

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
WEDNESDAY, OCTOBER 15, 2008**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, John McBride, alternate member and Albert Ruiz, alternate member

MEMBERS ABSENT FROM BRIEFING: Samuel Gillespie, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, John McBride, alternate member and Albert Ruiz, alternate member

MEMBERS ABSENT FROM HEARING: Samuel Gillespie, regular member

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

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

\*\*\*\*\*  
**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 15, 2008 docket.**

\*\*\*\*\*

**1:08 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 September 17, 2008 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 15, 2008**

**MOTION: Beikman**

I move approval of the Wednesday, **September 17, 2008** Board of Adjustment Public Hearing minutes.

**SECONDED: Chernock**

**AYES: 5**– Reynolds, Beikman, Chernock, McBride, Ruiz

**NAYS: 0** –

**MOTION PASSED 5 – 0** (Unanimously)

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 2**

To consider and adopt Board of Adjustment Panel B's 2009 public hearing schedule.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 15, 2008**

**MOTION: Beikman**

I move **approval** of the Board of Adjustment Panel B's 2009 public hearing schedule.

**SECONDED: Chernock**

**AYES: 5**– Reynolds, Beikman, Chernock, McBride, Ruiz

**NAYS: 0** –

**MOTION PASSED 5 – 0** (Unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 078-138

**BUILDING OFFICIAL'S REPORT:**

Application of Thom Hubacek, Jr. for a special exception to the landscape regulations at 2807 Harry Hines Blvd. This property is more fully described as Lots 3 & 4 in City Block 927 and is zoned PD-193 (MF-2) (H/96) which requires mandatory landscaping. The applicant proposes to provide an alternate landscape plan which will require a special exception.

**LOCATION:** 2807 Harry Hines Blvd.

**APPLICANT:** Thom Hubacek, Jr.

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an outdoor plaza area on a site developed as a city park (Pike Park).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The applicant is unable to fully comply with contradictory landscape requirements imposed upon the subject site since it is zoned both PD No. 193 (MF-2 Subdistrict) and Historic District Overlay No. 96. The applicant is only seeking landscape exceptions from the Board of Adjustment in areas where the PD No. 193 landscaping requirements on the site (related to street tree and sidewalks) contradict specific landscaping requirements imposed on the site in conjunction with Historic Overlay District No. 96 (including the provisions that require retention of the original retaining wall on the site, and the maintenance of mature and established trees on the site).
- The alternate landscape plan submitted in conjunction with this appeal is essentially the same landscape plan (with an added plaza area and 8 new trees) that was approved by Board of Adjustment Panel B in April of 2005 requested in conjunction with reconstructing an existing baseball field on the subject site.
- If the board were to grant this request with the staff suggested condition imposed, the site would be minimally "excepted" from the sidewalk and street tree provisions of PD No. 193, and would simultaneously comply with the February 2008 City of Dallas Landmark Commission-approved landscape plan of the subject site.
- The City's Chief Arborist recommends approval of this request whereby if the condition mentioned above is imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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

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

**GENERAL FACTS:**

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

The applicant has submitted a landscape plan of the subject site whereby, according to the City of Dallas Chief Arborist, the applicant seeks relief from the landscape requirements of the PD No. 193.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment A). The memo stated the following:
  - The special exception request is triggered by the new construction of a plaza and the addition of landscaping in Historic District 96, Pike Park.
  - Deficiencies:
    - The site is currently in non-compliance with Section 51P-193.126 for the mandatory provisions required for MF-2 Subdistricts specifically related to street trees (1 per 25 feet of frontage in the tree planting zone), and sidewalks (4 feet wide between 5' – 10' off curb). (Note that although the arborist's memo mentions a deficiency related to planting area requirements, the Chief Arborist has informed the Board Administrator since the memo was written that the site is in compliance with the planting area requirements). The construction of the new plaza area has reinstated the mandatory PD No. 193 landscape requirements for the property.
    - Sidewalk – Maintain existing 5' wide sidewalk within 3' setback from curb to preserve the existing retaining wall (as required by the Landmark Commission) as well as 4' wide sidewalk adjacent to Lyte Street.
    - Street trees – Requires 15 trees within planting zone near curb but proposes to maintain 5 existing trees located behind sidewalk. The applicant proposes to maintain existing landscaping as well.
  - Factors:
    - The Board of Adjustment Panel B approved a landscape plan in conjunction with BDA045-159 on April 20, 2005 that was an alternative to PD No. 193 requirements.
    - Historic District No. 96 has provisions for landscaping that are required to be met in this special district. More directly, Section 3, Building Site and Landscaping, state the following items within the provisions:

- Landscaping must be appropriate, enhance the structure and surroundings, and not obscure significant views of protected facades.
- The original retaining wall must be maintained.
- Existing plant massings of trees and shrubs must be retained and reinforced.
- Existing trees are protected, except that unhealthy or damaged trees may be removed.
- Mature and established trees must be maintained.
- The Landmark Commission approved the current proposed layout on February 11, 2008.
- The proposed plan is identical to the original plan from April of 2005 with the exception of the plaza and addition of eight trees in that vicinity. The plan maintains all existing plantings and the original retaining wall.
- Recommendation:
  - Approval

**Zoning:**

- Site: PD No. 193 (MF-2 Subdistrict, H/96) (Planned Development District, Multifamily, Historic)
- North: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)
- South: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)
- East: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)
- West: PD No. 193 (MF-2 Subdistrict, H/64) (Planned Development District, Multifamily, Historic)

**Land Use:**

The approximately 4 acre subject site is a city park (Pike Park) The areas to the north and west are developed with residential uses; the area to the east is developed with office uses; and the area to the south is developed as parking uses.

**Zoning/BDA History:**

- |  |  |
|--|--|
| <p>1. BDA 45-159, Property at 2807 Harry Hines Boulevard (the subject site)</p>  | <p>On April 20, 2005, the Board of Adjustment Panel B granted a request for a landscape special exception and imposed the following condition: compliance with the submitted revised landscape plan is required. The case report stated that the request was made in conjunction with reconstructing an existing baseball field with bleachers, restrooms, and concession facilities on a site developed as a city park (Pike Park).</p> |
| <p>2. BDA 012-143, 2722-2728 Akard and 2721-2727 Harry Hines Boulevard (the lot immediately south of the subject site)</p> | <p>On August 27, 2002, the Board of Adjustment Panel A followed the staff recommendation and granted an appeal for a landscape special exception requested in conjunction with developing a surface parking lot on a site that was undeveloped. The board imposed a</p>  |

condition whereby the applicant had to fully comply with the submitted revised landscape plan.

**Timeline:**

August 26, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Sept. 18, 2008: 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."

Sept. 29, 2008: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the September 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the October 3<sup>rd</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 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

October 6, 2008      The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an outdoor plaza area on a site developed as a city park (Pike Park).
- The subject site is dually zoned PD No. 193 (MF-2 Subdistrict) and City of Dallas Historic Landmark Site – Historic District Overlay No. 96. PD No. 193 imposes certain landscaping requirements on the site related to street tree and sidewalks that contradict specific landscaping requirements (including the provisions that require retention of the original retaining wall on the site and the maintenance of mature and established trees on the site) within the Historic Overlay zoning.
- The alternative landscape plan submitted in conjunction with this appeal is the same landscape plan that was approved by the City of Dallas Landmark Commission on February 4, 2008, and essentially the same alternative landscape plan (with an added plaza area and 8 new trees) that was imposed as a condition by Board of Adjustment Panel B in their approval of a landscape special exception in April of 2005 made in conjunction with reconstructing an existing baseball field on the site.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
  - maintaining the existing 5’ wide sidewalks with 3’ setbacks from the curb on Harry Hine Boulevard (to protect the Landmark-required retaining wall) and a 4’ wide sidewalk on Lyte Street when sidewalks are required to be 4’ wide and located between 5’ – 10’ off the curb; and
  - maintaining 5 existing trees located behind the sidewalk on Harry Hines Boulevard when 15 trees are required to be located in the tree planting zone.
- The City of Dallas Chief Arborist supports the request.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where a Landmark Commission-approved plan has been submitted that is deficient in the sidewalk and street tree requirements of PD No. 193) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted landscape plan, the site would be “excepted” from full compliance to the sidewalk and street tree requirements of the Oak Lawn PD landscape ordinance.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 15, 2008**

**APPEARIN IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Beikman**

I move that the Board of Adjustment grant application **BDA 078-138** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

**SECONDED: McBride**

**AYES:** 5– Reynolds, Beikman, Chernock, McBride, Ruiz

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 078-126(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Jose Luis Araujo for a special exception to the side yard setback regulations at 3062 Storey Lane. This property is more fully described as Lot 11 in City Block 11/5776 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a carport for a single family residential dwelling in a side yard and provide a 2 foot setback, which will require a special exception of 3 feet.

**LOCATION:** 3062 Storey Lane

**APPLICANT:** Jose Luis Araujo

**REQUEST:**

- A special exception to the side yard setback regulations of 3 feet is requested to maintain a carport in the site’s 5 foot side yard setback.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback for a carport since the basis for this type of appeal is when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

## **STANDARD FOR A VARIANCE:**

The board may grant a special exception to the side yard requirements in this section for a carport for a single family or duplex use when, in the opinion of the board the carport will not have a detrimental impact on surrounding properties.

In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of the surrounding properties will be adversely affected.
- (C) The suitability of the size and location of the carport.
- (D) The materials to be used in construction of the carport.

The storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.

## **GENERAL FACTS:**

- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'. The site is located on the 3000 block of Storey Lane. A scaled site plan has been submitted that shows that the existing carport is 2 feet from the side property line.
- The site is flat, rectangular in shape (60' x 120') and 7,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD, the site was developed in 1950 with a single family home that is in "average" condition with 1102 square feet of living space. DCAD states that there is an attached carport (336 sq. ft) on the property.
- A 5' side yard setback is required in the R-7.5(A) zoning district. The applicant submitted a site plan indicating a "proposed canopy" on the site that is located 2 feet from the side yard property line (or 3 feet into the 5 foot side yard setback).
- There are other carports in the immediate vicinity of the subject site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for carports in the side yard setback with a specific basis for this type of appeal.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

**Zoning/BDA History:**

There is no case history for this site or other properties in the immediate area.

**Timeline:**

August 5, 2008      The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.

September 18, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

September 24, 2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria or standard that the board will use in their decision to approve or deny the request;
- the September 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the October 3<sup>rd</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 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 October public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

September 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The submitted site plan indicates that about 16% of the proposed carport structure's 307.5 square foot footprint is to be located in the site's 5' side yard setback.
- The site is flat, rectangular in shape (60' x 120') and 7,200 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the special exception to the 5' side yard setback regulations to maintain an approximately 307.5 square foot carport attached to a single family home that is 2 feet from the side yard property line (or 3 feet into the 5 foot side yard setback) will not have a detrimental impact on surrounding properties.
- Granting this special exception would allow the carport to remain in its current location 2 feet away from the site's side yard property line (or 3 feet into the required 5' side yard setback).
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; require the carport in the side yard setback to be retained in its current design, material, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
  - Compliance with the submitted site plan, elevation, and sectional view document.
  - The carport structure must remain open at all times.
  - There is no lot-to-lot drainage in conjunction with this proposal.
  - All applicable building permits are obtained.
  - No item (other than a motor vehicle) may be stored in the carport.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 15, 2008**

APPEARIN IN FAVOR: Luis Araujo, 3062 Storey Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **McBride**

I move that the Board of Adjustment, in Appeal No. **BDA 078-126** on application Jose Luis Araujo, **grant** the request of this applicant to maintain a carport as a special exception to the minimum side yard requirements contained in the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will not have a detrimental impact on surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted site plan, elevations, and sectional view document is required.

2. The carport structure must remain open at all times.
3. Lot-to-lot drainage is not permitted in conjunction with this proposal.
4. All applicable building permits must be obtained.
5. No item (other than a motor vehicle) may be stored in the carport.

**SECONDED: Ruiz**

**AYES: 0-**

**NAYS: 5 – Reynolds, Beikman, Chernock, McBride, Ruiz**

**MOTION FAILED 0 – 5**

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

\*\*\*\*\*

**FILE NUMBER:** BDA 078-130(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Benny Duncan represented by P. Michael Jung for a special exception to the visibility obstruction regulations at 6010 Walnut Hill Lane. This property is more fully described as Lot 1 in City Block A/5479 and is zoned R-10(A) which requires a 20 foot visibility triangle at driveway approaches and a 45 foot visibility triangle at street intersections. The applicant proposes to construct and maintain a fence and vegetation for a residential structure in a required 20 foot visibility obstruction triangle and a 45 foot visibility obstruction triangle, which will require special exceptions.

**LOCATION:** 6010 Walnut Hill Lane

**APPLICANT:** Benny Duncan  
Represented by P. Michael Jung

**REQUESTS:**

A special exception to the visibility obstruction regulations is requested in conjunction with constructing and maintaining a fence and vegetation for a residential structure in a required 20 foot drive approach visibility triangle and a 45 foot street intersection visibility triangle.

**STAFF RECOMMENDATION (visibility obstruction):**

Denial

Rationale:

- The Development Services Senior Engineer submitted a comment sheet marked “Recommends that this be denied: potential traffic hazard even at this signalized intersection.”

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:**

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

**GENERAL FACTS:**

- The property is located on the southeast corner of Preston Road and Walnut Hill Lane and is developed with a single family structure.
- The site is zoned R-10(A) which requires a visibility triangle of 20' at driveway approaches and 45' at street intersections.

The 45 foot visibility triangle exists at the northwestern corner of the lot (the southeastern corner of Preston and Walnut Hill). The property has three 20' visibility triangles at the drive approaches on Walnut Hill Lane and one 20' visibility triangle at the drive approach on Preston Road.

**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) with SUP 971  
South: R-10(A) (Single family residential 10,000 square feet).  
East: R-10(A) (Single family residential 10,000 square feet).  
West: R-1ac(A) (Single family residential 1 acre)

**Land Use:**

The subject site is developed with a single family structure. The properties to the south, east, and west are developed with single family structures. The property to the north is developed with a permitted special use.

**Zoning/BDA History:**

BDA 056-045. The Board of Adjustment Panel A, granted a special exception to the fence regulations, on December 13, 2005.

**Timeline:**

August 26, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 18, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 24, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the September 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the October 3<sup>rd</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 October public hearing after considering the information or evidence and testimony presented to them by the applicant and all other interested parties.

September 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Development Services Senior Engineer submitted a review comment sheet recommending denial to the special exception to the visibility obstruction regulations.

### **STAFF ANALYSIS:**

- The applicant proposes to maintain a fence and vegetation in the 45' visibility triangle at the intersection of Preston and Walnut Hill and at the 20' visibility triangles at the three driveway approaches on the property.
- According to DCAD this 2,891 square foot single family structure was constructed in 1956 and is listed in "good: condition.
- A review of the site plan and site visit reveals the site has three driveway visibility triangles; two along Walnut Hill Lane and another along Preston Road.
- The visibility triangle on the eastern property line (Walnut Hill Lane) is created by a driveway on the adjoining property. The subject site has a fence and vegetation in the 20 foot visibility triangle.

- The City's Senior engineer reviewed the site plans and has recommended denial of the special exception.
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard
- If the Board were to grant the special exception to the visibility obstruction regulations, it may impose compliance with submitted site plan and elevation.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 15, 2008**

**APPEARING IN FAVOR:** Michael Jung, 4400 Bank of America Plaza, Dallas, TX  
Benny Duncan, P.O. Box 671099, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**\*2:35 PM.: Member Ruiz was excused and left the meeting. Therefore he did not hear or vote on this matter.**

**MOTION: Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 078-130**, hold this matter under advisement until **November 19, 2008**.

**SECONDED: Beikman**

**AYES: 4 – Reynolds, Beikman, Chernock, McBride**

**NAYS: 0 –**

**MOTION PASSED 4 – 0 (unanimously)**

\*\*\*\*\*

**FILE NUMBER: BDA 078-137**

**BUILDING OFFICIAL'S REPORT:**

Application of Greg Barnett for The 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 and is zoned PD-193 (MF-3-D) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a porte-cochere and provide a 1 foot front yard setback which will require a special exception of 24 feet.

**LOCATION: 2828 Hood Street**

**APPLICANT: Greg Barnett for The Plaza at Turtle Creek Residents Association, Inc.  
Represented by Roger Albright**

**REQUEST:**

- A special exception to the front yard setback regulations of 24' is requested in conjunction with replacing an existing canopy with a roof on an approximately 900 square foot porte cochere that is attached to a multi-story residential building (The Plaza at Turtle Creek).

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the front yard requirements for a porte cochere since the basis for this type of appeal is somewhat based upon whether the board finds that the structure will not adversely affect neighboring property.

**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.

A site plan has been submitted that indicates that the porte cochere is located 1' from the front property line. (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 20' 1" wide at the building line, and 38' 1" wide in the area between the building/setback line and the front property line).

The submitted elevation indicates a porte cochere structure with the following notations: "new roof to replace existing canopy" with "existing columns and low wall, typ."

Note that both the submitted site plan and elevation submitted in conjunction with this appeal (BDA078-137) are the same plans submitted in conjunction with (and imposed as conditions by the board in February of 2008 to) BDA078-026.

**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 078-026, 2828 Hood Street (the subject site)  
On February 13, 2008, the Board of Adjustment Panel B granted a request for a special exception to front yard setback regulations of 24', subject to the following conditions: compliance with the submitted site plan and elevation is required. The case report stated the request was made in conjunction with constructing an approximately 900 square foot porte cochere on an 18-story multifamily structure. This "granted" application has been deemed "denied without prejudice" since the applicant failed to make application for a building permit within 180 days from February 13, 2008).
2. BDA 045-264, 2828 Hood Street (the subject site)  
On September 21, 2005, the Board of Adjustment Panel B granted a request for a special exception to front yard setback regulations of 24', subject to the following conditions: compliance with the submitted site plan and elevation is required. The case report stated the request was made in conjunction with constructing an approximately 950 square foot porte cochere on an 18-story multifamily structure.
3. 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 stated the requests were made in conjunction with constructing an 18-story multifamily structure.

4. 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 stated 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.

5. 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:**

- Sept. 3, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 18, 2008: 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."
- Sept. 19, 2008: 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 September 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the October 3<sup>rd</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 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 October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- This porte cochere special exception request is once again made in conjunction with replacing an existing canopy with a roof on an approximately 900 square foot porte cochere that is attached to a multi-story residential building (The Plaza at Turtle Creek) - a proposed encroachment that was first “special excepted” by the Board of Adjustment in September of 2005 as a porte cochere with awning (and subsequently built) then “special excepted” again by the Board of Adjustment in February of 2008 as a porte cochere with a *roof* – the exact same application made in this request.
- The applicant returns with this request (BDA078-137) to reinstate the same special exception granted by Board of Adjustment Panel B on February 13, 2008 (BDA078-026). The applicant is required to re-file a board application before he can get a permit to “roof” the existing awning since he failed to meet the Dallas Development Code provision stating that an applicant is required to file an application for a building permit or certificate of occupancy within 180 days from the favorable action of the board. The code states if the applicant fails to file an application within this 180 day time period, the request is automatically denied without prejudice and the applicant must begin the process to have his request heard again, hence this new application: BDA078-137.
- The existing porte cochere is rectilinear in shape and does not exceed 25 feet in width at the building line. (The structure is 20’ 1”-wide at the building line, and 38’ 1”-wide in the area between the building/setback line and the front property line).
- As in September of 2005 and in February of 2008, 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 neighboring properties. The submitted site plan (identical to the plan submitted by and approved

as a condition to the special exception granted by the board in February of 2008) denotes the location of four “existing trees” located between the existing porte cochere and Hood Street. If the Board were to grant the request and impose a condition in conjunction with this request that compliance with the submitted site plan is required, the retention/provision of these trees would be deemed part of condition that must be met in conjunction with the special exception.

- As of October 6, 2008, one letter (from the Oak Lawn Committee) has been submitted in opposition to the request, and no letters have been submitted in support.
- The applicant has the burden of proof in establishing the following with regard to the special exception to the front yard setback regulations of 24':
  - The structure is rectilinear in shape and does not exceed 25 feet in width at the building line, and the structure will not adversely affect neighboring property.
- 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 900 square feet in area located 1’ away from the Hood Street front property line. In addition, if the Board were to impose the submitted elevation and site plan as a condition to the request, the structure in the setback would be restricted to that what is shown on these documents – a structure to be comprised of a “new roof to replace existing canopy” with “existing columns and low wall, typ.”, and a structure to be screened from Hood Street by four existing trees.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 15, 2008**

APPEARIN IN FAVOR: Roger Albright, 3301 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

**\*Member Ruiz was excused and left the meeting. Therefore he did not hear or vote on this matter.**

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 078-137**, on application of Greg Barnett/Plaza at Turtle Creek Residents Association, Inc., represented by Roger Albright, **grant** the request of this applicant to construct and maintain a porte-cochere as a special exception to the front yard setback requirements of PD 193, because our evaluation of the property and the testimony shows that the structure is rectilinear in shape, does not exceed 25 feet in width at the building line, and 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 is required.

SECONDED: **Chernock**

AYES: 4– Reynolds, Beikman, Chernock, McBride

NAYS: 0 –  
MOTION PASSED 4 – 0 (unanimously)

\*\*\*\*\*

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: McBride  
AYES: 5– Reynolds, Beikman, Chernock, McBride  
NAYS: 0 –  
MOTION PASSED 5 – 0 (unanimously)

**3:00 P.M.** - Board Meeting adjourned for **October 15, 2008.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

\*\*\*\*\*

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