

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, OCTOBER 21, 2009**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Lem Thomas, Asst. City Attorney, Jerry Svec, Project Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Jerry Svec, Project Engineer and Trena Law, Board Secretary

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 21, 2009 docket.**

1:07 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 16, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2009

MOTION: Gillespie

I move approval of the Wednesday, **September 16, 2009** Board of Adjustment Public Hearing minutes.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding *Larry Meletio and Jill Meletio v. City of Dallas, Texas, and Board of Adjustment, Dallas, Texas*, Civ. Action No. 3:09-CV-1205-M (N.D. Tex.), BDA 089-057, Property at 4341 Beechwood Lane

***Not an action item.**

FILE NUMBER: BDA 089-082

BUILDING OFFICIAL’S REPORT:

Application of Santos T. Martinez of Masterplan for a special exception to the side yard setback regulations at 5814 Vickery Boulevard. This property is more fully described as Lot 4 in City Block 10/1920 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to modify and maintain a carport and provide a 0 foot setback which will require a special exception of 5 feet.

LOCATION: 5814 Vickery Boulevard

APPLICANT: Santos T. Martinez of Masterplan

REQUEST:

- A special exception to the side yard setback regulations of 5' is requested in conjunction with modifying an existing metal-columned carport. Staff is unable to assess from the series of materials and plans submitted by the applicant (plans and emails included in this staff report labeled Attachments A – G) from when the application was originally submitted in May of 2009 what is actually being proposed in conjunction with modifying the existing carport. The site is developed with a one-story duplex.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations 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 SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow 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 a special exception, the Board shall consider the following:

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

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

GENERAL FACTS:

- A 5' side yard setback is required in the R-7.5(A) zoning district.
The applicant has submitted a site plan indicating the location of "existing carport area" on the site that is located on from the site's eastern side property line (or 5' into the 5' side yard setback).
The applicant submitted an elevation with the application on May 7, 2009 that did not denote the carport in the "front elevation."
On July 20, 2009, the applicant submitted a revised elevation document (not to scale) (Attachment C) that documented front and side elevations with the following notations: "brick to be placed around columns" and "existing steel carport to remain."
The "left elevation" on the elevation document entitled "Attachment C" showed the roof line of the carport to be higher than the cornice line of the duplex on the "left elevation" while the "front elevation" showed the roof line of the carport to be flat and in line with the cornice line of the existing duplex structure – a height denoted of 9'.

On August 4, 2009, the applicant submitted a revised elevation document dated 8-4-09 (Attachment E) that documented front and side elevations where the roof lines on both elevations appeared to match, and where the "front elevation" had a denoted height of 11'.

On August 31, 2009, the applicant submitted a revised elevation document dated 8-18-09 (Attachment F) that documented front and side elevations showing the roof line of the carport on the "front elevation" to be higher than the cornice line of the duplex while the roof line of the carport on the "left elevation" is in line with the cornice line of the duplex.

On October 9, 2009, the applicant submitted a series of documents (Attachment G), entitled as follows: "Front elevation Option A: Painted Wood;" "Front elevation Option B: Brick;" "Detail 2;" "Painted Wood Option A/Detail 1;" "Masonry Option B/Detail 2." In addition, a document was submitted without a title, north arrow, street reference or property lines on three sides of the structure that one may assume to be a floor plan of the structure on the subject site. The documents entitled "Attachment G" came with no cover letter or explanation that described what the documents were and whether these documents were to substitute for or add to the documents that had been submitted prior to/at the September 16th public hearing.

- The following information was gleaned from the submitted site plan:
 - Approximately 60' in length and approximately 14' in width (approximately 840 square feet in total area) that is proposed to be maintained attached to a duplex structure that is approximately 70' in length and approximately 30' in width (with a total approximate square footage of 2,100 square feet).
- The subject site is 140' x 50' (or 7,000 square feet) in area.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 300 square feet of the approximately 840 square foot carport is located in the site's eastern 5' side yard setback.
- According to DCAD, the site is developed with a structure in "unsound" condition built in 1940 with 2,204 square feet of living area, and an 820 square foot attached aluminum carport.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- A number of emails and plans between the applicant and the Board Administrator materialized from when this application was submitted on May 7, 2009 (see Attachments A-F).
- The Board determined at their August 18th hearing that the applicant failed to comply with the following Dallas Development Code provision related to the posting of notification signs: "The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with

street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.” As a result the board chose to delay hearing testimony on this application until their next regularly scheduled hearing – September 16, 2009.

- On August 31, 2009, the applicant submitted a revised elevation document dated 8-18-09 (see Attachment F).
- The Board of Adjustment conducted a public hearing on this application on September 16, 2009, and moved to delay action on the matter until their October 21st hearing.
- The applicant submitted additional information beyond what was submitted with the original application and what was presented at the September 16th briefing/hearing (see Attachment G). This information included documents with the following titles:
 - “Front elevation Option A: Painted Wood”
 - “Front elevation Option B: Brick”
 - “Detail 2”
 - “Painted Wood Option A/Detail 1”
 - “Masonry Option B/Detail 2”
 - a document without a title, north arrow, street reference or property lines on three sides of the structure that one may assume to be a floor plan of the structure on the subject site.

(Note that the documents described above as “Attachment G” came with no cover letter or written explanation that described what the documents were and whether these documents were to substitute for or add to the documents that had been submitted prior to/at the September 16th public hearing).

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family residential 7,500 square feet)
North: R-7.5 (A) (Single family residential 7,500 square feet)
South: CD No. 12 (Conservation District)
East: R-7.5 (A) (Single family residential 7,500 square feet)
West: R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

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

Zoning/BDA History:

- | | |
|---|--|
| 1. Miscellaneous Item #2, Property located at 5814 Vickery Boulevard (the subject site) | On February 18, 2009, the Board of Adjustment Panel B denied the applicant’s request (who at this time was Jill and Kyle Byrd) to waive the filing fee to be submitted |
|---|--|

in conjunction with a potential board of adjustment application – a special exception to the side yard setback regulations for a carport.

Timeline:

- May 7, 2009 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 9, 2009: 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 Rules of Procedure that states, “If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking
- July 10, 2009: The Board Administrator and the applicant exchanged emails regarding the posting of the notification sign and what appeared to be an incomplete application (see Attachment A).
- July 14, 2009: The Board Administrator and the applicant exchanged emails about what was the issue of the request (see Attachment B).
- July 17, 2009: The Board Administrator contacted the applicant and shared the following information via phone and email:
- an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- July 20, 2009: The applicant submitted a revised elevation of the carport to be modified on the subject site (see Attachment C).
- July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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.

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

July 30, 2009: The Board Administrator forward an email and photos taken by a city staff person of the sign as it was posted on the site on June 3, 2009 (see Attachment D).

August 4, 2009: The applicant submitted a revised elevation of the carport to be modified on the subject site (see Attachment E).

August 19, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their September 16th public hearing in order for the applicant to comply with the Dallas Development Code provisions related to the posting of notification signs.

August 20, 2009: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

August 31, 2009 The applicant submitted additional information to the Board Administrator (see Attachment F).

Sept. 1, 2009The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September 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, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.

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

Sept. 16, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their October 21st public hearing.

Sept. 17, 2009: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 5th deadline to submit additional evidence for staff to factor into their analysis; and the October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials; and

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

October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application 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 Chief Arborist, the Sustainable Development Department Project 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 9, 2009 The applicant submitted additional information to the Board Administrator (see Attachment G).

STAFF ANALYSIS:

- This request focuses on modifying and maintaining an existing carport that is located on the site’s eastern side property line (or as much as 5’ into the 5’ side yard setback). The applicant has written and submitted a series of elevations that represent a modification to an existing metal-columned carport with a roll down door (of which the City has no record of issuing a permit for). Staff is unable to assess from the series of materials and plans submitted by the applicant (plans and emails included in this staff report labeled Attachments A – G) from when the application was originally submitted in May of 2009 what is actually being proposed in conjunction with modifying the existing carport.
- The applicant shall have the burden of proof in establishing the following:
 - That granting this special exception to the side yard setback regulations of 5’ (requested in this case to modify and maintain an approximately 840 square foot carport attached to a duplex with varying heights and materials depending on which submitted elevation one would be consider located on the eastern side property line or 5’ into the 5’ side yard setback) will not have a detrimental impact on surrounding properties.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 300 square feet of the approximately 840 square foot carport is located in the site’s eastern 5’ side yard setback.
- Staff informed the Board of Adjustment at their September 16th briefing on this application that 11 letters had been submitted in support, 1 letter had been submitted that was neutral, and 6 letters had been submitted in opposition.
- 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; would require the carport in the side yard setback to be constructed and maintained in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the modified carport may cause on the lot immediately east:

1. Compliance with the submitted site plan and revised elevation (to be determined from of the number of submitted elevations submitted by the applicant over the course of the five months from when this application was submitted) is required.
2. The carport structure must remain open at all times.
3. There is no lot-to-lot drainage in conjunction with this proposal.
4. All applicable building permits are obtained.
5. No item (other than a motor vehicle) may be stored in the carport.

Note that there appears to be a discrepancy between the heights of the carport as denoted on the “left” and “front” elevations of the elevations document dated 8-18-09 (Attachment F). If the board were to want to impose this elevation as a condition to the request, they may feel it is necessary for the applicant to address this matter and provide clarity to this submitted elevation document.

BOARD OF ADJUSTMENT ACTION: AUGUST 19, 2009

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., Dallas, TX
 Kyle Byrd, 5734 Vickery, Dallas, TX

APPEARING IN OPPOSITION: Brian Sloss, 5818 Vickery Blvd., Dallas, TX

MOTION #1: Wilson

I move that the sign was posted in sufficient time in order to hear the matter in Appeal No. **BDA 089-082**.

SECONDED: Chernock

AYES: 2– Chernock, Wilson

NAYS: 3 –Reynolds, Gillespie, Beikman,

MOTION FAILED 3 – 2

MOTION #2: Wilson

I move that the Board of Adjustment in Appeal No. **BDA 089-082**, hold this matter under advisement until **September 16, 2009**.

SECONDED: Gillespie

AYES: 4– Reynolds, Gillespie, Beikman, Wilson

NAYS: 1 – Chernock

MOTION PASSED 4 – 1

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2009

APPEARING IN FAVOR: Steve Holy, 5726 Vickery Blvd., Dallas, TX
 Mark Winer, 1220 St. Monet Dr., Irving, TX
 Jill Byrd, 5734 Vickery Blvd., Dallas, TX
 Kyle Byrd, 5734 Vickery Blvd., Dallas, TX
 Santos Martinez, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Patricia Carr, 5843 Vanderbilt, Dallas, TX

2:15 P.M.: Break

2:20 P.M.: Resumed

MOTION #1: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 089-082** on application of Santos Martinez, represented by Masterplan, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will have a detrimental impact on surrounding properties.

SECONDED: **No one**

MOTION FAILED FOR LACK OF A SECOND

MOTION #2: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 089-082**, hold this matter under advisement until **October 21, 2009**.

SECONDED: **Chernock**

AYES: 4–Gillespie, Beikman, Chernock, Wilson

NAYS: 1 – Reynolds

MOTION PASSED 4 – 1

BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2009

APPEARING IN FAVOR:

Santos Martinez, 900 Jackson St., Dallas, TX
Kyle Byrd, 5734 Vickery, Dallas, TX

APPEARING IN OPPOSITION:

Patricia Carr, 5842 Vanderbilt, Dallas, TX
Gay Hopkins, 6030 Monticello Ave., Dallas, TX

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-082** on application of Santos Martinez, represented by Masterplan, **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:

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

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

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 –0(unanimously)

2:11 P.M.: Break

2:16 P.M.: Resume

FILE NUMBER: BDA 089-113

BUILDING OFFICIAL’S REPORT:

Application of Joanna St. Angelo, represented by Mark Scruggs, for special exceptions to the landscape and tree preservation regulations at 3630 Harry Hines Boulevard. This property is more fully described as an irregularly shaped approximately .8157 acre tract of land in City Block 1/1000 and is zoned PD-193 (I-2) which requires mandatory landscaping and tree preservation. The applicant proposes to construct and maintain a structure and provide alternate landscape and tree mitigation plans which will require special exceptions to the landscape and tree preservation regulations.

LOCATION: 3630 Harry Hines Boulevard

APPLICANT: Joanna St. Angelo
Represented by Mark Scruggs

REQUESTS:

- The following appeals have been made in this application on a site developed with an institutional use (The Sammons Center for the Arts):
 1. A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 125’ long, 7’ wide “accessibility ramp” that would connect the structure on the site and its surface off-street parking lot to Harry Hines Boulevard; and
 2. A special exception to the tree preservation regulations is requested in conjunction with mitigating protected trees that are required to be removed in tandem with constructing and maintaining the aforementioned “accessibility ramp” on the site.

STAFF RECOMMENDATION (landscape and tree special exceptions):

Hold under advisement/delay final action until Board of Adjustment Panel B’s tentatively scheduled January 20, 2010 public hearing

Rationale:

- The delay of final action on these special exception requests until January 20, 2010 is necessary since that applicant and owner (City of Dallas) were recently informed that Dallas County plans to rebuild the access road from Harry Hines Boulevard to Oak Lawn Avenue which will affect the accessibility ramp project that triggers the landscape/tree preservation ordinance compliance which this appeal is based on. The applicant has determined that the new sidewalk cannot accommodate the ramp shown on the submitted alternate landscape plan, and that the ramp must now be redesigned which will in turn affect the alternate landscape plan submitted to the Board as part of this application.

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.

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 (related to the landscape special exception):

- 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.

PD No. 193 also states that with regard to when landscaping must be completed that "if a landscape plan is required under this section, all landscaping must be completed in accordance with the approved landscape plan before the final inspection of any structure on a lot or, if no final inspection is required, within 120 days of the date of the issuance of a landscape permit."

The applicant has submitted an alternate landscape plan where, according to the City of Dallas Chief Arborist, the applicant seeks relief from Section 51P-193. 126.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the special exception request (see Attachment A). The memo stated the following:
 - Trigger:
 - New construction of new pedestrian ramp.
 - Deficiencies:
 - The proposal would base landscape completion past the final inspection of the construction permit for new paving. The proposed plan does not conform to PD 193 Part 1.
 - Factors:
 - The property houses the Sammons Center for the Arts on a lot with significant topographical challenges and an unusual shape formed by the placement between the Tollway, Harry Hines Boulevard, and the Oak Lawn Avenue "clover leaf." Parking is limited and a new ramp is being built to accommodate pedestrian movement from remote parking north of Oak Lawn Avenue and to allow easier handicapped access.
 - The existing structure that is of a historic nature had been altered by roadway configuration. The odd configuration of the lots forces the sidewalk to abut the street on one side and a significant slope and the structure on the other side. The slopes prohibit the proper placement of required trees along the street frontage in the tree planting zone. The sidewalk could not be adjusted to the required area without significant engineering efforts, and not at all along the building façade.
 - Some existing landscaping will remain on the northeast corner along the Tollway but will be maintained and transitioned to accept three new trees. Steep slopes prohibit the planting of screening shrubs along Oak Lawn Avenue but new shrubs are to be installed facing Harry Hines Boulevard.
 - The addition of new nonpermeable surface to the property with the construction of the ramp requires the whole property to be in compliance with the PD 193 regulations unless the Board of Adjustment determines a "special exception will not compromise the spirit and intent" of the code.
 - Recommendation:
 - Approval of the submitted landscape plan to be completed within 24 months
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a letter that requested that the board delay action on the application until January 20, 2010 since Dallas County recently informed the City of Dallas Public Works and Transportation Department of their plans to rebuild the access road from Harry Hines Boulevard to

Oak Lawn Avenue which will affect the accessibility ramp project that triggers the landscape ordinance compliance which this appeal is based on. As a result, the new sidewalk cannot accommodate the ramp which now must be redesigned which will in turn affect the alternate landscape plan submitted to the Board as part of this application.

GENERAL FACTS (related to the tree preservation special exception):

- 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 Dallas Development Code additional states in section 51A-10.134(5) “if a property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

An attachment has been submitted with the application that states that “mitigation trees will be planted as part of the alternate landscape plan note above and completed in the same twenty four month time extension.”

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from tree preservation ordinance of Article X: more specifically, relief from Section 51A-10.134(5) pertaining to timing of tree replacement.
 - Trigger:
 - New construction of new pedestrian ramp and removal of two protected trees.
 - Deficiencies:
 - The proposed extension of tree replacement is 6 months beyond the time allowed under Article X for the completion of tree replacement under a letter of credit or performance bond.
 - Factors for consideration:
 - The two oak trees (15’ and 19” caliper red oaks) must be removed to complete the ramp construction. The tree removal will be approved by tree removal application to allow for the improvement to the property. The applicant agrees to mitigate per Article X with the possible exception of timing on the property to be incorporated into the landscaping. Two non-protected hackberry trees in inappropriate locations are slated for removal to minimize maintenance concerns. The hackberry trees will not require a tree removal permit. Tree replacement is not required for non-protected trees.

The applicant requests to extend the timing of replacement for the two protected trees to 24 months in conjunction with the completion of the landscaping, if approved by the Board of Adjustment. This would allow for the funding, planning, and completion of site work renovations prior to the installation of replacement trees.

- Recommendation

Approval of the addition of time to complete the tree replacement to be done in conjunction with the completion of the landscape plan within 24 months.

- The applicant submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a letter that requested that the board delay action on the application until January 20, 2010 since Dallas County recently informed the City of Dallas Public Works and Transportation Department of their plans to rebuild the access road from Harry Hines Boulevard to Oak Lawn Avenue which will affect the accessibility ramp project that triggers the landscape ordinance compliance which this appeal is based on. As a result, the new sidewalk cannot accommodate the ramp which now must be redesigned which will in turn affect the alternate landscape plan submitted to the Board as part of this application.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (I-2 Subdistrict)(H-14) (Planned Development District, Industrial, Historic)
North: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)
South: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)
East: PD No. 193 (D Subdistrict) (Planned Development District, Duplex)
West: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)

Land Use:

The subject site is developed with an institutional use (The Sammons Center for the Arts). The area to the north is developed with the Harry Hines Boulevard/Oak Lawn Avenue interchange; the areas to the east and south are developed as the Dallas North Tollway; and the area to the south is developed as a railroad line.

Zoning/BDA History:

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

Timeline:

August 26, 2009: 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. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Sept. 24, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment providing the public hearing date and panel that will consider the application; the October 5th deadline to submit additional evidence for staff to factor into their analysis; the October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application 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 Chief Arborist, the Sustainable Development Department Project 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 12, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).
- October 12, 2009 The applicant submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS (related to the landscape special exception):

- This request focuses on constructing and maintaining an approximately 125' long, 7' wide "accessibility ramp" that would connect the structure on the site and its surface off-street parking lot to Harry Hines Boulevard and not fully complying with landscape regulations.
- Approval of this landscape special exception request would allow the accessibility ramp to be constructed and maintained on the site developed as the Sammons Center for the Arts while allowing the site to not fully comply with the landscape requirements of PD No. 193.
- The City of Dallas Chief Arborist supports the request largely given the significant topographical challenges and an unusual shape of the formed by roadways surrounding it, the development on the subject site (an existing structure of historic nature), and the trigger in this case for full compliance with the Landscape Regulations – merely an accessibility ramp that connects the structure on the site and its surface off-street parking lot to Harry Hines Boulevard.
- The applicant has the burden of proof in establishing the following:

- The special exception will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- Even though the City of Dallas Chief Arborist supports this request, the applicant submitted a letter after the submittal of the City Arborist's support position - a letter that documents how Dallas County has recently informed the City of Dallas Public Works and Transportation Department of their plans to rebuild the access road from Harry Hines Boulevard to Oak Lawn Avenue which will affect the accessibility ramp project triggering the landscape ordinance compliance which this appeal is based on, and how as a result, the new sidewalk cannot accommodate the ramp which now must be redesigned. The applicant therefore has requested for a delay of final action on this request until January 20, 2010 since the new ramp design will in turn affect the alternate landscape plan submitted to the Board as part of this application.

STAFF ANALYSIS (related to the tree preservation special exception):

- The request focuses on obtaining additional time to mitigate protected trees to be removed on this site (i.e. trees to be removed in conjunction with constructing and maintaining the aforementioned "accessibility ramp" on the site).
- The City of Dallas Chief Arborist supports the applicant's request.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating the protected trees to be removed on the site) will unreasonably burden the use of the property (in this case, a site that is developed with a structure of historic nature – the Sammons Center for the Arts).
 - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees to be removed on the site in conjunction with constructing and maintaining the accessibility ramp on the site) will not adversely affect neighboring property.
- Even though the City of Dallas Chief Arborist supports this request, the applicant submitted a letter after the submittal of the City Arborist's support position - a letter that documents how Dallas County has recently informed the City of Dallas Public Works and Transportation Department of their plans to rebuild the access road from Harry Hines Boulevard to Oak Lawn Avenue which will affect the accessibility ramp project triggering the landscape ordinance compliance which this appeal is based on, and how as a result, the new sidewalk cannot accommodate the ramp which now must be redesigned. The applicant therefore has requested for a delay of final action on this request until January 20, 2010 since the new ramp design will in turn affect the alternate landscape plan submitted to the Board as part of this application.

BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2009

APPEARING IN FAVOR: Mark Scruggs, 1907 Marilla St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 089-113** hold this matter under advisement until **January 2010**.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 –0 (unanimously)

FILE NUMBER: BDA 089-116

BUILDING OFFICIAL’S REPORT:

Application of Dustin Tyler Fair for a special exception to the fence height regulations and a special exception to the single family use regulations at 9727 Audubon Place. This property is more fully described as Lot 11A in City Block 14/5587 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and limits the number of dwelling units to one. The applicant proposes to construct an 8 foot fence in required front yard setbacks which will require a special exception of 4 feet to the fence regulations and to construct an additional dwelling unit which will require a special exception to the single family use regulations.

LOCATION: 9727 Audubon Place

APPLICANT: Dustin Tyler Fair

October 21, 2009 Public Hearing Notes:

- The Board Administrator circulated an October 21st email from the applicant to the board members at the morning briefing – an email where the applicant requested that the board deny his requests without prejudice.

Deleted: the

REQUESTS:

- The following appeals have been made in this application on a site that is partially undeveloped and partially developed with a single family home
 1. A special exception to the fence height regulations of 4’ is requested in conjunction with replacing an existing approximately 4’ high open iron fence that spans approximately half the length of the subject site and located in the site’s 40’ Audubon Place front yard setback with a 6’ high open iron fence with an 8’ high open iron gate/stone entry columns flanked by 4’ long, 6’ – 7’ 6” high stone

wing walls that would span across the entire length of the site and be located in the site's two 40' Audubon Place and Park Lane front yard setbacks; and

2. A special exception to the single family regulations requested in conjunction with constructing and maintaining two-story, additional dwelling unit/"guesthouse/pool house" structure that would have (according to submitted plans) approximately 2,300 square feet "under roof" that would attach to the existing two-story single family home on the site that has (according to DCAD) 13,002 square feet of living area.

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (additional dwelling unit special exception):

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

GENERAL FACTS (related to fence height special exception):

- 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 subject site is zoned single family- R-1ac(A).

The applicant has submitted a site plan and a partial elevation indicating a fence/column/gate proposal that would be located in the site's two 40' front yard setbacks along Audubon Place and Park Lane and would reach a maximum height of 8'.

- The following information was gleaned from the submitted site plan:
 - The proposal would be approximately 460' in length parallel to Audubon Place with a recessed entryway and approximately 100' in length parallel to Park Lane.
 - The proposed fence is shown to be located at approximate distances of 9' – 15' from the front property lines or at approximate distances of about 21' – 50' from the pavement lines.
 - The proposed gate is shown to be located at an approximate distance of 22' – 40' from the Audubon Place front property line or at an approximate distance of 35' – 52' from the Audubon Place projected pavement line.
- The proposal is located on a site where one single family home would have direct/indirect frontage to the proposal on Audubon Place (a lot with no fence in the front yard setback higher than four feet) and where one single family home would have direct frontage to the proposal on Park Lane (a lot with a fence, columns, and gate in the front yard setback that appears to be the result of a fence height special exception granted by the Board of Adjustment in 2003 – BDA023-084).
- The Board Administrator conducted a field visit of the site and surrounding area along Audubon Drive (approximately 500 feet north of the site) and along Park Lane (approximately 500 feet east and west of the site) and noted the following additional fence/walls beyond the one described above which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - an approximately 6.5 foot high open metal fence with 7.5 foot high columns immediately north of the site (which appears to have been "excepted" by the board in 1996- BDA956-163); and
 - an approximately 6.6' open iron fence and 10 9.5' high solid iron columns three lots northeast of the site (which appears to have been "excepted" by the board in 1997- BDA967-313).

GENERAL FACTS (related to additional dwelling unit special exception):

- The Dallas Development Code limits the number of dwelling units on any lot where a single family use is permitted to one dwelling unit. In addition, the Dallas Development Code defines "single family" use as "one dwelling unit located on a lot;" and a "dwelling unit" as "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms."
The applicant has submitted a site plan and a series of floor plans and elevations denoting a proposed "pool house" and/or "guesthouse" structure that the Building Official has deemed a "dwelling unit" structure.
- Floor plans of the additional dwelling unit structure denote the following:
 - 1st floor plan:
 - 1,400 square feet interior; 2,340 square feet under roof
 - Comprised of game room, family room, breakfast area, kitchen, bar, pool equipment, utility, bath
 - 2nd floor plan:

- 800 square feet occupied
- Comprised of three bedrooms and three bathrooms
- Elevations of the additional dwelling unit structure denote its height to be approximately 24'.
- The site plan shows that the site is approximately 460' long and approximately 280' wide or approximately 3 acres in area whereby the proposed accessory structure/dwelling unit is located as close as 185' from the northern property line, as close as 75' from the eastern property line, as close as 280' from the southern property line; and as close as 150' from the western property line.
- DCAD records indicate that the site is developed with the following:
 - a single family home built in 2000 in very good condition with 13,002 square feet of living area;
 - a 780 square foot attached garage;
 - a pool; and
 - a 665 square foot detached garage.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA 012-237, Property at 9727 Audubon Place (the subject site) | On September 9, 2002, the applicant withdrew a request for a fence height special exception of 2' 6" that had been randomly assigned to Board of Adjustment Panel B. |
| 2. BDA 956-163, Property at 9769 Audubon Place (the lot immediately north of the subject site) | On March 26, 1996, the Board of Adjustment Panel A granted a request for special exception to the fence height to maintain a maximum 6.5 foot high open metal fence with 7.5 foot high columns, and a special exception to maintain an additional dwelling unit on the property, subject to deed restricting the property to prevent the additional unit as rental accommodations. |
| 3. BDA 967-313, Property at 9762 | On October 28, 1997, the Board of |

Audubon Place (three lots northeast of the subject site)

Adjustment Panel A granted a request for special exception to the fence height regulations to maintain a 6 foot 6 inch high fence with 6 foot 10 inch high columns, and a 9 foot 6 inch high entry gate/columns, and imposed the following conditions: Compliance with the submitted site/landscape/elevation plan is required. The case report stated that the request was made in conjunction with constructing and maintaining a 6.6' open iron fence and 10 9.5' high solid iron columns (including decorative lights) in the Audubon Place front yard setback.

4. BDA 023-084, Property at 4800 Park Lane (the lot immediately south of the subject site)

On June 16, 2003, the Board of Adjustment Panel C granted a request for special exception to the fence height regulations of 2' 10" and imposed the following conditions: Compliance with the submitted site/landscape plan and fence elevation is required. The case report stated that the request was made in conjunction with constructing and maintaining a maximum 6' 10" high cast iron fence with "brick underpinning;" maximum 6' 10" brick columns; and two maximum 6' 10" high cast iron gates at the two ingress/egress points on the eastern and western ends of the estate.

Timeline:

The applicant submitted an "Application/Appeal to the Board of Adjustment" dated "11/28/09" and related documents which have been included as part of this case report.

- Sept. 17, 2009: 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. 17, 2009: The Board Administrator spoke with the applicant and emailed him the following information:
- an attachment providing the public hearing date and panel that will consider the application; the October 5th deadline to submit additional evidence for staff to factor into their analysis; the

October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

October 6, 2009

The Board of Adjustment staff review team meeting was held regarding this application 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 Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: No objection to extra height of wall- Note: Proposed wall is in flood plain along Park Lane. Will need to comply with Flood Plain Requirements and 45 x 45 visibility triangle at intersection." (The Board Administrator has reviewed the location of the fence on the submitted site plan and determined that it is represented to be in compliance with the City's visual obstruction regulations at the intersection of Park Lane and Audubon Place).

STAFF ANALYSIS (related to fence height special exception):

- The request focuses on constructing and maintaining (from what appears on the submitted partial elevation and site plan) a 6' high open iron fence with an 8' high open iron gate/stone entry columns flanked by 4' long, 6' – 7' 6" high stone wing walls that would span across the entire length of the site and be located in the site's two 40' Audubon Place and Park Lane front yard setbacks. The proposal is to be located on a site developed with a single family home that has an existing 4' high open iron fence (intended to be replaced by the proposal) that spans across about half of the site's Audubon Place frontage.
- A site plan and a partial fence elevation document have been submitted indicating the location of the proposed fence in the front yard setback relative to its proximity to the front property lines and pavement lines, and the length of the proposal relative to the entire lot. The site plan indicates that the fence is to be located approximately 9' – 15' from the front property lines or about 21' – 50' from the pavement lines; that the proposed gate is to be located approximately 22' – 40' from the front property line or about 35' – 52' from the pavement line. The proposal is shown to be about 460' long parallel to Audubon Place and about 100' in length parallel to Park Lane. Beyond a line on the submitted site plan denoting a line that is the proposed '6' open iron fence," only a partial elevation of the proposal was submitted that denotes a 6' high iron fence with open iron gate/stone entry columns that are 8' in height flanked by two, 4' long, 6' – 7' 6" high stone wing walls. Although the Board Administrator informed the applicant that a full fence elevation is typically submitted (an elevation

that would show a full representation of what the fence/column/gate proposal along both streets), no such document was required nor submitted in this case.

- The proposal is located on a site where one single family home would have direct/indirect frontage to the proposal on Audubon Place (a lot with no fence in the front yard setback higher than four feet) and where one single family home would have direct frontage to the proposal on Park Lane (a lot with a fence, columns, and gate in the front yard setback that appears to be the result of a fence height special exception granted by the Board of Adjustment in 2003 – BDA023-084).
- Two other fence/walls higher than 4' were noted by the Board Administrator in a field visit of the site and surrounding area (approximately 500 feet north of the site). An approximately 6.5 foot high open metal fence with 7.5 foot high columns was noted immediately north of the site (which appears to have been "excepted" by the board in 1996- BDA956-163); and an approximately 6.6' open iron fence and 10 9.5' high solid iron columns was noted three lots northeast of the site (which appears to have been "excepted" by the board in 1997- BDA967-313).
- As of October 12, 2009, no letters had been submitted to staff in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and partial elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.
- Staff also suggests that if the board were to grant this request, that they impose an additional condition beyond compliance with the submitted site plan and partial elevation document – that condition being compliance with the City's Flood Plain Regulations is required since the Sustainable Development and Construction Department Project Engineer has pointed out that part of the proposed wall is located in the Flood Plain along Park Lane.

STAFF ANALYSIS (related to additional dwelling unit special exception):

- This request focuses on constructing and maintaining two-story, additional dwelling unit/"guesthouse/pool house" structure that would have (according to submitted plans) approximately 2,300 square feet "under roof" that would attach to the existing two-story single family home on the site that has (according to DCAD) 13,002 square feet of living area.
- The site is zoned R-1ac(A) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to construct/maintain a second/additional dwelling unit on the site hence the special exception request.
- This special exception request centers on the function of what is to be located inside the guesthouse/pool house structure. Building Inspection has reviewed the floor plans submitted and deemed the proposed addition is a "dwelling unit" based on what is shown on the submitted floor plans.
- Floor plans of the additional dwelling unit structure denote the following:
 - 1st floor plan:

- 1,400 square feet interior; 2,340 square feet under roof
- Comprised of game room, family room, breakfast area, kitchen, bar, pool equipment, utility, bath
- 2nd floor plan:
 - 800 square feet occupied
 - Comprised of three bedrooms and three bathrooms
- Elevations of the additional dwelling unit structure denote its height to be approximately 24'.
- If the board were to deny this request, it appears that the addition could be built with modifications to the function/use inside the structure (or to the floor plans) since the structure appears to be in compliance with development standards including front yard, side yard, rear yard, height, and coverage requirements.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and does not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, subject to imposing a condition that the applicant comply with the submitted site plan, the additional dwelling unit structure would be restricted to the specific location and footprint shown on this plan, which in this case is a "dwelling unit" structure with an approximately 2,100 square foot building footprint situated on an approximately 3 acre site that is located as close as 185' from the northern property line, as close as 75' from the eastern property line, as close as 280' from the southern property line; and as close as 150' from the western property line.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 089-116**, on application of Dustin Tyler Fair, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit on the site will adversely affect neighboring properties or will be used as rental accommodations.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 –0 (unanimously)

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 089-116**, on application of Dustin Tyler Fair, **deny** the fence height special exception requested by this applicant in the Park Lane front yard setback and in the Audubon Place front yard setback **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 –0 (unanimously)

FILE NUMBER: BDA 089-112

BUILDING OFFICIAL’S REPORT:

Application of David Martinez for a variance to the side yard setback regulations at 1905 S. Beckley Avenue. This property is more fully described as Tract 29.2 in City Block C/4604, containing approximately .7712 acres of land, and is zoned CS which requires a 20 foot side yard setback. The applicant proposes to construct and maintain a structure and provide a 3 foot side yard setback which will require a variance of 17 feet.

LOCATION: 1905 S. Beckley Avenue

APPLICANT: David Martinez

REQUEST:

- A variance to the side yard setback regulations of 17’ is requested in conjunction with completing and maintaining a 1,900 square foot (50’ x 38’) storage building/structure in the 20’ side yard setback along the western side of the site which is developed with a commercial use (Discount Construction Materials).

STAFF RECOMMENDATION:

Denial

Rationale:

- There is no property hardship to the site or physical characteristic/feature of the site that warrants the requested side yard variance of 17’ to complete/maintain another structure on the site currently developed as a commercial use - in this case a structure located only 3’ away from the site’s western side property line adjacent to single family zoning and single family uses. The CS-zoned site is flat, is generally rectangular in shape (approximately 330’ x 85’), and is approximately 28,000 square feet in area.

STANDARD FOR A VARIANCE:

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

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

GENERAL FACTS:

- The subject site is located at the southwest corner of Beckley Avenue and Pelman Street and is zoned CS (Commercial Service). As a result, the subject site has two front yard setbacks (one along Pelman Street on its north, the other along Beckley Street on its east) and two side yard setbacks (one 0' side yard setback along its south where the site is adjacent to CS-zoned property, the other side yard setback of 20' along the its west where the site is adjacent to R-7.5(A)-zoned property).
- The minimum side yard setback on a CS (Commercial Service) zoned lot is 20 feet where adjacent to or directly across an alley from a single family, duplex, townhouse, or multifamily zoning district; or no minimum in all other cases. The subject site directly abuts to an R-7.5(A) (single family) zoning district to the west. The applicant has submitted a site plan indicating that the nearly completed approximately 1,900 square foot storage building/structure is located 3' from the site's western side property line, or 17' into the 20' side yard setback along the west side of the site.
- According to calculations taken by the Board Administrator from the submitted site plan, approximately 850 square feet (or nearly half – 44 percent) of the approximately 1,900 square foot structure is in the site's side yard setback on the west side of the lot.
- The site is flat, is generally rectangular in shape (approximately 330' x 85'), and is approximately 28,000 square feet in area. The site is zoned CS (Commercial Service) and because it is located on a corner with two street frontages, the site has two front yard setbacks which is a characteristic typical of any corner lot not zoned single family, duplex, or agricultural.
- According to DCAD records, the property is developed with an "automotive display" built in 1959 that is 200 square feet in area.

BACKGROUND INFORMATION:

Zoning:

Site: CS (Commercial Service)
North: CS (Commercial Service)
South: CS (Commercial Service)
East: CR (Community Retail)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a commercial use (Discount Construction Materials). The areas to the north, east, and south are developed with commercial and retail uses; and the area to the west is developed with single family uses.

Zoning/BDA History:

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

Timeline:

- Sept. 1, 2009: 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. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Sept. 22, 2009: The Board Administrator sent with the applicant the following information:
- A letter that provided information about the public hearing date and panel that will consider the application; the October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials, and the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence;" and
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
- October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application 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 Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

Although no review comment sheets with comments were submitted in conjunction with this application, the Building Inspection Development Code Specialist pointed out at the staff review team meeting that the features shown on submitted site plan show noncompliance with landscape and visual obstruction regulations to which no application has been made.

October 7, 2009 The Board Administrator contacted the applicant and confirmed that Building Inspection Development Code Specialist had made him aware of the fact when his application for a variance to the site yard setback regulations was submitted that the site was not in compliance with the Dallas Development Code's landscape and visual obstruction regulations, and that the applicant had intentionally only made application for a variance to the side yard setback regulations. The applicant informed the Board Administrator that he was aware that he would not be able to achieve a building permit for the structure near completion in the side yard setback with just approval of the side yard variance request – that if the board were to grant the variance to the side yard setback regulations, that he would be required to file a special exception to the landscape regulations and that if the board were to deny the variance request to the side yard setback regulations, the building would be required to be altered to a point and size that may no longer trigger the site to comply with the landscape regulations – in this case by increasing by more than 35 percent, the combined floor area of all buildings on the site within a 24-month period. The applicant would make a determination at a later time as to whether he would be making an application to the board for a special exception to the visual obstruction regulations to address the portions of a fence that appears to be located in intersection and drive approach visibility triangles.

STAFF ANALYSIS:

- The request focuses on completing and maintaining a 1,900 square foot (50' x 38') storage building/structure in the 20' side yard setback along the western side of the site which is developed with a commercial use.
- The submitted site plan indicates that the nearly completed approximately 1,900 square foot storage building/structure is located 3' from the site's western side property line, or 17' into the 20' side yard setback along the west side of the site.
- According to calculations taken by the Board Administrator from the submitted site plan, approximately 850 square feet (or nearly half – 44 percent) of the approximately 1,900 square foot structure is in the site's side yard setback on the west side of the lot.
- The site is flat, is generally rectangular in shape (approximately 330' x 85'), and is approximately 28,000 square feet in area. The site is zoned CS (Commercial Service) and because it is located on a corner with two street frontages, the site has

two front yard setbacks which is a characteristic typical of any corner lot not zoned single family, duplex, or agricultural.

- The applicant is aware of the fact that the site is not in compliance with the Dallas Development Code's landscape and visual obstruction regulations. The applicant has intentionally only made application for a variance to the side yard setback regulations even though he is aware that the City will not be able to issue a final building permit for the structure near completion in the side yard setback with just approval of the side yard variance request since the location of this structure located 3' away from the side property line adjacent to residential zoning precludes him from being able to provide the 10'-wide landscape buffer strip if not other provisions set forth in Article X: The Landscape Regulations of the Dallas Development Code. The applicant is aware that if the board were to grant the variance to the side yard setback regulations, that he would be required to file a special exception to the landscape regulations, and that if the board were to deny the variance request to the side yard setback regulations, the building would be required to be altered to a point and size that may no longer trigger the site to comply with the landscape regulations – in this case by increasing by more than 35 percent, the combined floor area of all buildings on the site within a 24-month period. The applicant would make a determination at a later time as to whether he would be making an application to the board for a special exception to the visual obstruction regulations to address the portions of a fence that appears to be located in intersection and drive approach visibility triangles.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations of 17' will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CS (Commercial Service) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CS (Commercial Service) zoning classification.
- If the Board were to grant the variances to the side yard setback regulations, imposing a condition whereby the applicant must comply with the submitted site plan, the encroachment into this setback would be limited to what is shown on this plan which in this case is a structure that is located 3' from the western side property line or 17' into the 20' side yard setback.
- Granting the side yard setback variance request would not provide any relief from the applicant fully complying with the landscape and visual obstruction regulations provided in the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 089-112**, hold this matter under advisement until **November 18, 2009**.

SECONDED: **Chernock**

AYES: 3– Gillespie, Chernock, Wilson

NAYS: 2 – Reynolds, Beikman

MOTION PASSED 3 – 2

MOTION: **Chernock**

I move to adjourn this meeting.

SECONDED: **Wilson**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

2:39 P.M. - Board Meeting adjourned for **October 21, 2009**.

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.