

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, AUGUST 13, 2008**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Panel Vice Chair, Samuel Gillespie, regular member, Marla Beikman, regular member, John McBride , alternate member and Marc Bateman, alternate member

MEMBERS ABSENT FROM BRIEFING: Christian Chernock, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Panel Vice Chair, Samuel Gillespie, regular member, Marla Beikman, regular member, John McBride, alternate member and Marc Bateman, alternate member

MEMBERS ABSENT FROM HEARING: Christian Chernock, regular member

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, Elias Sasson, Theresa McDonald, Director, Development Services, and Trena Law, Board Secretary

10:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 13, 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 June 25, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

MOTION: Beikman

I move approval of the Wednesday, **June 25, 2008** Board of Adjustment Public Hearing minutes.

SECONDED: Gillespie

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-093

BUILDING OFFICIAL'S REPORT:

Application of Jonathan Vinson of Jackson Walker, LLP for a special exception to the landscape regulations at 2900 McKinnon Street. This property is more fully described as Lot 1A in City Block D/936 and is zoned PD-193 (PDS 52) which requires mandatory landscaping. The applicant proposes to construct and maintain a residential multifamily structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 2900 McKinnon Street.

APPLICANT: Jonathan Vinson of Jackson Walker, LLP

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit for a condominium tower development on the subject site (Azure Tower).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted planting plan excerpt and full planting plan is required.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally “excepted” from the sidewalk width provisions of PD No. 193 (whereby about 26’ of the total 1,100 linear feet of sidewalk would be 0.5’ less in width than the required 6’) while exceeding PD No. 193 landscape requirements related to site trees, street trees, and tree mitigation.
- The City’s Chief Arborist 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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted a planting plan excerpt and full planting plan of the subject site whereby, according to the City of Dallas Chief Arborist, the applicant seeks relief from the landscape requirements of the PD No. 193, specifically the sidewalk width/location requirements of this ordinance (Section 51P-193.126(b)(4)).

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment B). The memo stated the following:
 - The special exception request is triggered by the new construction in PDS 52 approved by council on May 12, 2004.
 - Deficiencies:
 - The property is in non-compliance with the landscape plans approved by the City Plan Commission on June 2, 2005. New revisions to the previous plan must be approved by the commission through the amendment process.
 - Section S-52.111, Landscaping, states “the landscape plan must comply with the requirements of Part 1 of this (PD 193) article with a number of exceptions. (The sidewalk width and location were not excepted).

- Section 51P-193.126(b)(4) states that required sidewalks in non-residential subdistricts must be “in that area parallel to and between 5 and 12 feet from the back of the projected street curb” and a “minimum width of six feet.”
- The revised plans identify the sidewalk width at the corner of Wolf Street, adjacent to McKinnon Street, to be 5.5’ and placed along the abutting curb. There is a deficiency of 6 inches from the minimum code standards required under PD 193 Part 1.
- Factors:
 - The City Plan Commission approved a landscape plan on June 2, 2005, as required by code, prior to the issuance of the building permit on July 29, 2005.
 - The chief arborist agrees with the applicant’s assessment of the site conditions, code standards, and the stated timeline of events in their letter of July 25, 2008 to the board administrator. In reference to the timeline, engineering adjustments for the structure during construction stage dictated drainage changes under the review of the City of Dallas Public Works and Transportation Department. The approved adjustments for the sidewalk location and width were later noted upon a landscape inspection to be in violation of the approved landscape plans.
 - The chief arborist agrees with the solution proposal and plan revisions for the amendment that still must be presented for approval under the jurisdiction of the Plan Commission. The amendment must also be submitted, per PDS 52, to the Mayor’s Way Homeowner Association at the same time it is submitted to the Plan Commission.
- Recommendation:
 - Approval
- On July 25, 2008, the applicant submitted additional information to staff regarding the request (see Attachment A). This information included the following:
 - a letter that provided additional details about the request;
 - a copy of a “street level planting plan” excerpt and full drawing, plant list; and
 - a copy of a memo regarding the site from the landscape architect to the site developer.
- On August 1, 2008, the applicant submitted additional information to staff regarding the request (see Attachment C). This information included the following:
 - a letter that provided additional details about the request;
 - the City’s Chief Arborist’s memo;
 - Rendering of project, 2007 aerial photo, and site photographs;
 - a copy of a planting plan excerpt, reduced full planting plan, and plant list; and
 - a copy of a memo regarding the site from the landscape architect to the site developer.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (PD 52 Subdistrict) (Planned Development District, Planned Development)
North: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
South: PD No. 193 (O-2 and PD 79 Subdistricts) (Office and Planned Development)
East: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)

West: PD No. 193 (O-2 and PD 16 Subdistricts) (Office and Planned Development)

Land Use:

The subject site is developed with a condominium tower development (Azure Tower). The areas to the north, east, and south are developed with residential uses; and the area to the west is developed with office use.

Zoning/BDA History:

- | | |
|---|---|
| 1. Z 034-178, east corner of Wolf Street and McKinnon Street (the subject site) | On May 12, 2004, the City Council approved an application for a Planned Development Subdistrict with O-2 Office Subdistrict uses within the Oak Lawn Special Purpose District on property that had been zoned an O-2 Subdistrict in PD No. 193. |
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Timeline:

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|--------------------------|--|
| May 16, 2008 | The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. |
| July 16, 2008: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. |
| July 17, 2008: | The Board Administrator contacted the applicant and shared the following information by phone and email: <ul style="list-style-type: none">• 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 July 28th deadline to submit additional evidence for staff to factor into their analysis;• the August 1st 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 Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and, if not, may result in delay of action on the appeal or denial; and• that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties. |
| July 25 & August 1, 2008 | The applicant submitted additional information to the Board Administrator (see Attachments A and C). |

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection 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.

August 1, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS:

- This request focuses on obtaining a final building permit for a condominium tower development on the subject site (Azure Tower) – a site that either fully complies or exceeds the landscape requirements of PD No. 193 with one exception: an approximately 26’ long area of sidewalk (on a site with about 1,100 linear feet of frontage) at the corner of Wolf Street and McKinnon Street that is 6” (or 8 percent) deficit of the 6’ sidewalk width code requirement.
- A planting plan excerpt and full planting plan have been submitted whereby the applicant seeks an exception from the landscape requirements in the following way:
 - providing an approximately 5.5’ wide sidewalk (rather than the required 6’ wide sidewalk) along a relatively small length of the subject site (approximately 26’ of the total site’s approximately 1,100’ length of sidewalk) that would be 0.5’ or 6” less than the required 6’ sidewalk width.
- The applicant has stated that the landscape plans provided are actually in excess of what is required in PD No. 193: 46 of the required 44 street trees are provided; 84 of the required 15 site trees are provided; and 442 caliper inches of a required 74 caliper inches are mitigated.
- The City of Dallas Chief Arborist supports the request.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where plans have been submitted that is deficient in the sidewalk width requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted planting plan excerpt and full planting plan, the site would be “excepted” from full compliance to the sidewalk width requirements of the Oak Lawn PD landscape ordinance.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **McBride**

I move that the Board of Adjustment grant application **BDA 078-093** 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 planting plan excerpt and full planting plan is required.

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-099(K)

BUILDING OFFICIAL'S REPORT:

Application of Eric Rodriguez represented by Construction Concepts for a special exception to the single family regulations at 4525 Catina Lane. This property is more fully described as Lot 7 in City Block A/5534 and is zoned R-1ac(A), which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which will require a special exception.

LOCATION: 4525 Catina Lane

APPLICANT: Eric Rodriguez
Represented by Construction Concepts

REQUEST:

Special exception to single family regulations to add an additional dwelling unit on a single family use.

STAFF RECOMMENDATION:

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

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.209 (b)(6)(E)(i) of the Dallas Development Code states that the board may grant a special exception to authorize an additional dwelling unit in any district when, in the opinion of the board, the additional dwelling unite will not:

- (aa) be used as rental accommodations; or
- (bb) adversely affect neighboring properties.

GENERAL FACTS:

- This property is zoned R1ac(A), which restricts development to one dwelling unit.
- The applicant proposes to construct and maintain a single family structure and an additional dwelling unit.

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 currently under construction. The areas to the north, east, south, and west are developed with single family uses..

Zoning/BDA History:

There is neither case file history on this property nor properties in the immediate area.

Timeline:

- Jun 18, 2008 The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 15, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- July 16, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and 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 July 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 1st 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 August public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The property is zoned R1ac (A) which restricts development to one single family structure. The applicant proposes to develop the property with a single family structure and an attached additional dwelling unit.
- DCAD indicates the subject property is 1.1760 acres in area.
- The applicant submitted a site plan indicating the location of the proposed single family structure and attached additional dwelling unit.
- A review of the site plan by the Board of Adjustment's Senior Planner reveals the following:
 - The proposed development includes:
 - 8,921 square feet of total A/C area
 - 1,573 square foot garage

- 259 square foot porch
- 1,156 square foot patio
- 445 square foot servant quarters
 - The total coverage of the site is 12,254 square feet.
- The site plan indicates the proposed “servant quarters” will be located to the rear of the development (towards the north property line) adjacent to the garage. The proposed “servant quarters” has no access to the “main house.” The quarters can be accessed by an exterior.
- The applicant has the burden of proof to establish how the special exception to single family zoning use will not adversely affect neighboring property.
- If the Board chooses to grant this special exception of to the single family zoning use regulation staff recommends imposing the following condition—that the applicant comply with the submitted site plan, and elevation.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **McBride**

I move that the Board of Adjustment grant application **BDA 078-099** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-105(K)

BUILDING OFFICIAL'S REPORT:

Application of Joan Chalkley for a special exception to the fence height regulation at 7244 Lakehurst Avenue. This property is more fully described as Lot 18 and part of Lot 17 in City Block E/5455 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 7244 Lakehurst Avenue

APPLICANT: Joan Chalkley

REQUEST:

- A special exception of 4 feet to the fence height regulation to construct and maintain an 8 foot high fence in the property's front yard setback on property located on Boedeker St.

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:

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25 feet. The applicant is requesting to construct and maintain a eight foot high fence in the site's Boedeker St, required front yard setback, which will require a special exception of four feet.
- The fence will be parallel to the east property line along Boedeker St. and will run 70' from the southeast corner of the property (Boedeker and the alley) towards Lakehurst Ave.
- The site is flat and approximately 17,722 (116' x 165') square feet. According to DCAD the site was developed in 1965 and is in fair condition with 3,559 square feet of living space and includes the following additional improvements:
 - Cabana 235 square feet
 - Attached garage 510 square feet
 - Pool

- Jacuzzi 48 square feet
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for fence height with a specific basis for this type of appeal.

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 dwelling. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

There is no case history for this site or any sites in the immediate area.

Timeline:

- June 27 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 15, 2008: The Board of Adjustment Secretary randomly assigned this case to Panel B.
- July 16, 2008: The Board of Adjustment’s Senior Planner contacted the applicant and shared the following information by telephone and letter:
- 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 May 5th deadline to submit additional evidence for staff to factor into their analysis;
 - the May 9th 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 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 and evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

July 29 2008 Review comment sheet(s) with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- The site is currently developed with a single family structure. The surrounding properties in the area are developed with single family structures.
- The applicant proposes to construct and maintain a solid 8’ fence constructed of cedar slates with metal support posts. The fence will be parallel to the east property line and will run 70’ from the southeast corner of the property towards Lakehurst Ave.
- The site is flat and irregular in shape being approximately 17,772 square feet. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- This is different from other sites in the area in that it is encumbered by two front yard setbacks. The site has a front yard setback along Lakehurst Ave and Boedeker St. The applicant is only requesting a special exception to the fence height regulation for the Boedeker St. front yard.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation of 4 feet, allowing the applicant to construct and maintain an 8 foot high fence in the property’s front yard setback will not adversely impact neighboring properties.
- If the Board were to grant the special exception to the fence height regulation, staff would recommend imposing the following condition:
 1. Compliance with the submitted site plan and elevation.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: McBride

I move that the Board of Adjustment grant application **BDA 078-105** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Beikman

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-110

BUILDING OFFICIAL'S REPORT:

Application of Matthew Simon for a special exception to the fence height regulations at 735 Rainbow Drive. This property is more fully described as Lot 2 in City Block A/4788 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 735 Rainbow Drive

APPLICANT: Matthew Simon

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high, approximately 25' long, solid horizontal 2X6 Cedar board fence/wall in the Rainbow Drive 25' front yard setback on a lot 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 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.
A site plan/partial elevation has been submitted indicating that the proposal in this case will reach a maximum height of 8', and be limited to being located in the site's Rainbow Drive 25' front yard setback. (No proposal is shown to be located in the site's Tyler Street 25' front yard setback).
- The following additional information was gleaned from the submitted site plan/partial elevation:
 - A line indicating "new fence" that is approximately 25' in length parallel to Rainbow Drive and approximately 24' in length perpendicular to Rainbow Drive on the eastern side of the lot in the front yard setback.
 - The fence/wall line being located at a range of 1'- 10' from the Rainbow Drive front property line.
 - A partial elevation denoting an 8' high "Horizontal 2X6 Cedar set in C Channel Metal Posts Bottom Board to be Pressure Treated in Planters."
- There is one single family home that would have direct frontage to the proposal. This home has no fence in its front yard.
- 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 applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a sheet of photos of the site, and two letters from owners/neighbors in support of the proposal.

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 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:

- June 27, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 16, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 July 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 1st 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection 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.
- August 1, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- This request focuses on allowing the construction and maintenance of an 8' high, approximately 25' long, solid horizontal 2X6 Cedar board fence/wall in the Rainbow Drive 25' front yard setback on a lot developed with a single family home
- A site plan/elevation has been submitted that documents the material (solid wood), height (8'), and location of the proposal in the front yard setback (located at a range of 1' – 10' from the front property line).

- There is one single family home that would have direct frontage to the proposed approximately 25' long, 8' high board fence/wall. This home does not have a fence in its front yard.
- No other fences above four (4) feet high which appeared to be located in the front yard setback were noted in the immediate area surrounding the subject site.
- As of August 4, 2008, two 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 exception to the fence height regulations of 4' (whereby the proposed 8' high solid wood fence/wall in the front yard setback) 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/elevation would assure that the proposal would be constructed of/maintained as/limited to the material, height, and locations shown on this document.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: McBride

I move that the Board of Adjustment grant application **BDA 078-110** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Beikman

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-086(K)

BUILDING OFFICIAL'S REPORT:

Application of Kirk Williams and Tommy Mann of Winstead PC for a special exception to the parking regulations at 19009 Preston Road. This property is more fully described as Lot 58 in City Block 18/8736 and is zoned PD-170(Tract 6A) which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for office use, personal service use, restaurant without drive-in or drive-through service use, and general merchandise or food store less than 3500 square feet use and provide 303 of the required 377 parking spaces which will require a special exception of 74 spaces (19.6% reduction) to the parking regulations.

LOCATION: 19009 Preston Road

APPLICANT: Winstead PC

REQUEST:

- A special exception to the off-street parking regulations of 74 parking spaces (or 19.6% of the required off-street parking) is requested in conjunction with constructing and maintaining a nonresidential structure for office use, personal use, restaurant without drive-in or drive-through service use, and general merchandise or food store use less than 3500 square feet, and provide 303 of the required 377 parking spaces.

STAFF RECOMMENDATION:

Approval:

Rationale:

- The Development Services Senior Engineer has no objections to the request based on letters (and traffic counts) submitted by the applicant's representative.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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.

GENERAL FACTS:

- This site is in PD 170 which has provisions for the proposed use of this site. The site is currently developed with the Preston Lloyd Shopping Center and includes a variety of uses.
- According to the applicant the site is currently 48% leased.
- The applicant's representative has submitted a parking analysis related to the allowed uses of this property (see attachment).
- The site has a total of 54,234 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 170 (Planned Development)
North: PD No. 170 (Planned Development)
South: PD No. 170 (Planned Development)
East: PD No. 765 and PD 202 (Planned Development)

West: PD No. 170 (Planned Development)

Land Use:

The subject site is developed with Preston Lloyd Shopping Center. The property to the north is developed with a shopping center, the property to the west is developed with a multi-family use, the properties to the south are residential.

Zoning/BDA History:

PD 170 was established by ordinance 18131, passed by the Dallas City Council on January 11, 1984.

Timeline:

April 25, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 22, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

May 23, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information by letter:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the June 9th deadline to submit additional evidence for staff to factor into their analysis;
- the June 13th 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 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 June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection

Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

- June 12, 2008 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections” (see attachment).
- June 25, 2008 The Board of Adjustment Panel B voted to hold this case under advisement until August 13, 2008.
- July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The property owned by First Allied Corporation, is a mixed use shopping center. Uses include, restaurant, personal service, and retail uses.
- According to the applicant 48% of the 54,234 square foot structure is occupied, with 28,200 square feet vacant or 52% vacant.
- The applicant is requesting a special exception of 74 spaces or a 19.6% reduction to the parking requirement.
- The applicant has not specified any particular use in conjunction with the request. Under PD 170 there are several uses permitted on the property.
- The applicant has submitted a parking analysis conducted for the site that includes a variety of uses (see attachment).
- The submitted parking analysis states that the “currently occupied areas of Preston Lloyd Shopping Center require 182 parking spaces>”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the 54,234 square foot shopping center” use does not warrant the number of off-street parking spaces required, and
 - The special exception of 74 spaces (or 19.6 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request.
- If the Board were to grant the request for special exception to the parking regulation, the staff would recommend imposing the following condition:
 - Compliance with the submitted site plan.

BOARD OF ADJUSTMENT ACTION: JUNE 25, 2008

APPEARING IN FAVOR: Kirk Williams, 5400 Renaissance Tower, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 078-086**, hold this matter under advisement until **August 13, 2008**.

SECONDED: **Gillespie**

AYES: 3– Reynolds, Gillespie, Chernock,

NAYS: 0 –

MOTION PASSED 3 – 0 (unanimously)

***Member Marla Beikman recused herself and did not hear or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

APPEARING IN FAVOR: Tommy Mann, 5400 Renaissance, Dallas, TX
John DeShazo, 400 Houston St , Dallas, TX
David Nevarez, 3500 North Star Rd., Dallas, TX
Alan Ripley, 220 Fitzpatrick Tr., W Henrietta NY

APPEARING IN OPPOSITION: Ann Murphy, 19126 Windmill LN., Dallas, TX

MOTION #1: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 078-086**, on application of Kirk Williams and Tommy Mann of Winstead PC, grant the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 74 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office, personal service, restaurant without drive-in or drive-through service, and general merchandise or food store less than 3500 square feet uses on the site are changed or discontinued.
- The special exception shall terminate one year from today.

SECONDED: **McBride**

AYES: 3– Reynolds, Gillespie, McBride

NAYS: 1 – Bateman

MOTION FAILED 3 – 1

MOTION #2: Bateman

I move to **reconsider** the previous motion made in this matter.

SECONDED: McBride

AYES: 4– Reynolds, Gillespie, Bateman, McBride

NAYS: 0 –

MOTION PASSED 4 – 0(unanimously)

MOTION #3: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 078-086**, on application of Kirk Williams and Tommy Mann of Winstead PC, grant the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 74 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office, personal service, restaurant without drive-in or drive-through service, and general merchandise or food store less than 3500 square feet uses on the site are changed or discontinued.
- The special exception shall terminate one year from today.

SECONDED: Bateman

AYES: 4– Reynolds, Gillespie, Bateman, McBride

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 078-107

BUILDING OFFICIAL'S REPORT:

Application of Tommy McGee for a special exception to the landscape regulations at 1139 Bonnie View Road (aka 1122 Hutchins Road). This property is more fully described as Lot 1F in City Block C/5895 and is zoned R-7.5(A) which requires mandatory landscaping. The applicant proposes to maintain a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 1139 Bonnie View Road (aka 1122 Hutchins Road)

APPLICANT: Tommy McGee

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit for a recently constructed church structure on a site developed with a church structure built in 1970 (Egypt Chapel Baptist Church).

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- Compliance with the submitted alternate landscape plan is required.
- The applicant is waived from providing the “added shrubs for buffer groups” noted on this alternate landscape plan along Gallatin Street.

Rationale:

- The City’s Chief Arborist supports the request.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code (specifically related to street tree, perimeter landscape buffer strip, and design standard requirements) will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property. In this case the applicant is not able to fully meet the landscape requirements on the property and simultaneously meet City off-street parking and maneuvering requirements.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or

increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.

An alternate landscape plan has been submitted with the application that according to the City of Dallas Chief Arborist is deficient from meeting street tree, perimeter landscape buffer strip, and landscape design standard requirements.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from street tree, parking lot tree, perimeter landscape buffer strip, and design standard requirements of Article X: The Landscape Regulations.
 - Trigger:
 - New construction and paving on the lot.
 - Deficiencies:
 1. Street trees:
 - The applicant proposes to provide 2 of the required 8 large trees. (One tree is to be planted on Gallatin Street, the other on Bonnie View Road).
 2. Perimeter landscape buffer strip:
 - The applicant proposes to provide none of the 6 plant groups required along Gallatin Street.
 3. Design standard:
 - Screening of off-street parking (proposed on original landscape plan review). No screening shrubs, fence, or berm are proposed. No other design standard is proposed.
 - Factors for consideration:
 - The property was permitted for construction of a new building addition and parking area on March 23, 2006. The original landscape plan review was approved as part of the permit.
 - The Gallatin Street parking area was previously asphalted and used for church parking. It was repaved as part of the church expansion. A wrought iron and brick column fence is placed along the south and east perimeter of the property facing the two streets. Additional parking was placed on the north side of the new building.
 - A sidewalk waiver was approved for the property on December 11, 2007. Gallatin Street is an unimproved street with no curb or gutter, and no residences facing the street.
 - One residence sets across Gallatin Street that faces Bonnie View Road. The other adjacent property along Gallatin Street is a vacant lot with an unauthorized paved surface.
 - The lower (east) end of the lot is irregularly shaped providing a reduced maneuvering and parking area for required parking on the property.
 - The residential adjacency to the north of the lot is shown on the plan to be in compliance with the mandatory adjacency buffers and screening fence.
 - The “added shrubs for buffer groups” comment shown on the plan along Gallatin Street must be verified by the applicant. It is understood that all shrub planting called for from the original plan would be removed per this request. There is no objection to their removal.
 - Recommendation

- Approval.
 - The placement of the mandatory buffer to the south in conjunction with the north buffer would significantly diminish necessary parking and maneuvering space, and tree additions within the perimeter would remove needed parking areas while placing the trees in hazardous conditions. Planting the required trees in the unimproved Gallatin Street right of way is not recommended. Any possible street improvements or abandonments may necessitate the removal of such (possibly mature) trees in the future. All other landscape conditions presented at time of the original plan review are proposed for completion.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family residential 7,500 square feet)
North: R-7.5 (A) (Single family residential 7,500 square feet)
South: R-7.5 (A) (Single family residential 7,500 square feet)
East: TH-3 (A) (Townhouse)
West: R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with two structures that comprised a church campus (Egypt Baptist Church). The areas to the north, east, south, and west appear to be 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:

- June 27, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 17, 2008: The Board Administrator contacted the applicant and shared the following information:
 - the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;

- the significance of how the City of Dallas Chief Arborist's conclusions may factor into the staff recommendation and the board's action on the application ;
- the August 1st 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection 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.

July 30, 2008 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

STAFF ANALYSIS:

- The request focuses on obtaining a final building permit for a recently constructed church structure on a site developed with a church structure (Egypt Chapel Baptist Church), and being "excepted" from fully meeting the Landscape Regulations of the Dallas Development Code.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 - providing 2 of the required 8 large street trees,
 - providing none of the 6 plant groups in the perimeter landscape buffer strip along Gallatin Street ; and
 - partially provision of 1 of 2 required number of design standards.
- The City of Dallas Chief Arborist supports the request largely given how the site's limitations preclude the applicant from complying with landscape requirements while simultaneously meeting the City's off-street parking and maneuvering requirements.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.

- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan (with the exception of providing “added shrubs for buffer groups” noted on this plan), the site would be “excepted” from compliance with the street tree, perimeter landscape buffer strip, and design standard requirements of Article X: The Landscape Regulations.
- Granting this request for a special exception to the landscape regulations does not provide any relief that the applicant may determine is needed on the subject site to address possible violations to the Dallas Development Code’s Fence, Screening, and Visual Obstruction Regulations.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

APPEARING IN FAVOR: Tommy McGee, 7703 Robin Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Bateman

I move that the Board of Adjustment, in Appeal No. **BDA 078-107** on application of Tommy McGee, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.
- The applicant is not required to provide the “added shrubs for buffer groups” noted on this alternate landscape plan along Gallatin Street.

SECONDED: Gillespie

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0–

MOTION PASSED 5 – 0(unanimously)

FILE NUMBER: BDA 078-072(K)

BUILDING OFFICIAL'S REPORT:

Application of Grant Morrow represented by Robert Miklos for a special exception to the tree preservation regulations at 5429 Kiwanis Road. This property is more fully described as Lots 13-19 & 54 in City Block A/8712, Lots 1-18 in City Block B/8712, Lots 1-14 in City Block C/8712, Lots 1-7 in City Block D/8712, Lots 1-14 in City Block F/8712, and Lots 1-6 in City Block G/8712 and is zoned PD 701 which requires mandatory landscaping and tree preservation. The applicant proposes to construct a single family

residential development and provide an alternate landscape plan for tree preservation which will require a special exception.

LOCATION: 5429 Kiwanis Road

APPLICANT: Grant Morrow
Represented by Robert Miklos

REQUEST:

- A special exception to the tree mitigation regulation of Article X. The request is relief from the requirements of Section 51A-10.134 and 51A-10.135 (see attachment A) of the Dallas Development Code and to request approval of additional “alternate methods” of mitigation that includes a “tree planting plan.”

STAFF RECOMMENDATION:

Approval, subject to the stated conditions and amendments as follows:

- A minimum of 80% reduction in mitigation should be approved for the donation of 8 acres of trees and land, to be completed within 30 days of board action, that will be combined with the 25.6 acres of trees and land previously donated to the Park Department. (Article X – special exception replaces alternative method of mitigation)
- The site restoration project, as demonstrated on applicant’s Exhibit A, should be accepted as a portion of the mitigation obligation. This measure would provide assurance of site maintenance and escarpment protection until the completion of planting with future development. As such, the site restoration should contribute to the overall mitigation credit.
- The comprehensive landscape plan should be approved that identifies the size and number of trees to be planted on individual single family lots that exceed Article X standards; and that identifies the size, number and species of trees for open spaces, and for planting within the parkway. (Article X compliance – Plants trees on the property and within 1 mile of the property)
- Full compliance with the stated mitigation provisions, the applicant’s proposed conditions, and the staff suggested amendments. The chief arborist’s recommended amendments follow:
 - The chief arborist recommends that the TIMING of tree mitigation should be considered completed upon the final planting of all trees per this plan, or upon completion of the planting of 2,654 inches of trees under this plan, if documented by the Owner, and builders, to the Building Official.
 - All plant materials must be maintained in a healthy, growing condition.
 - Lots in Phase I and II that have been subject to site restoration may be cleared on a lot by lot basis under individual building permits for construction, or grading permits. In order to clear single, or multiple, lots without a building permit for construction, a grading permit is required to conduct clearing on the specific lots identified on the permit. Necessary and incidental clearances, in conjunction with

street construction, will be regulated under the Engineering Review process. The lots adjacent to the construction must be fully protected from street construction by a physical barrier and demonstrated on the Review plans.

- All parkway and open space trees subject to possible removal due to any of the defenses to prosecution in Section 51A-10.140 will not be in violation of the board conditions. All open space and parkway trees are subject to Article X protections as replacement trees. Single family lot trees that are removed, or die, are subject to tree-for-tree replacement with a species provided in PDD 701 and with the number of trees per lot required with this plan.

Rationale:

The Chief Arborist reviewed the request and conditions proposed by the applicant and has made the following recommendations in response to the applicant's request (see attachment).

All 'lot trees' (Part I) must conform to trees allowed in PDD 701 for single family lots.

The 'tree planting requirements' (Part II) for watering must include provisions 'to assure survival on a multi-annual basis' that must be not less than 2 years for each tree planted. Any amendments or diversions from the stated soil conditions for the tree planting environmental conditions must be approved by the Building Official. Tree stakes must be removed within one year unless determined necessary to remain.

The 'indigenous elm' (Part III) must be limited to the genus *Ulmus* and more specifically the species cedar elm, slippery elm, and the 'Liberty' (American) elm. (The 'Liberty' American elm is less susceptible to Dutch Elm Disease. The elm family includes hackberry, sugarberry, Osage-orange and mulberry and must be distinguished here for classification purposes.)

All 'parkway trees' (Part IV) must be live oak trees (*Quercus virginiana*) and per the applicants Exhibit B, or in locations 'averaging one-hundred feet on center' if in conflict with lot design elements (driveway locations) or utilities. The plan must conform to the conditions of PDD 701 for planting in proximity to underground utility lines. Large trees may not be planted within 10 feet horizontal from overhead utility lines.

Any 'open space replanting' (Part V) and any 'northwestern strip' planting (Part VI), with irrigation systems, that are placed on Park property, must be approved by the Park Department prior to installation.

Any alteration of the 'sewer access road' (Part VII) on Park property must be approved by the Park Department prior to implementation.

The 'site restoration' (Part IX) activities, including the initial seeding, must be approved by the Building Official by November 1, 2008. The conditions for approval are that all specifications for 'site restoration' per this plan have been implemented and that all maintenance procedures for the restoration are in place and are functioning properly. Furthermore, the owner will determine the status of the restoration and will report these conditions to the Building Official by July 1, 2009. If the Building Official determines, in their judgment, that the site is not yet in full compliance with Exhibit A, the owner will complete the site restoration per Exhibit A and request a final assessment by November 1, 2009. The Building Official shall approve the site restoration as completed upon the final inspection if he determines the property is in compliance with Exhibit A.

The 'rock spoil piles' (Part XI) that are to be removed by October 30, 2008 must be under a proper permit if moved to a location within the City of Dallas boundary limits.

The applicant must notify stormwater management through their SWP3 documentation of the details of the 'spoils' transfer from the Property.

The 'replacement of dead trees' (Part XII) that is within Park property must be approved by the Park Department prior to installation. The location of trees within the deed restricted properties must be approved by the Building Official prior to installation. The deed restricted zones must be fully protected as stipulated in PDD 701 and the deed restriction.

The Engineering/Landscape drawings (Part XIII) must conform to the requirements of PDD 701 for utility avoidance. Alterations from Exhibit B for conditions previously stated (parkway trees) are subject to building inspector approval.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

Section 51A-10.110 specifies that the board of adjustment may grant a special exception to the requirements of the landscape article upon making a special finding of evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of this property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

- (1) The extent to which there is residential adjacency.
- (2) The topography of the site.
- (3) The extent to which landscaping exists for which no credit is given under this article.
- (4) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053, 25155)

GENERAL FACTS:

- This site is zoned PD 701 a planned developed for single family residential as known as Grady Niblo Estates. PD 701 was established by Ordinance No. 25804, passed by the Dallas City Council on November 10, 2004.
-
- The applicant is requesting a special exception to the landscape requirements of Article X. More specifically, the request is for relief from mitigation requirements specified under Sections 51A-10.134 and 51A-10.135.
- The City of Dallas Chief Arborist submitted a memo to the Board's Senior Planner and the Board Chief Planner pertaining to the submitted site plan (see attachmentB). The memo stated the following:
 - The special exception requested is triggered by a tree removal permit issued on August 4, 2005 for the clearing of property to create a new single family development tract under the regulations of PD 701. PD 701 defers to Article X for the completion of tree mitigation.

Deficiencies

The Property has exceeded the allowed time period stipulated in Article X to complete tree mitigation (51A-10.134(5)).

Trees were removed within the development area that, by code, must be replaced on the lot (51A-10.134(1-4)), and/or completed through any of the alternative methods of mitigation provided by ordinance (51A-10.135).

The chief arborist agrees with the applicant's tabulations for the mitigation requirements. This proposal requests approval of an alternate plan that combines park land donation, site restoration and planting on the property, and that would fully complete tree replacement and mitigation required by city ordinance at an undetermined time.

Factors

A 25.6 acre portion of the Property was previously donated to the Park Department that encompasses the protected escarpment zone and includes a wide distribution of tree species and significant historical structures. The Property owner was not able to obtain 'conservation easement' (51A-10.135(d)) credit with the donation. The Parks Board would not except the potential encumbrances that might limit the city's administration of the property. Consequently, the property was donated in fee simple to the Parks Department. The City of Dallas encourages the donation of sensitive land areas surrounding the escarpment zone (Article V, Section 51A-5.210).

The Property is regulated by PDD 701 which refers to Article X, with exceptions. The PDD required the creation of multiple buffer areas, per the approved Conceptual Plan and Development Plan. A 50-foot wide wooded buffer is required along the east boundary (trees to remain on site) with limitations to use that were determined by the ordinance and deed restriction. Trees are required in the parkways at 150-foot intervals. Article X requires that single family lots have a minimum of three – 2" caliper trees per lot. PDD 701 provides a limitation to the species available for planting. Article X does not allow for trees in the parkway ('street') to count toward tree mitigation (Sec. 51A-10.134(3)). Protected trees in PDD 701 were determined to be 'all trees regardless of species, that are more than 8 inch caliper in size', and 'not located in the street right-of-way, on home pad sites, in swales, or on an area with a grade differential of more than three vertical feet according to the grading plan approved by the city.' This provision greatly increased the number of protected trees from Article X standards and increased the number of trees that would be exempted as well. The staff has disputed the 'home pad site' definition and accounting but does accept the applicant's proposed mitigation tabulation for this exemption as equaling or exceeding the City of Dallas' own estimates.

The applicant has submitted a lengthy series of requests for Board consideration. These requests are stated below with specific arborist recommendations to the each.

In general, the request submitted for your consideration is as follows:

- 1) The applicant requests the Board allow for a pending donation of an 8-acre tract (Part XIII), to be added to the previously donated 25.6 acre parcel of land, to account for an 80% reduction in the overall mitigation requirements. The applicant bases this proposal on a donation of 'approved replacement tree' species existing on the Property donated to the Park Department. A full tabulation of 'approved trees' on the 33.6 combined acres, completed by certified arborists, has been provided to the city arborist. Recommendation: Approval with acceptance of the total land donation with requested credit of a minimum of 80% of the total mitigation required.
- 2) The applicant requests that proposed site restoration activity (Part IX), as indicated in applicant's Exhibit A, should provide assurances of site protection and be considered in the cumulative tree mitigation reduction. Recommendation: Approval. The restoration work will provide a layer of soil and seeded grasses to protect surrounding properties and water courses from erosion and sedimentation and will restore vegetation to the site. The initial installation is to be completed by October 30, 2008. This effort will stabilize the site and adjacent escarpment zone in a healthy and protected condition until development is underway and tree replacement can be completed.
- 3) The applicant requests the approval of a 'comprehensive landscape plan' (Part XIII) that would exceed the PDD 701 conditions. This plan would replace a plan that was approved by the Director during the engineering review process, as required under Section 51P-701.112(d). Recommendation: Approval, subject to the condition that the plans conform to the requirements 51P-701.112(d). Trees to be planted on the single family lots must be as required under 51P-701.111(b). Trees in the parkway should be allowed to count toward tree mitigation (Section 51A-10.134(3), Location).
- 4) The applicant requests that compliance with the stated conditions in the proposal should be considered as meeting full compliance of Article X conditions for tree replacement. Recommendation: Approval. The chief arborist believes the combination of the land donation with lot and open space plantings, and with the measures introduced for site restoration, completes the tree mitigation, with an insurance for the future of the Property until new tree plantings can be completed by landscaping with the progress of the development, as prescribed under a board approved plan. This chief arborist recommends a special exception to the timing of mitigation and that it be open-ended until the completion of most, or all, landscaping on site, per the plan, unless 1) the board requires a cut-off date for final planting, or 2) the board determines that all mitigation has been completed with the land donation, open space plantings (other than parkway), and the completion of site restoration activities.

- Recommendation
 - Approval subject to the conditions imposed by the Chief Arborist.

BACKGROUND INFORMATION:

Zoning:

Site: PD701 (Planned Development)
North: MF-1(A) (Multifamily) and A(A) (Agricultural)
South: PD 478 (Planned Development) and A(A) (Agricultural)
East: R-½ ac (A) (Single family residential ½ acre)
West: A(A) (Agricultural)

Land Use:

The subject site is a planned development (single family subdivision) that is under construction. The property to the north is developed with a church. The properties to the east are developed with single family structures. The properties to the south and west are undeveloped.

Zoning/BDA History:

Z034-273	PD 701 was established November 10, 2004 (Ordinance 25804) by the City Council
Z 034-273	August 17, 2006 CPC approved development of 66 single family sites.
BDA 067-158	The Board of Adjustment Panel A, at its November 14, 2008 hearing, denied without prejudice a request for special exception to the tree preservation regulations.
Z034-273	May 17, 2007 CPC approved request for minor amendment to PD to permit various signage, landscaping and lighting area in parkway.

Timeline:

- April 10 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- June 2, 2008: The Board of Adjustment Secretary assigned this case to Panel A because the rules of procedure of the Board of Adjustment requires this case be returned to the panel hearing the pervious filed case.
- June 4, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the June 9th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the June 13th 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 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 June public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- June 10, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- The application received an administrative delay.
- June 13, 2008 The applicant's representative submitted a revised "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- The Chief Planner submitted a comment sheet (see attachment E)

- August 4, 2008: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).
- August 7, 2008: The applicant's representative submitted a revised site plan and mitigation proposal.

STAFF ANALYSIS:

- PD 701 is established on property located on the south side of Grady Niblo Road, west of Kiwanis Road. The size of PD 701 is approximately 70.71 acres.
- The main uses permitted in this district are those main uses permitted in the R-7.5 (A) Single Family District, subject to the same conditions applicable in the R-7.5(A) Single Family District, as set out in the Dallas Development Code.
- PD 701, Grady Niblo Estates, subdivision was originally owned and lots were being built-out by Newmark Homes. The current owner of the property, First Class Homes, Inc. is the applicant requesting the special exception to the landscape regulation.
- PD 701 SEC.51P-701.110 states the following regarding landscape and tree mitigation:
 - (a) Except as provided in this section, landscaping must be provided in accordance with Article X.
 - (b) The only allowable species for Article X tree requirements on single family lots are as follows:
 - i. White Ash (Fraxinus Americana).
 - ii. Texas Ash (Fraxinus texensis).
 - iii. Eastern Red Cedar (Juniperus virginiana).
 - iv. Mesquite (Prosopis glandulosa).
 - v. Texas Red Oak (Quercus buckleyi).
 - vi. Bur Oak (Quercus macrocarpa).
 - vii. Cedar Elm (Ulmus crassifolia).
 - (c) A 20-foot-wide landscape buffer strip meeting the requirements set forth in Section 51A-10.125 (b)(7) must be provided in the location shown on the conceptual plan as "Landscape Buffer." Landscaping must be in place before the final inspection of any residential structure in this district.
 - (d) A 50-foot-wide buffer for tree preservation purposes must be provided and maintained in the location shown on the conceptual plan.
 - (e) All plant materials must be maintained in a healthy, growing condition.
 - (f) One large tree, a minimum of three caliper inches in sized, must be planted and maintained 150 feet apart on center in the parkway portion of the right-of-way along all streets in this district.
 - i.
- A tree removal permit in conjunction with a grading permit was issued on August 4, 2005.

- As of November 24, 2006, ten building permits have been issued for “construction of new single family home.”
- On January 18, 2008, the representative for the applicant submitted a letter to the Chief Arborist, a summary of the letter is as follows (see attachment):
 - “Grady Niblo Estates was started as a move up community with parks and a neighborhood with a sense of nature inside the great City of Dallas.”
 - The project was designed to create “an upscale community with buffers for neighbors, a landscape rich frontage,...a City Park, and quality homes with appealing elevations (Newmark Homes).”
 - “We were informed by the City Attorney that our mitigation obligation would be fulfilled and completed with a dedication of trees coinciding with the dedication of parkland.”
 - “The attached history should be helpful in providing a timeline for all that occurred in regard to our tree mitigation issues.”
- A site visit by Board of Adjustment’s Senior Planner revealed that the site is currently under construction where a total of eight lots have been developed out of fifty nine lots in the first phase of this development. .
- The applicant submitted a tree exhibit dated November 28, 2007 that conveys the following information:
 - Total Developable area 33Acres
 - Conservation area 9.71 acres
 - Park Dedication 12.04 acres
- The applicant submitted the following request in conjunction with this application (see attachment C)
 - 1) An eight-acre tract shall be donated to the City of Dallas. In light of the previous grant of acreage to the parks department, and the density of trees on the eight-acre tract, the Grady Niblo Development shall be given an 80% mitigation credit for this donation.
 - 2) Allowing site restoration to count as alternate mitigation, based on the amount budgeted and contracted to spend on site restoration, on a dollar to dollar basis.
 - 3) Require a comprehensive landscape plan, including lot trees, that exceed the requirements for Planned Development District 701. Condition the issuance of a final inspection approval for a single family residence on compliance with the individual lot tree requirements, as well as compliance with parkway landscaping requirements adjacent to the single family residential lot.
 - 4) Compliance with these conditions, as full compliance with the requirements of Article X of the Dallas Development Code.
- The applicant has the burden of proof in establishing the following:
 - strict compliance with the requirements of this article will unreasonably burden the use of this property;
 - the special exception will not adversely affect neighboring property; and
 - the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

If the Board chooses to approve the request the staff recommends imposing the conditions as recommended by the Chief Arborist.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2008

APPEARING IN FAVOR: Joe Graham, 3838 Oaklawn #15, Dallas, TX
Thomas John, 2900 Amesbury Dr., Addison, TX
Robert Miklos, 1717 Main St., Dallas, TX
David Chen, 5528 Leeway Dr., Dallas, TX
Bruce Richardson, 5607 Richmond, Dallas, TX
Stashka Star, 5428 Kiwanis Rd., Dallas, TX
Frank Brackens, 5717 Kawanis, Dallas, TX
Sandra Brakefield, 5710 Cliffhaven Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 078-072** on application of Grant Morrow, represented by Robert Miklos, grant the request of this applicant to for a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the Grady Niblo Board of Adjustment document No. 1115374 version 14 submitted on 8/13/08 is required.

SECONDED: McBride

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0–

MOTION PASSED 5 – 0(unanimously)

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Gillespie

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

4:00 P.M. - Board Meeting adjourned for **August 13, 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.