevations have been submitted that indicate the maximum height and materials of the proposal (7'9" for the cedar board-on-board fence, 8' for the metal posts and masonry columns).
- There are no single family homes that would have direct frontage to the proposed fence. There is a multifamily development that has direct frontage to the proposed fence. This multifamily development immediately east of the site is zoned MF-1(A) where a 6' high fence is permitted by right. This multifamily development is located atop an approximately 9' high retaining wall.
- No other fence/walls were noted in the immediate area that appeared to be located in the front yard setback and to exceed either 4' or 6' in height.
- As of May 7th no letters have been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence/columns/posts that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan and elevations would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2007

APPEARING IN FAVOR: Charles Barnett, 2841 Fondren, Dallas, TX

APPEARING IN OPPOSITION: No one

1:18 P.M.: Member Sam Gillespie recused himself and did not vote on this matter.

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 067-074**, on application of Charles W. Barnett, represented by Charles Barnett and Patrick McIntyre, **grant** the request of this applicant to construct and maintain an eight-foot fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Beikman

AYES: 4–Cox, Brannon, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

MOTION: Brannon

I move to adjourn this meeting.

SECONDED: Chernock

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

1:25 P.M. - Board Meeting adjourned for May 16, 2007.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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