

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, MAY 21, 2008**

MEMBERS PRESENT AT BRIEFING: Samuel Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, H.B. Sorrells, regular member and Darlene Reynolds, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Samuel Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, H.B. Sorrells, regular member and Darlene Reynolds, 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, Kyra Blackston, Senior Planner, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer 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, Kyra Blackston, Senior Planner, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

10:40 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 21, 2008 docket.**

1:10 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 16, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2008

MOTION: Sorrells

I move approval of the Wednesday, **April 16, 2008** Board of Adjustment Public Hearing minutes.

SECONDED: Beikman

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-044

BUILDING OFFICIAL'S REPORT:

Application of Felix Limited, represented by Masterplan, for a special exception to the landscape regulations at 2701 Harry Hines Boulevard. This property is more fully described as Lot 1 in City Block 927 and is zoned PD-193 (I-2) which requires mandatory landscaping. The applicant proposes to provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 2701 Harry Hines Boulevard

**APPLICANT: Felix Limited
Represented by Masterplan**

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final Certificate of Occupancy on a lot developed with a surface parking lot.

(Note that this case was originally scheduled to be heard by the Board of Adjustment Panel B on April 16, 2008 but was not able to be called/heard given a notification error).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The landscape plan submitted in conjunction with this request is virtually identical to the landscape plan that was imposed as a condition to a previous landscape special exception request granted on the subject site by Board of Adjustment Panel B in August of 2007: BDA067-078. The applicant returns with a new landscape special exception application/request in that the landscape plan imposed as a condition in 2007 can not be implemented given provisions on this former plan that conflict with a city provision that requires that the ramp at the corner of Payne Street and Harry Hines Boulevard must be barrier free and must not be “landscaped” as shown on the August 2007 landscape plan.
- The City’s Chief Arborist once again recommends approval of this request whereby if the condition mentioned above is imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Reynolds

I move that the Board of Adjustment grant application **BDA 078-044** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-050

ORIGINAL BUILDING OFFICIAL'S REPORT:

Application of Masterplan for a variance to the front yard setback regulations at 2811 McKinney Avenue. This property is more fully described as Lots 1, 2, & 3 in City Block 955 and Lot 1 in City Block 1/955 and is zoned PD-193 (LC) which requires a front yard

setback of 10 feet. The applicant proposes to construct and maintain a structure and provide a 2 foot front yard setback which will require a variance of 8 feet.

REVISED BUILDING OFFICIAL'S REPORT:

Application of Masterplan for a variance to the front yard setback regulations and a special exception to the landscape regulations at 2811 McKinney Avenue. This property is more fully described as Lots 1, 2, & 3 in City Block 955 and Lot 1 in City Block 1/955 and is zoned PD-193 (LC) which requires a front yard setback of 10 feet and requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide a 2 foot front yard setback which will require an 8 foot variance to the front yard setback regulations, and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 2811 McKinney Avenue

APPLICANT: Masterplan

May 21, 2008 Public Hearing Notes:

- The Board Administrator circulated a revised partial site plan and section to the board members at their briefing (see Attachment F).

REQUESTS:

- The following appeals have been made in this application:
 1. A variance to the front yard setback regulations of 8' is requested in conjunction with constructing and maintaining, according to the application, an "open awning" (or according to the submitted site plan, a "covered patio") that would attach to an existing retail use (Christi's Restaurant) in the site's 10' McKinney Avenue front yard setback; and
 2. A special exception to the landscape regulations is requested in conjunction with increasing the nonpermeable coverage of the lot which in this case is an approximately 700 square foot canopy that would attach to a multi-story mixed use structure that was constructed in the mid 80's.

STAFF RECOMMENDATION (front yard variance):

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case requested to construct and maintain a canopy to cover an existing patio on one of the approximately five ground level suites for an existing restaurant use located within an existing relatively new (mid 80's) large mixed use structure on the site. Even though this site is somewhat irregular in shape, this characteristic (nor its size or slope) does not create hardship or preclude its development in a manner commensurate with other developments found in the

same PD No. 193 (LC) zoning district. The physical characteristics of the subject site do not warrant a canopy in the front yard setback for one or any of the ground level suites in the existing building on the subject site.

- The applicant had not substantiated how the physical features of the flat, somewhat irregularly-shaped, 1.38 acre site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification while simultaneously complying with code standards including front yard setback regulations.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following conditions:

- Existing planting areas and tree selections must be maintained in their current locations as specified on the submitted landscape plan for the Property.
- Any future plant changes must conform to the general location and plant type specifications designated per this plan and must be approved by the Building Official. Any removed large tree must be replaced with another tree at a minimum of 3.5" caliper and be of the same species, except that:
 - Due to potential overhead utility conflicts, any tree that is removed along the Howell Street tree planting zone must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official.
 - Due to potential overhead utility conflicts, any tree that is removed along the McKinney Avenue tree planting zone must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official.
- All existing plant materials at the date of the hearing must be maintained under the General Maintenance requirements of PD 193. All outside garbage dumpsters must be screened per PD 193 specifications.
- All conditions for tree preservation under Article X apply to this Property.
- When any additional work on the lot is performed that increases the existing building height, floor area, or nonpermeable coverage of the lot, the landscape requirements of PD 193 must be applied to the property.

Rationale:

- The City's Chief Arborist recommends approval of this request whereby if the conditions mentioned above are imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: Leslie Brosi, 3030 McKinney Avenue, Dallas, TX

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-050**, hold this matter under advisement until **May 21, 2008**.

SECONDED: Reynolds

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 21, 2008

APPEARING IN FAVOR:

Santos Martinez, 900 Jackson St., #640, Dallas, TX
Richard Christie, 2811 McKinney Ave #24, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-050**, on application of Masterplan, **grant** the eight foot variance to the front yard setback regulations because our evaluation of the property and 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: Sorrells

AYES: 3–Gillespie, Chernock, Sorrells,

NAYS: 2 – Beikman, Reynolds

MOTION FAILED 3 – 2

***Since the motion to grant did not get four concurring votes the motion failed and is therefore deemed denied with prejudice.**

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-050**, on application of Masterplan, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Existing planting areas and tree selections must be maintained in their current locations as specified on the submitted landscape plan.
- Any future plant changes must conform to the general location and plant type specifications designated on the submitted landscape plan and must be approved by the Building Official. Any large tree that is removed must be

replaced with another tree at a minimum of 3.5" caliper and be of the same species, except that, due to potential overhead utility conflicts, any tree that is removed along the Howell Street and McKinney Avenue tree planting zones must be replaced with a small tree species allowed in PD 193 unless an alternate selection is specified by the Tax Increment Finance District and approved by the Building Official.

- All existing plant materials at the date of the hearing must be maintained under the general maintenance requirements of PD 193. All outside garbage dumpsters must be screened per PD 193 specifications.
- All conditions for tree preservation under Article X apply to this Property.
- When any additional work on the lot is performed that increases the existing building height, floor area, or nonpermeable coverage of the lot, the landscape requirements of PD 193 must be applied to the property.

SECONDED: Beikman

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION #2: Gillespie

I move to **reconsider** the previous motion made to grant the variance.

SECONDED: Chernock

AYES: 4–Gillespie, Chernock, Sorrells, Reynolds

NAYS: 1 – Beikman

MOTION PASSED 4 – 1

MOTION #3: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-050**, on application of Masterplan, **grant** the eight foot variance to the front yard setback regulations because our evaluation of the property and 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: Sorrells

AYES: 4–Gillespie, Chernock, Sorrells, Reynolds

NAYS: 1 – Beikman

MOTION PASSED 4 – 1

FILE NUMBER: BDA 078-065

BUILDING OFFICIAL'S REPORT:

Application of Shelley Barrineau for a variance to the off-street parking regulations at 5332 Edmondson Avenue. This property is more fully described as Lot 11 in City Block F/2478 and is zoned R-7.5(A) which requires 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 an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a structure and provide an enclosed parking space with a setback of 5 feet which will require a variance of 15 feet.

LOCATION: 5332 Edmondson Avenue

APPLICANT: Shelley Barrineau

REQUEST:

- A variance to the off-street parking regulations of 15' is requested in conjunction with constructing and maintaining enclosed parking spaces in a two-vehicle garage/laundry room addition that would attach to an existing single family home. The enclosed parking spaces in the proposed addition would be located less than the required 20' distance from an alley right-of-way line.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff identified that the size of the lot, which according to the applicant, is 14' narrower, 9' shallower, and 35% smaller than 24 other lots in the 3800-3900 block of Fairfax Avenue and the 5200-5300 block of Edmondson Avenue precluded it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification – in this case with, according to information submitted by the applicant, an expanded single family home/garage that would be about 1,200 square feet lesser in size than the average living area and about 80 square feet lesser in size than the average garage area of the 24 other homes on the block. However, regardless of the demonstration of property hardship of the lot, staff is recommending denial of the request because the applicant had not substantiated how granting the request would not be contrary to public interest. Although the applicant's spreadsheet and the Board Administrator's field visit indicate that the only homes that access rear garages from the alley are at the end of the blocks (near Westside Street and Bordeaux Street), the Development Services Senior Engineer recommends that this request be denied commenting that the traffic on the alley may be impeded with only a 5' distance between the enclosed parking spaces/garage door and the alley right-of-way line.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2008

APPEARING IN FAVOR: Shelly Barrineau, 5332 Edmondson, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 078-065**, on application of Shelly Barrineau, **grant** the 15-foot variance for an enclosed parking space entered directly from a street or alley, because our evaluation of the property and 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted scaled site/plot 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 utilized for parking of vehicles.
- All applicable permits must be obtained.

SECONDED: **Sorrells**

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-066(K)

BUILDING OFFICIAL'S REPORT:

Application of Robert Ernst for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 4710 Alta Vista Lane. This property is more fully described as Lot 10 in City Block 6/6392 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 7 foot fence in a required front yard setback which will require a 3 foot special exception to the fence regulations, and to construct and maintain a fence in a required visibility obstruction triangle which will require a special exception to the visibility obstruction regulations.

LOCATION: 4710 Alta Vista Lane

APPLICANT: Robert Ernst

REQUESTS:

A special exception to the visibility obstruction regulation is requested in conjunction with constructing and maintaining a nonresidential structure.

A special exception to the fence height regulations of 3 feet is requested in conjunction with maintaining a 7' high fence in the site's front yard setback

STAFF RECOMMENDATION (visibility obstruction):

Denial

Rationale:

- The Development Services Senior Engineer submitted a comment sheet recommending denial stating "it appears that there is a distance of 13' from the gate edge of pavement, thus a regular vehicle is expected to block part of the roadway (see attachment A)."

STAFF RECOMMENDATION (fence height):

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.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2008

APPEARING IN FAVOR: Rob Ernst, 4710 Alta Vista Lane, Dallas, TX
David Kirgis, 4724 Alta Vista Lane, Dallas, TX

APPEARING IN OPPOSITION: Lionel White, 4680 College Park Dr. Dallas, TX
Sally Braden White, 4680 College Park Dr. TX Dallas,

MOTION #1: Reynolds

I move that the Board of Adjustment, in Appeal No. **BDA 078-066**, on application of Robert Ernst, **deny** the special exception to the fence height regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MOTION #2: Reynolds

I move that the Board of Adjustment, in Appeal No. **BDA 078-066**, on application of Robert Ernst, **deny** the special exception to the visibility obstruction regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Beikman

AYES: 5—Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 —

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-068

BUILDING OFFICIAL'S REPORT:

Application of Richard and Trea Yip, represented by Robert Baldwin, for special exceptions to the fence height and visual 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 fence in a required front yard setback and to construct and maintain items in required visibility obstruction triangles which will require a special exception to the fence regulations of 8' and special exceptions to the visual 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 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:
 - an 8' high solid stone veneer wall with cast stone cap with 10' high cast stone columns; and
 - an 11' 6" open iron picket entry gate with 12' high entry columns.
 2. A special exception to the visual obstruction regulations is requested in conjunction with constructing and maintaining the two entry columns and an approximately 8 foot long portion of the solid 8' high solid stone veneer wall in the site's 20' visibility triangles at the drive approach into the site from Calleja Way.

Note that in May of 2007, the applicant had made application to (and was granted by) the Board of Adjustment for the following on the subject site:

- A special exception to the fence height regulations of 8' was 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.
- A special exception to the visual obstruction regulations was 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 (visual obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer recommends that this be denied (i.e. that the entry columns and wall in the visibility triangles will constitute a traffic hazard).

BOARD OF ADJUSTMENT ACTION: MAY 21, 2008

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 078-068**, on application of Richard and Trea Yip, represented by Robert Baldwin, **grant** the request of this applicant to construct and maintain a 12-foot-tall 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/elevation is required.

SECONDED: Chernock

AYES: 4–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 078-068**, on application of Richard and Trea Yip, represented by Robert Baldwin, **grant** the request of this applicant to construct two entry columns and portions of a fence/wall in visibility triangles as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that

the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

3:00 P.M. - Board Meeting adjourned for **May 21, 2008.**

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.