

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL C**  
**MONDAY, OCTOBER 16, 2006**

**Briefing: 10:30 A.M. 5ES**  
**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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10-16-2006

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, OCTOBER 16, 2006  
AGENDA

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

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**Donnie Moore, Chief Planner**  
**Jennifer Hiromoto, Senior Planner**  
**Steve Long, Board Administrator**

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**MISCELLANEOUS ITEM**

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Approval of the **Monday, September 18, 2006** M1  
Board of Adjustment Public Meeting Minutes

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**UNCONTESTED CASES**

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BDA 056-202(J)	9797 Bruton Road <b>REQUEST:</b> Application of WAK/F2 L.P. represented by A.W. Rabalais for a variance to the side yard setback regulations	1
BDA 056-219(J)	2625 Kirven Drive <b>REQUEST:</b> Application of Wanda K. Hoy for a special exception to the front and side yard setback regulations	2
BDA 056-225(J)	10770 Lennox Lane <b>REQUEST:</b> Application of Kerry Krottinger for a special exception to the fence height regulations	3
BDA 056-240(J)	10717 Cromwell Drive <b>REQUEST:</b> Application of Herbert W. and Judith S. Merrill to appeal the decision of the administrative official	4

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## HOLDOVER CASE

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BDA 056-201

8727 Douglas Avenue

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**REQUEST:** Application of Richard Gussoni,  
represented by Ed Simons, for a variance to the  
height regulations

## 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 September 18, 2006 public hearing minutes.

**FILE NUMBER:** BDA 056-202(J)

**BUILDING OFFICIAL'S REPORT:**

Application of WAK/F2 L.P. represented by A.W. Rabalais for a variance to the side yard setback regulations at 9797 Bruton Road. This property is more fully described as Lot 2B in City Block 6756 and is zoned MF-2(A) which requires a side yard setback of 10 feet. The applicant proposes to construct a carport and provide a 0 foot setback, which would require a variance of 10 feet.

**LOCATION:** 9797 Bruton Road

**APPLICANT:** WAK/F2 L.P.  
Represented by A.W. Rabalais

**REQUEST:**

- A variance to the side yard setback regulations of 10' is requested in conjunction with constructing a carport on a site that is currently developed with a multifamily use.  
Note: The provision in the Dallas Development Code that provides for the Board of Adjustment to consider special exceptions for carports in the front yard and side yard is not applicable to multiple family zoned properties.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The subject site appears flat, slightly irregular in shape (462' x 700'), and approximately 6.78 acres in area.
- The applicant has not substantiated how the site's area, shape or slope precludes its development in a way where the applicable development standards can not be met.
- The applicant has not provided any evidence to substantiate how these variances are necessary to develop this parcel of land (a parcel that is different from other MF-2(A) zoned lots) whereby the lot's restrictive area, shape or slope precludes its development in a manner commensurate with other developments found on other similarly-zoned lots.
- The applicant has conveyed intentions to construct another carport on the east side of the property in a location that will not be located in a required side yard. It appears that the development has other locations for a carport that would not require a variance.

**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:**

- A 10' side yard setback is required for permitted structures other than single family or duplex uses in the MF-2(A) zoning.
- The site appears to be flat, irregular in shape, and according to the application is 6.78 acres in area. The site has approximately 358.6' of frontage along Bruton Road and widens to approximately 462' in width about one-third into the approximately 700' long lot.
- DCAD records indicate that the site is developed with multiple apartment buildings with approximately 366,198 square foot apartment built in 1985.
- The submitted site plan indicates the location the applicant is proposing the carport. The submitted site plan shows a carport for 7 parking spaces to be located at the southwest corner of the request site.
- The applicant submitted a revised site plan on October 2, 2006 showing a request for a carport for 12 parking spaces. The location of the proposed carports has 13 parking spaces, but the space closest to the street is located within the required front yard. A carport over this space would require a front yard setback variance, which the applicant is not requesting.
- The submitted elevation shows two views of the proposed carport: (1) a cross-section showing the roof and support structures at a height of 7 feet to a point inside the carport; and (2) an overhead view showing the 18' depth of the carport.
- The applicant noted on the revised site plan that the maximum height of the carport would be 8'.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: MF-2(A) D-1 (Multifamily with D-1 Dry Liquor Control Overlay)  
North: MF-2(A) (Multifamily)  
South: R-7.5(A) (Single Family Residential 7,500 square feet)

East: MF-2(A) (Multifamily)  
West: CR (Community Retail)

### **Land Use:**

The subject site is developed with a multifamily use. The areas to the north and east are developed with multifamily uses; the area to the south is developed with single family uses; and the area to the west is developed with 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:**

- July 25, 2006            The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Sept. 20, 2006:        The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Sept. 25, 2006:        The Board of Adjustment Senior Planner mailed the applicant a letter to convey the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 2, 2006:        The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code

Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

- October 2, 2006      Transportation Engineer Nguyen submitted a review comment sheets with comments were submitted in conjunction with this application.
- October 2, 2006:      The applicant submitted a revised site plan and provided information on the proposed maximum height of the carport.
- October 9, 2006      The applicant submitted a revised site plan that shows the entire request site and the proposed location of the carport.

**STAFF ANALYSIS:**

- The site appears to be flat, irregular in shape, and according to the application is 6.78 acres in area. The site has approximately 358.6' of frontage along Bruton Road and widens to approximately 462' in width about one-third into the approximately 700' long lot.
- The elevation shows a depth of 18' and the revised site plan indicates the carport would cover 12 of the 13 parking spaces. Given the parking space is typically approximately 9' in width, the size of the carport will be approximately 1,944 square feet (9' x 108').
- It is unclear if the construction of the carport in this location will have a detrimental impact on the landscaping buffer that is between the parking spaces and the fence.
- From site visit observations and reviewing the submitted site plan, it appears that the site has parking spaces that are not within a required side yard that could allow a carport to be built without needing a variance.
- The applicant has the burden of proof in establishing the following related to the side yard variance request:
  - That granting the variance to the side yard setback regulations of 10' on the southwest side of the subject site requested to construct a carport for 13 parking spaces 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 side yard setback regulations of 10' is necessary to permit development of the subject site (a site that is developed with multiple apartment buildings, appears to be flat, irregular in shape, and according to the application is 6.78 acres 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 MF-2(A) zoning classification.
  - The variance to side yard setback regulations of 10' 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 MF-2(A) zoning classification.

- If the Board were to grant the side yard variance request of 10', imposing a condition whereby the applicant must comply with the revised site plan and elevation, the carport structure in the setback would be limited to that what is shown on these plans.

**FILE NUMBER:** BDA 056-219(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Wanda K. Hoy for a special exception to the front and side yard setback regulations at 2625 Kirven Drive. This property is more fully described as Lot 107 in City Block 6739 and is zoned R-7.5(A) which requires a 25 foot front yard setback and a 5 foot side yard setback. The applicant proposes to maintain an existing carport and provide a 15 foot front yard setback and a 0 foot side yard setback which would require a special exception of 10 feet to the front yard setback regulations and 5 feet to the side yard setback regulations.

**LOCATION:** 2625 Kirven Drive

**APPLICANT:** Wanda K. Hoy

**REQUEST:**

- A special exception to the front yard setback regulations of 10 feet and a special exception to the side yard setback regulations of 5 feet are requested in conjunction with maintaining a carport on a site developed with a single family home.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception for a carport to the front yard or side yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not have a detrimental impact on surrounding properties and there is no vehicular access to an area behind the required front building line that would accommodate a parking space.

**STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE FRONT YARD:**

The Board of Adjustment may grant a special exception to the minimum front yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board,

- (1) there is no adequate vehicular access to an area behind the required front building line that would accommodate a parking space, and
- (2) the carport will not have a detrimental impact on surrounding properties.

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

- (1) Whether the requested special exception is compatible with the character of the neighborhood.

- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

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

### **STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

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

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

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

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

### **GENERAL FACTS:**

- A 25'-front yard setback and a 5'-side yard setback is required in the R-7.5(A) zoning district.
- The existing carport is located 15' from the site's eastern front property line and 0' from the site's northern side property line
- The existing carport has the following characteristics:
  - approximately 23.1' x 25' (or approximately 518 square feet) in area
  - two-vehicles-wide
  - constructed of metal materials
  - 8' in height
- The subject site is approximately 134' x 60' in area.
- The plat map indicates that the subject property is adjacent to a 10' wide easement.
- According to DCAD, the site is developed with a single family home in average condition built in 1953 with 1,234 square feet of living area.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the front yard and side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").

- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the front yard setback and side yard setback with a different basis for appeal than that of *special exceptions for carports* in the front yard setback and side yard setback.
- The Dallas Development Code specifies that no side yard setback is required in residential districts for “a structure accessory to a residential use if the structure does not exceed 15 feet in height; and is located in the rear 30 percent of the lot.” In this case, the special exception is required since:
  - The “carport” structure can not be deemed “a structure accessory to a residential use” since it is attached to the main structure.
  - Even if the “carport” structure was detached from the main structure and could be deemed “a structure accessory to a residential use,” it is not located in the rear 30 percent of the 134’-long lot.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a 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:**

August 17, 2006      The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. (Color photos of the site submitted with the application will be available for review at the briefing/public hearing).

Sept. 20, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

Sept. 25, 2006:      The Board of Adjustment Senior Planner mailed the applicant a letter to convey the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, 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 applicant has submitted an elevation and a site plan showing the location of the existing carport. The applicant has identified on the application that the carport is completely constructed of steel.
- Other existing carports were identified in the immediate area.
- The existing carport is located adjacent to the side yard that is separated from the adjacent lot by a 10' wide access easement, which reduces the impact on the adjacent lot in respect to lot-to-lot drainage.
- Granting both special exceptions would allow the carport to remain in its current location, which is 15' away from the front property line (or 10' into the required 25' front yard setback) and 0' away from the side property line (or 5' into the required 5' side yard setback).
- Historically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport's location in the front yard setback and side yard setback; would require the carport located in the required setbacks to be retained in its current design, materials, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:

1. Compliance with the submitted site plan and elevation is required.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. All applicable building permits are obtained.
- The applicant has the burden of proof to substantiate the carport special exception to the front yard regulations that (1) there is not adequate vehicular access to an area behind the required front building line that would accommodate a parking space, and (2) the carport will not have a detrimental impact on surrounding properties.
  - The applicant has the burden of proof to substantiate regarding the carport special exception to the side yard regulations that the carport will not have a detrimental impact on surrounding properties.

**FILE NUMBER:** BDA 056-225(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Kerry Krottinger for a special exception to the fence height regulations at 10770 Lennox Lane. This property is more fully described as Lot 1 in City Block 3/5522 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 9 foot fence in the required front yard setback which would require a special exception of 5 feet.

**LOCATION:** 10770 Lennox Lane

**APPLICANT:** Kerry Krottinger

**REQUEST:**

- A special exception to the fence height regulations of 5' is requested in conjunction with constructing and maintaining an 8' high solid stucco fence with 9' high stucco columns and a sliding gate to be located in the site's Lennox Lane and Royal Lane 40' front yard setback on a site developed with a single family home.

**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 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 elevation indicating a wall/gate proposal that would reach a maximum height of 8'.
- The applicant has submitted a revised site plan showing the curb line to ensure the proposed fence will be outside of the visibility corner clip; and a revised elevation labeling the maximum height of the columns to be 9' and changing the materials of the columns from stone to stucco.

- The following additional information was measured from the site plan:
  - The proposed wall/gate located in the 40' front yard setback would be: approximately 106' in length located approximately 1' from the north property line adjacent to Royal Lane; approximately 28' in length located diagonally across the northwest corner of the request site at the Royal Lane and Lennox Lane visibility corner clip; approximately 315' in length approximately 1' from the property line on the west side of the subject site adjacent to Lennox Lane; and approximately 40' located on the southern property line perpendicular to Lennox Lane.
  - The proposed two gates are to be located approximately 5' from the west property line.
- No landscape plan or landscape materials have been noted to be provided in conjunction with this proposal.
- There is one single family homes across Lennox Lane and two single family homes across Royal Lane that would have direct frontage to the proposed fence.
- The applicant submitted a drawing demonstrating the existing fences that exceed 6' in height according to his observations.
- Senior Planner Hiromoto conducted a field visit of the site and surrounding area and noted fences that exceed 4' in yards that are likely to be deemed front yards according to the development code immediately north, south, east, and west of the request site.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request.

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

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

1. BDA 93-014      On January 12, 1993, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence height regulations to maintain a 5 foot wrought iron fence with 6' brick columns in the defined front yards along Lennox Lane and Royal Lane, subject to compliance with a submitted site/landscape plan at 10770 Lennox Lane (the subject site).

2. BDA 978-232 On October 19, 1998, the Board of Adjustment denied with prejudice of a request for a special exception to the fence height regulations of 4 feet and followed the staff recommendation of denial with prejudice of the request for a special exception to the visibility triangle regulations at 10770 Lennox Lane (the subject site).
3. BDA 84-286 On October 23, 1984, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence height regulations to maintain a 7' wrought iron and brick fence with 7' and 8' brick columns along Strait Lane at 10777 Strait Lane (three lots east of the request site).
4. BDA 88-119 On November 8, 1988, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence height regulations to maintain a 6'10" open metal fence with brick columns, subject to a site plan and a landscape plan.
5. BDA 94-126 On October 25, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations to maintain a 7' fence subject to a minimum 10' setback from the property line; the fence must be constructed of an acceptable open metal material and the fence portion must not exceed 6' in height; columns of metal or solid materials and columns not exceeding 7' in height; and a landscape plan approved by this Board (landscaping in front of fence between the fence and the property line) located at 10757 Lennox Lane (the lot immediately west of the subject site).

**Timeline:**

- August 25, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- Sept. 25, 2006      The applicant submitted a revised site plan to Development Code Specialist Sipes.
- October 2, 2006:    The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- October 2, 2006    Transportation Engineer Nguyen submitted a review comment sheets with comments were submitted in conjunction with this application.
- October 6, 2006    The applicant submitted additional information (see Attachment A) and a revised elevation. (Color photos of the site and surrounding area submitted with the application will be available for review at the briefing/public hearing).

**STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the entire proposed wall/gate in the site's front yard setbacks, and its location relative to the front property line.
- A wall/gate elevation has been submitted that denotes the maximum height of the proposed gate/wall (8'- 0"), proposed columns (9'-0") and the building materials (wall and columns to be stucco, both to match the house).
- No landscape plan or notation of landscape materials to be planted adjacent to the wall have been submitted in conjunction with the appeal. The applicant's representative verbally indicated it is the applicant's intention to install landscaping adjacent to the fence.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' (whereby the proposed 8' high wall/gate and 9' high columns) will not adversely affect neighboring property.

- Granting this special exception of 5' with conditions imposed that the applicant complies with the revised site plan and elevation would assure that the proposed wall and gate would be constructed and maintained as shown on these documents.

**FILE NUMBER:** BDA 056-240(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Herbert W. and Judith S. Merrill to appeal the decision of the administrative official at 10717 Cromwell Drive. This property is more fully described as Lot 6A in City Block B/6430 and is zoned R-10(A). The applicant proposes to appeal the building official's decision that an amateur communication tower antenna cannot cross a property line.

**LOCATION:** 10717 Cromwell Drive

**APPLICANT:** Herbert W. and Judith S. Merrill

**REQUEST:**

- An appeal has been made to reverse/overturn the Building Official's decision that an amateur communication tower cannot cross a property line and the antenna must meet all required zoning setbacks.

**BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

**GENERAL FACTS:**

- On August 22, 2006, the applicant filed an appeal to the Board of Adjustment in response to the denial of a building permit application, which would allow an amateur communication tower to remain.
- The date that the decision of the Building Official was made is August 22, 2006, which is the date of a letter from Development Code Specialist Danny Sipes.
- The date in which the decision is made by the Building Official is relevant since the Dallas Development Code states that an appeal to the board must be made within 15 days after notice of the decision of the official.
- The Building Official has determined that the amateur communication tower is a structure and all portions of the structure must provide the setbacks required according to the zoning district.
- The Dallas Development Code lists amateur communication towers as an accessory use, which the tower is allowed in residential districts.
- The Senior Planner forwarded a copy of the "Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas" to the applicant via regular mail (see Attachment A).

- The applicant submitted a survey showing the location of the amateur communication tower. The tower provides a 7.5-foot side yard setback on the southern side of the subject property.
- The submitted survey shows the property is developed with a single-family use, a pool, and a tower.
- The applicant submitted a photo of the existing tower. A scaled elevation was not provided.
- The plat map indicates the subject property is 82 feet by 143 feet with a 30-foot front building line.
- The applicant verbally provided the following details to Senior Planner Hiromoto regarding the history of the amateur communication tower:
  - The applicant first installed a tower on his property in 1977, prior to the amateur communication tower ordinance.
  - In 1981, the applicant installed an additional antenna, which is the first time an antenna crossed the property line, being the southern boundary line of the subject property.
  - In May 2003, the applicant replaced the tower structure and replaced it with the currently existing tower.
- The applicant verbally provided the following details to Senior Planner Hiromoto regarding the size of the amateur communication tower:
  - The tower is approximately 42 feet in height.
  - The tallest antenna has a radius of approximately 25 feet (equaling a horizontal span of approximately 50 feet).
  - The widest antenna has a radius of approximately 39 feet (equaling a horizontal span of approximately 78 feet).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10(A) (Single Family Residential 10,000 square feet)  
North: R-10(A) (Single Family Residential 10,000 square feet)  
South: R-10(A) (Single Family Residential 10,000 square feet)  
East: R-10(A) (Single Family Residential 10,000 square feet)  
West: R-10(A) (Single Family Residential 10,000 square feet)

**Land Use:**

The subject site is developed with a single family use. The area to the north, south, east, and west are developed with single family uses. The area to the west is developed with TXU power lines.

**Zoning/BDA History:**

1. BDA90-028      On May 8, 1990, the Board of Adjustment approved a fence height special exception of 1 foot 6 inches to allow a 10 foot six inch fence

in the side and rear yards at 10711 Cromwell Drive (located south of the subject site).

**Timeline:**

- August 22, 2006 Development Code Specialist Sipes wrote a letter indicating the Building Official's decision that an amateur communication tower antenna could not cross a property line and the antenna must meet all required zoning setbacks.
- August 22, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Sept. 25, 2006: The Board of Adjustment Senior Planner mailed the applicant a letter to convey the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the October 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
  - a copy of the "Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas" was forwarded to the applicant's (see Attachment A).
- October 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, 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.

October 9, 2006      Assistant City Attorney submitted documents in support of the Building Official's decision (see Attachment B).

**STAFF ANALYSIS:**

- The applicant has the burden of proof in establishing the necessary facts to show that Building Official's decision of August 22<sup>nd</sup> should be overturned/or reversed.
- If the Board were to uphold the decision of the Building Official, the City would require that the structure come into compliance, including all antennae, and meet the setbacks of the zoning district.
- The R-10(A) zoning district requires a minimum side yard setback for permitted structures other than for a single family use of 10 feet.
- If the Board were to overturn the decision of the Building Official, the applicant would need a side yard setback variance on the subject property to allow a 0 foot setback for the antennae. The adjacent property to the south would also need to seek a side yard setback variance to allow the antennae to allow a 0 foot side yard setback for the portions that are on this property

**FILE NUMBER:** BDA 056-201

**BUILDING OFFICIAL'S REPORT:**

Application of Richard Gussoni, represented by Ed Simons, for a variance to the height regulations at 8727 Douglas Avenue. This property is more fully described as a tract of land in City Block 9/5599 and is zoned R-1ac(A) which limits the height of a structure to 36 feet. The applicant proposes to construct a single family dwelling and provide a height of 43 feet which would require a variance of 7 feet.

**LOCATION:** 8727 Douglas Avenue

**APPLICANT:** Richard Gussoni  
Represented by Ed Simons

**REQUEST:**

- A variance to the height regulations of 7' is requested in conjunction with constructing and maintaining a 3-level single family home that would reach 43' in height.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The subject site slopes in its middle to a creek bed, and is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west) and is 6.562 acres in size.
- The current features of the site have allowed the development of an existing single family home that, according to DCAD has over 6,000 square feet of living space, and that appears to be two-stories in height.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope precludes the development of a new single family home that could meet the applicable development standards including the maximum 36' height provision commensurate with other developments found on other similarly-zoned lots.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary

hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

### **GENERAL FACTS:**

- The maximum height for a structure in the R-1ac (A) zoning district is 36 feet. The applicant has submitted elevations indicating a proposed single family structure that will reach 42' 6 ¼" in height. (The Building Official's Report indicates the structure would reach 43' in height).
- "Height" is defined in the Dallas Development Code as "the vertical distance measured from grade to:
  - A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure;
  - B) for a structure with a dome roof, the midpoint of the vertical dimension of the dome; and
  - C) for any other structure, the highest point of the structure.
- According to calculations taken from the submitted site plan by the Board Administrator, the proposed single family home has a building footprint of about 8,400 square feet (140' x 60').
- According to dimensions taken from the submitted elevations by the Board Administrator, portions of third level and roof of the home exceeds the maximum 36' height limit.
- A site plan has been submitted with contour lines. This plan indicates that the site is about 625' in width at its widest point from Chatham Hill Road on the south to the site's property line on the north. The application states that a creek runs through the site which is substantiated by contour lines on the site plan. The site elevation begins on the south at 583' and declines over a length of about 210' to the middle of the site where a creek bed that divides the site at an elevation of 548'. The site then inclines from the creek bed over about a length of about 210' back to northern edge of the site at an elevation of 563'.
- The site is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west). According to the application, the site is 6.562 acres in area. The site is zoned R-1ac (A) where lots are typically 1 acre in area.
- DCAD records indicate that the site is developed with the following:
  - a single family home in fair condition built in 1939 with 6,342 square feet of living space;
  - a 510 square foot cabana;
  - a 996 square foot attached garage;
  - a pool;

- a 560 square foot detached servants quarters;
- a 400 square foot basement; and
- a 337 square foot storage building.
- On September 8<sup>th</sup>, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter to the board requesting a postponement of the issue at hand. (A copy of the board administrator's response to this letter is included in Attachment A).
- The Board of Adjustment held a public hearing on this matter on September 18, 2006. The board determined that the applicant had not posted his notification sign on the subject site per Dallas provisions set forth in the Development Code, and delayed action until October 16, 2006.
- No additional information has been submitted on this request since the September 18<sup>th</sup> public hearing.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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 21, 2006            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 17, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 18, 2006:      The Board Administrator emailed the applicant's representative with the following information:
  - the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the September 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment 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.

Sept. 8, 2006 The applicant's representative submitted additional information beyond what was submitted with the original application and beyond the staff review team meeting. (Attachment A is a copy of this letter and a response to the letter by the Board Administrator).

Sept. 18, 2006: The Board of Adjustment conducted a public hearing on the request but delayed action until their next scheduled public hearing to be held on October 16, 2006. (The board determined that the applicant had not posted his notification sign on the subject site in adherence with provisions set forth in the Dallas Development Code).

## **STAFF ANALYSIS:**

- A site plan has been submitted with contour lines. This plan indicates that the site is about 625' in width at its widest point from Chatham Hill Road on the south to the site's property line on the north. The application states that a creek runs through the site which is substantiated by contour lines on the site plan. The site elevation begins on the south at 583' and declines over a length of about 210' to the middle of the site where a creek bed that divides the site at an elevation of 548'. The site then inclines from the creek bed over about a length of about 210' back to northern edge of the site at an elevation of 563'.
- The site is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west). According to the application, the site is 6.562 acres in area. The site is zoned R-1ac (A) where lots are typically 1 acre in area.
- The submitted elevation shows that part of the 3<sup>rd</sup> level of the proposed single family home would exceed the maximum 36' height limit.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
  - That granting the variance to the height regulations of 7' requested to construct and maintain a 3-level single family home 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 height regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac (A) zoning classification.
  - The variance to the height regulations 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 not permitted by this chapter to other parcels of land in districts with the same R-1ac (A) zoning classification.
- If the Board were to grant the variance to the height regulations of 7', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the amount of the structure that would be permitted to encroach above the 36' maximum height would be limited to what is shown on these documents.

## **BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Scott

I move that the Board of Adjustment in Appeal No. **BDA 056-201**, hold this matter under advisement until **October 16, 2006** due to the applicant's failure to post the notification sign on the property.

SECONDED: **Boyd**

AYES: 5– Madrigal, Boyd, Moore, Maten, Scott

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)