

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL C**  
**MONDAY, SEPTEMBER 15, 2008**

**Briefing: 11:00 A.M. L1FN, CONFERENCE ROOM B**  
**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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09-15-2008

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, SEPTEMBER 15, 2008  
AGENDA

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BRIEFING	L1FN, CONFERENCE ROOM B	11:00 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 <b>Monday, August 11, 2008</b> Board of Adjustment Public Hearing Minutes	M1
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**UNCONTESTED CASES**

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BDA 078-123K	9127 Branch Hollow Drive <b>REQUEST:</b> Application of Mark A. Knudson for a special exception to the fence height regulations	1
BDA 078-125	5807 Watson Avenue <b>REQUEST:</b> Application of Dana M. Dutcher, represented by Warren Packer/David Nelson, for a special exception to the fence height regulations and for a variance to the front yard setback regulations	2

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**HOLDOVER CASE**

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BDA 078-098(K)	8300 Douglas Avenue <b>REQUEST:</b> Application of Vince Gurley for a special exception to the sign regulations	3
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## REGULAR CASE

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BDA 078-119	650 Ft. Worth Avenue (aka 641 Yorktown Street) <b>REQUEST:</b> Application of Masterplan Consultants, represented by Ed Simons, for variances to the sidewalk, off-street parking, and front yard setback regulations	4
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## 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 August 11, 2008 public hearing minutes.

**FILE NUMBER:** BDA 078-123(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Mark A. Knudson for a special exception to the fence height regulations at 9127 Branch Hollow Drive. This property is more fully described as Lot 1 in City Block 5/8150 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

**LOCATION:** 9127 Branch Hollow Drive

**APPLICANT:** Mark A. Knudson

**REQUEST:**

- A special exception of 4 feet to the fence height regulation to construct and maintain an 8 foot high fence in the property's front yard setback on property located on Whitehurst Dr.

**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:**

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25 feet. The applicant is requesting to construct and maintain a eight foot high fence in the site's Whitehurst Drive, required front yard setback, which will require a special exception of four feet.
- The applicant proposes to construct and maintain a solid 8' fence of cedar slates with metal support posts parallel to the north property line along Whithurst Drive and will run 90 linear feet.'

- The site is flat and approximately 10,456 (90' x 120') square feet. According to DCAD the site was developed in 1974 and is in very good condition with 3,004 square feet of living space and includes the following additional improvements:
  - Attached garage 682 square feet
  - Pool
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for fence height with a specific basis for this type of appeal.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

There is no case history for this site or any sites in the immediate area.

**Timeline:**

- July 21 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.
- August 15, 2008:      The Board of Adjustment Secretary randomly assigned this case to Panel B.
- August 16, 2008:      The Board of Adjustment’s Senior Planner contacted the applicant and shared the following information by telephone and letter:
- 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 August 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the September 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the September public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheet(s) with comments were submitted in conjunction with this application.

Sept. 5, 2008 The applicant submitted additional information to the Board of Adjustment’s Senior Planner for the Board’s consideration see attachment A.

**STAFF ANALYSIS:**

- The site is currently developed with a single family structure. The surrounding properties in the area are developed with single family structures.
- The applicant proposes to construct and maintain a solid 8’ fence constructed of cedar slates with metal support posts. The fence will be parallel to the north property line and will run 90’ parallel to Whitehurst Drive.
- The site is flat and rectangular in shape being approximately 10,456 square feet. The site is zoned R-7.5 where lots are typically 7,500 square feet in area.
- This is different from other sites in the area in that it is encumbered by two front yard setbacks. The site has a front yard setback along Brach Hollow Drive and Whitehurst Drive. The applicant is only requesting a special exception to the fence height regulation for the Whitehurst Drive front yard (what would typically be considered a side yard).
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation of 4 feet, allowing the applicant to construct and maintain an 8 foot high fence in the property’s front yard setback will not adversely impact neighboring properties.
- If the Board were to grant the special exception to the fence height regulation, staff would recommend imposing the following condition:
  1. Compliance with the submitted site plan and elevation.



**FILE NUMBER:** BDA 078-125

**BUILDING OFFICIAL'S REPORT:**

Application of Dana M. Dutcher, represented by Warren Packer/David Nelson, for a special exception to the fence height regulations and for a variance to the front yard setback regulations at 5807 Watson Avenue. This property is more fully described as part of Lots 7 and 8 in City Block A/5614 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a front yard setback of 40 feet. The applicant proposes to construct an 8 foot 6 inch fence in a required front yard setback which will require a 4 foot 6 inch special exception, and to construct and maintain a single family residential accessory structure and provide a 16 foot 6 inch front yard setback which will require a variance of 23 feet 6 inches.

**LOCATION:** 5807 Watson Avenue

**APPLICANT:** Dana M. Dutcher  
Represented by Warren Packer/David Nelson

**REQUESTS:**

- The following appeals have been made in this application on a site currently developed with a single family home:
  1. Special exceptions to the fence height regulations of 4' 6" are requested in conjunction with constructing and maintaining a 7' high open iron fence with 8' 6" high columns, an 8' 6" high Watson Avenue open iron gate, and an 8' high Douglas Avenue open iron gate (both gates with 8' 6" high stucco columns) in the site's 40' front yard setbacks along Watson Avenue and Douglas Avenue; and
  2. A variance to the front yard setback regulations of 23' 6" is requested in conjunction with constructing and maintaining an approximately 150 square foot storage building in the site's 40' Douglas Avenue front yard setback.

**STAFF RECOMMENDATION (related to the 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 (related to the variance):**

Approval of the variance request of 23' 6", subject to the following condition:

- Compliance with the submitted site plan (indicating a 16' 9" setback) is required.

Rationale:

- The site is different from other parcels of land in zoned R-1ac(A) given that it is slightly smaller than the typical lot in R-1ac(A) (the site is 32,038 square feet or 0.73 acres in area where lots are typically 1 acre or 43,560 square feet in area) and given that it is a single family-zoned lot with two 40' front yard setbacks. These characteristics of the subject site create hardship and preclude the applicant from maintaining this site with a reasonably sized house and constructing/maintaining a reasonably sized storage building. While the Douglas Avenue "frontage" of the subject site functions as its side yard, it is deemed a "front yard" only because it is 27' shorter than its Watson Avenue frontage – the "frontage" of the site that functions as its front yard. If the subject site's Douglas Avenue "frontage" were 27' longer, the proposed storage building would comply with the 10' side yard setback and would not require a variance. Furthermore, the applicant has substantiated that relocating the proposed storage building outside/beyond the Douglas Avenue 40' front yard setback is not possible without interfering with the existing A/C and pool equipment.

### **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 VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

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

- 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 located at the northeast corner of Watson Avenue and Douglas Avenue. The site has a 40' front yard setback along its western boundary: Douglas Avenue (since it is the shorter of the two street frontages by 27'), and a 40' front yard setback along its southern boundary: Watson Avenue (since even though it is the longer of the two street frontages, it is deemed a front yard in order to maintain the

continuity of the established setback of homes to the east of the site that front southward onto Watson Avenue). The site has 10' side yard setbacks along its northern and eastern boundary.

The applicant has submitted a scaled site plan and partial elevations indicating a 7' high open iron fence with 8' 6" high stucco columns and 8' 6" high gates in the site's Watson Avenue and Douglas Avenue front yard setbacks.

- The submitted scaled site plan indicates that the proposal located in the site's 40' *Watson Avenue* front yard setback has the following additional characteristics:
  - approximately 195' in length parallel to the street;
  - located approximately on the front property line (or approximately 12' from the pavement line).
- The submitted scaled site plan indicates that the proposal located in the site's 40' *Douglas Avenue* front yard setback has the following additional characteristics:
  - approximately 166' in length parallel to the street;
  - located approximately on the front property line (or approximately 15' from the pavement line).
- There are two single family homes to the south of the site on Watson Avenue that would have direct/indirect frontage to the proposal. Neither of these homes have fences. There is no single family home to the west on Douglas Avenue that would have frontage to the proposal.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other visible fences above four (4) feet high located in a *front* yard setback.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - an amended application; and
  - a document that provides additional details about the variance request.

#### **GENERAL FACTS (related to the variance):**

- Single family structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'. The subject site is located at the northeast corner of Watson Avenue and Douglas Avenue. The site has a 40' front yard setback along its western boundary: Douglas Avenue (since it is the shorter of the two street frontages by 27') and a 40' front yard setback along its southern boundary: Watson Avenue (since even though it is the longer of the two street frontages, it is deemed a front yard in order to maintain the continuity of the established setback of homes to the east of the site that front southward onto Watson Avenue). The site has 10' side yard setbacks along its northern and eastern boundary.

An amended application (see Attachment A) notes a variance request of 23' 6" (which implies a 16' 6" setback) even though the submitted site plan indicates a "new stor. building" that is located 16' 9" from the site's Douglas Avenue front property line (or 23' 3" into the site's Douglas Avenue front yard setback). (No encroachment is proposed in the site's Watson Avenue front yard setback). An elevation has been submitted that shows that the proposed storage building is 10' x 15' in area and 12' in height.
- According to DCAD records, the site is developed with the following:

- a structure built in 1996 that is in “good” condition with 7,747 square feet of living area;
- a 580 square foot porte cochere;
- a 902 square foot attached garage; and
- a pool.
- The subject site is zoned R-1ac(A), is flat, rectangular in shape (193 x 166’), and 32,038 square feet (or 0.73 acres) in area where lots are typically 1 acre or 43,560 square feet in area. The corner lot/subject site has two 40’ front yard setbacks where most single family lots in this single family zoning district have one 40’ front yard setback.
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - an amended application; and
  - a document that provides additional details about the variance request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1 (A) (Single family district 1 acre)  
North: R-1 (A) (Single family district 1 acre)  
South: R-1 (A) (Single family district 1 acre)  
East: R-1 (A) (Single family district 1 acre)  
West: R-1 (A) (SUP #29) (Single family district 1 acre, Specific Use Permit)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 956-230, Property at 5807 Watson Avenue (the subject site)
 

On September 16, 1996, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 3’ and imposed the following conditions: compliance with the submitted revised site plan/elevation plan is required. The case report stated that the request was made in conjunction with constructing and maintaining a 6’ high open metal fence with 6.5’ high stucco columns, and 7’ high entry gate columns along Watson Avenue. The case report stated that “Building Inspection staff has determined that the proposed fence along Douglas Avenue is located in a side

yard.”

**Timeline:**

- July 24, 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.
- August 14, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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.”
- August 14, 2008: The Board Administrator contacted the applicant’s representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the requests;
  - the August 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the September 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and, if not, may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 26, 2008 The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).
- August 26, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment B).
- August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection

Development Code Specialist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS (related to fence height special exceptions):**

- The requests are made to construct/maintain a 7' high open iron fence with 8' 6" high columns (and either 8' or 8' 6" high gates) in the site's 40' Watson Avenue and Douglas Avenue front yard setbacks.
- A scaled site plan and scaled partial elevations have been submitted indicating the location of the proposal in the front yard setbacks (located on the property lines or about 12' -15' from the pavement lines), heights (7' for the fence, 8' 6" for the columns, 8' for the Douglas Avenue gate, and 8' 6" for the Watson Avenue gates), and materials (open iron fence and gates, and stucco columns).
- There are two single family homes to the south of the site on Watson Avenue that would have direct/indirect frontage to the proposal. Neither of these homes have fences. There is no single family home to the west on Douglas Avenue that would have frontage to the proposal.
- No other fences were noted above four (4) feet high in the immediate area that appeared to be located in a *front* yard setback.
- As of September 8, 2008, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions of 4' 6" (whereby a 7' high fence with 8' 6" high columns and either 8' or 8' 6" high gates located in the site's Watson Avenue and Douglas Avenue front yard setbacks) does not adversely affect neighboring property.
- Granting these special exceptions to the fence height regulations of 4' 6" with a condition imposed that the applicant complies with the submitted site plan and partial elevations would provide assurance that the proposal would be maintained in the locations and of the height/materials shown on these documents.

**STAFF ANALYSIS (related to the variance):**

- The applicant has made a front yard variance request of 23' 6" to allow the construction and maintenance of an approximately 150 square foot storage building in the site's 40' Douglas Avenue front yard setback on a site developed with a single family home.
- The site is zoned R-1ac(A) and is different from most single family zoned lots in that it has two 40' front yard setbacks (and as a result, two side yard setbacks). The site is additionally different from most lots zoned R-1ac(A) in that it is smaller in area (32,038 square feet or 0.73 acres in area) than the typically-sized lot at 43,560 square feet or 1 acre in area.
- According to dimensions taken from the submitted site plan, the entire 150 square foot storage building is located in the site's Douglas Avenue 40' front yard setback.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance requested in conjunction with constructing and maintaining the 150 square foot storage building in the site's Douglas Avenue

front yard setback 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 front yard setback regulations of 23' 6" is necessary to permit development of the subject site (a site that is developed with a single family home with about 8,000 square feet of living area; a site that is flat, rectangular in shape, and approximately 0.73 acres in area in a zoning districts where lots are typically 1 acre 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 R-1ac(A) 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 R-1ac(A) zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure in the front yard setback would be limited to what is shown on this document— which in this case is a 150 square foot storage building shown on the submitted plan to be located as close as 16' 9" from the site's Douglas Avenue front property line (or as much as 23' 3" into this 40' front yard setback). Note that although the applicant has requested a 23' 6" variance, the site plan shows a variance need of not greater than 23' 3".

**FILE NUMBER:** BDA 078-098(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Vince Gurley for a special exception to the sign regulations at 8300 Douglas Avenue. This property is more fully described as Lot 6A in City Block 5623 and is zoned PD 314 (Tract 3), which allows 1 detached sign per street frontage. The applicant proposes to construct a second additional detached premise sign which would require a special exception to the sign regulations.

**LOCATION:** 8300 Douglas Avenue

**APPLICANT:** Vince Gurley

**REQUEST:**

A special exception to the sign regulation for an additional detached sign on Douglas Ave.

**STAFF RECOMMENDATION:**

Denial

Rationale:

The applicant has not substantiated how compliance with the requirements results in substantial financial hardship or inequity to the applicant.

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

Section 51A7.703 (a) The board of adjustment may, in specific cases, take the following actions and authorize the following special variances and exceptions with respect to the provisions of this article.

- (d) Except as provided in Section 51A-7.703(c) the board of adjustment may, in specific cases and subject to appropriate conditions, authorize only the following special variances and exceptions to the regulations established in this article when the board has made a special finding from the evidence presented that strict compliance with the requirement of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of this article:

(2) Authorize one additional detached premise sign on premise in excess of the number permitted by this article.

**GENERAL FACTS:**



- The subject site is currently developed with office and retail use.
- The applicant proposes to construct and maintain an additional 5' x4'2" monument sign on Douglas St.
- The code states that properties in PD314 (tract 3) are allowed to have one monument sign per 450 feet of frontage on a public street.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 314 (tract 3) (Planned Development)  
North: PD 314 (Planned Development)  
South: PD 314 (Planned Development)  
East: PD 314 (Planned Development)  
West: PD 314 (tract 2)(Planned Development)

**Land Use:**

The site is currently developed with a mixed use structure. The property to the west is under construction. The properties to the north, east, and south are developed with commercial and retail uses.

**BDA History:**

- |                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. BDA 067-051, 8333 Douglas Avenue/AKA 8383 Douglas Avenue (the subject site)</p> | <p>On August 13, 2007, the Board of Adjustment Panel C denied a request for a special exception to the parking regulations of 181 spaces without prejudice. The case report stated that the request was made in conjunction with constructing an office tower with 144,400 square feet of office uses and a 4,600 square foot bank use on a site currently developed with an approximately 278,000 square foot office tower.</p>    |
| <p>2. BDA 056-053, 8383 Douglas Avenue/AKA 8333 Douglas Avenue (the subject site)</p> | <p>On February 13, 2006, the Board of Adjustment Panel C granted a request for a special exception to the parking regulations of 288 spaces and imposed the following conditions: the special exception shall automatically and immediately terminate if and when the office and restaurant uses on the site are changed or discontinued. The case report stated that the request was made in conjunction with constructing and</p> |

maintaining a new 126,000 square foot office tower and an 8,500 square foot restaurant on the site.

### 3. BDA 078-111

The Board of Adjustment Panel A, at its August 11, 2208 meeting took the following action:

- Granted a special exception to the off-street parking regulations of 75 spaces (or 6% of the required off-street parking) in conjunction with completing and maintaining a seven story tower with 145,052 square feet of office use and a separate one story structure with 3,983 square feet of “financial institution with drive-in window” use.

#### **Timeline:**

- |                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 16, 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| July 15, 2008  | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| July 16, 2008: | <p>The Board of Adjustment Senior Planner contacted the applicant’s representative and shared the following information:</p> <ul style="list-style-type: none"><li>• the public hearing date and panel that will consider the application;</li><li>• the criteria and standard that the board will use in their decision to approve or deny the request;</li><li>• 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;</li><li>• the July 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;</li><li>• the August 1<sup>st</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;</li><li>• 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</li><li>• that the board will take action on the matter at the August public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.</li></ul> |

July 29, 2008 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

August 18, 2008 The Board of Adjustment Panel C voted to hold this case under advisement until September 15, 2008

August 21, 2008 The applicant submitted a revised site plan, elevation, and additional supporting documents to the Board of Adjustment's Senior Planner.

August 26, 2008 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The proposed site is zoned PD 314 (tract 3) which limits a property to one detached premise sign for 450 feet of street frontage.
- The site currently developed with Preston Center and has one detached monument sign on the corner of Douglas and Luther Lane. The applicant proposes to construct and maintain an additional sign on Douglas.
- The site has four attached signs on Luther Street.
- The submitted site plan and elevation indicates the proposed sign will be a single tenant internally lit sign 4'6" in height and 5' in width. Or 22.5 square feet.
- The site has approximately 220 feet of street frontage along Douglas and 290 feet of street frontage on Luther Lane.
- The applicant has the burden of proof to substantiate how strict compliance of the sign regulation of one detached premise sign for each 450 feet of street frontage causes a substantial financial hardship or inequity to the applicant

- If the Board chooses to grant the special exception of an addition detached premise sign, staff recommends imposing the following condition, strict compliance with the submitted site plan and elevation

**FILE NUMBER:** BDA 078-119

**BUILDING OFFICIAL'S REPORT:**

Application of Masterplan Consultants, represented by Ed Simons, for variances to the sidewalk, off-street parking, and front yard setback regulations at 650 Ft. Worth Avenue (aka 641 Yorktown Street). This property is more fully described as Lot 9A in City Block 2/6817 and is zoned PD 714 (Subdistrict 1B) where a 15 foot wide sidewalk along Fort Worth Avenue and an 11 foot 6 inch wide sidewalk along any other street is required; where 100 percent of any parking for new construction located on the same building site as the main use must be to the rear of the main structure is required; and where a maximum front yard setback of 15 feet is required. The applicant proposes to construct and maintain a structure without the required 15 foot wide sidewalk along Fort Worth Avenue and without the required 11 foot 6 inch wide sidewalk along Yorktown Street and Eastus Drive which will require variances to the sidewalk regulations; where the applicant proposes to construct and maintain a structure with off-street parking located to the side of the main structure which will require a variance to the off-street parking regulations; and where the applicant proposes to construct and maintain a structure and provide a maximum 410 foot front yard setback which will require a variance of up to 395 feet to the maximum front yard setback regulations.

**LOCATION:** 650 Ft. Worth Avenue (aka 641 Yorktown Street)

**APPLICANT:** Masterplan Consultants  
Represented by Ed Simons

**REQUESTS:**

- The following appeals have been made in this application in conjunction with constructing and maintaining an approximately 5,200 square foot bank structure with drive-through (Neighborhood Credit Union) on a site developed with an existing approximately 17,500 square foot bank structure (Neighborhood Credit Union):
  1. Variances to the *maximum* front yard setback regulations of up to 395' are requested since the new structure on the site would exceed the 15' *maximum* front yard setback established for the Planned Development zoning district in the 2005;
  2. Variances to the off-street parking regulations are requested since the required off-street parking for the new structure on the site would be located to the sides (rather than the required rear) of the new main structure on the site; and
  3. Variances to the minimum sidewalk regulations are requested to maintain existing sidewalks on the site at widths less than what was established in the Planned Development zoning district surrounding the existing structure along Ft. Worth Avenue and Yorktown Street, and to maintain no sidewalk surrounding the existing structure along Eastus Street. (The applicant has submitted a revised site plan indicating compliance with required sidewalk width regulations for the

area surrounding the new structure to be located on the portion of the subject site designated as an artificial lot).

### **STAFF RECOMMENDATION:**

Approval of the maximum front yard setback and off street parking variance requests, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The site is different from other parcels of land in the PD No. 714 zoning classification given the atypical 15' *maximum* front yard setback and off-street parking regulations (off-street parking to be provided only to the *rear* of a structure) triggered in this case for the new approximately 5,200 square foot structure on the approximately 114,000 square foot (or 2.5 acre) site with three front yard setbacks. The characteristics of the subject site create hardship which preclude the applicant from developing it with the proposed 5,200 square foot bank structure with drive-through while complying with the three maximum front yard setbacks (along Fort Worth Avenue, Yorktown Street, and Eastus Street) and the off-street parking regulations of PD No. 714 (parking to the rear of the proposed structure from all three streets: Fort Worth Avenue, Yorktown Street, and Eastus Street).

Denial of the minimum sidewalk width variances

Rationale:

- Although staff has concluded that because the site is different from other parcels of land in the PD No. 714 zoning classification (given the atypical 15' *maximum* front yard setback and off-street parking provisions) which in turn creates hardship precluding the applicant from developing this site with the proposed 5,200 square foot bank structure with drive-through while complying with the front yard setback and off-street parking regulations of PD No. 714, the applicant has not substantiated any site characteristic/physical site constraint that precludes the applicant from meeting/providing sidewalks at their required widths for the entire site (i.e. the area inside *and* outside the area on the site designated as an artificial lot).
- Staff has concluded however that granting these variances would not be contrary to the public interest if the board were to impose the submitted revised site plan as a condition to the request since sidewalks would be provided per the ordinance provisions for the new development on the western portion of the subject site designated as an artificial lot whereby the only portion of the site to be "varied" from these sidewalk regulations would be the area where no new development is proposed *outside* the area designated as an artificial lot. Any deviation (such as a new addition or construction) to the site beyond what is documented on the revised site plan (assuming the board were to impose it as a condition to granting the requests) would trigger the sidewalks to either be provided per the ordinance or for the applicant to file a new application to the board for an additional variance request.

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

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

### **GENERAL FACTS:**

- Structures on lots located in Subdistrict 1b of PD No. 714 are required to provide a minimum front yard setback of 6' (where at least 50 percent of the front façade must be at the minimum front yard setback) and a maximum front yard setback of 15'. The PD No. 714 *maximum* front yard setback provision was established in the 2005 to encourage new development close to the street in order to promote a more urban/pedestrian environment.  
According to a letter written by the applicant's representative, the proposed structure will provide a 410' setback from the Eastus Street front property line (395' beyond the 15' maximum front yard setback); a 21' 2" setback from the Yorktown Street front property line (6' 2" beyond the 15' maximum front yard setback), and a 113' setback from the Forth Worth Avenue front property line (or 98' beyond the 15' maximum front yard setback).  
The existing bank structure on the site is a nonconforming structure –a structure that does not conform to the regulations (other than use regulations) of the code, but was lawfully constructed under the regulations in force at the time of construction. The Dallas Development Code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations. Variances to the front yard setback regulations are not requested in conjunction with this nonconforming structure. (The existing building footprint of the decades-old structure does not conform with the minimum and maximum front yard setbacks that were established for PD No. 714 in the 2005).
- 100 percent of any parking for new construction located on the same building site as the main use on lots located in Subdistrict 1b of PD No. 714 must be to the rear of the main structure.  
A site plan has been submitted that indicates required parking to be located in places to the sides of the main structure.
- A 15' width is required for a sidewalk located along Ft. Worth Avenue and West Commerce Street, and an 11.5' width is required for a sidewalk along any other street in Subdistrict 1b of PD No. 714.

According to a letter written by the applicant's representative, the sidewalks will be provided at the required widths within the area designated as an artificial lot where the new structure is proposed but the existing 4' wide sidewalks along Yorktown Street and Fort Worth Avenue (and the provision of no sidewalk along Eastus Street) *outside* the area designated as the artificial lot are proposed to be maintained.

- The site is flat, irregular in shape and according to the application, 113,692 square feet (or 2.6 acres) in area. The site has three front yard setbacks (one along Ft. Worth Avenue, one along Yorktown Street, and one along Eastus Street) – a characteristic that is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the site is developed with an 8,930 square foot bank built in 1978, and an 8,419 square foot bank built in 1986.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter that provided additional details about the requests; and
  - a revised site plan.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 714 Subarea 1b (Planned Development District)  
North: PD No. 714 Subarea 1b (Planned Development District)  
South: IR (Industrial Research)  
East: PD No. 714 Subarea 1b (Planned Development District)  
West: PD No. 714 Subarea 1b (Planned Development District)

### **Land Use:**

The subject site is developed with bank (Neighborhood Credit Union). The areas to the north, east, south, and west are developed with commercial 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:**

- July 24, 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.
- August 14, 2008:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 14, 2008:      The Board Administrator contacted the applicant and shared the following information by phone and email:



- 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 August 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the September 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 22, 2008      The applicant submitted additional information to the Board Administrator (see Attachment A).

August 25, 2008      The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:  
 1. "Deny the variance to the sidewalk standards.  
 2. Approve the variance to the off-street parking regulations."

August 26, 2008:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

**STAFF ANALYSIS:**

- Variances to the *maximum* front yard setbacks along Fort Worth Avenue, Yorktown Street, and Eastus Street are requested to construct/maintain a new approximately 5,200 square foot bank structure with drive-through on a site currently developed with an approximately 17,500 square foot banks structure.
- Variances to the off-street parking regulations are requested to locate required off-street parking for the new structure to the sides of it rather than entirely behind it.
- Variances to minimum sidewalk regulations are requested to maintain sidewalks at their current widths (below the minimum width standards) along Fort Worth Avenue and Yorktown Street (and to maintain no sidewalk on Eastus Street) on the portion of the subject site that lies *outside* the designated artificial lot - the portion of the subject site on which no new development is proposed.

- Although the existing bank structure can remain out of compliance with the maximum front yard setbacks established with the creation of the 2005 Planned Development District as a nonconforming structure, the proposed new structure on the subject site triggers the entire site to comply with the minimum sidewalk width regulations.
- The site is flat, irregular in shape and according to the application, 113,692 square feet (or 2.6 acres) in area. The site has three front yard setbacks (one along Ft. Worth Avenue, one along Yorktown Street, and one along Eastus Street) a characteristic that is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the front yard setback regulations of up to 395', variances to the off-street parking regulations (to allow required parking to be located to the side of the new structure rather than entirely behind it), and variances to the minimum sidewalk regulations (to allow the sidewalks to be either retained at their current widths or waived on the portion of the site located outside the artificial lot where the new structure is proposed) 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 variances are necessary to permit development of the subject site (a site that is developed with an approximately 17,500 square foot bank structure, and a site that is flat, irregular in shape, and approximately 114,000 square feet in area with three front yard setbacks) 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 PD No. 714 zoning classification.
  - The variances 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 PD No. 714 zoning classification.
- If the Board were to grant the variance requests, imposing a condition whereby the applicant must comply with the submitted revised site plan, the new structure would be limited to that what is shown on this plan - which in this case is structure that would provide a 410' setback from the Eastus Street front property line (395' beyond the 15' maximum front yard setback); a 21' 2" setback from the Yorktown Street front property line (6' 2" beyond the 15' maximum front yard setback), and a 113' setback from the Fort Worth Avenue front property line (or 98' beyond the 15' maximum front yard setback); where part of the new structure's required off-street parking would be located to the sides of it rather than entirely behind it; and where sidewalks on the artificial lot would comply with the sidewalk width requirements but where the sidewalks elsewhere on the site could be maintained at 4' widths along Yorktown Street and Fort Worth Avenue (and where no sidewalk would be required to be provided along Eastus Street).