

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, SEPTEMBER 21, 2005**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Linda Wise, alternate member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Linda Wise, alternate member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Michael Sultan, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Michael Sultan, Chief Arborist and Trena Law, Board Secretary

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**10:11 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's September 21, 2005 docket.**

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**1:05 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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B August 17, 2005 public hearing minutes

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

**MOTION: Gomez**

I move **approval** of the **Wednesday, August 17, 2005** Board of Adjustment Public Hearing minutes.

**SECONDED: Brannon**

**AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe**

**NAYS: 0 – None**

**MOTION PASSED 5 – 0 (Unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

A briefing will be conducted by the Assistant City Attorney to the Board of Adjustment on zoning and land use bills from the 79<sup>th</sup> Texas Legislature (see Attachment A).

**\*This was not an action item**

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**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** Unassigned

**REQUEST:** To waive the \$900.00 filing fee to be submitted in conjunction with a potential Board of Adjustment application

**LOCATION:** 6010 Velasco Avenue

**APPLICANT:** Chris Hewett

**September 21, 2005 Public Hearing Notes:**

- The Board of Adjustment delayed action on this matter until October 19<sup>th</sup>. The board strongly encouraged the applicant to provide specific financial documents/records either before or at the October hearing that would demonstrate how payment of the filing fee would result in substantial financial hardship to him. The applicant provided testimony that he felt that he understood what type of information he would need to submit to warrant favorable action from the board.

## **STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

## **GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of the \$900.00 filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A).
- The Board of Adjustment conducted a hearing on this matter on August 17, 2005. The Board Administrator forwarded a copy of an email written by the applicant to the board at the August 17<sup>th</sup> briefing (see Attachment B). This email documented the applicant's potential conflict of being able to attend the August 17<sup>th</sup> public hearing due to "having to go out of town for business." The board delayed action on the matter until September 21, 2005.
- As of September 9<sup>th</sup>, no additional information has been submitted by the applicant.

## **Timeline:**

- |                |   |
|----------------|---|
| July 22, 2005  | The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).  |
| July 28, 2005: | The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel B.  |
| July 28, 2005: | The Board Administrator wrote the applicant a letter that conveyed the following information: <ul style="list-style-type: none"><li>• the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);</li><li>• the criteria/standard that the Board will use in their decision to approve or deny the request; and</li></ul> |

- the importance of evidence submitted by the applicant with regard to the Board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board.

August 17, 2005: The Board of Adjustment conducted a hearing on this matter and delayed action until September 21, 2005.

August 25, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the delay of action on this matter until September 21, 2005; and
- that any additional evidence that he wanted staff to include in the board's docket to be submitted by September 9<sup>th</sup> with the standard by which the board would waive the filing fee being his demonstration (through testimony and financial documents) of how payment of the filing fee results in substantial financial hardship to the applicant.

**BOARD OF ADJUSTMENT ACTION: August 17, 2005**

APPEARED IN FAVOR: No one

APPEARED IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment Public hold this matter under advisement until **September 21, 2005.**

SECONDED: Brannon

AYES: 4–Cox, Brannon, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 4 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARED IN FAVOR: Chris Hewitt, 6010 Velasco Avenue, Dallas, TX  
Joshua Lacomte, 5827 Velasco Ave., Dallas, TX

APPEARED IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment Public hold this matter under advisement until **October 19, 2005.**

SECONDED: **Gillespie**

AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 5 – 0 (Unanimously)

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**MISCELLANEOUS ITEM NO. 4**

**FILE NUMBER:** BDA045-279

**REQUEST:** To reimburse the \$1,250.00 filing fee submitted in conjunction with this Board of Adjustment application for a landscape special exception

**LOCATION:** 3338 N. Winnetka Avenue

**APPLICANT:** Edgar Carranza, represented by Oscar Ordonez

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted an email to the Board Administrator requesting reimbursement of the \$1,250.00 filing fee that was submitted in conjunction with BDA045-279 (see Attachment A).
- The Board of Adjustment conducted a hearing on the fee reimbursement and landscape special exception matters on August 17, 2005, whereby the board granted the request for a special exception to the landscape regulations (subject to compliance with the submitted landscape plan), and delayed action on the request to reimburse the filing fee that was submitted in conjunction with this request. The board delayed action on this matter to allow the applicant's representative additional

time to demonstrate how payment of the filing fee resulted in substantial financial hardship to the applicant.

- As of September 9<sup>th</sup>, no additional information has been submitted by the applicant.

**Timeline:**

- June 24, 2005      The applicant submitted an application to the Board of Adjustment for a special exception to the landscape regulations.
- July 15, 2005:      The Board of Adjustment Secretary randomly assigned the request to Board of Adjustment Panel B.
- August 5, 2005      The applicant's representative submitted an email to the Board Administrator requesting that the \$1,250.00 filing fee submitted in conjunction with the landscape special exception appeal be reimbursed (see Attachment A).
- August 9, 2005      The Board Administrator emailed the applicant's representative and informed him that this request would be placed on the August 17<sup>th</sup> Miscellaneous Docket Agenda, and that the board would reimburse the filing fee if the applicant were able to convince the board that payment of the filing fee results in substantial financial hardship to the applicant.
- August 17, 2005:    The Board of Adjustment conducted a hearing on this matter and delayed action until September 21, 2005.
- August 25, 2005:    The Board Administrator wrote the applicant's representative a letter that conveyed the following information:
- the delay of action on this matter until September 21, 2005; and
  - that any additional evidence that he wanted staff to include in the board's docket to be submitted by September 9<sup>th</sup> with the standard by which the board would waive the filing fee being his demonstration (through testimony and financial documents) of how payment of the filing fee results in substantial financial hardship to the applicant.

**BOARD OF ADJUSTMENT ACTION: August 17, 2005**

APPEARED IN FAVOR:                      Oscar Ordonez, 706 Lowe Dr, Cedar Hill, TX

APPEARED IN OPPOSITION:              No one

MOTION:      **Brannon**

I move that the Board of Adjustment Public hold this matter under advisement until **September 21, 2005.**

SECONDED: **Wise**

AYES: 4–Cox, Brannon, Wise, Jaffe  
NAYS: 0 - None  
MOTION PASSED 4 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARED IN FAVOR: No one

APPEARED IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment **deny** the request to reimburse the filing fee submitted in conjunction with a special exception to the landscape regulations **without prejudice**.

SECONDED: **Jaffe**  
AYES: 4–Cox, Brannon, Wise, Jaffe  
NAYS: 1 - Gillespie  
MOTION PASSED 4– 1

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FILE NUMBER: BDA 045-291

**BUILDING OFFICIAL'S REPORT:**

Application of John H. Stone for a special exception to the fence regulations at 5600 Park Lane. This property is more fully described as Lot 4 in City Block 7/5597 and is zoned R-1ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 10 foot fence in the required front yard setback which would require a special exception of 6 feet to the fence height regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5600 Park Lane

APPLICANT: John H. Stone

**REQUEST:**

- A special exception to the fence height regulations of 6' is requested in conjunction with maintaining the following:
  - an 8'-high solid board-on-board wood fence and gate (with a 10'-high arbor over the gate) located in the 40'-front yard setbacks along Park Lane and Hathaway Street; and
  - a 6'-high open chain link fence in the Hathaway Street 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.

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The originally submitted site plan/elevation made the following notations:
  - the existing wall, gate, and arbor are located parallel to Park Lane and Hathaway Street;
  - the existing wall is approximately 120 feet long along Park Lane and approximately 70' long along Hathaway Street;
  - the existing wall, gate, and arbor are located approximately on the property lines and approximately 20' from the pavement lines of Park Lane and Hathaway Street;
  - an 8'-high board-on-board wall with an 8'-high solid board-on-board "automatic sliding gate" with a 10'-high 2'-wide, 17'-long "arbor over gate" structure.
- A revised site/landscape/elevation plan was submitted on August 25, 2005. This made the following additional notations to the originally submitted site/elevation plan (see Attachment A):
  - An existing 6'-high chain link fence to remain in the Hathaway Street front yard setback that is about 200 feet long in the same relative distance from the property line and pavement line as the existing board-on-board wall.
  - Landscape notations along Park Lane to include 6 Bald Cypress, 1 Chinese Tallow, 1 Eastern Redbud.
  - Landscape notations along Hathaway Street to include 6 Nandinas, and "Existing solid English Ivy allowed to grow up to screen fence."
  - General notes added on this plan stating the following:
    - Additional Ivy will be planted and maintained to cover the street side of the board fence within two (2) years of favorable action of the board.
    - The fence is board on board.
    - Chain Link Height is six (6) feet height.
    - The existing chain link fence has English Ivy covering the fence and it will be maintained in the same manner.
- The existing wall is located on a site where two single family homes have direct/indirect frontage along Park Lane, one of which has an open approximately 6'-high chain link fence, the other with no fence.
- The existing wall and fence are located on a site where two single family homes have direct/indirect frontage along Hathaway Street. The home immediately to the west has an approximately 10'-high solid wood wall. If the wall on this site is deemed to be located in a side yard setback, a 9'-high fence/wall is permitted by right.
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (approximately 500 feet east and west of the site) and noted one



other fence above 4' high which appeared to be located in the front yard setback: a 6'-high chain link fence northwest of the site behind landscape materials.

- The Board Administrator conducted a field visit of the site and surrounding area along Hathaway Street and noted the following fence/wall which appears to be located in a side yard setback: a 10'-high solid wood fence/wall immediately west of the site.

## **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, south, and west are developed with single family uses; the area immediately east of the site is the Dallas North Tollway.

### **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:**

- July 29, 2005      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. Part of the information submitted with the application were loose photographs that the applicant identified as fences between Douglas Avenue (east), Holloway (west), Park Lane (north), and Deloache (south). These photos will be available for review upon request at the briefing and public hearing.
- August 18, 2005:    The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 19, 2005:    The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 25, 2005      The applicant submitted a revised site/landscape/elevation plan beyond what was submitted with the original application (see Attachment A).

August 29, 2005:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

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

**STAFF ANALYSIS:**

- A revised scaled site/landscape/elevation plan has been submitted that documents the location of the existing wall and fence relative to their proximity to the property line and pavement line. The revised scaled site/landscape/elevation plan also clearly shows their length relative to the lot.
- The submitted revised scaled site/landscape/elevation documents the materials and height of the existing board-on-board wall (8'), "arbor over gate" (10'), and chain link fence (6'). (No elevation of the existing chain link fence has been submitted although the plan describes the fence in notation form as "existing chain link.")
- Existing and/or proposed landscape materials are noted on the submitted revised site/landscape/elevation plan that either screen and/or will screen the existing fence/wall within 2 years from favorable action of the board.

- The existing wall along Park Lane is located immediately across from a single family home that has no fence in its front yard setback.
- The existing wall and fence along Hathaway Street are located immediately across from a single family home that has an approximately 10'-high solid wood fence/wall. (If the fence/wall on this site is deemed to be located in a side yard setback, a 9'-high fence/wall is permitted by right).
- As of September 9<sup>th</sup>, no letters had been submitted to staff either in support or in opposition to the proposed fences.
- Granting this special exception of 6' with a condition imposed that the applicant complies with the submitted revised site/landscape/elevation would assure that the existing fence, wall, and arbor gate are maintained as shown on this document.

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARED IN FAVOR: No one

APPEARED IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment **grant** application **BDA 045-291** 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/landscape/elevation plan is required.

SECONDED: **Brannon**

AYES: 5—Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 -

MOTION PASSED 5— 0

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**FILE NUMBER:** BDA 045-287

**BUILDING OFFICIAL'S REPORT:**

Application of Charles Shin, represented by Robert E. Mckenzie, for a special exception to the landscape regulations at 10800 Dennis Road. This property is more fully described as Lot 1A in City Block 6602 and is zoned IR, which requires landscaping to be provided with new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section

51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 10800 Dennis Road

**APPLICANT:** Charles Shin  
Represented by Robert E. Mckenzie

**September 21, 2005 Public Hearing Notes:**

- The applicant submitted additional information at the public hearing. The information included a revised site plan and photographs of the subject site.

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 8,000 square foot retail building on a site that is undeveloped.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

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

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- Two "site plans" have been submitted in conjunction with this request. One site plan is entitled "Site Plan Neiborhood" and the other is entitled "Site Plan (Building)." A "landscape plan" has not been submitted in conjunction with this request.

- The applicant submitted an attachment with the application which states that “we are requesting a land scape variance to eliminate the three landscape buffers.”
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- On September 7, 2005, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
  - The applicant is requesting relief from the requirement to provide a 10’ wide landscape buffer strip.
  - The special exception request is triggered by new construction.
  - Deficiencies:
    1. The applicant is required to provide a 10’ wide landscape buffer strip where residential adjacency exists. (In this case, 11 plant groups are required for the 560 linear feet along the northern, western, and southern property lines). The applicant is proposing to provide no buffer but proposing to provide off-site landscaping to the west (one of two sides where there is residential zoning AND a residential use).  
It appears that there is room to provide all of the landscape requirements but for the deficiency noted above, however, the alternate landscape plan does not specifically identify the plant materials to be able to make that determination.
  - Factors for consideration:
    - The alternate landscape plan does not adequately identify plant materials to know if the alternate landscape plan meets all of the landscape requirements but for the 10’ wide landscape buffer strip. Although they have residential adjacency on 3 sides due to the zoning, the only residential uses are to the north and to the west.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: IR (Industrial Research)  
North: PD No. 448 (Planned Development District)  
South: PD No. 448 (Planned Development District)  
East: IR (Industrial Research)  
West: PD No. 448 (Planned Development District)

**Land Use:**

The subject site is undeveloped. The areas to the north and west are developed with multifamily uses; and the areas to the east and south are developed with retail uses.

**Zoning/BDA History:**

1. Z956-179, a tract of land fronting                      On June 19, 1996, the City Council adopted

on Royal Lane, beginning 125 west of the west line of Dennis Road (the area immediately to the north, south, and west of the subject site)

an ordinance that created Planned Development District No. 448 that allowed multifamily as the main use on property that had been zoned IR (Industrial Research).

**Timeline:**

- July 20, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 18, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 19, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the August 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

The District Manager of the Code Compliance Department forwarded a review comment sheet marked "Has no objections." In addition, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment A).

**STAFF ANALYSIS:**

- The applicant has not submitted a "landscape plan" in conjunction with the request for a special exception to the landscape regulations. The applicant *has* submitted two "site plans," neither of which specifies any landscape materials to be provided either on the site (or on adjacent property) other than "grass."
- If the Board were to grant this request (whereby the board feels that the applicant has demonstrated how strict compliance with the requirements of this article will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property), staff suggests that the board impose the following condition:
  - The applicant shall fully comply with the Landscape Regulations of the Dallas Development Code with the following exception: the 10'-wide landscape buffer strip is waived on the north, south, and west sides of the subject site.  
(This condition would seem to address what the applicant has written his request to be of the board: elimination of the three landscape buffers).
- If the board were grant this request and impose the condition that the applicant comply with the two submitted site plans, the applicant would not only be waived the buffer strip requirements but virtually all other landscape requirements given the lack of notations and specifics on these submitted site plans. In addition, there could be no requirement for the owner of either the subject site and/or the owners of adjacent properties to provide any landscape/plant materials shown on these plans on neighboring sites, but merely requiring the owner of the subject site to provide landscape materials as shown on these plans to be provided on the subject site, which in this case is nothing.

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARED IN FAVOR: Robert McKenzie, 4211 Wiley College, Dallas, TX

APPEARED IN OPPOSITION: No one

**MOTION: Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 045-287** on application of Charles Shin, **deny** the special exception to the landscape requirements requested by this applicant **with prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burned the use of the property or the special exception will adversely affect neighboring property.

**SECONDED: Brannon**

**AYES:** 5–Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 -  
MOTION PASSED 5- 0

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**FILE NUMBER:** BDA 045-253

**BUILDING OFFICIAL'S REPORT:**

Application of Riz Chand for a special exception to the fence regulations at 5131 Southbrook Drive. This property is more fully described as Lot 1A in City Block 5/5578 and is zoned R-1Ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 12 foot 8 inch fence in the required front yard setback which would require a special exception of 8 feet 8 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5131 Southbrook Drive

**APPLICANT:** Riz Chand

**September 21, 2005 Public Hearing Notes:**

- The Board Administrator informed the Board of Adjustment of the following minor amendment that the applicant had made to the submitted site plan during the lunch break: the fence height notation of 12' on the submitted site plan was amended to 12' 8".

**REQUEST:**

- A special exception to the fence height regulations of 3' 8" is requested in conjunction with constructing a 12' 8"-high solid fence in the Northwest Highway front yard setback on a site that is developed with a single family house.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The request was determined by the Building Official to be in a front yard due to the lot being a "through-lot" with double frontage, Southbrook Drive and Northwest Highway.
- A site plan has been submitted that documents the location of the proposed fence relative to the proximity to the property line and pavement line. The site plan also shows the length of the proposed fence relative to the lot.

- An elevation has been submitted that documents the height of the proposed fence (12' 8"). The fence is proposed to be constructed of pre-cast concrete.
- Senior Planner Pitner conducted a field visit of the site and surrounding area and noted multiple fences that appeared to be higher than 4' located along Northwest Highway in similar lots with double street frontage.
- Subsequent to providing a letter from TxDOT (Attachment C), the Building Official has deemed that access to the lot is restricted. Restricted access allows the front yard to be governed by the rear yard regulations and therefore, the Special Exception request is for 3' 8" instead of 8' 8" if it were a front yard location.

**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 single family residential. The areas to the north, south, east and west are developed with single family uses. The area to the northeast is developed with a church.

**Zoning/BDA History:**

1. BDA 85-135 On April 9, 1985, the Board of Adjustment granted a request for fence height special exception to construct a 7 foot 4 inch solid brick fence in a front yard located at the southwest corner of Northwest Highway and Inwood Road.

**Timeline:**

- May 31, 2005: 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 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

August 4, 2005 The applicant submitted information beyond what was submitted with the original application, a petition of support with 10 signatures (see Attachment A).

August 8, 2005 The applicant submitted information beyond what was submitted with the original application, an email with observations of fences on Northwest Highway and a list of building permits for some of those fences (see Attachment B).

August 12, 2005 TxDOT submitted a letter stating that access to Northwest Highway will not be permitted at the request site (see Attachment C).

September 1, 2005 TxDOT submitted a letter stating that there are no plans for a turn lane (see Attachment D).

The applicant submitted a letter regarding the proposed fence construction (see Attachment E).

September 7, 2005 The applicant submitted a landscaping plan (see Attachment F).

**STAFF ANALYSIS:**

- Since the application was submitted, the ownership of the property has changed. The new owner has submitted a letter along with the previous owner indicating the desired continuance of the application on behalf of the new owner.
- The building official determined this lot is a through-lot due to the double frontage on two streets. Access would need to be prohibited by either the City or by plat in order for the request to be deemed in a rear yard.
- Northwest Highway is classified by the Thoroughfare Plan as a 6-lane divided principle arterial.
- It has been confirmed that access would not be granted by TxDOT onto Northwest Highway.
- There are topographical barriers to access through the request site that include a creek that runs parallel to Northwest Highway in this area. In order to access Northwest Highway from the request site would require a bridge across the creek.
- The yard where the fence is being requested has been deemed a front yard; however, the yard functions as a rear yard and access from this lot to Northwest Highway does not appear feasible.
- The proposed fence is to be constructed of durable material (pre-cast concrete).
- Granting the fence height special exception of 3'8" with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the proposed fence is maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: August 17, 2005**

APPEARING IN FAVOR: Mark Yelderman, 5121 Southbrook Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment in Appeal No. **BDA 045-253**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Brannon**

AYES: 4–Cox, Brannon, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 4 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARED IN FAVOR: Mark Elderman, 5121 Southbrook, Dallas, TX  
Bruce Chand, 5131 Southbrook, Dallas, TX

APPEARED IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment in Appeal No. **BDA 045-253** on application of Riz Chand, **grant** the request of this applicant to construct a twelve-foot, eight-inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan, elevation, and landscape plan is required ; and
- An irrigation system must be installed.

**SECONDED: Brannon**

**AYES: 5**–Cox, Brannon, Gillespie, Wise, Jaffe

**NAYS: 0** -

**MOTION PASSED 5– 0**

\*\*\*\*\*

**FILE NUMBER:** BDA 045-254

**BUILDING OFFICIAL'S REPORT:**

Application of Mark and Susan Yelderman for a special exception to the fence regulations at 5121 Southbrook Drive. This property is more fully described as Lot 1B in City Block 5/5578 and is zoned R-1Ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 12 foot 8-inch fence in the required front yard setback which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5121 Southbrook Drive

**APPLICANT:** Mark and Susan Yelderman

**September 21, 2005 Public Hearing Notes:**

- The Board Administrator informed the Board of Adjustment of the following minor amendment that the applicant had made to the submitted site plan during the lunch break: the fence height notation of 12' on the submitted site plan was amended to 12' 8".

**REQUEST:**

- A special exception to the fence height regulations of 3' 8" is requested in conjunction with constructing a 12' 8"-high solid fence in the Northwest Highway front yard setback on a site that is developed with a single family house.

## **STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

### **GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The request was determined by the Building Official to be in a front yard due to the lot being a "through-lot" with double frontage, Southbrook Drive and Northwest Highway.
- A site plan has been submitted that documents the location of the proposed fence relative to the proximity to the property line and pavement line. The site plan also shows the length of the proposed fence relative to the lot.
- An elevation has been submitted that documents the height of the proposed fence (12' 8"). The fence is proposed to be constructed of pre-cast concrete.
- Senior Planner Pitner conducted a field visit of the site and surrounding area and noted multiple fences that appeared to be higher than 4' located along Northwest Highway in similar lots with double street frontage.
- Subsequent to providing a letter from TxDOT (Attachment C), the Building Official has deemed that access to the lot is restricted. Restricted access allows the front yard to be governed by the rear yard regulations and therefore, the Special Exception request is for 3' 8" instead of 8' 8" if it were a front yard location.

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

#### **Zoning/BDA History:**

1. BDA 85-135                      On April 9, 1985, the Board of Adjustment granted a request for fence height special

exception to construct a 7 foot 4 inch solid brick fence in a front yard located at the southwest corner of Northwest Highway and Inwood Road.

**Timeline:**

May 31, 2005: 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 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

- August 4, 2005 The applicant submitted information beyond what was submitted with the original application, a petition of support with 10 signatures (see Attachment A).
- August 8, 2005 The applicant submitted information beyond what was submitted with the original application, an email with observations of fences on Northwest Highway and a list of building permits for some of those fences. (see Attachment B).
- August 12, 2005 TxDOT submitted a letter stating that access to Northwest Highway will not be permitted at the request site (see Attachment C).
- September 1, 2005 TxDOT submitted a letter stating that there are no plans for a turn lane (see Attachment D).
- The applicant submitted a letter regarding the proposed fence construction (see Attachment E).
- September 7, 2005 The applicant submitted a landscaping plan (see Attachment F).

**STAFF ANALYSIS:**

- The building official determined this lot is a through-lot due to the double frontage on two streets. Access would need to be prohibited by either the City or by plat in order for the request to be deemed in a rear yard.
- Northwest Highway is classified by the Thoroughfare Plan as a 6-lane divided principle arterial.
- It has been confirmed that access would not be granted by TxDOT onto Northwest Highway.
- There are topographical barriers to access through the request site that include a creek that runs parallel to Northwest Highway in this area. In order to access Northwest Highway from the request site would require a bridge across the creek.
- The yard where the fence is being requested has been deemed a front yard; however, the yard functions as a rear yard and access from this lot to Northwest Highway does not appear feasible.
- The proposed fence is to be constructed of durable material (pre-cast concrete).
- Granting the fence height special exception of 3'8" with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the proposed fence is maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: August 17, 2005**

APPEARING IN FAVOR: Mark Yelderman, 5121 Southbrook Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jaffe**



I move that the Board of Adjustment in Appeal No. **BDA 045-254**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Brannon**

AYES: 4–Cox, Brannon, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 4 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARED IN FAVOR: Mark Elderman, 5121 Southbrook, Dallas, TX  
Bruce Chand, 5131 Southbrook, Dallas, TX

APPEARED IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment in Appeal No. **BDA 045-254** on application of Mark and Susan Yelderman, **grant** the request of this applicant to construct a twelve-foot, eight-inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan, elevation, and landscape plan is required; and
- An irrigation system must be installed.

SECONDED: **Brannon**

AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 -

MOTION PASSED 5– 0

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**FILE NUMBER:** BDA 045-262

**BUILDING OFFICIAL'S REPORT:**

Application of Virgil Fleming represented by Raymond S. Lambert for a variance to the side yard setback regulations at 2433 Southwood Drive. This property is more fully described as Lot 6 in City Block A/6038 and is zoned R-10 (A) which requires a 6 foot side yard setback. The applicant proposes to construct an addition and provide a 3 foot side yard setback which would require a variance of 3 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 2433 Southwood Drive

**APPLICANT:** Virgil Fleming  
Represented by Raymond S. Lambert

**REQUEST:**

- A variance to the side yard setback regulations of 3' is requested in conjunction with constructing an addition on a single-family home.

**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 ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that 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 must be necessary to permit development of a specific parcel of land which 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 in districts with the same zoning classification. A variance may 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 a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**GENERAL FACTS:**

- The site is flat, rectangular in shape (70' x 175'), and approximately 12,250 square feet in area.
- The typical lot size in R-10 (A) zoning district is 10,000 square feet.
- A 6' side yard setback is required in the R-10(A) zoning district.
- DCAD records indicate that the site is developed with a single family home in average condition that was built in 1952 and has 1,139 square feet of living area and a detached 440 square foot servants quarters.
- The addition to the single family structure is an enclosed breezeway that would connect the main structure with the detached gameroom accessory structure.
- The area of the proposed enclosed breezeway is approximately 138 square feet.
- The detached gameroom accessory structure, located 3' in the 6'-side yard setback, is approximately 400 square feet in area , or 20' x 20' according to the site plan.
- There is a second accessory structure on the request site, a 420 square foot (14' x 30') storage building, indicated on the landscape plan.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10 (A) (Single family residential 10,000 square feet)  
North: R-10 (A) (Single family residential 10,000 square feet)  
South: R-10 (A) (Single family residential 10,000 square feet)  
East: R-10 (A) (Single family residential 10,000 square feet)  
West: R-10 (A) (Single family residential 10,000 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 sites.

**Timeline:**

- June 23, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the August 5th deadline to submit additional evidence for staff to factor into their analysis;
  - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 22, 2005: The applicant's representative submitted revised site plans to show an enclosed breezeway as opposed to a covered breezeway as shown on the site plan originally submitted.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The attached plat map indicates that the site is 12,250 square feet. This total lot size is greater than the typically-sized lot in the R-10(A) zoning district at 10,000 square feet.
- The revised site plan shows an enclosed breezeway that would connect the main structure to the accessory structure.
- The applicant has verbally indicated that the accessory structure was constructed when the main structure was constructed in 1952.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the revised site plan, the amount of encroachment into the side yard setback would be limited in this case to an area of approximately 60 square feet.

**BOARD OF ADJUSTMENT ACTION: August 17, 2005**

APPEARING IN FAVOR: Raymond Lambert, 12250 Inwood Rd, #9, Dallas, TX

APPEARING IN OPPOSITION: Lorraine Terry, 6602 Atlanta Drive, Colleyville, TX  
76034

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 045-262**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Wise**

AYES: 4-Cox, Brannon, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 4 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARED IN FAVOR: Raymond Lambert, 12250 Inwood Rd., Ste 9, Dallas, TX

APPEARED IN OPPOSITION: Lorraine Terry, 6602 Atlanta, Colleyville, TX

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 045-262** on application of Virgil Fleming, **deny** the variance requested by this applicant **without prejudice**, 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 not result in unnecessary hardship to this applicant.

SECONDED: **Gomez**

AYES: 5—Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 -

MOTION PASSED 5— 0

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FILE NUMBER: BDA 045-264

**BUILDING OFFICIAL'S REPORT:**

Application of Plaza at Turtle Creek Residents Association, Inc. represented by Roger Albright, for a special exception to the front yard setback regulations at 2828 Hood Street. This property is more fully described as Lot 1H in City Block 11/1017 is zoned Planned Development 193 (MF-3 D) which requires a 25 foot front yard setback. The applicant proposes to maintain a porte-cochere in the required front yard and provide a 1 foot setback which would require a special exception of 24 feet. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions

LOCATION: 2828 Hood Street

APPLICANT: Plaza at Turtle Creek Residents Association, Inc.  
Represented by Roger Albright

**September 21, 2005 Public Hearing Notes:**

- The applicant's representative submitted additional information to the Board of Adjustment. This information included letters in support of the request and photographs of the site and surrounding area.

**REQUEST:**

- A special exception to the front yard setback regulations of 24' is requested to maintain an approximately 950 square foot porte cochere that is attached to a multi-story residential building (The Plaza at Turtle Creek).

**STANDARD FOR A SPECIAL EXCEPTION TO THE FRONT YARD REQUIREMENTS FOR A PORTE-COCHERE, COVERED WALKWAY, OR CANOPY:**

The board of adjustment may allow a special exception to the front yard requirements of Section 51P-193.125 to permit the erection of a permanently constructed porte-cochere, covered walkway, or canopy in the multiple-family, MH, A, office, commercial, central area, and industrial subdistricts if the structure is rectilinear in shape and does not exceed 25 feet in width at the building line, and if the board finds that the structure will not adversely affect neighboring property.

**GENERAL FACTS:**

- A 25'-front yard setback is required in the PD No. 193 (MF-3 Subdistrict) zoning district.
- The porte cochere is located 1' from the front property line when a 25'-front yard setback is required.
- For purposes of this request, Building Inspection has stated that the 25'-front yard setback line (dictated by the underlying zoning district) is also the site's building line.
- The submitted site plan indicates that the existing porte cochere is in compliance with two characteristics that are specified in the applicable special exception provision of PD No. 193:
  1. The existing porte cochere is rectilinear in shape; and
  2. The existing porte cochere does not exceed 25 feet in width at the building line. (The structure is 21' 1"-wide at the building line, and 33'-wide in the area between the building/setback line and the front property line).
- The Board Administrator forwarded a letter to the Board of Adjustment written by the applicant's representative at the August 17<sup>th</sup> public hearing (Attachment A). The letter requested that the board delay action on this matter so the applicant could meet with the interested neighbors in an attempt to address all of their concern and obtain their support.
- On August 26, 2005, the applicant's representative submitted a letter and photos of the site (see Attachment B for a copy of the letter, and note that the photos will be available for review upon request at the briefing/public hearing).

**BACKGROUND INFORMATION:**

- Site: PD No. 193 (MF-3 Subdistrict Dry) (Planned Development District, Multifamily)
- North: PD No. 193 (MF-3 Subdistrict Dry) (Planned Development District, Multifamily)
- South: PD No. 193 (MF-3 Subdistrict Dry) (Planned Development District, Multifamily)
- East: PD No. 193 (MF-3 Subdistrict Dry) (Planned Development District, Multifamily)
- West: PD No. 193 (MF-3 Subdistrict Dry) (Planned Development District, Multifamily)

**Land Use:**

The approximately 1.5-acre subject site is developed as a multi-story residential structure (The Plaza at Turtle Creek). The areas to the north, east, and west are developed with residential uses; and the area to the south is undeveloped.

**Zoning/BDA History:**

1. BDA 989-147, 2828 Hood Street (the subject site)      On January 19, 1999, the Board of Adjustment Panel B granted a request for a variance to side yard setback regulations of 30', and a variance to the rear yard setback regulations of 12' 4", subject to the following conditions: Compliance with the submitted site plan and elevation is required. The case report states the requests were made in conjunction with constructing an 18-story multifamily structure.
2. BDA 978-213, 3535 Gillespie ( a tract of land including the subject site)      On August 18, 1998, the Board of Adjustment Panel B granted a request for a variance to side yard setback regulations of 45', subject to the following conditions: Compliance with the submitted site plan is required. The case report states the request was made in conjunction with constructing a 9-story multifamily structure. The report additionally noted that the request was made due to a recent subdivision of the site and the lot to the east that resulted in the placement of a property line running diagonally through what had been a rectangular shaped lot, and the applicant's inability to obtain all required permits for a tower in conjunction with the approval of BDA 967-178 in 1997 within 180 days from the board's favorable action on February 25, 1997.
3. BDA 967-178, 3535 Gillespie (a tract of land including the subject site and the lot immediately to the east)      On February 27, 1997, the Board of Adjustment Panel B granted a request for a variance to the side yard variance of 45 requested in conjunction with constructing 2 high-rise multifamily buildings.

**Timeline:**

June 23, 2005:      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- July 15, 2005 The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- August 17, 2005 The Board of Adjustment held a public hearing on this matter but delayed action on this matter until September per the request of the applicant's representative.
- August 26, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B).
- August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division



Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

**STAFF ANALYSIS:**

- The existing porte cochere is rectilinear in shape and does not exceed 25 feet in width at the building line. (The structure is 21' 1"-wide at the building line, and 33'-wide in the area between the building/setback line and the Hood Street property line).
- As of August 5<sup>th</sup>, no letters of support and one letter of opposition (from the Oak Lawn Committee) have been submitted in conjunction with this application.
- If the Board were to grant the front yard special exception request, subject to the submitted site plan and elevation, the encroachment into the site's front yard setback would be limited to a porte cochere structure that is about 950 square feet in area located 1' away from the Hood Street front property line. In addition, if the Board were to condition the request to the submitted site plan and elevation, the structure in the setback would be restricted to that what is shown on this document – a structure that is comprised of a "low masonry wall and columns @ posts" and "existing canopy."
- The Board Administrator conducted a field visit of the site and noted a number of landscape materials adjacent to the existing porte cochere. The existing landscape materials (trees and shrubs) significantly screen the existing porte cochere structure to a level where the structure is barely visible from certain areas on Hood Street and from some neighboring properties. Although the site plan indicates the location of landscape materials adjacent to the existing porte cochere in conceptual form, specifications regarding the sizes and species of these materials have not provided on the submitted site plan. If the Board feels that the retention of the existing materials is related to whether or not the porte cochere will not adversely affect neighboring property, they should request that the applicant specify the existing materials to be retained adjacent to the porte cochere on a site plan.

**BOARD OF ADJUSTMENT ACTION: August 17, 2005**

APPEARING IN FAVOR:                     No one  
   No one

APPEARING IN OPPOSITION:

MOTION:       **Brannon**

I move that the Board of adjustment in **BDA 045-264**, hold this matter under advisement until **September 21, 2005**.

SECONDED: **Wise**

AYES: 4-Cox, Brannon, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 4 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

APPEARING IN FAVOR: Roger Albright, 3301 Elm St., Dallas, TX  
Neil Emmons, 2525 Turtle Creek, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gomez**

I move that the Board of adjustment in **BDA 045-264**, on application of the Plaza at Turtle Creek Residents Association, Inc., **grant** the request to maintain a porte-cochere in the front yard as a special exception to the minimum front yard requirements in PD 193 because our evaluation of the property and testimony shows that the porte-cochere is rectilinear in shape, does not exceed 25 feet in width at the building line, and will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Oak Lawn Special Purpose District:

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

SECONDED: **Brannon**

AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 - None

MOTION PASSED 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 045-270

**BUILDING OFFICIAL'S REPORT:**

Application of Caye Cook and Associates, represented by Lindsey White, for a special exception to tree preservation regulations at 2050 N. Stemmons Freeway. This property is more fully described as a tract of land in City Blocks 6053 and 7896 and is zoned MU-3 (A) which mitigation for every protected tree removed. The applicant proposes to construct an addition and provide an tree mitigation plan which would require a special exception to the tree preservation regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 2050 N. Stemmons Freeway

**APPLICANT:** Caye Cook and Associates  
Represented by Lindsey White

**REQUEST:**

- A special exception to the tree preservation regulations is requested in conjunction with removing trees on a site developed with an office/showroom use (Dallas Market

Center). The tree removal is proposed given plans to add a 320,000 square foot multi-level parking garage (with additional showroom space atop) on this site.

**STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

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

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The applicant has submitted a “Planting Plan” that does not fully comply with the tree preservation regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting an exception from the required amount of tree mitigation.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised “Planting Plan,” and a letter that provides additional details about the request and why it should be granted.
- The applicant has stated that the new expansion will require removing 40 trees that were voluntarily planted when the site was developed several decades ago prior to the creation of the City’s current Landscape and Tree Preservation Regulations. In addition, the applicant has stated that even though 40 trees are being removed on the site, 79 existing trees will remain, which is 10 trees beyond the 69 trees that would be required to be located on the site per the current Landscape and Tree Preservation Regulations.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). This memo states the following:
  - The applicant is requesting relief from the required amount of tree mitigation.
  - The special exception request is triggered by new construction.
  - Deficiency:
    - The applicant is required to provide inch-for-inch replacement of any protected tree removed.  
The applicant is proposing to remove 39 trees (totaling 716 inches with a replacement value of \$57,054.00) and to provide one new 4" Live Oak tree.
  - Factors for consideration:
    - All of the existing trees on the site were planted voluntarily when the site was developed several decades ago.
    - There is little (almost no) opportunity to plant any replacement trees on the site.
    - The proposal involves retaining many more trees than are being removed, and the site will maintain a significant canopy cover.
- The Board of Adjustment conducted a public hearing on August 17<sup>th</sup> and delayed action on this appeal until September 21<sup>st</sup> per the request of the applicant.
- As of September 9<sup>th</sup>, no additional information had been submitted by the applicant.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-3 (Mixed use)  
North: PD No. 193 (Planned Development District)  
South: MU-3 (Mixed use)  
East: MU-3 (Mixed use)  
West: MU-3 (Mixed use)

**Land Use:**

The subject site is developed with a showroom use (Dallas Market Center). The area to the north is developed with commercial uses; the areas to the east and west are developed with showroom uses; and the area to the south is the Stemmons Freeway.

**Zoning/BDA History:**

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| <p>1. BDA 034-198, 2020 N. Stemmons Freeway (a site that included part of the subject site)</p> | <p>On September 20, 2004, the Board of Adjustment Panel C granted a request for a special exception to off-street parking regulations of 1,073 spaces (or 25% of the required parking), subject to the following conditions: The special exception of 1073 spaces shall automatically and immediately terminate if and when the mixed use</p> |
|---|---|

(office/showroom/warehouse) on the site is changed or discontinued; and the Dallas Market Center, Ltd., must maintain parking leases totaling 3,050 parking spaces. The case report states that the request was related to the applicant's proposal to reclassify the use for the three existing buildings on the site that contain over 4,000,000 square feet from "trade center" to "office showroom/warehouse" use. The report states that the request was not triggered by the applicant's intent to increase the square footage of any structure on the site, adding additional square footage on the lot, nor to reduce the amount of existing parking provided on the site.

**Timeline:**

- June 24, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the August public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

July 27, 2005      The applicant's representative two letters to the Board Administrator. One letter formally requested that her original request for a special exception to the landscape regulations be withdrawn since a revised plan had been made that fully met the landscape requirements. The other letter further explained the scope of the tree preservation special exception request and why it should be granted (see Attachment A).

July 27, 2005:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

August 17, 2005      The Board of Adjustment conducted a public hearing on this appeal and delayed action on this matter until September 21, 2005 per the request of the applicant.

August 29, 2005:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

**STAFF ANALYSIS:**

- The applicant has submitted a revised "Planting Plan" that reflects the removal of 39 trees and the retention of 79 trees that were voluntarily planted on the site prior to the creation of the site and street tree requirement.
- Granting this request, subject to a condition that the applicant comply with the submitted revised planting plan, will allow the proposed 320,000 square foot multi-level parking garage with additional showroom space above, while simultaneously preserve/retain 79 existing trees on the site (10 trees beyond the 69 trees that the current landscape ordinance would require to be located on the site).

- Granting this request, subject to the submitted revised planting plan, does not provide any relief from (or exception to) the landscape regulations since the applicant modified the originally submitted plans for the purpose of being able to fully comply with the landscape regulations.
- As of September 9<sup>th</sup>, the applicant had not submitted any additional information regarding the appeal.

**BOARD OF ADJUSTMENT ACTION: August 17, 2005**

APPEARING IN FAVOR: David Voss, 6536 Kenwell, Dallas, TX  
Caye Cook, 6425 Royalton Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION#1: Jaffe**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, on application of Dallas Market Center Co., **grant** the request of this applicant to provide an alternate landscape and tree mitigation plan as a special to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the \$57,054 as a requirement for the inch for inch replacement for the protected trees removed is required.

SECONDED: No one

**\*The motion was withdrawn by the maker of the motion.**

**MOTION#2: Jaffe**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, on application of Dallas Market Center Co., **deny** the special exception to the landscape and tree preservation requirements requested by this applicant **without prejudice** because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property.

SECONDED: **Wise**

AYES: 1–Jaffe

NAYS: 3 - Cox, Brannon, Wise,

MOTION FAILED 1 – 3

**MOTION#3: Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, on application of Dallas Market Center Co., **grant** the request of this applicant to provide an alternate landscape and tree mitigation plan as a special to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape and tree mitigation plan is required and the relief is only for 370 caliper inches of trees.

**SECONDED: Wise**

**AYES:** 3–Cox, Brannon, Wise

**NAYS:** 1 -Jaffe

**MOTION FAILED 3 –1 \*The motion to grant the request did not get four concurring votes, therefore the motion was deemed denied with prejudice.**

**MOTION#4: Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, **reconsider** the previous motion and **deny the request without prejudice.**

**SECONDED: Wise**

**AYES:** 1–Jaffe

**NAYS:** 3 - Cox, Brannon, Wise

**MOTION FAILED 3 –1**

**MOTION#5: Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, hold this matter under advisement until **September 21, 2005.**

**SECONDED: Brannon**

**AYES:** 3–Cox, Brannon, Wise

**NAYS:** 0 –

**NO VOTE:** 1- Jaffe

**MOTION PASSES 3 –0**

**BOARD OF ADJUSTMENT ACTION: September 21, 2005**

**APPEARING IN FAVOR:**

David Voss, 6536 Kenwell, Dallas, TX  
Caye Cook, 6425 Royalton Dr., Dallas, TX

**APPEARING IN OPPOSITION:**

No one



**MOTION: Jaffe**

I move that the Board of Adjustment, in Appeal No. **BDA 045-270**, on application of Dallas Market Center Co., **deny** the special exception to the landscape and tree preservation requirements requested by this applicant **without prejudice** because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property.

**SECONDED: Gillespie**

**AYES: 5**– Cox, Brannon, Gillespie, Wise, Jaffe

**NAYS: 0** -

**MOTION PASSED 5 – 0** (unanimously)

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**MOTION: Brannon**

I move to adjourn this meeting.

**SECONDED: Jaffe**

**AYES: 5**– Cox, Brannon, Gillespie, Wise, Jaffe

**NAYS: 0** -

**MOTION PASSED 5 – 0** (unanimously)

**3:17 P.M.** - Board Meeting adjourned for September 21, 2005.

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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