

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

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

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

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

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

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12-15-2008

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

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BRIEFING	5ES	10:00 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 ITEMS**

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Approval of the <b>Monday, November 17, 2008</b> Board of Adjustment Public Hearing Minutes	M1
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**UNCONTESTED CASES**

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BDA 078-156	2939 Belle Starr Drive <b>REQUEST:</b> Application of Cain Gutierrez for a special exception to the side yard setback regulations	2
BDA 078-157(K)	3201 Jacotte Circle <b>REQUEST:</b> Application of William Leeper for a special exception to the single family use regulations	3
BDA 089-003	9806 Inwood Road <b>REQUEST:</b> Application of Audrey Spangenberg, represented by Robert Baldwin, for a special exception to the fence height regulations	4

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**HOLDOVER CASE**

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BDA 078-145	3520 Greenville Avenue <b>REQUEST:</b> Application of Peter Kavanagh, Zone Systems, Inc., for a variance to the rear yard setback regulations and for a variance to the height regulations	5
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**REGULAR CASES**

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BDA 078-158(K)	9226 Hathaway Street <b>REQUEST:</b> Application of Michael Dees for a special exception to the fence height regulations	8
BDA 078-159(K)	6133 Llano Avenue <b>REQUEST:</b> Application of Dolores Parker for a special exception to the visibility obstruction regulations	9
BDA 089-005(K)	315 Cole Street <b>REQUEST:</b> Application of Richard Stanzel represented by Robert Baldwin for a special exception to the parking regulations	10

## 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 November 17, 2008 public hearing minutes.

**FILE NUMBER:** BDA 078-155(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Ed Simons for a variance to the minimum sidewalk regulations at 2303 Pittman Street. This property is more fully described as Lots 3 through 13 in City Block 1/6817 and is zoned PD-714 (Subarea 1B), which requires minimum sidewalk widths. The applicant proposes to construct a nonresidential structure and use and provide a 0" wide sidewalk which will require a variance of 11 feet, 6 inches.

**LOCATION:** 2303 Pittman Street

**APPLICANT:** Ed Simons

**REQUEST:**

- The applicant is requesting a variance to the sidewalk regulations in PD 714..

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- . Compliance with submitted site plan.

**Rationale:**

Although, the city's Senior Engineer is recommending denial, the applicant has established how the development of this parcel of land will not be contrary to the public interest. This parcel of land differs from other parcels of land in the same PD 714 zoning in that it has a restrictive developable area. The property abuts an unimproved street. The installation of a sidewalk along Pittman may require improvement of the street and removal of multiple maturing large canopy trees. The trees provide an aesthetic quality and the surface is permeable which helps in storm water control. The removal of the multiple maturing large canopy trees would also remove the visual buffer from the adjacent uses across the unimproved street.

**STANDARD FOR A VARIANCE:**

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; the variance is necessary to permit

development of specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and the variance is not granted to relieve a self-created or personal hardship; nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**GENERAL FACTS:**

- PD 714 requires all properties with new construction and major modifications to comply with the street and sidewalk regulations.
- Under PD 714 any new or major modifications along Pittman Street require the property to provide an 11 –foot, six-inch-wide sidewalk.
- Major modification means reconstruction, alternation, or renovation of an original building that exceeds 50 percent of the value of the original building assessed by the Dallas Central Appraisal District or any increase in floor area of an original building by 50 percent or more.
- The site is irregular in shape and is developed with a 9,000 square foot storage warehouse built in 1950.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 714 Sub district 1B (Planned Development)  
North: PD 714 Sub district 1A (Planned Development)  
South: IR (Industrial)  
East: PD 714 Sub district 1B (Planned Development)  
West: PD 714 Sub district 1B (Planned Development)

**Land Use:**

The site is currently developed with storage warehouses. The property to the east is developed with a mobile home park. The property to the north is developed with a nonresidential use. The property to the south is the developed with the United States postal service

**Zoning/BDA History:**

BDA 078-119. The Board of Adjustment Panel C, at its public hearing held on Monday, September 15, 2008, granted a request for variances to the sidewalk, off-street parking, and front yard setback regulations of up to 395 feet.

**Timeline:**

- October 17, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 20, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 21, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information by phone 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 December 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the December 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 December public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- November 21, 2008 The City's Chief Planner submitted a comment sheet (see attachment A).
- December 1, 2008: The applicant's representative submitted a letter of explanation for the Board's consideration (see attachment C)
- December 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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 Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- December 3, 2008 The City's Senior Engineer submitted a comment sheet recommending denial of this request (see attachment B)
- December 5, 2008: The applicant's representative submitted a revised Planting Plan (see attachment D).

## **STAFF ANALYSIS:**

- The applicant is requesting a variance of 11-feet and six-inches to the sidewalk regulations in conjunction with development and maintenance of a restaurant in PD 714.
- The application is triggered by the definition of major modification. Where the proposed modification of this property exceeds the 50 percent value of improvements according to DCAD. The applicant proposes to convert an existing warehouse storage use into a restaurant without drive-thru.
- DCAD values the improvements of this property, developed in 1950, to be approximately \$117,000.00. The applicant has indicated the proposed modifications to be valued over \$70,000.00 or approximately 60 percent of the improved value (see attachment C).
- PD 714 requires all new development and major modifications to provide streets and sidewalks.
- The property is encumbered with the hardship of existing mature large canopy trees in the required sidewalk area. These existing trees provide an aesthetic quality and help to provide storm water control. If the trees were removed and replaced with a sidewalk the permeable area will be removed and the visual buffer from the unimproved street and adjacent uses will be removed.
- This property differs from other properties in the PD 714 sub-district1B zoning in that it has an irregular shape and abuts an unimproved street along Pittman. The development of the required sidewalk is in a restrictive area due to the number of maturing large canopy trees.
- The applicant has the burden of proof in establishing that granting the variance to the required sidewalk regulation will not be contrary to public interest.
- If the Board chooses to grant the variance to the sidewalk regulation of 11-feet and six-inches, staff recommends imposing the submitted site plan as a condition.

**FILE NUMBER:** BDA 078-156

**BUILDING OFFICIAL'S REPORT:**

Application of Cain Gutierrez for a special exception to the side yard setback regulations at 2939 Belle Starr Drive. This property is more fully described as Lot C in City Block 6752 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a carport and provide an 8 inch side yard setback which will require a special exception of 4 feet, 4 inches.

**LOCATION:** 2939 Belle Starr Drive.

**APPLICANT:** Cain Gutierrez

**REQUEST:**

- A special exception to the side yard setback regulations of 4' 4" is requested in conjunction with constructing and maintaining an approximately 670 square foot (56' x 12'), approximately 13' high wood column/composition shingle-roofed carport on a site developed with an approximately 1,500 square foot one-story single family home.

**STAFF RECOMMENDATION:**

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

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

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

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

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

## **GENERAL FACTS:**

- A 5' side yard setback is required in the R-7.5(A) zoning district. The applicant has submitted a site plan indicating a "new carport" on the site that is located 8" from the site's northern side property line (or 4' 4" into the 5' side yard setback).
- The following information was gleaned from the submitted site plan:
  - 56.4' in length and 12' in width (677 square feet in area) that is proposed to be attached to a house that is 57' in length and 26.4' in width (1,515 square feet in area).
- The following information was gleaned from the submitted section drawing:
  - wood columns with a pitched composition shingle roof.
- The submitted elevations show that the proposed carport is about 13' in height.
- The subject site is 190' x 51' (or 9,690 square feet) in area.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 242 square feet of the approximately 672 square foot carport is located in the site's northern 5' side yard setback.
- According to DCAD, the site is developed with a single family home in "unsound" condition built in 1922 with 1,354 square feet of living area.
- The site is located at the end of a dead end street – a street with three homes on the west side of the street (including the subject site) and a laundromat on the east side of the street. No other carports were noted on the block.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site is developed with a single family home. The area to the north is developed with a vacant single family home; the area to the east is developed as a commercial use; and the areas to the south and west are undeveloped.

### **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:**

October 29, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Nov. 20, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

Nov. 20, 2008: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the December 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

Dec. 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location and size of the carport relative to the entire site/lot. The site plan indicates that the proposed carport is 8" away from the site's northern side property line, and is 12' wide by 56' in length.
- A section document has been submitted indicating that the carport is comprised of wood columns with a composition shingle roof.
- Elevations have been submitted showing scale of the proposed carport in relation to the existing single family home on the site. The elevations show that the proposed carport is approximately 13' in height.

- According to calculations taken from the submitted site plan by the Board Administrator, about 1/3 of the approximately 670 square foot carport would be located in the site's northern side yard setback.
- No other carports were noted on the dead end street. The site is located at the end of the street where immediately across from it is a Laundromat use.
- The applicant has the burden of proof in establishing the following:
  - That granting the special exception to the side yard setback regulations of 4' 4" requested to construct and maintain an approximately 670 square foot wood-posted, shingle-roofed carport attached to a single family home that would be 8" away from the northern side property line (or 4' 4" into the 5' side yard setback) will not have a detrimental impact on surrounding properties.
- Granting this special exception would allow the carport to be constructed/maintained 8" away from the site's northern side property line (or 4' 4" into the required 5' side yard setback).
- As of December 8<sup>th</sup>, 2008, no letters or petitions have been submitted in support or in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be constructed and maintained in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the proposed carport may cause on the lot immediately north:
  1. Compliance with the submitted site plan, section, 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.
  5. No item (other than a motor vehicle) may be stored in the carport.

**FILE NUMBER:** BDA 078-157(K)

**BUILDING OFFICIAL'S REPORT:**

Application of William Leeper for a special exception to the single family use regulations at 3201 Jacotte Circle. This property is more fully described as Lot 2A in City Block D/2849 and is zoned R-7.5(A), which requires a single family dwelling use in a single family, duplex, or townhouse district may be supplied by not more than one electrical utility service, and metered by not more than one electrical meter. The applicant proposes to construct a single family dwelling in a single family district and have more than one electrical meter, which will require a special exception.

**LOCATION:** 3201 Jacotte Circle

**APPLICANT:** William Leeper

**REQUEST:**

A special exception to the electrical service for single family use regulations is requested in conjunction with the construction and maintenance of a single family structure.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the electrical service for single family use 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-4.112(a)(8) of the Dallas Development Code states that the board may grant a special exception to authorize more than one electrical utility service and more than one electrical meter on a lot in the R-1ac(A) district when, in the opinion of the board the special exception will:

- (1) not be contrary to the public interest;
- (2) not adversely affect neighboring properties; and
- (3) not be used to conduct a use not permitted in this district

**GENERAL FACTS:**

- The subject site is developed with a single family structure and an accessory structure.
- The site currently has an electric meter on the accessory use.

- The applicant is proposing to construct and maintain a single family structure and accessory use and provide more than one electrical meter.
- The Dallas Development Code states that in the R1ac(A) zoning a single family use may not be supplied by not more than one electrical utility service, and not metered by more than one electrical meter.

## **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 structure and accessory structure. The surrounding properties are developed with single family structures.

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

BDA 067-135 on September 19, 2007 the Board of Adjustment, Panel B granted a variance to off-street parking regulation of 10 feet.

### **Timeline:**

- October 21 2008      The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 20 2008:    The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 21 2008:    The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via 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 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 December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the December 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 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 December public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

December 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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.

A review comment sheet marked no comment was submitted by the City's Chief Planner.

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the proposed electric meter and the structures on the site.
- The site plan illustrates that the proposed additional electric meter will be located approximately 32 feet from the main service utility pole and approximately 160 feet from the existing electric meter on the site.
- The applicant proposes to use the additional electric meter for a new two story main dwelling and maintain the current electric meter for the one story accessory building.
- The applicant has the burden of proof in establishing that the special exception to the single family zoning use regulations (allowing for an additional electric meter) will not adversely affect neighboring property and will not be used to conduct a use not permitted in this district.

**FILE NUMBER:** BDA 089-003

**BUILDING OFFICIAL'S REPORT:**

Application of Audrey Spangenberg, represented by Robert Baldwin, for a special exception to the fence height regulations at 9806 Inwood Road. This property is more fully described as Lot 6 in City Block 2/5601 and part of City Block 5601 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 10 foot 6 inch fence which will require a special exception of 6 feet 6 inches.

**LOCATION:** 9806 Inwood Road

**APPLICANT:** Audrey Spangenberg  
Represented by Robert Baldwin

**REQUEST:**

- A special exception to the fence height regulations of 6' 6" is requested in conjunction with replacing an approximately 6' high open wrought iron fence with a 7' - 7' 2" open wrought iron fence with 9' – 10' 6" high cast stone columns in the site's 40' front yard setback on a site being developed with a single family home. (The entry gate that will exceed 4' in height is proposed to be located behind the 40' setback line/out of the required front yard).

**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 a partial elevation indicating a fence/column proposal that would be located in the site's front yard setback and would reach a maximum height of 10' 6".

- A scaled site plan has been submitted that indicates the location of the proposal in the front yard setback. The following additional information was gleaned from this site plan:
  - The proposal would be approximately 240' in length parallel to Inwood Road with a recessed entryway that will be located out of the required 40' front yard setback.
  - The proposed fence is shown to be located approximately 25' – 40' from on the front property line (or approximately 29' – 44' from the pavement line).
- The "replacement fence proposal" is located on a site where one single family home would have direct/indirect frontage - a lot which has an open wrought iron fence in its front yard setback that appears to be approximately 4' in height.
- The submitted zoning map with this application shows that approximately half of the existing fence on the site as well as half of the replacement proposal is located in the flood plain. The Board of Adjustment imposed a condition related to the flood plain in conjunction with the fence special exception that was granted on the site in 1987 (see the "Zoning/BDA History" section of this case report for further details). Although the Board Administrator has forwarded this application to the Floodplain Management Section for review, no comments have been made on the current proposal as of December 8th.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500 feet north and south of the site) and noted one other fence/wall higher than 4' immediately south of the subject site. This fence/wall is an approximately 9' high solid brick fence/wall (with no recorded BDA history) that functions as a screen wall for the lot immediately south – a lot "fronting" southward onto Lakehill Court.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-1ac (A) (FP) (Single family district 1 acre, Flood Plain)
<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) and PD No. 385(Single family district 1 acre and Planned Development)

### **Land Use:**

The subject site is being 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 87-148, Property at 9806 Inwood Lane (the subject site)

On April 28, 1987, the Board of Adjustment granted a request for a special exception to the fence height regulations of 4' and imposed the following conditions: 1) Per the landscape plan and structure plan as submitted per attachment designated exhibit "A", and 2) Per memorandum from the Department of Public Works, Storm Water Management Division signed by Michael H. Askew stating the fence is in the flood plain area and the plans have been reviewed and approved." The case report stated that the request was made to construct and maintain a 6' high open wrought iron fence with columns that would reach 8' in height.

### **Timeline:**

November 4, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Nov. 20, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

Nov. 20, 2008: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; the December 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".

Dec. 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

## **STAFF ANALYSIS:**

- The request focuses on replacing an approximately 6.5' high open wrought iron fence (with 8' high columns) with a 7' – 7' 2" high open wrought iron fence with 9' – 10.5' high columns in the site's front yard setback.
- A scaled site plan/partial elevation has been submitted documenting the location of the proposed fence/columns in the front yard setback relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The replacement fence is shown to be located approximately 25' – 40' from the front property line or about 29' – 44' from the pavement line. The proposal is about 240' long parallel to Inwood Road. Although the entry gate is shown on the partial elevation to exceed 4' in height, it is shown to be located behind the 40' front yard setback line therefore is not part of the application to the board.
- The "replacement fence proposal" is located on a site where one single family home would have direct/indirect frontage - a lot which has an open wrought iron fence in its front yard setback that appears to be approximately 4' in height.
- The submitted zoning map with this application shows that approximately half of the replacement fence proposal is located in the flood plain. The Board of Adjustment imposed a condition related to the flood plain in conjunction with the fence special exception that was granted on the site in 1987 – a condition that held the construction of the fence to the plans that were reviewed and approved by Storm Water Management. (Although the Board Administrator forwarded this application to the Floodplain Management Section for review, no comments have been made on the current proposal as of December 8th).
- One other fence/wall higher than 4' was noted by the Board Administrator in a field visit of the site and surrounding area (approximately 500 feet north and south of the site). This fence/wall is located immediately south of the subject site and is an approximately 9' high solid brick fence/wall (with no recorded BDA history) that functions as a screen wall for the lot immediately south – a lot "fronting" southward onto Lakehill Court.
- As of December 8, 2008, no letters had been submitted to staff in opposition to the proposal, and one letter had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 10' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 6' 6" with a condition imposed that the applicant complies with the submitted site plan/partial elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document. The board may also feel it is necessary to impose an additional condition (as they did in 1987) that requires the proposal to comply with the code's Flood Plain Regulations since the submitted zoning map indicates that approximately half of the fence proposal is located in the flood plain.

**FILE NUMBER:** BDA 078-145

**BUILDING OFFICIAL'S REPORT:**

Application of Peter Kavanagh, Zone Systems, Inc., for a variance to the rear yard setback regulations and for a variance to the height regulations at 3520 Greenville Avenue. This property is more fully described as Lot 1B in City Block A/2894 and is zoned CR which requires a rear yard setback of 20 feet where there is adjacent residential zoned property and which limits the height of a structure to 26 feet due to the residential proximity slope regulations. The applicant proposes to construct a structure and provide a 1 foot rear yard setback which will require a variance of 19 feet to the rear yard setback regulations, and to construct a structure with a height of 65 feet which will require a variance 39 feet to the height regulations due to the residential proximity slope.

**LOCATION:** 3520 Greenville Avenue.

**APPLICANT:** Peter Kavanagh, Zone Systems, Inc.

**REQUESTS:**

- The following appeals have been made in this application in conjunction with constructing and maintaining a 65' high "stealth antenna facility" on a site that is currently developed with a retail use (M Street Bar):
  1. A variance to the rear yard setback regulations of 19'; and
  2. A variance to the height regulations (specifically to the residential proximity slope or RPS) of 39'.

**STAFF RECOMMENDATION:**

Denial of both variance requests

Rationale:

- Although the subject site is located immediately adjacent to a lot with a structure (the Grenada Theater) that is eligible for National Register of Historic Places (NRHP) designation whereby the Texas Historical Commission (THC) had written in August of 2008 that the monopole tower as shown at that time\* on the subject site would have an adverse effect on this structure's NRHP eligibility, there appears to be no physical site constraints on (or hardship to) the subject site that precludes the applicant from locating the proposed "stealth antenna facility" further west on the site – a location that would be in compliance with the rear yard setback and height regulations related to the residential proximity slope.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the

applicable development standards including rear yard and height regulations created by the residential proximity slope) in a manner commensurate with other developments found on other similarly CR (Community Retail) zoned lots.

- \* Note that the applicant did not submit the proposed monopole plans and photo simulations that were submitted to the THC (and which the THC wrote their August 14, 2008 comments) in conjunction with this board of adjustment application. While the August 18<sup>th</sup> THC letter specifically referenced a 75' high tower with exposed transmission antennas, the tower shown on the elevation plan submitted in conjunction with this board application is denoted as a "65' – 0" - stealth monopole tower," implying that modifications were made to the height and design of the monopole from when it was presented to the THC in August of 2008 where they had concluded that the monopole tower as proposed at that time would have an adverse impact on the Grenada Theater's NRHP eligibility.

### **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 minimum rear yard setback for structures on lots zoned CR where adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district is 20'. (The subject site is immediately adjacent to property zoned MF-2(A) otherwise no minimum rear yard setback would be required).  
The original application and original Building Official's Report stated that a variance of 17' was needed since a 3' setback was provided from the rear property line although the site plans appeared to show a structure that was approximately 2.5' from the rear property line which would require a 17.5' variance.  
On October 20, 2008, a revised Building Official's Report (see Attachment A) was forwarded to staff stating that a 19' rear yard variance was needed since a structure was to be located only 1' from the rear property line. (According to the Building Inspection Development Code Specialist, the "structure' located 1' away from the rear property line is a concrete slab on which the monopole tower and related equipment would be located atop).

- The maximum height for a monopole cellular tower in a CR zoning district is 65' (with RAR required), however, any portion of a structure over 26' in height cannot be located above a residential proximity slope which in this case given that the subject site is immediately adjacent to property zoned MF-2(A) is a 1:1 slope (or 1 foot in height for every 1 foot away from private property in a residential zoning district). This slope on the subject site begins at the MF-2(A) zoned property immediately east of the site that is currently developed as a surface parking lot. The original application and Building Official's Report states that a variance of 39' was needed since the proposed cell tower was to be 65' in height and located 3' from the rear property line. Although a revised Building Official's Report was forwarded to staff stating that a 19' rear yard variance was needed since a structure was to be located only 1' from the rear property line, the revised Building Official's Report did not amend any original reference to the RPS variance request.
- The subject site is flat, rectangular in shape (approximately 136' long and approximately 112' wide), and, according to the application, 0.393 acres in area.
- DCAD states that the site is developed with the following:
  - a restaurant built in 2000 that is 3,037 square feet in area.
- On October 29, 2008, staff received additional information from the applicant (see Attachment B). This information included the following information:
  - a letter from the applicant providing additional details about the request;
  - a letter from the Texas Historical Commission regarding their position on the proposed construction of the 75' monopole tower on the site – a position as it relates to the tower on the site and its relationship to/effect on the Grenada Theater (a structure that is eligible for listing on the National Register of Historic Places) immediately to the site's north;
  - a letter from an environmental regulatory consultant regarding their position on the proposed construction of the tower on the site – a tower that should be a stealth tower and should be moved to the east edge of the site.
- On November 17, 2008, the board of adjustment held a briefing and hearing on this application where the Board Administrator circulated a letter from the applicant requesting that the board delay action on the requests until December in order to meet with the Lowest Greenville West Neighborhood Association (Attachment C). The Board Administrator also circulated a letter from the Lowest Greenville West Neighborhood Association requesting that the board honor the applicant's request for this delay (Attachment D).
- The Board of Adjustment delayed action on this application at their November 17<sup>th</sup> hearing until December 15<sup>th</sup> encouraging the applicant to meet with interested parties/neighborhoods in an attempt to form a mutually agreed upon proposal.
- No additional information from either the applicant or interested parties has been submitted to staff since the November 17<sup>th</sup> hearing.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)

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

**Land Use:**

The subject site is developed with a retail use (M Street Bar). The areas to the north, south, and east are developed with a retail uses; and the area to the west is developed with a surface parking lot.

**Zoning/BDA History:**

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

**Timeline:**

- Sept. 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.
- October 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 16, 2008: The Board Administrator emailed the applicant 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 requests;
  - the October 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the November 7<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 matters at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 29, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A).

- October 29, 2008 Staff received additional information from the applicant (see Attachment B).
- October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- The Historic Preservation Senior Planner submitted a Review Comment Sheet marked "Has no objections if certain conditions are met" with the following comments: "Proposed project is adjacent to the Grenada Theater, an eligible City of Dallas Landmark. It is also close to two City of Dallas Conservation Districts, M Streets and M Streets East. Staff supports recommendations outlined in letter by Texas Historical Commission dated August 14, 2008.
- Nov. 17, 2008: The Board of Adjustment conducted a public hearing where the board delayed action on this matter until December 15, 2008.
- Nov. 20, 2008: The Board Administrator emailed the applicant the following information:
- a document that provided the public hearing date, the December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- Dec. 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- The requests for variances to the rear yard setback and height regulations (created by the residential proximity slope) are made in conjunction with constructing a 65' high "stealth antenna facility" on a site developed with a retail use (M Street Bar) - a site that is immediately adjacent to a site developed with the Grenada Theater - a structure eligible for designation on the National Register of Historic Places.

- The subject site is flat, rectangular in shape (approximately 136' long and approximately 112' wide), and, according to the application, 0.39 acres in area. According to DCAD, the site is developed with a restaurant built in 2000 that is 3,037 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the rear yard and height regulations due to the residential proximity slope requested to construct and maintain a 65' high stealth tower structure (and related equipment structures) 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 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 CR (Community Retail) 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 same CR (Community Retail) zoning classification.
- If the Board were to grant the rear yard variance of 19' and height variance of 39', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structures encroaching into the rear yard setback and above and beyond the residential proximity slope would be limited to what is shown on the submitted plan and elevation which in this case is a 65' high stealth monopole structure (and related equipment structures) that is as close as 1' away from the rear property line (or 19' into the 20' setback) and 39' above the residential proximity slope line.

**BOARD OF ADJUSTMENT ACTION:    NOVEMBER 17, 2008**

APPEARING IN FAVOR:                    No one

APPEARING IN OPPOSITION:    No one

MOTION:    **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 078-145**, hold this matter under advisement until **December 15, 2008**.

SECONDED:    **Moore**

AYES: 5–Boyd, Moore, Maten, Wahlquist, Rios

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

**FILE NUMBER:** BDA 078-151

**BUILDING OFFICIAL'S REPORT:**

Application of Marc Andres, represented by Roger Albright, to appeal the decision of the administrative official at 1516 Greenville Avenue. This property is more fully described as Lot 1 (portions of Lots 1 & 2) in City Block P/1481 and is zoned CR which requires a Certificate of Occupancy be issued for the requested restaurant use. The building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations, or that the information, plans, diagrams, computations, specifications, or other data or supporting documents submitted with the application clearly show that the use or occupancy will be operated in violation of the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official to deny the issuance of a certificate of occupancy.

**LOCATION:** 1516 Greenville Avenue

**APPLICANT:** Marc Andres  
Represented by Roger Albright

**REQUEST:**

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's September 25, 2008 decision to deny applications for a restaurant use on the subject site – specifically Certificate of Occupancy Application #0808271104 and Masterpermit Application #0808271098. The applicant alleges that this denial was in error and should be overturned.

**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:**

- The Building Official's September 25, 2008 letter to Ed Simons, Vice President of Masterplan Consultants, regarding Vagabond at 1516 Greenville Avenue states the following:
  - We have concluded our review of your applications for a restaurant use. Based on our review of the plans, specifications, and business plan you provided, we must deny your applications. Our denial is based on the following:

- Sale of food is secondary to other activities. The submittal does not conform to the definition of a restaurant in Dallas Development Code Section 51A-4.210(b)(24) (“an establishment principally for the sale and consumption of food.”)
- The kitchen is not capable of supporting the food menu you provided. Also, there has been a significant reduction in the size of the kitchen from the previous restaurant use.
- The number of bars (four) is not typical for a restaurant use.
- The multiple DJ stations (two) along with the live performance stage and curtains indicate that dancing will occur, which requires a Specific Use Permit (SUP).
- The appropriate use for the project you proposed is an alcoholic beverage establishment, which requires an SUP.
- You may appeal this decision to the Board of Adjustment within 15 days after September 25, 2008, or apply for an SUP for an alcoholic beverage establishment.
- The Dallas Development Code defines “restaurant without drive-in or drive through service” use as “An establishment principally for the sale and consumption of food on the premises.”
- The Dallas Development Code defines “alcoholic beverage establishments” use as “Bar, lounge, or tavern“ which is “an establishment principally for the sale and consumption of alcoholic beverages on the premises that derives 75 percent or more of its gross revenue on a quarterly (three month) basis from the sale of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premise consumption” or “Private-club bar” which is “an establishment holding a private club permit under Chapter 32 or 33 of the Texas Alcoholic Beverage Code that derives 35 percent or more of its gross revenue from the sale or service of alcoholic beverages for on-premise consumption and that is located in a dry area as defined in Title 6 (Local Options Elections) of the Texas Alcoholic Beverage Code.”
- On December 4, 2008, the Assistant City Attorney assisting the Building Official on this application and BDA078-154 forwarded additional information to the Board Administrator regarding this appeal and BDA078-154 (see Attachment A).
- On December 5, 2008, the applicant’s representative on this application and BDA 078-154 forwarded additional information to the Board Administrator regarding this appeal and BDA078-154 (see Attachment B).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)  
South: CR (Community Retail)  
East: CR (Community Retail)  
West: CR (Community Retail)

**Land Use:**

The subject site is developed as a vacant commercial structure. The areas to the north, south, and west are developed with commercial/retail uses; the area to the east is developed with a surface parking lot.

**Zoning/BDA History:**

- |  |   |
|--|---|
| 1. BDA 078-154, Property at 1516 Greenville (the subject site) | On December 15, 2008, the Board of Adjustment Panel C will consider an appeal requesting that the Board of Adjustment reverse/overturn the Building Official's October 8, 2008 decision to deny applications for a commercial amusement (inside) use on the subject site. |
|--|---|

**Timeline:**

- October 9, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 20, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 20, 2008: The Board Administrator emailed the applicant's representative the following information:
- an attachment providing the public hearing date and panel that will consider the application; the December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; the December 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment;
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".
- Dec. 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

Dec. 4, 2008: The Assistant City Attorney assisting the Building Official on this application and BDA078-154 submitted additional information pertaining to these appeals (see Attachment A).

Dec. 5, 2008 The applicant's representative on this application and BDA078-154 submitted additional information pertaining to these appeals (see Attachment B).

**STAFF ANALYSIS:**

- The applicant is requesting that the September 25<sup>th</sup> Building Official's decision be overturned/reversed regarding the denial of applications made for a restaurant use on the subject site.
- If the Board of Adjustment upholds the Building Official's decision, the applicant will not be able to obtain applications and a certificate of occupancy for a restaurant use as submitted.
- If the Board of Adjustment reverses the Building Officials' decision, the applicant will be able to obtain applications and a certificate of occupancy for a restaurant use as submitted.

**FILE NUMBER:** BDA 078-154

**BUILDING OFFICIAL'S REPORT:**

Application of Marc Andres, represented by Roger Albright, to appeal the decision of the administrative official at 1516 Greenville Avenue. This property is more fully described as Lot 1 (portions of Lots 1 & 2) in City Block P/1481 and is zoned CR, which requires a Certificate of Occupancy be issued for the requested commercial amusement (inside) use. The building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations, or that the information, plans, diagrams, computations, specifications, or other data or supporting documents submitted with the application clearly show that the use or occupancy will be operated in violation of the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official to deny the issuance of a certificate of occupancy.

**LOCATION:** 1516 Greenville Avenue

**APPLICANT:** Marc Andres  
Represented by Roger Albright

**REQUEST:**

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's October 8, 2008 decision to deny application for a commercial amusement (inside) use on the subject site – specifically Certificate of Occupancy Application #0808271104 and Masterpermit Application #0808271098. The applicant alleges that this denial was in error and should be overturned.

**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:**

- The Building Official's October 8, 2008 letter to to Ed Simons, Vice President of Masterplan Consultants, regarding Vagabond at 1516 Greenville Avenue states the following:
  - We have concluded our review of your application for a Commercial Amusement (Inside) use. Based on our review of the plans, specifications, and business plan

you provided, we must deny your application. Our denial is based on the following:

- The submittal does not conform to the definition of a Commercial Amusement (Inside) in Dallas Development Code Section 51A-4.210(b)(7)(A)(v) (“a facility wholly enclosed in a building that offers entertainment or games of skill to the public for a fee.”)
- You may appeal this decision to the Board of Adjustment within 15 days after October 8, 2008.
- The Dallas Development Code defines “commercial amusement (inside)” use specifically “(v)” as referenced in Building Official’s October 8<sup>th</sup> letter to Ed Simons as “a facility wholly enclosed in a building that offers entertainment or games of skill to the general public for a fee. This use includes but is not limited to an adult arcade, adult cabaret, adult theater, amusement center, billiard hall, bowling alley, children’s amusement center, dance hall, motor track, or skating rink.”
- On December 4, 2008, the Assistant City Attorney assisting the Building Official on this application and BDA078-151 forwarded additional information to the Board Administrator regarding this appeal and BDA078-151 (see Attachment A).
- On December 5, 2008, the applicant’s representative on this application and BDA 078-151 forwarded additional information to the Board Administrator regarding this appeal and BDA078-151 (see Attachment B).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)  
South: CR (Community Retail)  
East: CR (Community Retail)  
West: CR (Community Retail)

**Land Use:**

The subject site is developed as a vacant commercial structure. The areas to the north, south, and west are developed with commercial/retail uses; the area to the east is developed with a surface parking lot.

**Zoning/BDA History:**

1. BDA 078-151, Property at 1516 Greenville (the subject site)

On December 15, 2008, the Board of Adjustment Panel C will consider an appeal requesting that the Board of Adjustment reverse/overturn the Building Official’s September 25, 2008 decision to deny applications for a restaurant use on the subject site.

## **Timeline:**

- October 9, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 20, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Nov. 20, 2008: The Board Administrator emailed the applicant's representative the following information:
- an attachment providing the public hearing date and panel that will consider the application; the December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; the December 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment;
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".
- Dec. 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Dec. 4, 2008: The Assistant City Attorney assisting the Building Official on this application and BDA078-151 submitted additional information pertaining to these appeals (see Attachment A).
- Dec. 5, 2008 The applicant's representative on this application and BDA078-151 submitted additional information pertaining to these appeals (see Attachment B).

## **STAFF ANALYSIS:**

- The applicant is requesting that the October 8<sup>th</sup> Building Official's decision be overturned/reversed regarding the denial of application made for a commercial amusement (inside) use on the subject site.

- If the Board of Adjustment upholds the Building Official's decision, the applicant will not be able to obtain applications and a certificate of occupancy for a commercial amusement (inside) use as submitted.
- If the Board of Adjustment reverses the Building Officials' decision, the applicant will be able to obtain applications and a certificate of occupancy for a commercial amusement (inside) use as submitted.

**FILE NUMBER:** BDA 078-158(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Michael Dees for a special exception to the fence height regulations at 9226 Hathaway Street. This property is more fully described as Lot 27A in City Block 7/5597 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 an 8 foot 8 inch fence in a required front yard setback which will require a special exception of 4 feet 8 inches.

**LOCATION:** 9226 Hathaway Street

**APPLICANT:** Michael Dees

**REQUEST:**

A special exception to the fence height regulations of 5 feet is requested in conjunction with constructing and maintaining a solid fence and gate in the site's 40 foot front yard setback.

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The subject site is an undeveloped property on Hathaway Street.
- The site has two front yard setbacks, one along Hathaway Street and the other along Northwest Highway.
- The applicant is proposing to construct and maintain an 8 foot 8 inch solid fence and a 6 foot wrought iron fence with 8 foot gates in the site's 40-foot front yard setbacks.
- 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. And a person shall not erect or maintain a fence in a required yard more than nine feet above grade.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-1ac(A) (Single family district 1 acre)  
North: R-1ac(A) (Single family district 1 acre)  
South: R-16 (A) (Single family district 16,000 square feet)  
East: R- 1ac(A) (Dallas North Tollway)  
West: R-1ac(A) (Single family district 1 acre)

### **Land Use:**

The subject site is undeveloped. The areas to the north, south, and west are developed with single family uses. The property to the east is developed with the Dallas North Tollway.

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

There is no case history for the site.

### **Timeline:**

- October 22 2008     The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 20 2008:     The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- November 21 2008:     The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via 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 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 December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- the December 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 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 December public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

December 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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.

A review comment sheet marked no comment was submitted by the City's Senior Engineer.

December 2, 2008: The applicant's representative submitted a landscape plan for the Board's consideration.

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that document the location of the proposed solid fence, open fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the solid stone fence to be 8 feet in height, the columns and stone caps to be 8 feet-6 inches in height. The solid stone fence runs 60 linear feet along Northwest Highway and 140 linear feet along Hathaway Street.
- The site plan illustrates a 6 foot tall open wrought iron fence (that adjoins the solid fence) running 260 linear feet along Hathaway Street and two 8 foot entry gates that are 20 feet from the front property line.
- There are other fences along Hathaway Street.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Should the Board vote to grant the special exception to the fence height regulation, staff recommends imposing the submitted landscape plan, elevation and site plan as conditions of approval.



**FILE NUMBER:** BDA 078-159(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Dolores Parker for a special exception to the visibility obstruction regulations at 6133 Llano Avenue. This property is more fully described as Lot 13 in City Block 1/2156 and is zoned R-7.5(A), which requires a 20 foot visibility triangle at driveway and alley approaches. The applicant proposes to construct and maintain a single family residential fence structure in a required visibility obstruction triangle which will require a special exception.

**LOCATION:** 6133 Llano Avenue

**APPLICANT:** Dolores Parker

**REQUESTS:**

Special exceptions to the visibility obstruction regulations are requested in conjunction with constructing and maintaining a fence and a residential structure in required 20 foot visibility obstruction triangles.

**STAFF RECOMMENDATION (visibility obstruction):**

Denial

Rationale:

- The Development Services Senior Engineer submitted a comment sheet marked "Recommends that this be denied" for the following reasons:
  1. The fence will be inside the 20' x20' all visibility triangle.
  2. The fence will in the 20' x20' driveway visibility triangles.
  3. The gate will only provide a distance of approximate 9 feet form the gate to the front of the curb on Clements Street.

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

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

**GENERAL FACTS:**

- The property is located on the corner of Llano Ave and Clement St.

- The proposed fence will be constructed adjacent to the alley on the northern property line.
- The site is zoned R-7.5(A) which requires a visibility triangle of 20' at driveway and alley approaches.

## **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 structure. The properties to the north, south, and east are developed with single family structures. The property to the west is developed with a City of Dallas Park.

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

There is no zoning history or board of adjustment history for this site or properties in the immediate area.

### **Timeline:**

- October 24, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- November 21, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:
- the public hearing date and panel that will consider the application;
  - the criteria and standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;

- the December 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 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 December public hearing after considering the information or evidence and testimony presented to them by the applicant and all other interested parties.

December 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The applicant proposes to construct and maintain a fence in the 20' visibility triangles at the driveway and alley approaches on the property.
- There are three visibility triangles at the drive approach on Clements St.:
  1. one at the alley on the northern side of the drive approach; and
  2. two at the drive approach for the property
- According to DCAD this 3,565 square foot single family structure was constructed in 2005 and is listed in "excellent" condition.
- The City's Senior engineer reviewed the site plans and has recommended denial of the special exception.
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard
- If the Board were to grant the special exception to the visibility obstruction regulations, it may impose compliance with submitted site plan and elevation.

**FILE NUMBER:** BDA 089-005(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Richard Stanzel represented by Robert Baldwin for a special exception to the parking regulations at 315 Cole Street. This property is more fully described as a .382 acre tract of land, tract 1.6, in City Block 16/6846 and is zoned PD-621 (Subdistrict 1), which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for a job or lithographic printing use and provide 20 of the required 38 parking spaces which will require a special exception of 18 spaces.

**LOCATION:** 315 Cole Street

**APPLICANT:** Richard Stanzel  
Represented by Robert Baldwin

**REQUEST:**

- A special exception to the off-street parking regulations of 18 parking spaces (or 47% of the required off-street parking) is requested in conjunction with constructing and maintaining a nonresidential structure for a job or lithographic printing use and provide 20 of the required 38 parking spaces.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Development Services Senior Engineer recommends this request be denied because there is no supporting documentation, such as a parking study including information on the number of employees for each shift, number of anticipated visitors, or hours of operation.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction

authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

### **GENERAL FACTS:**

- The site is zoned PD 621 and is required to provide 38 parking spaces for the job or lithographic printing use. The applicant proposes to provide 52.6 percent of the required parking for the proposed use.
- The property is currently developed with a nonresidential commercial use.
- According to DCAD the property was developed in 1951 with an office/showroom and in 1969 with a warehouse.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD 621 (Planned Development)
<u>North:</u>	PD 621 (sub district 1)(Planned Development)
<u>South:</u>	PD 621 (Planned Development)
<u>East:</u>	PD 621 (sub district 1)(Planned Development)
<u>West:</u>	PD 621 (Planned Development)

### **Land Use:**

The subject site is currently developed with a nonresidential use. The properties to the north, south, east, and west are developed with nonresidential 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:**

November 4, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 20, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 21, 2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the December 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the December 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 December public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

December 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December 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 Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

December 3, 2008 The Development Services Senior Engineer submitted a review comment sheet (see attachment).

### **STAFF ANALYSIS:**

- The applicant proposes to provide 20 of the required 38 parking spaces for the proposed 12,166 square foot nonresidential development for a job or lithographic printing use.
- The Dallas Development Code 51P-621.110(b)(K) gives the following off-street parking requirement for office use:
  - One space per 358 square feet of floor area.
- The Dallas Development Code 51P-621.110(b)(L) gives the following off-street parking requirement for office showroom/warehouse:
  - One space per 1,100 square feet of floor area up to 20,000 square feet.
- The applicant has submitted a site plan illustrating the location of the proposed development and all parking to be provided for the site. The site plan shows 9 on-street parking spaces and 11 off-street parking spaces.
- Granting this request, subject to the condition that the special exception of 18 spaces automatically and immediately terminates if and when the job or lithographic printing use is changed or discontinued, would allow the continuation of the proposed approximately 12,166 square foot structure to be leased with this specific use.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the job or lithographic printing use does not warrant the number of off-street parking spaces required and:
  - The special exception of 18 spaces (or 47 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on the adjacent and nearby streets.
- If the Board chooses to grant the special exception of 18 spaces to the parking regulation, staff recommends imposing the submitted site plan as a condition.