

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

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Bldg Official and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Bldg Official and Trena Law, Board Secretary

10:35 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 15, 2012 docket.**

1:00 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B June 20, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

MOTION: Gillespie

I move approval of the **Wednesday, June 20, 2012** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-075

BUILDING OFFICIAL’S REPORT:

Application of Ken George for special exceptions to the fence height regulations and visual obstruction regulations at 3884 Echo Brook Lane. This property is more fully described as Lot 1 in City Block J/6412 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 to street intersections and a 45-foot visibility triangle at street intersections. The applicant proposes to construct and maintain a 9-foot high fence which will require a special exception of 5 feet to the fence height regulations, and to locate and/or maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 3884 Echo Brook Lane

APPLICANT: Ken George

REQUESTS:

- The following appeals had been made in this application on a site that is developed with a single family home:
 1. special exceptions to the fence height regulations of 5’ are requested in conjunction with constructing and maintaining a 9’ high cedar board on board fence and sliding gate to be located in two of the site’s three required front yards (Princess Lane and Rosser Road), and
 2. special exceptions to the visual obstruction regulations are requested in conjunction with: maintaining an existing Crepe Myrtle in the 45’ visibility triangle at the intersection of Princess Lane and Rosser Road; and locating and maintaining portions of the proposed board on board fence and sliding gate in the

two 20' visibility triangles on either side of the driveway into the site from Rosser Road.

(No part of this application is made to construct/maintain any fence in the site's Echo Brook Lane required front yard).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (fence height special exceptions):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections" to the requests.
- The applicant has substantiated how the location the existing crepe myrtle in the 45' Princess Lane/Rosser Road intersection visibility triangle and the location of portions of a proposed fence/gate in the 20' visibility triangles on either side of the driveway into the site from Rosser Road do not constitute traffic hazards.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16,000 square feet)
North: R-16(A) (Single family district 16,000 square feet)
South: R-16(A) (Single family district 16,000 square feet)
East: R-16(A) (Single family district 16,000 square feet)
West: R-16(A) (Single family district 16,000 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:

- May 25, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: Staff discovered an error with meeting notification requirements on this application for Panel C’s August 13th hearing. Given this error and the fact that this property had no previous history with a board of adjustment panel, the Board of Adjustment Secretary randomly re-assigned this application to Board of Adjustment Panel B to be

heard at their public hearing to be held on August 15th. The Board Administrator informed the applicant of this new hearing date.

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

- These requests focus on constructing and maintaining a 9' high cedar board on board fence and sliding gate to be located in two of the site's three required front yards (Princess Lane and Rosser Road) with no part of this application being made to construct/maintain any fence in the site's Echo Brook Lane required front yard.
- The subject site is a corner lot zoned R-16(A) with three front yards. The site is bounded on the west by Echo Brook Lane, on the north by Princess Lane, and on the east by Rosser Road. The subject site has a 20' required front yard on the north /Princess Lane frontage merely because this frontage is the shortest of the three street frontages. The subject site has a 30' required front yard on the west/Echo Brook Lane frontage and a 15' required front yard on the east/Rosser Road frontage because the lot runs from one street to another. In terms of *function* the subject site has one front yard (Echo Brook Lane on the west), two sides yards (one on the south, the other along Princess Lane on the north) and a rear yard (Rosser Road on the east). If the site's Princess Lane frontage were about 3' longer, it would be deemed a side yard where the proposed 9' high fence could be constructed and maintained by right; and if the site did not extend from one street to another, Rosser Road would be deemed a rear yard where the proposed 9' high fence could be constructed and maintained by right.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard. The applicant had submitted a site plan and elevation document indicating that the proposal in the Princess Lane and Rosser Road required front yards reaches a maximum height of approximately 8' 4". (The applicant has made an application for a 9' high fence to account for grade changes on the property where the fence may in certain places reach 9' in height).
- The following additional information was gleaned from the submitted site plan:
 - About 80' in length parallel along Princess Road (and approximately 20' perpendicular on the east and west sides in this required front yard), approximately on the property line or about 12' from the pavement line where one single family home fronts this proposal.
 - Approximately 60' in length along Rosser Road, approximately on the property line or about 20' from the pavement line where no single family home fronts this proposal.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other *front yard* fences higher than 4' were noted in the immediate area, however, a number of fences higher than 4' were noted along Rosser Road – fences that appear to be located in side yards.
- As of August 6, 2012, one petition signed by 23 neighbors/owners along with one letter had been submitted to staff in support of the request or no letters had been submitted opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' will not adversely affect neighboring property.

- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted site plan and elevation document would require the proposal exceeding 5' in height in the required Princess Lane and Rosser Road front yards to be constructed and maintained in the location and of the heights and materials as shown on these documents.

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

- These request focus on maintaining an existing Crepe Myrtle in the 45' visibility triangle at the intersection of Princess Lane and Rosser Road; and locating and maintaining portions of the proposed board on board fence and sliding gate in the two 20' visibility triangles on either side of the driveway into the site from Rosser Road.
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 A site plan and elevation document have been submitted indicating an existing Crepe Myrtle in the 45' visibility triangle at the intersection of Princess Lane and Rosser Road; and portions of the proposed board on board fence and sliding gate (about 3' lengths) in the two 20' visibility triangles on either side of the driveway into the site from Rosser Road.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain and/or locate/maintain items in the 45' Princess Lane/Rosser Road intersection visibility triangle and in the 20' visibility triangles on either side of the driveway into the site from Rosser Road will not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation document would require that the items in the in 45' Princess Lane/Rosser Road intersection triangle and in the 20' visibility triangles on either side of the driveway into the site from Rosser Road to be limited to the location, height, and materials of those items as shown on these documents.

BOARD OF ADJUSTMENT ACTION: **AUGUST 15, 2012**

APPEARING IN FAVOR: Ken George, 3884 Echo Brook Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 112-075**, on application of Ken George, **grant** the request of this applicant to construct and/or maintain a nine-foot-high

fence in the front yard on Princess Lane and Rosser Lane as special exceptions to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 112-075**, on application of Ken George, **grant** the request to maintain items in the visibility triangles at the drive approach and at the intersection triangle as a special exception to the visual 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 and elevation document is required.

SECONDED: Wilson

AYES: 4–Gillespie, Chernock, Wilson, Leone

NAYS: 1 – Reynolds

MOTION PASSED 4 – 1

FILE NUMBER: BDA 112-078

BUILDING OFFICIAL’S REPORT:

Application of Jonathan Vinson of Jackson Walker, LLP, for special exceptions to the fence height regulations and visual obstruction regulations at 9807 Meadowbrook Drive. This property is more fully described as being a 4.3 acre parcel of land in City Block 5601 and is zoned R-1ac(A), which limits the height of a fence to 4 feet and requires 20-foot visibility triangles at driveways. The applicant proposes to construct and/or maintain an 8-foot high fence, which will require a special exception to the fence height regulations of 4 feet, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 9807 Meadowbrook Drive

APPLICANT: Jonathan Vinson of Jackson Walker, LLP

REQUESTS:

- The following appeals had been made in this application on a site that is developed with a single family home
 1. a special exception to the fence height regulations of 4' is requested in conjunction with completing and maintaining an 8' high board-on-board fence and sliding gate located in one of the site's two front yard setbacks (Ravine Drive) on a site developed with a single family home.
 2. a special exception to the visual obstruction regulations is requested in conjunction with completing and maintaining a portion of the aforementioned board fence and gate in the 20' visibility triangle on the west side of the driveway into the site from Ravine Drive.(No part of this application is made to address any fence in the site's Meadowbrook Drive front yard setback).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exception):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections" to the requests.
- The applicant has substantiated how the location a portion of a fence and gate in the 20' visibility triangle on west side of the driveway into the site from Ravine Drive does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- June 18, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 17, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 24,
August 3 & 6, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachments A, B, and C).

July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”

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

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

- This request focuses on completing and maintaining an 8’ high board-on-board fence located in one of the site’s two 40’ front yard setbacks (Ravine Drive) on a site developed with a single family home.
- The subject site is a zoned R-1ac(A) and has two front yard setbacks given that the property extends from Ravine Drive on the west to Meadowbrook Drive on the east.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9’ above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard. The applicant had submitted a site plan circling the focus of this request in the site’s Ravine Drive front yard setback and elevation document indicating that the proposal in the Ravine Drive front yard setback reaches a maximum height of approximately 8’.
- The following additional information was gleaned from the submitted revised site plan (see Attachment B):
 - About 25’ in length, located approximately on the property line.
- The fence/gate is located on the western side of the subject site where no single family home fronts this proposal.
- No other fences higher than 4’ were noted in the immediate area along Ravine Drive.
- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B and C).
- As of August 6, 2012, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ will not adversely affect neighboring property.
- Granting this special exception of 4’ with a condition imposed that the applicant complies with the submitted revised site plan and elevation would require the proposal exceeding 4’ in height in the Ravine Drive front yard setback to be completed and maintained in the location and of the heights and materials as shown on these documents.

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

- This request focuses on completing and maintaining portions of the aforementioned board fence and gate in the 20' visibility triangle on the west side of the driveway into the site from Ravine Drive.
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A revised site plan and elevation document has been submitted indicating a portion of the proposed fence and sliding gate in the 20' visibility triangle on the west side of the driveway into the site from Ravine Drive.

- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A, B, and C).
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to locate and maintain a portion of a fence and gate in the 20' visibility triangle on the west side of the driveway into the site from Ravine Drive will not constitute a traffic hazard.

Granting this request with a condition imposed that the applicant complies with the submitted revised site plan and elevation would require the items in the 20' visibility triangle on west side of the driveway into the site from Ravine Drive to be limited to the location, height, and materials of these items as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 112-078** 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 revised site plan and elevation is required.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-079

BUILDING OFFICIAL’S REPORT:

Application of Rob Baldwin for a variance to the side yard setback regulations at 10245 Strait Lane. This property is more fully described as lot 4B in City Block E/5532 and is zoned R-1ac(A), which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a structure and provide a 3 foot side yard setback, which will require a variance of 7 feet.

LOCATION: 10245 Strait Lane.

APPLICANT: Rob Baldwin

REQUEST:

- A variance to the side yard setback regulations of 7’ is requested in conjunction with locating and maintaining an approximately 42 square foot “emergency generator” structure, all of which is to be located in the site’s southern 10’ side yard setback on a site being developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with submitted site plan is required.

Rationale:

- The applicant has substantiated how the subject site is unique and different from most lots zoned R-1ac(A) in that it is not of typical size of most lots in its zoning district. The subject site is about 42,000 square feet in area or about 1,300 square feet smaller in area than most parcels of land in the same zoning district – a constraint that necessitates a small variance to the side yard setback regulations for in this case merely an approximately 42 square foot generator structure.
- In addition, granting this request does not appear to be contrary to the public interest in that: 1) the subject site is separated from the property to the south nearest the proposed encroachment by a 15’ wide utility easement; and 2) the fact that the location of the proposed generator structure is relatively close to being in the rear 30 percent of the lot where no side yard setback would be required for any structure that does not exceed 15 feet in height.

STANDARD FOR A VARIANCE:

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

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

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| <p>1. BDA 112-032, Propert at 10245 Strait Lane (the subject site)</p> | <p>On April 18, 2012, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 4" and imposed the submitted revised site plan/elevation as a condition to the request. The case report stated that the request was made in conjunction with a 7' 3" high open iron picket fence/wall (with 3' high stone base) with 7' 9" high brick columns, and two, 8' 8" high open iron picket gates with 8' high brick columns on a site being developed with a single family home.</p> |
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Timeline:

- June 11, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

- July 17, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 27, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on locating and maintaining an approximately 42 square foot “emergency generator” structure, all of which is to be located in the site’s southern 10’ side yard setback on a site being developed with a single family home.
- The minimum side yard setback on an R-1ac(A) zoned lot is 10 feet. The applicant has submitted a site plan indicating a generator structure that is located 3’ from the site’s southern side property line (or 7’ into the required 10’ side yard setback).
- The site is flat, rectangular in shape (169’ x 251’), and is (according to the application) 0.9700 acres (or approximately 42,253 square feet) in area. The plat map of the site indicates that the property has a 75’ platted building line along Strait Lane. The site is zoned R-1ac(A) where lots are typically 1 acre or 43,560 square feet in area.
- According to DCAD records, the property at 10245 Strait Lane has the following improvements:
 - “main improvement” built in 2010 with 14,922 square feet of living area, and 14,922 square feet of total area;
 - “additional improvements” – a pool, a 338 square foot porte cochere, a 575 square foot detached garage, and a 865 square foot attached garage.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal

enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) (Single family) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) (Single family) zoning classification.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- If the Board were to grant the side yard variance of 7', imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into this setback would be limited to that shown on the site plan which in this case is an approximately 42 square foot emergency generator structure that is located 3' from the southern side property line or 7' into this 10' side yard setback, or 18' away from the northern side property line of the property immediately to the south (a 3' distance between the generator and the site's southern side property line added to a 15' wide utility easement).

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 112-079** 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 is required.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-080

BUILDING OFFICIAL'S REPORT:

Application of Howard Earl Rachofsky for a special exception to the single family use regulations and a variance to the floor area regulations at 8605 Preston Road. This property is more fully described as being a 3.213 acre parcel of land in City Block 5619 and is zoned R-1ac(A), which limits the number of dwelling units to one and states that an individual accessory structure may not exceed 25% of the floor area of the main structure. The applicant proposes to construct and maintain an additional dwelling unit, which will require a special exception to the single family use regulations, and to construct and maintain an accessory structure with 4,473 square feet of floor area (38.9% of the 11,493 square foot floor area of the main structure), which will require a variance to the floor area regulations of 1,600 square feet.

LOCATION: 8605 Preston Road

APPLICANT: Howard Earl Rachofsky

REQUESTS:

- The following appeals had been made in this application on a site that is developed with a single family home:
 1. A request for a special exception to the single family use development standard regulations is requested in conjunction with constructing and maintaining an additional dwelling unit structure (a one-story, detached "dwelling unit" structure) on a site currently developed with a multi-story dwelling unit/single family home structure; and
 2. A variance to the floor area regulations for a structure accessory to single family use of 1,600 square feet is requested in conjunction with constructing and maintaining the aforementioned additional dwelling unit structure which according to the application is more than 25 percent the square footage of the existing 11,493 square foot main structure. The application states that allowable square footage with merely the aforementioned special exception request is 2,873 square feet (25 percent of 11,493 square feet in the main structure) whereby an additional 1,600 square feet is requested to be varied for the second dwelling unit to have a total of 4,473 square feet.

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

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

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

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION (special exception):

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

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

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant has substantiated how the subject site is unique and different from most lots zoned R-1ac(A) in that it is of an irregular shape and of a restrictive area caused in part the natural formation of a pond/floodway easement along the northern boundary of the subject site.

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-10(A) (Single family district 10,000 square feet)
West: R-1ac(A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

1. BDA 056-043, 5950 Deloache Avenue (The property immediately north of the subject site) On December 13, 2005, the Board of Adjustment Panel A granted a request for a special exception to A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The case report stated that the request was made for an additional “dwelling unit” in this appeal that was to be a 2-story garage/ guest house structure. The board granted the request and imposed the following conditions: compliance with the submitted site plan and elevation is required; and the property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

Timeline:

- June 26, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 17, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

July 25, 2012: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

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

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

GENERAL FACTS/STAFF ANALYSIS (special exception):

- This request focuses on constructing and maintaining an additional dwelling unit structure (a one-story, detached “dwelling unit” structure) on a site currently developed with a multi-story dwelling unit/single family home structure.
- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- A site plan has been submitted denoting the locations of two building footprints, the larger of the two unlabeled but located near the middle of the site, and the smaller of the two and labeled “proposed second dwelling unit” on the western side of the subject site. The site plan represents the sizes and locations of the two building footprints relative to the entire lot/property.
- The site is zoned R-1ac(A) (Single family district 1 acre) where the Dallas Development Code permits one dwelling unit per lot. The site is currently developed with a dwelling unit structure; the applicant proposes to construct and maintain an additional dwelling unit on the site hence the special exception request.
- A floor plan has been submitted of the second/additional dwelling unit structure denoting the following rooms/spaces: kitchen, dining room, living room, courtyard, study, bedroom, closets, two bathrooms, and laundry/utilities.
- Building Inspection staff has reviewed the submitted floor plan of the proposal and deemed it a “dwelling unit” - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- DCAD records indicate that the property at 8605 Preston Road has the following improvements:

- “main improvement:” a structure built in 1993 with 8,891 square feet of living area; and
- “additional improvements:” 504 square foot attached garage, pool, and 1,716 square foot basement.
- This request appears to center on the function of what is proposed to be located inside the proposed structure. If the board were to deny this request but grant the applicant’s other request in this application (floor area variance), it appears that this structure could be constructed and maintained with modifications to the function/use inside of it or to the floor plan.
- As of August 6, 2012, one letter had been submitted to staff in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- If the Board were to approve the request for a special exception to the single family regulations, the Board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan and/or floor plan are necessary in assuring that the special exception will not adversely affect neighboring properties. Note that granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements including but not limited to setback and coverage requirements). The Board would have to grant the applicant’s other request in this application (floor area variance) in order for the additional dwelling unit to be constructed/maintained as proposed and as shown on submitted plans.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses on a variance to the floor area regulations of 1,600 square feet made in conjunction with constructing and maintaining the aforementioned additional dwelling unit structure which is more than 25 percent the square footage of the existing 11,493 square foot main structure.
- The application states that allowable square footage with merely the aforementioned special exception request is 2,873 square feet (25 percent of 11,493 square feet in the main structure) whereby an additional 1,600 square feet is requested to be varied for the second dwelling unit to have a total of 4,473 square feet.
- “Accessory structure” is defined in the Dallas Development Code as “a structure located on the same lot as the main building that is subordinate in floor area, location, and purpose to the main building and use for a permitted accessory use.”
- The Dallas Development Code states that “an accessory use must be a use customarily incidental to the main use.”
- The subject site is zoned R-1ac(A), which permits a “single family” use by right.
- The subject site is developed with a single family use.

- For single family uses, the Dallas Development Code states that, except in the agricultural district, “the floor area of any individual accessory structure on a lot, (excluding floor area used for parking), may not exceed 25 percent of the floor area of the main building.”
- The site has some slope, slightly irregular in shape, with some floodway easement along the north side of the site, and is (according to the application) 3.213 acres in area. The site is zoned R-1ac(A).
- DCAD records indicate that the property at 8605 Preston Road has the following improvements:
 - “main improvement:” a structure built in 1993 with 8,891 square feet of living area; and
 - “additional improvements:” 504 square foot attached garage, pool, and 1,716 square foot basement.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the floor area for structures accessory to single family uses regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) (single family) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) (single family) zoning classification.
- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- Granting the request for the variance to the floor area regulations of 1,600 square feet, with a condition imposed that the applicant complies with the submitted site plan would require the structure to be completed and maintained in the location as shown on this document. Note that granting this variance request will not provide any relief to the Dallas Development Code regulations other than allowing the accessory structure to exceed the maximum floor area allowed relative to the floor area of main structure on the site. The Board would have to grant the applicant’s other request in this application (single family use special exception) in order for the accessory structure to be permitted as an additional dwelling unit on the site.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Wilson

I move that the Board of Adjustment grant application **BDA 112-080** 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 is required.
- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-084

BUILDING OFFICIAL’S REPORT:

Application of Troy Broussard, represented by Lisa Lamkin of Brown Reynolds Watford Architects, Inc., for a special exception to the off-street parking regulations at 2906 E. Kiest Boulevard. This property is more fully described as Tract 6 in City Block 7332 and is zoned MF-2(A), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a multifamily use and an accessory community center (private) use and provide 302 of the required 402 off-street parking spaces, which will require a special exception of 100 spaces.

LOCATION: 2906 E. Kiest Boulevard

APPLICANT: Troy Broussard
Represented by Lisa Lamkin of Brown Reynolds Watford Architects, Inc.

REQUEST:

- A special exception to the off-street parking regulations of 100 parking spaces (or 25 percent reduction of the 402 off-street parking spaces that are required) is requested in conjunction with replacing an existing 150-unit multifamily development with a new 146-unit multifamily development and accessory community center. More specifically, the applicant intends to redevelop the site with an approximately 173,000 square foot multifamily use with an approximately 5,600 square foot accessory community center, and provide 302 (or 75 percent) of the 402 required off-street parking spaces.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 100 spaces shall automatically and immediately terminate when the multifamily or the accessory community center uses on the site are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections” to the request.
- The applicant has substantiated how the parking demand generated by the multifamily and accessory community center uses 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.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: IR (Industrial Research)
South: MF-2(A) (Multifamily)
East: IR (Industrial Research)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is currently developed with a multifamily use. The areas to the north, east, and west appear to be mostly undeveloped; and the area to the south appears to be developed with commercial uses.

Zoning/BDA History:

1. BDA 101-093, Property at 2906 E. Kiest Boulevard (the subject site) On October 19, 2011, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 98 and imposed the following condition: the special exception of 100 spaces shall automatically and immediately terminate when the multifamily and the accessory community center uses on the site are changed or discontinued. The case report stated that the request was made in conjunction with replacing an existing 150-unit multifamily development with a new 146-

unit multifamily development and accessory community center. More specifically, the applicant had intended to redevelop the site with an approximately 173,000 square foot multifamily use with an approximately 5,000 square foot accessory community center, and provide 303 (or 76 percent) of the 401 required off-street parking spaces.

Timeline:

- July 27, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- July 17, 2012: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections.”
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on replacing an existing 150-unit multifamily development with a new 146-unit multifamily development and accessory community center, and providing 302 (or 75 percent) of the required 402 off-street parking spaces.
- This application is a virtual restoration of a parking special exception granted on this property by Board of Adjustment Panel B in October of 2011- BDA 101-093. This previous request was for a special exception to the off-street parking regulations of 98 parking spaces (or 24 percent reduction of the 401 off-street parking spaces that are required) that was requested in conjunction with replacing an existing 150-unit multifamily development with a new 146-unit multifamily development and accessory community center. More specifically, the applicant had intended to redevelop the site with an approximately 173,000 square foot multifamily use with an approximately 5,000 square foot accessory community center, and provide 303 (or 76 percent) of the 401 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement:
 - Multifamily use: 1 space for 500 square feet of floor area. Not less than one space or more than two and one half spaces are required for each dwelling unit in a multifamily structure 36 feet or less in height.
 - Accessory community center (private) use: 1 space for 100 square feet of floor area.
- The applicant has stated that the proposed units are larger in size because they are being developed as affordable units for residents who will for the most part rely on public transportation and not have more than one vehicle per unit.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections” to the request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed multifamily and accessory community center uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 100 spaces would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 100 spaces shall automatically and immediately terminate if and when the multifamily or accessory community center uses are changed or discontinued, the applicant would be allowed to redevelop the property with a new multifamily development and provide only 75 percent of the required off-street parking.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 112-084** 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.

- The special exception shall automatically and immediately terminate if and when the multifamily or accessory community center uses are changed or discontinued.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-086

BUILDING OFFICIAL’S REPORT:

Application of Michael Hampton of Lend Lease for a special exception to the off-street parking regulations at 2655 Royal Lane. This property is more fully described as Lot 7A in City Block 6609 and is zoned PD-498, which requires parking to be provided. The applicant proposes to construct and maintain structure for general merchandise or food store less than 3500 square feet use and a motor vehicle fueling station use and provide 14 of the required 17 off-street parking spaces, which will require a special exception of 3 spaces.

LOCATION: 2655 Royal Lane

APPLICANT: Michael Hampton of Lend Lease

REQUEST:

- A special exception to the off-street parking regulations of 3 parking spaces (or a 18 percent reduction of the 17 off-street parking spaces that are required) is requested in conjunction with constructing and maintaining an approximately 3,000 square foot convenience store/fuel station/general merchandise or food store 3,500 square feet or less use (7-Eleven). The applicant proposes to provide 14 (or 82 percent) of the required 17 off-street parking spaces in conjunction with constructing and maintaining the proposed use with its proposed square footage on property that is partially developed with a vacant fuel station use and partially undeveloped.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and

nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the fuel station or general merchandise or food store 3,500 square feet or less uses are changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed fuel station and general merchandise or food store 3,500 square feet or less uses 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 Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections” to the request.

BACKGROUND INFORMATION:

Zoning:

Site: PD 498 (Planned Development)
North: PD 498 (Planned Development)
South: PD 498 (Planned Development)
East: IR (Industrial Research)
West: PD 498 (Planned Development)

Land Use:

The subject site is currently developed with a vacant fuel station use. The areas to the north and west are developed with commercial uses; the area to the south is developed with office uses; and the area to the east is developed with an elevated DART rail line.

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 28, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

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

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

July 23, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 3,000 square foot convenience store/fuel station/general merchandise or food store 3,500 square feet or less use (7-Eleven) and providing 14 (or 82 percent) of the required 17 off-street parking spaces. The property is currently partially developed with a vacant fuel station use and partially undeveloped.
- The Dallas Development Code requires the following off-street parking requirements:
 - General merchandise or food store 3,500 square feet or less: 1 space per 200 square feet of floor area.
 - Motor vehicle fueling station: two spaces
- The applicant has prepared a parking study indicating that proposed project is forecasted to generate similar parking demand as experienced at five other 7-Eleven sites in the same local market where the peak parking demand never exceeded the proposed 14 parking spaces proposed to be provided on the subject site.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed fuel station and general merchandise or food store 3,500 square feet or less uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 3 spaces (or an 18 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

- If the Board were to grant this request, and impose the condition that the special exception of 3 spaces shall automatically and immediately terminate if and when the motor vehicle fueling station or general merchandise or food store 3,500 square feet or less uses are changed or discontinued, the applicant would be allowed to develop the site with these specific uses and provide only 14 of the 17 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Wilson

I move that the Board of Adjustment grant application **BDA 112-086** 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.

- The special exception shall automatically and immediately terminate if and when the motor vehicle fueling station or general merchandise or food store 3,500 square feet or less uses are changed or discontinued.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-034

ORIGINAL BUILDING OFFICIAL’S REPORT:

Application of Roberto Torres, represented by Ramon Aranda, for special exceptions to the fence height and visual obstruction regulations at 9903 Laneyvale Avenue. This property is more fully described as Lot 51 in City Block C/6682 and is zoned R-5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at alley and driveway approaches and a 45 foot visibility triangle at street intersections. The applicant proposes to maintain a 7 foot high fence in a required front yard, which will require a 3 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

REVISED BUILDING OFFICIAL’S REPORT:

Application of Roberto Torres, represented by Ramon Aranda, for special exceptions for the handicapped to the fence height and visual obstruction regulations at 9903 Laneyvale Avenue. This property is more fully described as Lot 51 in City Block C/6682 and is zoned R-5(A), which limits the height of a fence in the front yard to 4 feet and requires 20 foot visibility triangles at alley and driveway approaches and a 45 foot visibility triangle at street intersections. The applicant proposes to construct and/or maintain a 7-foot high fence, which will require a special exception to the fence height regulations of 3 feet necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling, and to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

LOCATION: 9903 Laneyvale Avenue

APPLICANT: Roberto Torres
Represented by Ramon Aranda

REQUESTS:

- The applicant's representative has revised the application since the May 16th public hearing, and submitted a doctor's letter and a revised site plan and elevation to staff (see Attachments B, C and D). The applicant requests that the board grant special exceptions to modify/maintain the existing fence on the property that is higher than 4' in height in front yard setbacks, and to modify and maintain items located in visibility triangles by either granting special exceptions to these regulations as previously requested per: A) the provisions set forth in the Code's fence, screening and visual obstruction regulations (51A-4.602) or B) the provision set forth in the Code's "special exceptions for the handicapped" (51A- 1.107).

The following appeals had been made in this application on a site that is developed with a single family home:

1. special exceptions to the fence height regulations of up to 3' and/or for the handicapped are requested in conjunction with modifying and maintaining according to the submitted site plan (see Attachment C) an existing "5' brick, stone & wrought iron fence" with a 7' high archway over a pedestrian gate along Laneyvale Avenue and along a portion of Algonquin Drive, and a 6' high wood fence along another portion of Algonquin Drive, both of which are located in the site's two 20' front yard setbacks, and
2. special exceptions to the visual obstruction regulations and/or for the handicapped are requested in conjunction with modifying and maintaining according to the submitted revised site plan (see Attachment C) portions of the aforementioned existing 5' high open wrought iron fence with stone base located in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue (about 10' of length on either side of the driveway), and portions of this fence in the 45' Laneyvale Avenue/Algonquin Drive intersection visibility triangle. (The revised site plan shows the provision of a 30' visibility triangle at this intersection).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED: Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

STAFF RECOMMENDATION (fence height special exceptions):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of these requests.
- The applicant’s representative had not substantiated how the location of the existing 5’ high open wrought iron fence with stone base located in the 20’ visibility triangles on either side of the driveway into the site from Laneyvale Avenue and in the 45’ visibility triangle at the Laneyvale Avenue/Algonquin Drive intersection does not constitute a traffic hazard.

STAFF RECOMMENDATION (handicapped special exceptions):

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

BACKGROUND INFORMATION:

Zoning:

| | |
|---------------|---|
| <u>Site:</u> | R-5(A) (Single family district 5,000 square feet) |
| <u>North:</u> | R-5(A) (Single family district 5,000 square feet) |
| <u>South:</u> | R-7.5(A) (Single family district 7,500 square feet) |
| <u>East:</u> | R-5(A) (Single family district 5,000 square feet) |
| <u>West:</u> | R-5(A) (Single family district 5,000 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:

January 20, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 21, 2012: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 21, 2012: The Board Administrator emailed the applicant's representative the following information:

- A picture of shrubs that he photographed on the property, and a request that if these shrubs were something his client intended to request that the board consider in the triangles, to add them to his site plan and elevation no later than March 30th – otherwise it would be noted in the staff report that these existing shrubs are not part of the applicant's request.

(Note that no such request/amendment was made to the application and/or submittals).

- April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.
- April 5, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "No objection to fence height or alley visibility triangle – however, both the lack of a 45 x 45 at the street/street and the 20 x 20 at the drive are traffic hazards."
- April 18, 2012: The Board delayed action on this application until May 16th to allow the applicant an opportunity to meet with an opposing property owner and possibly submit a revised proposal to the Board.
- May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.
- May 4, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "No objection to fence height or alley visibility triangle – however, both the lack of a 45 x 45 at the street/street and the 20 x 20 at the drive are traffic hazards."
- May 4, 2012: The applicant's representative submitted revised materials to the Board Administrator *after* the Sustainable Development and Construction Department Project Engineer submitted his updated review comment sheet marked "Recommends that this be denied." (see Attachment A).
- May 16, 2012: The Board delayed action on this application until August 15th to allow the applicant an opportunity to possibly submit a revised

application, and/or to possibly submit a revised proposal (i.e. a revised site plan and /or elevation, or any other related documents to this application) beyond the requests for special exceptions to the fence height and visual obstruction regulations to address any fence over 4' in height in required front yard setbacks and any item located in required visibility triangles on the subject site

May 17, 2012: The Board Administrator emailed the applicant's representative the following information:

- Information regarding this application, some of which had already been forwarded to him, and some of which was new information for his review including his original application materials and his added attachment - all of which will be included in the docket report and emailed to him, city staff, and the board of adjustment members about a week ahead of the scheduled August 15th public hearing; the provision from the Dallas Development Code allowing the board to grant a special exception to the fence height regulations (51A-4.602(a)(6)) and a special exception to the visual obstruction regulations (51A-4.602(d)(3)); the provision from the Dallas Development Code allowing the board to grant special exceptions for the handicapped (51A-1.107), and the definition of his testimony at the May 16th hearing regarding this provision in the Code); the board's rule pertaining to documentary evidence;
- As conveyed to him at the May 16th, the 5:00 p.m, July 27th deadline to amend/add to this application, and/or to submit any revised site plans/elevations that you intend to make beyond what he had already submitted to date should be addressed with/submitted to Todd Duerksen; and
- per his request below a copy of the current board of adjustment roster (including the names of each board member and the council member who appointed them), and a copy of Chapter V: Code of Conduct. (The email noted that in response to his request on the phone, that while city staff did not prepare transcripts of board hearings, that a copy of a CD recording was available for purchase from Trena Law, Board of Adjustment Secretary. Trena can be reached at 214/670-4206).

July 2012: The applicant's representative has revised the application, and submitted a doctor's letter and a revised site plan and elevation to staff (see Attachments B, C and D).

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

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

- These revised requests focus on modifying/maintaining (according to the submitted revised elevation) an existing “5’ brick, stone & wrought iron fence” with a 7’ high archway over a pedestrian gate along Laneyvale Avenue and along a portion of Algonquin Drive, and a 6’ high wood fence along another portion of Algonquin Drive, both of which are located in the site’s two 20’ front yard setbacks on a property developed with a single family home.
- On May 16, 2012, the board of adjustment delayed action on the application until August 15th to allow the applicant an opportunity to possibly submit a revised application, and/or to possibly submit a revised proposal (i.e. a revised site plan and /or elevation, or any other related documents to this application) beyond his requests for special exceptions to the fence height and visual obstruction regulations to address any fence over 4’ in height in required front yard setbacks and any item located in required visibility triangles on the subject site.
- The applicant was advised at the May 16th public hearing that any amendment/addition that he intended to make to his application, and/or any revised site plans/elevations that he intended to make beyond what he had submitted to date should be addressed with/submitted to city staff no later than 5:00 p.m., Friday, July 27th.
- Since the May 16th public hearing, the applicant’s representative has revised the application, and submitted a doctor’s letter and a revised site plan and elevation to staff (see Attachments B, C and D). The applicant has amended his original application requesting that the Board to consider special exceptions to modify/maintain the existing fence on the property that is higher than 4’ in height in front yard setbacks, and to modify and maintain items located in visibility triangles by either granting special exceptions to these regulations as previously requested per: 1) the provisions set forth in the Code’s fence, screening and visual obstruction regulations (51A-4.602) OR 2) the provision set forth in the Code’s “special exceptions for the handicapped” (51A- 1.107).
- The subject site is a corner lot zoned R-5(A) with two street frontages of unequal distance. The site is located at the northeast corner of Laneyvale Avenue and Algonquin Drive. Even though the Laneyvale Avenue frontage of the subject site appears to function as its front yard and the Algonquin Drive frontage appears to function as its side yard, the subject site has two 20’ front yard setbacks along both streets. The site has a 20’ front yard setback along Laneyvale Avenue (the shorter of the two frontages which is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a 20’ front yard setback along Algonquin Drive (the longer of the two frontages of this corner lot of unequal frontage distance), which would typically be regarded as a side yard where a 9’ high fence could be maintained by right). The site’s Algonquin Drive frontage is deemed a front yard to maintain the continuity of the established front yard setback along this street created by a number of properties immediately north of the subject site that front west and have front yard setbacks along Algonquin Street.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9’ above grade, and additionally states that in all

- The applicant had submitted with the original application a scaled site plan and two “NTS” or (Not To Scale) elevations indicating that the proposal in the required front yard setbacks reaches a maximum height of 7’- in this case the 7’ maximum height being an archway over a pedestrian gate along Laneyvale Avenue.
- The following additional information was gleaned from the originally submitted site plan:
 - Along Laneyvale Avenue:
 - Approximately 72’ in length parallel to the street and approximately 20’ in length perpendicular on the east side of the site in the front yard setback.
 - Approximately on the front property line or approximately 10’ from the pavement line.
 - Along Algonquin Drive:
 - Approximately 105’ in length parallel to the street and approximately 20’ in length perpendicular on the north side of the site in the front yard setback.
 - Approximately on the front property line or approximately 10’ from the pavement line.
- On May 4, 2012, the applicant’s representative emailed a revised site plan and revised elevations to the Board Administrator (see Attachment A). Note that staff could not glean certain dimensions from these emailed reduced plans.
- No single family home “fronts” on the Laneyvale Avenue side of the subject site (the property immediately south of the site fronts westward to Algonquin Drive and has a side yard along Laneyvale Avenue and what appears to be an 8’ high solid fence in its side yard across from the subject site); and three single family homes “front” on Algonquin Drive, none with fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high, which appeared to be located in a front yard setback. (One approximately 8’ high solid fence was noted immediately south of the subject site – a fence that appears to be in compliance with the Development Code since this property’s Laneyvale Avenue frontage is a *side yard*).
- As of August 6, 2012, two letters had been submitted to staff in support of the request and one letter had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of up to 3’ will not adversely affect neighboring property OR are needed to afford a handicapped person equal opportunity to use and enjoy a dwelling.
- Granting these special exceptions of up to 3’ with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations would require the proposal exceeding 4’ in height in the front yard setbacks to be modified/maintained in the location and of the heights and materials as shown on these revised documents.

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

- These revised requests focus on modifying and maintaining according to the submitted revised site plan (see Attachment C) portions of the aforementioned existing 5’ high open wrought iron fence with stone base located in the 20’ visibility

triangles on either side of the driveway into the site from Laneyvale Avenue (about 10' of length on either side of the driveway), and portions of this fence in the 45' Laneyvale Avenue/Algonquin Drive intersection visibility triangle. (The revised site plan shows the provision of a 30' visibility triangle at this intersection).

- On May 16, 2012, the board of adjustment delayed action on the application until August 15th to allow the applicant an opportunity to possibly submit a revised application, and/or to possibly submit a revised proposal (i.e. a revised site plan and /or elevation, or any other related documents to this application) beyond his requests for special exceptions to the fence height and visual obstruction regulations to address any fence over 4' in height in required front yard setbacks and any item located in required visibility triangles on the subject site.
- The applicant was advised at the May 16th public hearing that any amendment/addition that he intended to make to his application, and/or any revised site plans/elevations that he intended to make beyond what he had submitted to date should be addressed with/submitted to city staff no later than 5:00 p.m., Friday, July 27th.
- Since the May 16th public hearing, the applicant's representative has revised the application, and submitted a doctor's letter and a revised site plan and elevation to staff (see Attachments B, C and D). The applicant has amended his original application requesting that the Board to consider special exceptions to modify/maintain the existing fence on the property that is higher than 4' in height in front yard setbacks, and to modify and maintain items located in visibility triangles by either granting special exceptions to these regulations as previously requested per: 1) the provisions set forth in the Code's fence, screening and visual obstruction regulations (51A-4.602) OR 2) the provision set forth in the Code's "special exceptions for the handicapped" (51A- 1.107).
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A scaled site plan and two "NTS" or (Not To Scale) elevations had been submitted with the original application that showed a 5' high open wrought iron fence with stone base located in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue (about 10' of length on either side of the driveway) and in the 45' visibility triangle at Laneyvale Avenue and Algonquin Drive (about 27' lengths on both streets).
- The submitted revised site plan (see Attachment C) shows portions of the aforementioned existing 5' high open wrought iron fence with stone base located in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue (about 10' of length on either side of the driveway), and portions of this fence in the 45' Laneyvale Avenue/Algonquin Drive intersection visibility triangle. (The revised site plan shows the provision of a 30' visibility triangle at this intersection).
- The applicant's representative had submitted a revised site plan and elevations prior to the May 16th hearing that he stated removed existing shrubs that the Board

Administrator noted on his field trip that are located on either side of the driveway into the site from Laneyvale Avenue, and removed any item out of the required 45' visibility triangle at Laneyvale Avenue and Algonquin Drive. But these revised plans (Attachment A) were replaced by the applicant's revised plans of July 27th (Attachment C).

- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain aforementioned items in the 20' drive approach visibility triangles and in the Laneyvale Avenue/Algonquin Drive 45' intersection triangle do not constitute a traffic hazard OR are needed to afford a handicapped person equal opportunity to use and enjoy a dwelling.
- Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan and elevations (Attachment C) would require that the items in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue and in the 45' visibility triangle at the intersection of Laneyvale Avenue and Algonquin Drive to be limited to the location, height, and materials of those items as shown on these revised documents.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2012

APPEARING IN FAVOR: Ramon Aranda, 2946 So. Sunbeck Circle, Farmers Branch

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment in Appeal No. **BDA 112-034**, hold this matter under advisement until **May 16, 2012**.

SECONDED: Gillespie

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: Ramon Aranda, 2946 So. Sunbeck Circle, Farmers Branch

APPEARING IN OPPOSITON: No one

MOTION: Wilson

I move that the Board of Adjustment in Appeal No. **BDA 112-034**, hold this matter under advisement until **August 15, 2012**.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

APPEARING IN FAVOR: Ramon Aranda, 2946 So. Sunbeck Circle, Farmers Branch

APPEARING IN OPPOSITON: No one

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **112-034**, on application of Roberto Torres, represented by Ramon Aranda, **deny** the special exception for fence height requirements requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 112-034** on application of Roberto Torres, represented by Ramon Aranda, **deny** the special exception to maintain items in the visibility triangles at the drive approach and at the intersection triangle **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #3: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 112-034** on application of Roberto Torres, represented by Ramon Aranda, **deny** the request of this applicant to construct and/or maintain a 7-foot-high fence on the property as a special exception for the handicapped requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the special exception is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

SECONDED: Leone

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

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

MOTION #4: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 112-034** on application of Roberto Torres, represented by Ramon Aranda, **deny** the request to maintain items in the visibility triangles at the drive approach and at the intersection triangle as a special exception for the handicapped requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the special exception is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

SECONDED: **Leone**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-065

BUILDING OFFICIAL’S REPORT:

Application of George M. Underwood III, represented by Robert Reeves, for a variance to the side yard setback regulations at 15635 Coit Road. This property is more fully described as a part of Tract C, a 4.236 acre tract in City Block 35/8196 and is zoned CR, which requires a side yard setback of 20 feet where there is residential adjacency. The applicant proposes to construct and maintain a structure and provide a 5 foot side yard setback, which will require a variance of 15 feet.

LOCATION: 15635 Coit Road

APPLICANT: George M. Underwood III
Represented by Robert Reeves

August 15, 2012 Public Hearing Notes:

- The applicant’s representative submitted written documentation at the public hearing.

REQUEST:

- A variance to the side yard setback regulations of 15’ is requested in conjunction with constructing and maintaining an approximately 2,600 square foot retail structure, a portion of which would be located in the site’s southern 20’ side yard setback on a property developed with a retail strip center (Spanish Village Shopping Center).

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Although granting this variance request would allow another structure in the site's 20' southern side yard setback (an existing structure on the site was varied by the Board of Adjustment in 1968 just 2' away from the southern property line), the applicant had not substantiated in this case how the subject site differs from other lots zoned CR where its restrictive size, shape, or slope precludes it from being developed in a manner commensurate with the development upon other parcels of land with the same CR zoning. The site is flat, somewhat irregular in shape, and is (according to the application) 4.236 acres (or approximately 184,000 square feet) in area. The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: MF-1(A) (Multifamily)
East: City of Richardson
West: MF-1(A) (Multifamily)

Land Use:

The subject site is developed with a retail strip center (Spanish Village Shopping Center). The areas to the north and east are developed with retail uses; and the areas to the south, and west are developed with multifamily uses.

Zoning/BDA History:

1. BDA 68-163, Property at 15635 Coit Road (a portion of the subject site)

On November 22, 1968, the Board of Adjustment granted an application for “a permit to construct a one-story masonry office building requesting setback from the property line adjacent to the MF-1 zoned district 2 feet instead of the required 20 feet which would require a variance of 18 feet.” The minutes state among other things how “at the time of platting, they did not realize by dedicating an alley on this site that they would be creating a property line there and naturally would not have done that; they would have probably uses an alley easement.” (Note that this granted application on this property is most likely why the applicant with the current application has not requested variance for the “Existing 3,150 SF” structure on his submitted site plan that is located in the site yard setback between Coit Road and the proposed structure that is the focus of the current application).

Timeline:

- April 9, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 17, 2012: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 30, 2012: The applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachment A).

June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings.
No review comment sheets with comments were submitted in conjunction with this application.

June 20, 2012: The Board of Adjustment Panel B conducted a public hearing on this application where the applicant submitted additional documentation to the board (see Attachment B). The board delayed action until their next public hearing to be held on August 15, 2012.

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

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses constructing and maintaining an approximately 2,600 square foot retail structure, a portion of which would be located in the site's southern 20' side yard setback on a property developed with a retail strip center (Spanish Village Shopping Center).
- On June 20, 2012, the Board of Adjustment Panel B conducted a public hearing on this matter. The applicant submitted additional written documentation to the Board at the public hearing (see Attachment B). The board delayed action on this request until August 15, 2012.
- The subject site is located at the southwest corner of Arapaho Road and Coit Road. The subject site is zoned CR (Community Retail).
- The minimum side yard setback on a lot zoned CR is 20 feet where adjacent to or directly across an alley from a single family, duplex, townhouse, or multifamily zoning district; or no minimum in all other cases. The subject site directly abuts an MF-1(A) (multifamily) zoning district to the south – an area that is developed with a multifamily development.

- The applicant has submitted a site plan indicating a “proposed 2,640 SF” structure that is located 5’ on from the site’s southern side property line (or 15’ into the required 20’ side yard setback).
- The site is flat, somewhat irregular in shape, and is (according to the application) 4.236 acres (or approximately 184,000 square feet) in area. The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 1,100 square feet (or about 40 percent) of the approximately 2,600 square foot proposed structure would be located in the site’s southern 20’ side yard setback.
- According to DCAD records, the “main improvements” for property at “15635 Coit Road” is a “free standing retail store” with 3,150 square feet built in 1969.
- The structure proposed to be located in the site’s southern side yard setback would be located 3’ further away from this side property line than that of an existing structure on the property varied into this setback by the Board of Adjustment in 1968 (BDA 68-163) – a request made to construct an office building in this setback that (according to minutes of this hearing) was prompted by the creation of a property line that the owner did not realize would occur when he dedicated an alley on the south side of the subject site.
- The site is flat, somewhat irregular in shape, and is 4.236 acres in area. The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- On May 30, 2012, the applicant’s representative submitted additional information for the board’s consideration beyond what was submitted with the original application (see Attachment A).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR (Community Retail) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR (Community Retail) zoning classification.
- If the Board grants the side yard variance of 15’, imposing the submitted site plan as a condition, the structure encroachment into the setback would be limited to what is shown on this plan, which in this case is a portion of proposed retail structure located 5’ from the site’s southern side property line or 15’ into this 20’ side yard setback.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2012

APPEARING IN FAVOR: Robert Reeves, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-065**, on application of George M. Underwood, III, represented by Robert Reeves, **grant** a 15-foot variance to the side 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: Wilson

AYES: 3 – Wilson, Leone, Agnich

NAYS: 1 – Reynolds

MOTION FAILED 3 -1

MOTION #2: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-065**, on application of George M. Underwood, III, represented by Robert Reeves, **deny** the side yard setback variance **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Agnich

AYES: 0 –

NAYS: 4 – Reynolds, Wilson, Leone, Agnich

MOTION FAILED 4 -0

MOTION #3: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-065**, hold this matter under advisement until **August 15, 2012**.

SECONDED: Wilson

AYES: 3 – Reynolds, Wilson, Leone, Agnich

NAYS: 0 –

MOTION PASSED 4 -0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 15, 2012

APPEARING IN FAVOR: Robert Reeves, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment, in Appeal No. **BDA 112-065**, on application of George M. Underwood III, represented by Robert Reeves, **grant** the 15 foot variance to the minimum side yard setback regulations requested by this applicant 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: **Chernock**

AYES: 4–Gillespie, Chernock, Wilson, Leone

NAYS: 1 – Reynolds

MOTION PASSED 4 – 1

MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

2:10 P.M. - Board Meeting adjourned for **August 15, 2012.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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