

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL C**  
**MONDAY, APRIL 13, 2009**

**Briefing:** 10:30 A.M. 5/E/S  
**Public Hearing:** 1:00 P.M. **COUNCIL CHAMBERS**

**Purpose:** To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

**\*All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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04-13-2009

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, APRIL 13, 2009  
AGENDA

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BRIEFING	5ES	10:30 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Kyra Blackston, Senior Planner**

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**MISCELLANEOUS ITEM**

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Approval of the **Monday, March 16, 2009** M1  
Board of Adjustment Public Hearing Minutes

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**UNCONTESTED CASES**

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BDA 089-015	5040 Lemmon Avenue <b>REQUEST:</b> Application of Santos T. Martinez of Masterplan for a special exception to the sign regulations	1
BDA 089-037	5255 Ridgedale Avenue <b>REQUEST:</b> Application of Cindy Whitaker, represented by Jeff Jones, for a variance to the off-street parking regulations	2

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**HOLDOVER CASE**

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BDA 089-004	5969 Westgrove Circle <b>REQUEST:</b> Application of Robert Behringer, represented by Robert Baldwin, for special exceptions to the fence height regulations	3
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**REGULAR CASES**

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BDA 089-045	5211 Santa Fe Avenue <b>REQUEST:</b> Application of Mirna C. Lemus for special exceptions to the fence height and visual obstruction regulations	4
BDA 089-047(K)	5646 E. Mockingbird Lane <b>REQUEST:</b> Application of Frank Mihalopoulos for a special exception the screening regulations, a special exception to the landscaping regulations, a special exception to the visibility obstruction regulations, a special exception to the off-street stacking regulations, and a variance to the off-street parking regulations	5

## EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C March 16, 2009 public hearing minutes.

**FILE NUMBER:** BDA 089-015

**BUILDING OFFICIAL'S REPORT:**

Application of Santos T. Martinez of Masterplan for a special exception to the sign regulations at 5040 Lemmon Avenue. This property is more fully described as Lots 9 & 10 in City Block 2/2457 and is zoned PD-193 (LC). The applicant proposes restore a nonconforming detached premise single-tenant sign which will require a special exception to the sign regulations for nonconforming signs legally erected or maintained prior to April 30, 1973.

**LOCATION:** 5040 Lemmon Avenue.

**APPLICANT:** Santos T. Martinez of Masterplan

**REQUEST:**

- A special exception to the sign regulations is requested in conjunction with according to the application and correspondence from the applicant:
  1. reinstating the nonconforming location of a pre-existing detached premise sign that was removed and stolen by a contractor on a neighboring adjacent site with a new sign that is 2' lower in height (18' instead of 20') and 6 square feet smaller in effective area (64 square feet instead of 70 square feet) than the original sign on the site – a site currently developed with an office use (Loan Star Cash Loans); and
  2. locating this nonconforming sign in the 45' visibility triangle at the intersection of Lemmon Avenue and Mahanna Street.

(Note that the applicant's separate March 4<sup>th</sup> request for a special exception to the visual obstruction regulations requested to relocate and maintain the sign in the 45' visibility triangle at Lemmon Avenue and Mahanna Street was combined with the special exception to the sign regulations on March 30<sup>th</sup> since, according to the applicant, the City's review of the application allowed him to request the reinstatement of nonconforming rights of the removed sign along with the location of this sign in the 45' visibility triangle as one special exception request, that being a request for a special exception to the sign regulations).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how strict compliance with this article would result in substantial financial hardship or inequity to the applicant without corresponding benefit to the city and citizens in accomplishing the objectives of this article.
- Granting this special exception would merely allow (according to the applicant) a stolen nonconforming sign to be replaced/relocated back on the site (in the 45' Lemmon Avenue/Mahanna Street intersection triangle) – a new sign that would be (according to the applicant) 6 square feet smaller in effective area (64 square feet rather than 70) and 2 feet lower in height (18' high rather than 20') than the previous sign on the site that was legally erected or maintained prior to April 30, 1973.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR THE NON-CONFORMING SIGNS LEGALLY ERECTED OR MAINTAINED PRIOR TO APRIL 30, 1973:**

The Board of Adjustment may vary any or all provisions in this article with respect to premise non-conforming signs legally erected or maintained prior to April 30, 1973 when the board makes a specific finding from the evidence presented that strict compliance with this article would result in substantial financial hardship or inequity to the applicant without corresponding benefit to the city and citizens in accomplishing the objectives of this article.

**GENERAL FACTS:**

- The Dallas Development Code states no person may repair a non-conforming sign if the cost of repair is more than 60 percent of the cost of erecting a new sign of the same type at the same location, unless the sign is brought into conformity with this chapter. No person may repair a non-conforming sign where the effect of such repair shall be to enlarge or increase the structure of the non-conforming sign. For purposes of this section (Section 51A-7.702. Removal and Maintenance of Certain Non-Conforming Signs) mono-pole, metal, and wood are each an example of “type” of sign and the term “repair” does not include the maintenance or changes in words or other content on the fact of a sign.
- On March 31, 2009, the Building Inspection Development Code Specialist forwarded a letter from the applicant and a revised Building Official’s Report to the Board Administrator (see Attachment A).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (LC) (Planned Development, Light Commercial)  
North: PD No. 193 (LC) (Planned Development, Light Commercial)  
South: PD No. 193 (LC) (Planned Development, Light Commercial)  
East: PD No. 193 (LC) (Planned Development, Light Commercial)  
West: PD No. 193 (LC) (Planned Development, Light Commercial)

### **Land Use:**

The subject site is developed with an office use (Loan Star Loans). The areas to the north, south, east, and west are developed with commercial/retail 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:**

- Jan. 30, 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.
- Feb. 19, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Feb. 20, 2009: The Board Administrator emailed the applicant the following information:
- an attachment providing the public hearing date and panel that will consider the application; the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment;
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".
- March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- March 3, 2009: The applicant requested to amend his application from what was originally submitted as an appeal to overturn the Building Official's decision on a denied sign permit to special exceptions to the sign and visual obstruction regulations.
- March 23, 2009: The Board Administrator emailed the applicant the following information:



- an attachment providing the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; the April 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment;
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".

March 30, 2009      The Building Inspection Development Code Specialist forwarded a letter from the applicant and a revised Building Official's Report to the Board Administrator (see Attachment A).

March 31, 2009:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Historic Preservation Senior Engineer and the Development Services Senior Engineer submitted Review Comment Sheets marked "Has no objections."

**STAFF ANALYSIS:**

- The applicant's request focuses on allowing the replacement of a pre-existing detached premise sign that was removed and stolen by a contractor on a neighboring/adjacent site, on a site currently developed with an office use (Loan Star Cash Loans). The replacement/new sign is (according to the applicant) 2' lower in height (18' instead of 20') and 6 square feet smaller in effective area (64 square feet instead of 70 square feet) than the original sign, and would be relocated/replaced back in the location of the original sign.
- The applicant has the burden of proof in establishing how strict compliance with this article would result in substantial financial hardship or inequity to the applicant without corresponding benefit to the city and citizens in accomplishing the objectives of this article.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and sign elevation would assure that the replacement sign would be constructed and maintained in the location and of the height and dimensions shown on these documents.

**FILE NUMBER:** BDA 089-037

**BUILDING OFFICIAL'S REPORT:**

Application of Cindy Whitaker, represented by Jeff Jones, for a variance to the off-street parking regulations at 5255 Ridgedale Avenue. This property is more fully described as Lot 15 in City Block R/2186 and is zoned CD-9 which requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a structure and provide enclosed parking spaces with a setback of 10 feet which will require a variance of 10 feet.

**LOCATION:** 5255 Ridgedale Avenue

**APPLICANT:** Cindy Whitaker  
Represented by Jeff Jones

**REQUEST:**

- A variance to the off-street parking regulations of 10' is requested in conjunction with enclosing parking spaces with garage doors in an existing two-story three-vehicle detached accessory structure on a lot developed with a single family home. The parking spaces that are proposed to be enclosed with garage doors in the existing accessory structure would be located less than the required 20' distance from right-of-way line on Laneri Street.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required.
2. Automatic garage doors must be installed and maintained in working order at all times.
3. At no time may the area in front of the garage be utilized for parking of vehicles.
4. All applicable permits must be obtained.
5. The applicant must comply with the Dallas Development Code visibility obstruction regulations.

Rationale:

- Granting the variance would not be contrary to the public interest given that:
  - There is over a 22' distance between the enclosed parking spaces in the existing accessory structure (proposed to be enclosed with garage doors) and the

- projected pavement line of Laneri Street (a length that should accommodate the length of a standard sized vehicle at 17' 10" entering/exiting the garage);
- The structure is in compliance with the all other setback and development code regulations whereby the only variance need in this case is to the off-street parking regulations, specifically the parking regulation regarding the distance that must be provided between an enclosed parking space (garage door) and a right-of-way line. (The structure could remain as it is if the variance is denied and be in compliance with code as long as garage doors would not be installed to enclose the existing parking spaces);
  - The applicant has received a staff-approved Conservation District Work Review Form for the accessory structure;
  - The applicant has submitted a petition signed by 46 neighbors who support the variance request; and
  - The Development Services Senior Engineer has submitted a Review Comment Sheet marked "Has no objections."
- The site is of a size that precludes it from being developed with a reasonably- sized garage without varying the off-street parking regulation. The site is only 50' wide whereby if the 10' distance between the parking spaces in the accessory structure proposed to be enclosed with garage doors and the Laneri Street right-of-way/property line were combined with the accessory structure width at approximately 23', only an approximate 18' width of open yard space would remain between the accessory structure and the western side property line. (If the 20' distance were provided, only an approximate 8' width of open yard space would remain between a relocated accessory structure and the western side property line).
  - The width of the subject site at 50' combined with the width and location of the circa 1930's home on the site results in less than an 8' distance between the house and the west side property line and a 10' distance between the house and the east side property line parallel to Laneri Street – neither of which is conducive for the applicant to locate a driveway on either side of the existing house that would lead back to a garage/garage door in the rear of the property from Ridgedale Avenue as what appears to be a prevailing characteristic that is an option for a number of other non-corner lots in the same blockface.

### **STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; 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 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 Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.  
A site plan has been submitted that indicates the location of enclosed parking spaces in a detached accessory structure that would be located 10' from the Laneri Street right of way line on the east side of the site. The site plan denotes an approximate 23' distance between the location of enclosed parking spaces in the accessory structure and the projected pavement line of Laneri Street.  
The site plan denotes that the lot width is 50' whereby there is a 10' distance between the enclosed parking spaces and the Laneri Street right-of-way/property line, a 23' width for the existing accessory structure, and a remaining approximately 18' width of open yard space left between the accessory structure and the western side property line.
- The site is flat, rectangular in shape (145' x 50'), and approximately 7,250 square feet in area. The site is zoned CD (Conservation District) No. 9 which prior to its creation in 2002 had been R-7.5(A) where lots are typically 7,500 square feet.
- According to DCAD records, the property is developed with the following:
  - a single family home in "very good" condition built in 1939 with 2,148 square feet of living area;
  - an 800 square foot detached garage; and
  - a 500 square foot detached carport.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - A document that further explains the merits of the request;
  - A copy of the City of Dallas permit for the accessory structure (a structure that is in compliance with all Development Code provision as long as the parking spaces in the accessory structure are not enclosed).;
  - A copy of an approved "Department of Development Services Conservation District Work Review Form;"
  - A petition signed by 46 neighbors in support of the request; and
  - Photos of the previous accessory structure on the site, and other garages in the area that may or may not be in compliance with the code provision that the applicant seeks variance from.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: CD No. 9 (Conservation District)

North: CD No. 9 (Conservation District)  
South: CD No. 9 (Conservation District)  
East: CD No. 9 (Conservation District)  
West: CD No. 9 (Conservation District)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

- Feb. 12, 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.
- March 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 20, 2009: The Board Administrator contacted the applicant's representative 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 March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 3<sup>rd</sup> 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."
- March 26, 2009 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Historic Preservation Senior Engineer submitted a Review Comment Sheet marked "Has no objections" commenting "This is located in CD #9. We have no problem with the setback particularly since the garage doors are located approximately 22 feet from Laneri Street."

April 2, 2009

The Development Services Senior Engineer forwarded a review comment sheet marked "Has no objections."

### **STAFF ANALYSIS:**

- This request is made to allow the applicant the ability to enclose existing parking spaces (by adding garage doors) in an existing two-story three-vehicle detached accessory structure on a lot developed with a single family home. The existing accessory structure complies with all development standards with the exception of the 20' spacing/distance requirement that is required to be provided between an enclosed parking space and the Laneri Street right of way line. As a result, the existing accessory structure could be maintained on the site as shown on the submitted site plan and elevation *without* garage doors (on enclosed parking spaces) if this request were denied.
- The site plan denotes an approximate 23' distance between the location of enclosed parking spaces in the accessory structure and the projected pavement line of Laneri Street.
- The site plan denotes that the lot width is 50' whereby there is a 10' distance between the enclosed parking spaces and the Laneri Street right-of-way/property line, a 23' width for the existing accessory structure, and a remaining approximate 18' width of open yard space left between the accessory structure and the western side property line.
- The site is flat, rectangular in shape (145' x 50'), and approximately 7,250 square feet in area. The site is zoned CD (Conservation District) No. 9 which prior to its creation in 2002 had been R-7.5(A) where lots are typically 7,500 square feet.
- The Development Services Senior Engineer has submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 10' to install garage doors (or enclose parking spaces) in an existing accessory structure whereby the enclosed parking spaces will be located 10' away from the Laneri Street right of way line or over 22' from the pavement line 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 to the parking regulations of 10' to install garage doors (or enclose parking spaces) in an existing accessory structure whereby the enclosed parking spaces will be located 10' away from the Laneri Street right of way line or over 22' from the pavement line is necessary to permit development of the subject site (a site that is developed with a single family home and accessory structure, and

is flat, rectangular in shape, and 7,250 square foot in area) 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 CD No. 9 zoning classification.

- The variance to the parking regulations of 10' requested to install garage doors (or enclose parking spaces) in an existing accessory structure whereby the enclosed parking spaces would be 10' away from the Laneri Street right of way line 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 CD No. 9 zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  1. Compliance with the submitted site plan is required.
  2. An automatic garage door must be installed and maintained in working order at all times.
  3. At no time may the area in front of the garage be utilized for parking of vehicles.
  4. All applicable permits must be obtained.
  5. The applicant must comply with the Dallas Development Code visibility obstruction regulations.These conditions are imposed to help assure that the variance will not be contrary to public interest.
- If the Board were to grant the variance request of 10', imposing a condition whereby the applicant must comply with the submitted site plan, the parking spaces in the existing accessory structure could be enclosed with garage doors that would be 10' away from the Laneri Street right of way line (or 10' into the 20' setback/distance requirement) and over 22' from the Laneri Street projected pavement line.

**FILE NUMBER:** BDA 089-004

**BUILDING OFFICIAL'S REPORT:**

Application of Robert Behringer, represented by Robert Baldwin, for a special exception to the fence height regulations at 5969 Westgrove Circle. This property is more fully described as Lot 11A in City Block 1/8211 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 13 foot 9 inch fence in a required front yard setback which will require a special exception of 9 feet, 9 inches.

**LOCATION:** 5969 Westgrove Circle

**APPLICANT:** Robert Behringer  
Represented by Robert Baldwin

**REQUESTS:**

- Special exceptions to the fence height regulations of up to 9' 9" are requested in conjunction with constructing and maintaining the following in the site's two 40' front yard setbacks on a site being developed with a single family home:
  - in the Westgrove Circle and Ashbourne Drive front yard setbacks *parallel* to these streets:
    - An 8' 6" high open wrought iron fence (of which the bottom 2' 6" is a 8"chopped leuders limestone wall, ashlar pattern" base) with 9' 4" high pickets, and three 13' 4" high open wrought iron gates (one gate on Westgrove Circle, two gates on Ashbourne Drive) that are flanked by 13' 9" high entry columns (of which the top 2' 9" of these columns being "napa bronze electric lights");
  - in the Westgrove Circle front yard setback *perpendicular* to this street:
    - A 9' 4" high open wrought iron fence; and
  - in the Ashbourne Drive front yard setback *perpendicular* to this street:
    - An approximately 8' 6" high solid stucco wall with 9' high cast stone columns.

**STAFF RECOMMENDATION:**

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

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



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

### **GENERAL FACTS:**

- The subject site is located at the corner of Westgrove Circle and Ashbourne Drive. Even though the Westgrove Circle side of the site functions as the site's front yard and the Ashbourne Drive side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Westgrove Circle given that this frontage is the shorter of the two street frontages, and a front yard setback along Ashbourne Drive given that the continuity of the established setback must be maintained on this street since houses face Ashbourne Drive immediately north of the subject site.  
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 applicant has submitted a site plan and a document with several partial elevations indicating a fence/wall/column/gate proposal that would be located in the site's two front yard setbacks and would reach a maximum height of 13' 9".
- A site plan has been submitted that indicates the location of the proposal in the front yard setbacks. The following additional information was gleaned from this site plan for the proposal *along Westgrove Circle*:
  - The proposal would be approximately 250' in length parallel to Westgrove Circle with a recessed entryway, approximately 40' in length perpendicular to Westgrove Circle on the west.
  - The proposed fence/wall is shown to be located approximately on the Westgrove Circle front property line (or approximately 12' from the Westgrove Circle pavement line).
  - The proposed gate is to be located about 13' from the Westgrove Circle front property line (or approximately 25' from the Westgrove Circle pavement line).
- The following additional information was gleaned from the submitted site plan for the proposal *along Ashbourne Drive*:
  - The proposal would be approximately 400' in length parallel to Ashbourne Drive, approximately 40' in length perpendicular to Ashbourne Drive on the north.
  - The proposed fence/wall is shown to be located approximately on the Ashbourne Drive front property line (or approximately 12' - 20' from the Ashbourne Drive pavement line).
  - The proposed gates are to be located approximately 12' from the Ashbourne Drive front property line (or approximately 24' from the Ashbourne Drive pavement line).
- The submitted site plan shows what appears to be a number of landscape materials adjacent to the proposed fence/wall none of which are denoted with a species name or size.

- The proposal *along Westgrove Circle* would be located on the site facing a vacant lot that is maintained as a park-like space, therefore, no single family homes would have direct/indirect frontage.
- The proposal *along Ashbourne Drive* would be located on the site where three single family homes on the lots across the street would have direct/indirect frontage, one of which has an approximately 6' high fence with approximately 6.5' high columns and an 8' high solid cast stone wall perpendicular to Westgrove Circle – a result of an approved fence height special exception by the Board of Adjustment in 2000.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fence/wall beyond that described above which appeared to be located in the front yard setback above 4' in height.
- On March 16, 2009, the Board of Adjustment conducted a public hearing on this request and delayed action until April 13, 2009 per the applicant's representative request. The applicant's representative requested a month delay to allow him an opportunity to present his proposal to the neighborhood architectural review committee.
- As of April 2, 2009, the applicant's representative submitted a letter to staff (see Attachment A). This letter stated among other things how the applicant's representative is "working diligently with the Preston Trails Neighborhood Association and our neighbors on coming up with a fence design that is appropriate for the neighborhood and acceptable to all parties."

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site is being developed with a single family home. The areas to the north and east are developed with single family uses; the area to the south of the site is a undeveloped tract of land maintained as a park-like space; and the area to the west is undeveloped.

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

- |  |   |
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| 1. BDA 990-294, Property at 5975 Westgrove Circle (the lot immediately east of the subject | On June 19, 2000, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations |
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site)

(subject to compliance with the submitted site plan and elevations). The case report stated that the request was made in conjunction with constructing and maintaining an approximately 6' high open wrought iron fence with approximately 6.5' high cast stone columns along Westgrove Circle and an 8' high solid cast stone wall perpendicular to Westgrove Circle (within the site's 40' front yard setback).

**Timeline:**

- Nov. 4, 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.
- Nov. 20, 2008:        The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Nov. 20, 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 deadline to submit additional evidence for staff to factor into their analysis;
  - the deadline to submit additional evidence to be incorporated into the Board's docket materials.
- Nov. 21, 2008:        Staff discovered that the site delineated on the submitted plat and zoning map did not encompass the entire site, and that the site was encompassing two lots that would require a re-plat to accommodate the one house shown to encompass the entire site. Staff informed the applicant that the application would be delayed until the subject site was re-platted from two lots to one lot.
- Feb. 17, 2009         Building Inspection forwarded revised application materials which have been included as part of this case report part of which establishes a newly platted subject site.
- Feb. 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 March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis;

- and the March 6<sup>th</sup> 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."

March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

March 16, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their April 13<sup>th</sup> public hearing.

March 19, 2009: The Board Administrator contacted the applicant's representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 3<sup>rd</sup> 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."

March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

April 2, 2009 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- The requests focus on constructing/maintaining an 8' 6" high open wrought iron fence (with solid limestone base) in the site's two front yard setbacks parallel to Westgrove Circle and Ashbourne Drive. A 9' 4" high open wrought iron fence is

proposed perpendicular to Westgrove Circle in the front yard setback on the west side of the site, and an 8' 6" high solid stucco wall is proposed perpendicular to Ashbourne Drive on the north side of the site. The only component of the proposal that reaches 13' 9" in height is six entry gate columns that flank the three, 13' 4" high entry gates on the site.

- A scaled site plan and a document with several partial fence elevations have been submitted documenting the location of the proposed fence/wall/columns/gates relative to their proximity to the Westgrove Circle and Ashbourne Drive front property lines and pavement lines, the lengths of the proposals relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately on the property lines or about 12' – 20' from the pavement lines. The proposal is about 250' long parallel to Westgrove Circle and about 40' long perpendicular; and the proposal is about 400' long parallel to Ashbourne Drive and about 40' long perpendicular.
- The submitted site plan shows what appears to be a number of landscape materials adjacent to the proposed fence/wall none of which are denoted with a species name or size.
- The Westgrove Circle proposal would be located on the site where no single family homes would have direct/indirect frontage, and where no other fences were noted in front yards.
- The Ashbourne Drive proposal would be located on the site where three single family homes would have direct/indirect frontage, and where one of these homes has an approximately 6' high fence with approximately 6.5' high columns and an 8' high solid cast stone wall perpendicular to Westgrove Circle – a result of an approved fence height special exception by the Board of Adjustment in 2000.
- As of April 6, 2009, two letters had been submitted to staff in opposition to the proposal, and one letter had been submitted in support.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 13' 9" in height) will not adversely affect neighboring property.
- Granting these special exceptions of 9' 9" with a condition imposed that the applicant complies with the submitted site plan and elevations 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.

**BOARD OF ADJUSTMENT ACTION:     MARCH 16, 2009**

APPEARING IN FAVOR:                     Rob Baldwin, 401 Exposition Ave., Dallas, TX

APPEARING IN OPPOSITION:             No One

**\*Member Jim Gaspard recused himself and did not hear or vote on this matter.**

MOTION:     **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 089-004** hold this matter under advisement until **April 13, 2009**.

SECONDED: **Bateman**

AYES: 4–Boyd, Moore, Maten, Bateman

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

**FILE NUMBER:** BDA 089-045

**BUILDING OFFICIAL'S REPORT:**

Application of Mirna C. Lemus for special exceptions to the fence height and visual obstruction regulations at 5211 Santa Fe Avenue. This property is more fully described as part of Lot 8 in City Block E/1424 and is zoned D(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to maintain a 7 foot 5 inch fence in a required front yard setback which will require a 3 foot 5 inch special exception to the fence regulations, and to maintain items in a required visibility obstruction triangle which will require a special exception to the visual obstruction regulations.

**LOCATION:** 5211 Santa Fe Avenue

**APPLICANT:** Mirna C. Lemus

**REQUESTS:**

- The following appeals have been made in this application on a site that is currently developed with what appears to be a single family home:
  1. A special exception to the fence height regulations of 3' 5" is requested in conjunction with what is shown on the submitted site plan and elevation document to be a 7' 5" high wrought iron fence and gate located in the site's 25' front yard setback.
  2. Special exceptions to the visual obstruction regulations are requested in conjunction with what is shown on the submitted site plan and elevation document to be a 7' 5" high wrought iron fence located in the two 20' visibility triangles at the drive approach into the site from Santa Fe Avenue.

**STAFF RECOMMENDATION (fence height special exception):**

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

**STAFF RECOMMENDATION (visual obstruction special exception):**

Denial of the requests

Rationale:

- The City's Development Services Senior Engineer recommends denial of the requests specifically stating that vehicles entering the site from the street may

partially occupy the street pavement and that his objection is primarily due to the gate.

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

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

### **STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

### **GENERAL FACTS (related to the fence height special exceptions):**

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.  
The applicant has submitted a site plan and an elevation document indicating a fence/gate in the 25' front yard setback that reaches a maximum height of 7' 5". (Note that the Board Administrator observed a fence and gate on the subject site that appears to be what is represented on the submitted site plan and elevation document. The case report is based on what has been applied for and what has been shown the submitted plans that may or may not be an accurate depiction of the fence and gate actually on the subject site).
- The following additional information was gleaned from the submitted site plan:
  - The fence/gate is shown to be approximately 60' in length parallel to Santa Fe Avenue and approximately 22' – 25' in length perpendicular to the street on the east and west "sides" of the site in the front yard setback.
  - The fence/gate is shown to be located 0' – 3' from the front property line or approximately 8' – 11' from the pavement line.
- Three single family homes have direct frontage to the existing fence/gate on the subject site however these houses are separated from the subject site and other homes northwest of them by an elevated berm/railroad line turned bicycle/running/walking path.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences above four (4) feet high which appeared to be located in the front yard setback - an approximately 6' high solid board fence immediately southwest of the site and an approximately 6' high solid board fence immediately northeast of the site, neither with any recorded history of being "special excepted" by the board of adjustment.



**GENERAL FACTS (related to the visual obstruction special exceptions):**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
  - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A site plan and elevation document have been submitted that shows portions of a 7' 5" high open wrought iron fence located in the site's two 20' visibility triangles at the drive approach into the site from Santa Fe Avenue. (Note that the Board Administrator observed a fence and gate on the subject site that appears to be what is represented on the submitted site plan and elevation document. The case report is based on what has been applied for and what has been shown the submitted plans that may or may not be an accurate depiction of the fence and gate actually on the subject site).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: D (A) (Duplex)  
North: D (A) (Duplex)  
South: PD No. 134 (Planned Development)  
East: PD No. 134 (Planned Development)  
West: D (A) (Duplex)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

Feb. 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.

March 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- March 20, 2009: The Board Administrator contacted the applicant and shared the following information via phone:
- The date in which the public hearing date will take place;
  - the criteria/standard that the board will use in their decision to approve or deny the requests.
- Because of the applicant's inability to speak English, the Board Administrator suggested that an English speaking person contact him to provide further information about the application, and that an English speaking person consider attending the public hearing to assist with translation.
- March 25, 2009: The Board Administrator wrote the applicant a letter that included the following information:
- The date in which the public hearing date will take place;
  - The requests that have been made to the board;
  - The criteria/standard that the board will use in their decision to approve or deny the requests;
  - Deadlines to submit additional information to staff and the board;
  - A reference to a city staff person who could provide translation of this information in Spanish.
- March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- The Historic Preservation Senior Engineer submitted a Review Comment Sheet marked "Has no objections" commenting "Not in Hollywood Hts CD."
- April 2, 2009 The Development Services Senior Engineer forwarded a Review Comment Sheet dated 4-2-09 marked "Recommends that this be denied" with the following comments:  
"Entering vehicles may partially occupy the street pavement. The objection is primarily due to the gate."

**STAFF ANALYSIS (related to the fence height special exception):**

- This request focuses on (what is represented on a submitted site plan and elevation document) a 7' 5" high wrought iron fence/gate in the site's 25' front yard setback on a site that appears to be developed with a single family home. The Board Administrator observed a fence and gate on the subject site that appears to be what is represented on the submitted site plan and elevation document. The case report is based on what has been applied for and what has been shown the submitted

plans that may or may not be an accurate depiction of the fence and gate actually on the subject site.

- A site plan document and a elevation document have been submitted documenting the location of the proposal relative to the front property line (shown at about 0' – 3' from the property line) and pavement line (shown at about 8' – 11' from the pavement line), the length of the proposal relative to the entire lot (shown at about 60' long parallel to the street and approximately 22' – 25' perpendicular to the street on both sides of the site in the front yard setback), the height (shown at 7' 5") and building materials (shown to be wrought iron).
- Three single family homes have direct frontage to the existing fence/gate on the subject site however these houses are separated from the subject site and other homes northwest of them by an elevated berm/railroad line turned bicycle/running/walking path.
- Two other fences above four (4) feet high were noted which appeared to be located in the front yard setback - an approximately 6' high solid board fence immediately southwest of the site and an approximately 6' high solid board fence immediately northeast of the site, neither with any recorded history of being "special excepted" by the board of adjustment.
- As of April 6, 2009, no letters have been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 5" (whereby the wrought iron fence and gate that is shown on submitted plans to reach a maximum 7' 5" in height) will not adversely affect neighboring property.
- Granting this special exception of 3' 5" with a condition imposed that the applicant complies with the submitted site plan and elevation document would assure that the fence/gate exceeding 4' in height would be modified and/or maintained in the location and of the height and material as shown on these documents.
- Note that if the board were to grant the fence special exception request but deny one or both visual obstruction special exception requests, staff would make necessary notations on any imposed plan and/or elevation to clarify the board's decision.

#### **STAFF ANALYSIS (related to the visual obstruction special exceptions):**

- These requests focus on (what is represented on a submitted site plan and elevation document) a portion of a 7' 5" high wrought iron fence located in the two 20' visibility triangles at the drive approach into the site from Santa Fe Avenue. The submitted site plan shows that about 9' of a 7' 5" high wrought iron fence is located in the western drive approach visibility triangle (all of which is perpendicular to the street) and about a 12' of a 7' 5" high wrought iron fence is located in the eastern drive approach visibility triangle (all of which is parallel to the street). The Board Administrator observed a fence and gate on the subject site that appears to be what is represented on the submitted site plan and elevation document. The case report is based on what has been applied for and what has been shown on the submitted plans that may or may not be an accurate depiction of the fence and gate actually on the subject site.

- The Development Services Senior Engineer submitted a Review Comment Sheet marked “Recommends hat this be denied” with the following comments: “Entering vehicles may partially occupy the street pavement. The objection is primarily due to the gate.”
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing portions of a 7’ 5” high wrought iron fence in the two 20’ drive approach visibility triangles on the site will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted site plan and elevation document, only a 7’ 5” high wrought iron fence and gate as shown on the submitted plans would be “excepted” into these visibility triangles on the subject site.
- Note that if the board were to grant one or both visual obstruction special exception requests but deny the fence height special exception request, staff would make necessary notations on any imposed plan and/or elevation to clarify the board’s decision.

**FILE NUMBER:** BDA 089-047(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Frank Mihalopoulos for a special exception the screening regulations, a special exception to the landscaping regulations, a special exception to the visibility obstruction regulations, a special exception to the off-street stacking regulations, and a variance to the off-street parking regulations at 5646 E. Mockingbird Lane. This property is more fully described as Lot 1 in City Block A/2897 and is zoned CR, which requires that an owner shall provide screening for the rear or service side of a nonresidential building if the nonresidential building is in a retail district and is exposed to and closer than 150 feet to the boundary line of a D(A) district, and requires mandatory landscaping, and requires a 20 foot visibility triangle at the intersection of a driveway and a street and a 45 foot visibility triangle at the intersection of two streets, and requires off-street stacking spaces to be provided, and requires the owner of off-street parking to provide screening to separate the parking area from a contiguous residential use if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use. The applicant proposes to construct a nonresidential structure and provide a 0 foot screening fence, which will require a 6 foot special exception to the screening regulation, and to provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to provide off-street parking in a visibility obstruction triangle, which will require a special exception to the visibility obstruction regulations, and to construct a nonresidential structure for a financial institution w/drive-in window use and provide 11 of the required 12 stacking spaces, which will require a 1 space special exception to the stacking regulations and to not provide the required screening to separate the parking area from a contiguous residential use which will require a variance to the off-street parking regulations.

**LOCATION:** 5646 E. Mockingbird Lane

**APPLICANT:** Frank Mihalopoulos

**REQUESTS:**

The applicant seeks to develop the property with a non-residential use and seeks a special exception to the screening regulations; special exception to the landscape regulations; a special exception to the visibility obstruction regulations; a special exception to the stacking (parking) regulations; and a variance to the off-street parking regulations.

**STAFF RECOMMENDATION (special exception to screening):**

Denial

Rationale:

- The Development Services Senior Engineer has reviewed the request and recommends denial.

Note: this request is for the portion of a fence behind the building that serves as the required screening for the rear or service side of a nonresidential use adjacent to a duplex area.

**STANDARD FOR A SPECIAL EXCEPTION TO THE REQUIRED SCREENING REGULATIONS:**

The board may grant a special exception to the height requirement for screening when in the opinion of the board, the special exception will not adversely affect neighboring property, except that the board may not grant a special exception to the height requirements for screening around off-street parking.

**STAFF RECOMMENDATION (landscape regulations):**

Denial

Rationale:

The Chief Arborist has reviewed a landscape plan submitted on April 2, 2009 and recommends denial to the alternate plan submitted (see attachment). The Chief Arborist sites many deficiencies in the alternate landscape plan including: perimeter tree landscape buffer, street trees, buffer plant material, foundations planting strip, pedestrian enhancements, enhanced pavement, and screening.

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

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

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

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

- the extent to which there is residential adjacency;
  - the topography of the site;
  - the extent to which landscaping exists for which no credit is given under this article;
- and

- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION (visibility obstruction):**

Denial

Rationale:

- The development Services Senior Engineer has reviewed the request and recommends denial because the special exception will create a traffic hazard.

**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.

**STAFF RECOMMENDATION (stacking):**

Denial

Rationale:

- The Development Services Senior Engineer has reviewed the request and recommends denial because stacking demand requires the 12 stacking spaces required by the Code.
- The special exception to the stacking requirements will create a traffic hazard or increase traffic congestion on adjacent or nearby streets.

**STANDARD FOR A SPECIAL EXCEPTION STACKING REGULATION:**

Section 51A-4.304(d) (1) of the Dallas Development Code states that the board of adjustment may grant a special exception to authorize a reduction in the number of off-street stacking spaces required under this article if the board finds, after a public hearing, that the stacking demand generated by the use does not warrant the number of off-street stacking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this subsection is two spaces for each of the first two drive-through windows, if any, or 25 percent of the total number of required spaces, whichever is greater, minus the number of spaces currently not provided due to already existing nonconforming rights.

(2) In determining whether to grant a special exception under Paragraph (1), the board shall consider the following factors:

- (A) The stacking demand and trip generation characteristics of all uses for which the special exception is requested.
- (B) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.

- (C) The availability of public transit and the likelihood of its use.
- (3) In granting a special exception under Paragraph (1), the board shall specify the use or uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- (4) In granting a special exception under Paragraph (1), the board may:
- (A) establish a termination date for the special exception or otherwise provide for the reassessment of conditions after a specific period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable condition that would have the effect of improving traffic safety or lessening congestion on the streets.
- (5) The board shall not grant a special exception under Paragraph (1) to reduce the number of off-street stacking spaces required in:
- (A) a planned development district; or
  - (B) an ordinance granting or amending a special use permit.

**STAFF RECOMMENDATION (variance off-street parking):**

Denial

Rationale:

- The Development Services Senior Engineer recommends denial of this request.
- The applicant has not substantiated how this parcel of land differs from other parcels of land by being of such 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 CR zoning.

Note: this request is for the portion of a fence adjacent to Greenville Avenue that serves as the parking lot required screening.

**STANDARD FOR A VARIANCE TO THE OFF-STREET PARKING REGULATIONS:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; 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 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 applicant proposes to construct and maintain a financial institution with drive-in window, which is a permitted use in the CR zoning.
- The Dallas Development Code requires the following for financial institutions in the CR zoning:
  1. one off-street parking space per 333 square feet of floor area;
  2. 10 stacking spaces for two teller windows;
  3. two stacking spaces per unmanned transaction station.
  4. The owner of off-street parking must provide screening to separate the parking from a commercial or retail use and a residential use.
  5. Screening for off-street parking must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence that is not less than six feet in height.
- The property is located on the corner of Mockingbird Land and Greenville Ave.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Commercial Retail)  
North: MU-3 (Mixed Use)  
South: D(A) (Duplex)  
East: CR (Community Retail)  
West: CR (Community Retail)

**Land Use:**

The site is developed with a retail use. The properties to the north, east and west are developed with retail and commercial uses. The properties to the south are developed with residential uses.

**Zoning/BDA History:**

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

**Timeline:**

- February 27, 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.
- March 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 24, 2009: The Board Senior Planner mailed the applicant 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 March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
  - the April 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 April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- April 2, 2009 The Development Services Senior Engineer submitted a comment sheet (see attachment A).
- April 3, 2009 The applicant's representative submitted additional information for the Board's consideration (attachment C).
- April 7, 2009 The Chief Arborist submitted a memorandum referencing the submitted alternate landscape plan (attachment B).

**STAFF ANALYSIS:**

- The site is currently developed with a retail use. The proposed use for this site is a financial institution with drive-in window.
- The submitted site plan illustrates a 23,601 square foot lot developed with 3,543 sq. ft. bank with drive-in window and unmanned transaction station, and providing 11 stacking spaces and 24 off-street parking spaces.
- The applicant is seeking a special exception to the screening regulation. This request is for the portion of a fence/wall behind the building that serves as the required screening for the rear or service side of a nonresidential use adjacent to a duplex area. The revised submitted landscape plan illustrates a retaining wall adjacent to the alley with landscaping. The Chief Arborist has stated the “alley pathway should be maintained in such a way that vegetation is not likely to become an encumbrance the future safe use of the full alley by adjacent properties and city services.”
- The applicant has submitted an alternate landscape plan and is requesting a special exception to the landscape regulations. The Chief Arborist has reviewed the revised alternate landscape plan submitted on April 2, 2009, and recommends denial. The Chief Arborist submitted a memorandum with an analysis of this request. The proposed landscape plan is deficient in perimeter landscape buffer, street trees, buffer plant materials, foundation planting strip, pedestrian enhancements, and enhanced pavement. Some of the proposed landscaping is located within the visibility triangles. The Chief Arborist requested revisions to the landscape plan on April 3, 2009 to address specific concerns on the submitted April 2, 2009 landscape plan.
- This parcel of land with the proposed development has four visibility obstruction triangles. One 20 foot visibility triangle at the alley (southern property line); two 20-foot visibility triangles at the drive approach on Greenville Ave; and a 45 foot visibility triangle at the intersection of Greenville Ave and Mockingbird Lane. The submitted site plan shows three parking spaces located with the visibility obstruction triangles. The Development Services Senior Engineer is recommending denial of all the special exceptions to the visibility of obstruction requests.
- The Dallas Development Code requires 10 stacking (parking) spaces to be provided for two drive-in teller windows and 2 stacking (parking) spaces to be provided for an unmanned transaction station (ATM). The applicant proposes to provide 11 of the total 12 stacking spaces required, which require a 1 space special exception to the stacking regulation. The Development Services Senior Engineer is recommending denial of this request.
- The subject site abuts three residential lots to the south of the property. Screening for off-street parking is required to separate residential uses from commercial retail uses. The applicant is required to provide a solid wall that is no less than six feet in height. The applicant proposes to provide a retaining wall of an undefined height that runs approximately 150 feet parallel to the southern property line (adjacent to the alley), which will require a variance to the off-street parking regulations. This request is for the portion of a fence/wall adjacent to Greenville Avenue that serves as the parking lot required screening. The landscape plan indicates there will be

landscaping planted on the retaining wall. Staff is recommending denial of the variance request.

- The applicant has the burden of proof in establishing the following:
  1. that granting the special exception the landscape regulations is necessary because strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council;
  2. that granting the special exception to the visibility obstruction regulation will not constitute a traffic hazard;
  3. that granting the special exception to the stacking regulation would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets, and that the stacking demand generated by the financial institution with drive-in use does not warrant the number of off-street stacking spaces required;
  4. that granting the variance to the off-street parking regulation is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such 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 CR zoning; and 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 CR zoning.
- If the Board were to grant the special exception to the landscape regulations staff recommends compliance with the submitted revised alternate landscape plan.
- If the Board grants the special exception to the visibility obstruction regulation staff recommends compliance with the submitted site plan.
- If the Board votes to grant the variance to the off-street parking regulation staff recommends compliance with the submitted site plan and that the alley pathway be maintained in such a manner that the vegetation does not encumber the safe use of the full alley by adjacent properties and by city services.