

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, MARCH 16, 2009**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Marc Bateman, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Elizabeth Wahlquist, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Marc Bateman, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Elizabeth Wahlquist, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

10:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 16, 2009** docket.

1:02 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C February 19, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2009

MOTION: Boyd

I move **approval** of the Thursday, **February 19, 2009** public hearing minutes.

SECONDED: Moore

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-012

BUILDING OFFICIAL’S REPORT:

Application of W. Scott Singler, represented by Robert Baldwin, for variances to the front and side yard setback regulations at 2811 Hood Street. This property is more fully described as Lot 7 in City Block 1/1024 and is zoned PD-193 (MF-3) which requires a 10 foot front yard setback for the first 36 feet in height of a structure and a 25 foot front yard setback for all portions of a structure above 36 feet in height, and a 38 foot side yard setback. The applicant proposes to construct a multifamily residential structure and provide a 2 foot, 6 inch front yard setback for a portion of the structure under 36 feet in height which will require a 7 foot, 6 inch variance to the front yard setback regulations, and provide an 18 foot front yard setback for a portion of the structure over 36 feet in height which will require a 7 foot variance to the front yard setback regulations, and to provide 10 foot side yard setbacks which will require 28 foot variances to the side yard setback regulations.

LOCATION: 2811 Hood Street

**APPLICANT: W. Scott Singler
 Represented by Robert Baldwin**

March 16, 2009 Public Hearing Notes:

- The applicant’s representative submitted east and north elevations of the proposal at the public hearing.

AMENDED REQUESTS:

- The following appeals have been made in this application on a site that is currently being developed as a 4-story, 54’ high multifamily development:

1. A variance to the front yard setback regulations of 7' is requested in conjunction with constructing and maintaining two stairwell "structures" to be located in the 10' front yard setback required for the portion of the multifamily structure under 36' in height;
2. A variance to the front yard setback regulations of 6' is requested in conjunction with constructing and maintaining a portion of the multifamily structure to be located in the 25' front yard setback required for the portion of the multifamily structure over 36' in height; and
3. Variances to the side yard setback regulations of 27' are requested in conjunction with constructing and maintaining a portion of the multifamily structure to be located in the site's two 37' side yard setbacks for the portion of the multifamily structure over 36' in height.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that there is no property hardship to the site that warrants any of the four variances requested in this case. The site is flat, is not irregular in shape, and is of a size that would allow it to be developed in a manner commensurate with other parcels of land in the same MF-3 Subdistrict of PD No. 193.
- The applicant had not substantiated how the physical features of the flat, regularly-shaped, 20,000+ square foot subject site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (MF-3) zoning classification while simultaneously complying with code standards including front yard setback regulations.
- The applicant had not substantiated how granting the variances is not contrary to the public interest particularly information that addressed points/concerns expressed by an opposing property owner at the February public hearing.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The subject site is located at the north corner of Congress Avenue and Hood Street. The subject site is zoned PD No. 193 (MF-3 Subdistrict).
As a result, the site has two 10' front yard setbacks for the portion of the structure 36' in height and under, and two 25' front yard setback for the portion of the structure *over* 36' in height: one front yard setback along the south side/Hood Street side of the site (the shorter of the lot's two frontages), and the other front yard setback along the west side/Congress Avenue side of the site (the longer of the two frontages but a front yard setback nonetheless in order to maintain continuity of the established setback of one home directly northwest that fronts southwest onto Congress Avenue).
In addition, the site has two side yard setbacks along the northwest and northeast sides of the site: 10' side yard setbacks for the portion of the structure 36' in height or less and 37' side yard setbacks (a 10' side yard setback combined with a setback of one-half the height of the proposed structure height which in this case is 54') for the portion of the structure *over* 36' in height.
- The Building Inspection Development Code Specialist forwarded a revised Building Official's Report on this application (see Attachment A).
- In the MF-3 Subdistrict of PD No. 193, the following minimum front yard setbacks must be provided for all buildings and structures:
 1. 10 feet for the first 36 feet in height.
 2. 25 feet for all portions of a building above 36' in height.The applicant's representative has submitted a revised site plan and a revised "front" and "south" elevation (see Attachment C) indicating a four-story, approximately 54' high structure with an approximately 6,600 square foot building footprint whereby two stairwell structures are located (according to a document submitted by the applicant's representative) 3' from the site's Congress Avenue front property line (or 7' into the required 10' setback for the portion of the structure 36' in height or less). In addition, the applicant's representative has conveyed in a document and on a revised "south elevation" that a portion of the structure *over* 36' in height will be located 19' from the site's Congress Avenue front property line (or 6' into the 25' setback for the portion of the structure *over* 36' in height).
- In the MF-3 Subdistrict of PD No. 193, a 10' side yard setback is required for multiple-family structures 36' or less in height, and if a building is erected to exceed 36' in height, an additional setback must be provided that is equal to one-half the height of the building, up to a maximum setback of 50 feet.
The applicant has submitted a revised site plan and revised "front elevation" and "south elevation" indicating a four-story, approximately 54' high structure with an approximately 6,600 square foot building footprint whereby the structure 36' or less in height complies with the side yard setback regulations. The applicant's representative has conveyed in a document and on a revised "front elevation" that a portion of the structure *over* 36' in height will be located 10' from the site's north side property line (or 27' into the 37' setback for the portion of the structure *over* 36' in height).
- According to calculations taken by the Board Administrator from the revised site plan and elevations, the area of the proposed structure 36' in height or less (two stairwell

structures) to be located in the site's 10' Congress Avenue front yard setback is approximately 133 square feet (or about 2 percent) of the 6,600 square foot building footprint.

- According to calculations taken by the Board Administrator from the revised site plan and elevations, the area of the proposed structure over 36' in height to be located in the site's 25' Congress Avenue front yard setback is approximately 430 square feet (or 7 percent) of the 6,600 square foot building footprint.
- According to calculations taken by the Board Administrator from the revised site plan and elevations, the area of the proposed structure over 36' in height to be located in the site's 37' northeastern side yard setback is approximately 2,300 square feet (or 34 percent) of the 6,600 square foot building footprint.
- According to calculations taken by the Board Administrator from the site plan, the area of the proposed structure over 36' in height to be located in the site's 37' northwestern side yard setback is approximately 2,100 square feet (or 31 percent) of the 6,600 square foot building footprint.
- The site is flat, generally rectangular in shape (approximately 195' on the north, approximately 195' on the south, approximately 109' on the east, and approximately 102' on the west) and approximately 20,500 square feet (or 0.47 acres) in area. The site is zoned PD No. 193 (MF-3). The site has two front yard setbacks and two side yard setbacks.
- DCAD records indicate that the site is developed with a 6,552 square foot apartment structure built in 2008.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). Although this information was dated January 30, 2009, it was not received by staff until February 5th after the staff review team meeting held on February 3rd. This information included the following:
 - a letter that further explains the requests;
 - photographs labeled "Other properties zoned PD 193 (MF-3) in Immediate Vicinity with No Additional Setbacks";
 - a "Plan View of Stairs" document;
 - a "Detail of Stairs" document;
 - a "Side View of Stairs" document; and
 - an annotated "Building Elevations" document.
- On February 19, 2009, the Board of Adjustment conducted a public hearing on this request and delayed action until March 16, 2009 per the applicant's representative request. The applicant was encouraged at this hearing to submit among other things a revised site plan to staff that accurately/comprehensively represented what was to be varied on the site in the front and side yard setbacks and above and below 36' in height.
- The applicant's representative submitted information beyond what was submitted with the original application and what was submitted prior to the February public hearing (see Attachment C). This information included the following:
 - a document that provided additional details about the request; and
 - a "Front Elevation" and a "South Elevation." (The applicant's representative has chosen not to submit elevations of the other two sides of the structure given that, according to his March 6th email to the Board Administrator, he feels that the two submitted revised elevations are adequate and accurately show what is being

requested. The applicant's representative also wrote that he felt that the four elevations submitted last time created confusion at the last hearing, and that the two revised elevations should suffice since he feels that the board is not approving elevations, just the variances).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-3) (Planned Development Multifamily)
North: PD No. 193 (MF-3) (Planned Development Multifamily)
South: PD No. 193 (MF-3) (Planned Development Multifamily)
East: PD No. 193 (MF-3) (Planned Development Multifamily)
West: PD No. 193 (MF-3) (Planned Development Multifamily)

Land Use:

The subject site is under development. The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

1. BDA 056-212, Property at 2811 Hood Street (the eastern "half" of the subject site) On September 18, 2006, the Board of Adjustment Panel C granted a request for a variance to the side yard setback regulations of 10' and imposed the submitted site plan as a condition to this request. The case report stated that the request was made in conjunction with constructing and maintaining two, 3 story, 3 unit multifamily structures on a site that was currently developed with a vacant, one story apartment structure.

Timeline:

- Nov. 20, 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.
- Dec. 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

- Jan. 23, 2009: 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 February 2nd deadline to submit additional evidence for staff to factor into their analysis; the February 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Feb. 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of Development Services – Current Planning; the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Feb. 3, 2009 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A).
- Feb. 5, 2009: The applicant's representative forwarded additional information to the Board Administrator (see Attachment B).
- Feb. 19, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their March 16th public hearing.
- Feb. 20 & 25, 2009: The Board Administrator emailed the applicant's representative and sent a letter that conveyed the following information:
- the delayed public hearing date;
 - the March 2nd deadline to submit additional evidence for staff to factor into their analysis;
 - the March 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence;" and
 - a list of additional materials that the board was interested in having the applicant submit to staff/the board including: 1) a revised site plan that accurately/comprehensively represents what you want the board to vary above and below 36' in height, and in the front and side yard setbacks; and 2) a revised section document that accurately represents what you want the board to vary – a section document that matches with the structures or

portions of the structure represented on a revised site plan that would hopefully be submitted before March 3rd.

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

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

March 5, 2009: The applicant's representative forwarded additional information to the Board Administrator (see Attachment C).

STAFF ANALYSIS:

- Four variances have been requested to complete and maintain a 4-story, 54' high multifamily development with a building footprint of approximately 6,600 square feet. Two front yard setback variances have been requested to the site's Congress Avenue front yard setback: one being for the portion of the structure over 36' in height or less - two stairway structures, and the other being for the portion of the structure over 36' in height - an approximately 84' long portion of the structure that is 6' into the setback. (No front yard variance is requested for the site's Hood Street front yard setback). Two side yard setback variances have been requested to the site's two 37' foot side yard setbacks for the portion of the structure over 36' in height along the northwestern and northeastern sides of the site.
- The site is flat, generally rectangular in shape (approximately 195' on the north, approximately 195' on the south, approximately 109' on the east, and approximately 102' on the west) and approximately 20,500 square feet (or 0.47 acres) in area. The site is zoned PD No. 193 (MF-3). The site has two front yard setbacks and two side yard setbacks. DCAD records indicate that the site is developed with a 6,552 square foot apartment structure built in 2008.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front and side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site (a site that is under development, and is flat, generally rectangular in shape, and over 20,000 square foot in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (MF-3) zoning classification.

- The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 193 (MF-3) zoning classification.
- If the Board were to grant any or all of the variances requested, imposing a condition whereby the applicant must comply with the submitted revised site plan and revised “South Elevation” and “Front Elevation”, the structure in any or all of the front and side yard setbacks that are granted would be limited to what is shown on these plans.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2009

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

APPEARING IN OPPOSITION: Erle Rawlins III, 3610 Congress, Dallas, TX

MOTION: **Rios**

I move that the Board of Adjustment, in Appeal No. **BDA 089-012**, hold this matter under advisement until **March 16, 2009**.

SECONDED: **Wahlquist**

AYES: 5–Boyd, Wahlquist, Rios, Murrell, Salinas

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2009

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition Ave., Dallas, TX
Frank Stick, 4224 N Hall Street, Dallas, TX
Scott Singler, 2811 Hood Street, Dallas, TX

APPEARING IN OPPOSITION: Erle Rawlins III, 3610 Congress, Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 089-012**, on application of W. Scott Singler, represented by Robert Baldwin, **grant** the seven foot variance to the minimum front yard setback regulations for a portion of the structure under 36 feet in height requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised elevations is required.

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 089-012**, on application of W. Scott Singler, represented by Robert Baldwin, **deny** the front yard setback variance for a portion of the structure over 36 feet in height requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gaspard**

AYES: 2–Moore, Gaspard

NAYS: 3– Boyd, Maten, Bateman

MOTION FAILED: 3 – 2

MOTION #3: **Maten**

I move that we reconsider the previous motion made.

SECONDED: **Moore**

AYES: 3–Moore, Maten, Gaspard

NAYS: 2– Boyd, Bateman

MOTION PASSED: 3 – 2

MOTION #4: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 089-012**, on application of W. Scott Singler, represented by Robert Baldwin, **deny** the front yard setback variance for a portion of the structure over 36 feet in height requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Moore**

AYES: 3–Moore, Maten, Gaspard

NAYS: 2– Boyd, Bateman

MOTION PASSED: 3 – 2

MOTION #4: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 089-012**, on application of W. Scott Singler, represented by Robert Baldwin, **deny** the side yard setback variance for a portion of the structure over 36 feet in height in the northeastern side yard requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Gaspard
AYES: 3– Moore, Maten, Gaspard
NAYS: 2– Boyd, Bateman
MOTION PASSED: 3 – 2

MOTION #5: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 089-012**, on application of W. Scott Singler, represented by Robert Baldwin, **deny** the side yard setback variance for a portion of the structure over 36 feet in height in the northwestern side yard requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Gaspard
AYES: 3– Moore, Maten, Gaspard
NAYS: 2– Boyd, Bateman
MOTION PASSED: 3 – 2

FILE NUMBER: BDA 089-004

BUILDING OFFICIAL’S REPORT:

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

LOCATION: 5969 Westgrove Circle

APPLICANT: Robert Behringer
Represented by Robert Baldwin

REQUESTS:

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

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the corner of Westgrove Circle and Ashbourne Drive. Even though the Westgrove Circle side of the site functions as the site's front yard and the Ashbourne Drive side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Westgrove Circle given that this frontage is the shorter of the two street frontages, and a front yard setback along Ashbourne Drive given that the continuity of the established setback must be maintained on this street since houses face Ashbourne Drive immediately north of the subject site.
The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and a document with several partial elevations indicating a fence/wall/column/gate proposal that would be located in the site's two front yard setbacks and would reach a maximum height of 13' 9".
- A site plan has been submitted that indicates the location of the proposal in the front yard setbacks. The following additional information was gleaned from this site plan for the proposal *along Westgrove Circle*:

- The proposal would be approximately 250' in length parallel to Westgrove Circle with a recessed entryway, approximately 40' in length perpendicular to Westgrove Circle on the west.
- The proposed fence/wall is shown to be located approximately on the Westgrove Circle front property line (or approximately 12' from the Westgrove Circle pavement line).
- The proposed gate is to be located about 13' from the Westgrove Circle front property line (or approximately 25' from the Westgrove Circle pavement line).
- The following additional information was gleaned from the submitted site plan for the proposal *along Ashbourne Drive*:
 - The proposal would be approximately 400' in length parallel to Ashbourne Drive, approximately 40' in length perpendicular to Ashbourne Drive on the north.
 - The proposed fence/wall is shown to be located approximately on the Ashbourne Drive front property line (or approximately 12' - 20' from the Ashbourne Drive pavement line).
 - The proposed gates are to be located approximately 12' from the Ashbourne Drive front property line (or approximately 24' from the Ashbourne Drive pavement line).
- The submitted site plan shows what appears to be a number of landscape materials adjacent to the proposed fence/wall none of which are denoted with a species name or size.
- The proposal *along Westgrove Circle* would be located on the site facing a vacant lot that is maintained as a park-like space, therefore, no single family homes would have direct/indirect frontage.
- The proposal *along Ashbourne Drive* would be located on the site where three single family homes on the lots across the street would have direct/indirect frontage, one of which has an approximately 6' high fence with approximately 6.5' high columns and an 8' high solid cast stone wall perpendicular to Westgrove Circle – a result of an approved fence height special exception by the Board of Adjustment in 2000.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fence/wall beyond that described above which appeared to be located in the front yard setback above 4' in height.

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 being developed with a single family home. The areas to the north and east are developed with single family uses; the area to the south of the site is a

undeveloped tract of land maintained as a park-like space; and the area to the west is undeveloped.

Zoning/BDA History:

- | | |
|--|---|
| 1. BDA 990-294, Property at 5975 Westgrove Circle (the lot immediately east of the subject site) | On June 19, 2000, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations (subject to compliance with the submitted site plan and elevations). The case report stated that the request was made in conjunction with constructing and maintaining an approximately 6' high open wrought iron fence with approximately 6.5' high cast stone columns along Westgrove Circle and an 8' high solid cast stone wall perpendicular to Westgrove Circle (within the site's 40' front yard setback). |
|--|---|

Timeline:

- | | |
|----------------|--|
| Nov. 4, 2008 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| Nov. 20, 2008: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C. |
| Nov. 20, 2008: | The Board Administrator contacted the applicant and shared the following information: <ul style="list-style-type: none">• the public hearing date and panel that will consider the application;• the criteria/standard that the board will use in their decision to approve or deny the request;• the deadline to submit additional evidence for staff to factor into their analysis;• the deadline to submit additional evidence to be incorporated into the Board's docket materials. |
| Nov. 21, 2008: | Staff discovered that the site delineated on the submitted plat and zoning map did not encompass the entire site, and that the site was encompassing two lots that would require a re-plat to accommodate the one house shown to encompass the entire site. Staff informed the applicant that the application would be delayed until the subject site was re-platted from two lots to one lot. |

- Feb. 17, 2009 Building Inspection forwarded revised application materials which have been included as part of this case report part of which establishes a newly platted subject site.
- Feb. 20, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- The requests focus on constructing/maintaining an 8' 6" high open wrought iron fence (with solid limestone base) in the site's two front yard setbacks parallel to Westgrove Circle and Ashbourne Drive. A 9' 4" high open wrought iron fence is proposed perpendicular to Westgrove Circle in the front yard setback on the west side of the site, and an 8' 6" high solid stucco wall is proposed perpendicular to Ashbourne Drive on the north side of the site. The only component of the proposal that reaches 13' 9" in height is six entry gate columns that flank the three, 13' 4" high entry gates on the site.
- A scaled site plan and a document with several partial fence elevations have been submitted documenting the location of the proposed fence/wall/columns/gates relative to their proximity to the Westgrove Circle and Ashbourne Drive front property lines and pavement lines, the lengths of the proposals relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately on the property lines or about 12' – 20' from the pavement lines. The proposal is about 250' long parallel to Westgrove Circle and about 40' long perpendicular; and the proposal is about 400' long parallel to Ashbourne Drive and about 40' long perpendicular.

- The submitted site plan shows what appears to be a number of landscape materials adjacent to the proposed fence/wall none of which are denoted with a species name or size.
- The Westgrove Circle proposal would be located on the site where no single family homes would have direct/indirect frontage, and where no other fences were noted in front yards.
- The Ashbourne Drive proposal would be located on the site where three single family homes would have direct/indirect frontage, and where one of these homes has an approximately 6' high fence with approximately 6.5' high columns and an 8' high solid cast stone wall perpendicular to Westgrove Circle – a result of an approved fence height special exception by the Board of Adjustment in 2000.
- As of March 9, 2009, 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 exceptions to the fence height regulations (whereby the proposal that would reach 13' 9" in height) will not adversely affect neighboring property.
- Granting these special exceptions of 9' 9" with a condition imposed that the applicant complies with the submitted site plan and elevations document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2009

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

APPEARING IN OPPOSITION: No One

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

MOTION: **Maten**

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

SECONDED: **Baten**

AYES: 4–Boyd, Moore, Maten, Bateman

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-025

BUILDING OFFICIAL’S REPORT:

Application of David Weinreb, represented by Bill Rehnert, for a special exception to the fence height regulations at 5516 North Forty Place. This property is more fully described

as Tract 1, a 3.1286 acre tract of land in City Block 8732 and is zoned R-1/2ac(A) & 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 a required front yard setback which will require a special exception of 5 feet.

LOCATION: 5516 North Forty Place

APPLICANT: David Weinreb
Represented by Bill Rehnert

REQUEST:

- A special exception to the fence height regulations of 5' is requested in conjunction with completing and maintaining (according to the submitted revised site plan and elevations document) the following in the site's 40' front yard setback along Frankford Road:
 - An 8' high, approximately 220' long solid decorative iron fence/wall with 9' high columns; and
 - An 8' high, approximately 120' long solid stone veneer wall with 9' high columns. (The entry gate is shown on the revised site plan to be located behind the 40' building line).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the corner of Frankford Road and North Forty Place. Even though the Frankford Road side of the site functions as the site's front yard and the North Forty Place side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along North Forty Place given that this frontage is the shorter of the two street frontages, and a front yard setback along Frankford Road given that the continuity of the established setback must be maintained on this street given the lots immediately east of the subject site that have front yard setbacks along Frankford Road.
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 revised site plan and a revised "Fence Elevations" document with two elevations in conjunction with this application for a fence proposal that would exceed 4' in height in the site's Frankford Road front yard setback. These plans indicate a fence/wall/column proposal that would be located in the site's Frankford Road front yard setback and would reach a maximum height of 9'.

The applicant has submitted another separate application for a fence height special exception for a fence proposal that would exceed 4' in height in the site's North Forty Place front yard setback part of which exists in the Frankford Road front yard setback : BDA089-026.

- The revised site plan indicates the location of the proposal in the Frankford Road front yard setback. The following additional information was gleaned from this revised site plan:
 - The proposal would be approximately 350' in length parallel to Frankford Road with a recessed entryway.
 - The proposed fence/wall is shown to be located at a range of approximately 13' – 40' from the Frankford Road pavement line.
 - The location of the gate is shown on the revised site plan behind the 40' building line.
- The revised submitted site plan shows about 10 existing trees on the street side of the proposal. While it appears that the caliper inch of these trees is noted, species are not. The two elevations on the revised "Fence Elevations" document provide representations of landscape materials to be placed adjacent to the proposal including species names, heights, and sizes.
- The proposal is located on the site adjacent to about five single family lots none of which front the proposal/Frankford Road, and all of which are located behind an approximately 10' high solid masonry wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted a series of approximately 9' high fence/walls immediately east of the subject site, an approximately 10' high wall immediately south of the subject site, and no fences/walls west of the subject site.
- On March 6, 2009, the applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a notebook divided into the following sections:
 - application
 - site plan
 - fence elevation and fence landscape plan
 - Signed letters of support
 - Anticipated letters of support
 - Photos of existing neighboring walls, photos of entry
 - Audio CD- Frankford Road noise
 - City of Dallas Works and Transportation Traffic Count 2005
 - Applicable comments from Board of Adjustment meeting on 11.17.09 obtained for City of Dallas
 - Correspondence sent to neighbors

BACKGROUND INFORMATION:

Zoning:

- Site: R-1ac (A) and R-1/2 ac (A) (Single family district 1 acre and ½ acre)
- North: R-1ac (A) and R-1/2 ac (A) (Single family district 1 acre and ½ acre)
- South: R-1/2 ac (A) (Single family district 1/2 acre)
- East: R-1ac (A) (Single family district 1 acre)
- West: R-1/2ac (A) (Single family district 1/2 acre)

Land Use:

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

Zoning/BDA History:

1. BDA 078-141, Property at 5516 North Forty Place (the subject site)
On November 17, 2008, the Board of Adjustment Panel C denied requests for special exceptions to the fence height regulations without prejudice. The case report stated that the special exceptions were requested in conjunction with constructing and maintaining a solid fence and gate in the site's 40' front yard setbacks.
2. BDA 089-017, Property at 5516 North Forty Place (the subject site)
On January 21, 2009, the applicant withdrew his request for a special exception to the fence height regulations for a 9' high fence along Frankford Road.
3. BDA 089-017, Property at 5516 North Forty Place (the subject site)
On January 21, 2009, the applicant withdrew his request for a special exception to the fence height regulations for a 9' high fence along North Forty Place.
4. BDA 089-026, Property at 5516 North Forty Place (the subject site)
On March 16, 2009, the Board of Adjustment Panel C will consider a request for a special exception to the fence height regulations of 5' made in conjunction with completing and maintaining a solid fence and gate in the site's 40' front yard setback along North Forty Place.

Timeline:

- Jan. 16, 2009 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 19, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- Feb. 20, 2009: The Board Administrator contacted the applicant’s representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- March 9, 2009: The applicant’s representative forwarded additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- The request focuses on completing/maintaining (according to the submitted revised site plan and elevations document) an 8’ high fence/wall with 9’ high columns in the site’s 40’ front yard setback along Frankford Road.
- A scaled revised site plan and a scaled revised elevations document have been submitted documenting the location of the proposed fence/wall/columns relative to their proximity to the Frankford Road pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately 13’ – 40’ from the pavement line. The proposal is about

350' long parallel to Frankford Road (where about 2/3 of its length is solid decorative iron metal and where about 1/3 of its length is solid stone veneer).

- Elevations shown on the revised "Fence Elevations" document provide representations of landscape materials to be placed adjacent to the proposal including species names, heights, and sizes.
- The proposal is located on the site adjacent to about five single family lots none of which front the proposal/Frankford Road, and all of which are located behind an approximately 10' high solid masonry wall.
- A series of approximately 9' high fence/walls were noted in a field visit conducted by the Board Administrator immediately east of the subject site, as well as an approximately 10' high wall immediately south of the subject site, and no fences/walls west of the subject site.
- As of March 9, 2009, no letters had been submitted to staff in opposition to the proposal, and six letters 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 9' in height) will not adversely affect neighboring property.
- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations document would assure that the proposal would be completed and maintained in the location and of the heights and materials as shown on these documents. Imposing these documents as conditions to this request would also assure that the proposal could only be completed / maintained as proposed if the landscape materials were planted and maintained on the site as shown on these plans.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2009

APPEARING IN FAVOR:

Kaye Weinmann, 1400 Santa Fe Trail, Carrollton, TX
Michael Lang, 6802 Hammond Ave., Dallas, TX
Grant Herlitz, 5722 Moss Creek Ct., Dallas, TX

APPEARING IN OPPOSITION:

Brody Hildebrand, 5595 N. Forty Pl., Dallas, TX
Anthony John Clingly, 5575 N Forty Pl., Dallas, TX
Katherine Hildebrand, 5595 N. Forty Pl., Dallas, TX
Flora Mascolo, 5540 N Forty Pl., Dallas, TX
Richard Brown, 5812 Richwater Dr, Dallas, TX
Ann Murphy, 19126 Windmill Ln., Dallas, TX

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 089-025**, on application of David Weinreb, represented by Bill Rehnert, **grant** the request of this applicant to construct and maintain a nine foot fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Gaspard

AYES: 2–Maten, Gaspard

NAYS: 3 – Boyd, Moore, Bateman

MOTION FAILED: 2 – 3

MOTION #2: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 089-025**, on application of David Weinreb, represented by Bill Rehnert, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Bateman

AYES: 4–Boyd, Moore, Maten, Bateman

NAYS: 1 –Gaspard

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 089-026

BUILDING OFFICIAL’S REPORT:

Application of David Weinreb, represented by Bill Rehnert, for a special exception to the fence height regulations at 5516 North Forty Place. This property is more fully described as Tract 1, a 3.1286 acre tract of land in City Block 8732 and is zoned R-1/2ac(A) & 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 a required front yard setback which will require a special exception of 5 feet.

LOCATION: 5516 North Forty Place

APPLICANT: David Weinreb
Represented by Bill Rehnert

March 16, 2009 Public Hearing Notes:

- The applicant's representative requested that the board deny this application without prejudice after being informed by staff that the board was not able to consider his initial request at this hearing to withdraw this application.

REQUEST:

- A special exception to the fence height regulations of 5' is requested in conjunction with completing and maintaining (according to the submitted revised site plan and elevations document) an 8' high, approximately 240' long solid decorative iron fence/wall with 9' high cast stone columns in the site's 40' front yard setback along North Forty Place. (The entry gate is shown on the revised site plan to be located behind the 40' building line).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the corner of Frankford Road and North Forty Place. Even though the Frankford Road side of the site functions as the site's front yard and the North Forty Place side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along North Forty Place given that this frontage is the shorter of the two street frontages, and a front yard setback along Frankford Road given that the continuity of the established setback must be maintained on this street given the lots immediately east of the subject site that have front yard setbacks along Frankford Road.

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 revised site plan document and a revised "Fence Elevations" document in conjunction with this application for a fence proposal that would exceed 4' in height in the site's North Forty Place front yard setback. These plans indicate a fence/wall/column proposal that would be located in the site's North Forty Place front yard setback and would reach a maximum height of 9'.

The applicant has submitted another separate application for a fence height special exception for a fence proposal that would exceed 4' in height in the site's Frankford Road front yard setback part of which exists in the North Forty Place front yard setback: BDA089-025.

- The revised site plan indicates the location of the proposal in the North Forty Place front yard setback. The following additional information was gleaned from this revised site plan:
 - The proposal would be approximately 240' in length parallel to North Forty Place with a recessed entryway.
 - The proposed fence/wall is shown to be located at a range of approximately 25' – 40' from the North Forty Place property line.
- The revised submitted site plan shows 3 existing trees on the street side of the proposal. This plan denotes the caliper inch and species of these trees. The two elevations on the revised "Fence Elevations" document provide representations of landscape materials to be placed adjacent to the proposal including species names, heights, and sizes.
- The proposal is located on the site where one single family lot/home would have direct frontage to the proposal – a house with a split rail wood fence that is approximately 3' in height.
- The Board Administrator conducted a field visit of the site and surrounding area along North Forty Place from Frankford Road to approximately 500 north of the subject site, and noted one other fence/wall in the immediate vicinity of the subject site– a fence/wall that is higher than 4' in height that may or may not be located in the front yard setback located immediately north of the subject site.
- On March 6, 2009, the applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a notebook divided into the following sections:
 - application
 - site plan
 - fence elevation and fence landscape plan
 - Signed letters of support
 - Anticipated letters of support
 - Photos of existing neighboring walls, photos of entry
 - Audio CD- Frankford Road noise
 - City of Dallas Works and Transportation Traffic Count 2005
 - Applicable comments from Board of Adjustment meeting on 11.17.09 obtained for City of Dallas
 - Correspondence sent to neighbors

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) and R-1/2 ac (A) (Single family district 1 acre and ½ acre)
North: R-1ac (A) and R-1/2 ac (A) (Single family district 1 acre and ½ acre)
South: R-1/2 ac (A) (Single family district 1/2 acre)
East: R-1ac (A) (Single family district 1 acre)

West: R-1/2ac (A) (Single family district 1/2 acre)

Land Use:

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

Zoning/BDA History:

- | | |
|---|--|
| 1. BDA 078-141, Property at 5516 North Forty Place (the subject site) | On November 17, 2008, the Board of Adjustment Panel C denied requests for special exceptions to the fence height regulations without prejudice. The case report stated that the special exceptions were requested in conjunction with constructing and maintaining a solid fence and gate in the site's 40' front yard setbacks. |
| 2. BDA 089-017, Property at 5516 North Forty Place (the subject site) | On January 21, 2009, the applicant withdrew his request for a special exception to the fence height regulations for a 9' high fence along Frankford Road. |
| 3. BDA 089-017, Property at 5516 North Forty Place (the subject site) | On January 21, 2009, the applicant withdrew his request for a special exception to the fence height regulations for a 9' high fence along North Forty Place. |
| 4. BDA 089-025, Property at 5516 North Forty Place (the subject site) | On March 16, 2009, the Board of Adjustment Panel C will consider a request for a special exception to the fence height regulations of 5' made in conjunction with completing and maintaining a solid fence and gate in the site's 40' front yard setback along Frankford Road. |

Timeline:

- | | |
|----------------|---|
| Jan. 16, 2009 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| Feb. 19, 2009: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning |

the same request, that case must be returned to the panel hearing the previously filed case.”

- Feb. 20, 2009: The Board Administrator contacted the applicant’s representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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

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

March 9, 2009: The applicant’s representative forwarded additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- The request focuses on completing/maintaining (according to the submitted revised site plan and elevations document) an 8’ high fence/wall with 9’ high columns in the site’s 40’ front yard setback along North Forty Place.
- A scaled revised site plan and a scaled revised elevations document have been submitted documenting the location of the proposed fence/wall/columns relative to their proximity to the North Forty Place property line, the length of the proposal relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately 25’ – 40’ from the property line. The proposal is about 240’ long parallel to North Forty Place.
- Elevations shown on the revised “Fence Elevations” document provide representations of landscape materials to be placed adjacent to the proposal including species names, heights, and sizes.
- The proposal is located on the site where one single family lot/home would have direct frontage to the proposal – a house with a split rail wood fence that is approximately 3’ in height.

- One other fence/wall was noted in a field visit conducted by the Board Administrator in the immediate vicinity of the subject site– a fence/wall that is higher than 4’ in height that may or may not be located in the front yard setback located immediately north of the subject site.
- As of March 9, 2009, no letters had been submitted to staff in opposition to the proposal, and six letters 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 9’ in height) will not adversely affect neighboring property.
- Granting this special exception of 5’ with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations document would assure that the proposal would be completed and maintained in the location and of the heights and materials as shown on these documents. Imposing these documents as conditions to this request would also assure that the proposal could only be completed / maintained as proposed if the landscape materials were planted and maintained on the site as shown on these plans.

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

APPEARING IN FAVOR: Bill Rehnert, 13355 Noel Road, Ste 950, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 089-026**, on application of David Weinreb, represented by Bill Rehnert, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Bateman**

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-033(K)

BUILDING OFFICIAL’S REPORT:

Application of James P. Christon represented by Winstead PC for a special exception to the landscaping regulations at 9807 Walnut Hill Lane. This property is more fully described as a 1.52 acre lot in City Block 8081 and is zoned CR, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 9807 Walnut Hill Lane

APPLICANT: James P. Christon
Represented by Winstead PC

REQUEST:

- The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulation.

STAFF RECOMMENDATION:

Approval

Rationale:

- The City's Chief Arborist recommends approval (see attachment A) of this request for the following reasons:
 - Strict compliance with the ordinance will unreasonably burden the use of the property;
 - The special exception will not adversely affect neighboring properties; and
 - The requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

Section 51A-10.110 specifies that the board of adjustment may grant a special exception to the requirements of the landscape article upon making a special finding of evidence presented that:

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

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

- (1) The extent to which there is residential adjacency.
- (2) The topography of the site.
- (3) The extent to which landscaping exists for which no credit is given under this article.
- (4) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053, 25155)

GENERAL FACTS:

- The site is developed with a nonresidential retail use.

- The site has an irregular shape and has a shared access with the adjoining multi-family property to the north.
- The applicant is requesting a special exception to the landscape requirements of Article X. More specifically, the request is for relief from buffer requirements specified under Section 51A-10.125 (b)(1), “Perimeter landscape buffer strip and street tree requirements.”

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a Walgreens. The areas to the south, west and east are developed with commercial and retail, the area to the north is developed with a multifamily use.

Zoning/BDA History:

- BDA 078-028. On February 11, 2008, the Board of Adjustment Panel C granted a request for a special exception to the landscaping regulations.
- On February 19, 2009 the Board of Adjustment Panel C granted to waive the two year limitation on a requested for a special exception to the landscape regulations that was granted on February 11, 2008.

Timeline:

- January 30, 2009: 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.
- February 19, 2009 The Board of Adjustment Panel C granted a waiver to the two year limitation for this site.
- February 20, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- February 24, 2009: The Board’s Senior Planner contacted the applicant’s representative by letter and shared 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 March 2nd deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the March 6th 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 March public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the 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.

March 3, 2009 The applicant submitted a letter for the Board's consideration see (attachment A)

March 9, 2009 The Chief arborist submitted an analysis of the landscape plan and recommended approval (see attachment B).

STAFF ANALYSIS:

- This site is developed with a newly constructed "Walgreens" pharmacy. The site is 1.52 acres and has an irregular shape and slope.
- The applicant is proposing minor adjustments to a landscape plan previously approved by the Board. The adjustments to the landscape plan are needed to remediate utility conflicts on the site. The revised landscape plan does not further reduce the number of street trees within 30 feet of the curb nor make any further reduction along the residential perimeter buffer.
- A site plan has been submitted and reviewed by the Board's Senior Planner and the City of Dallas Chief Arborist. A review of the site plan by the Board's Senior Planner shows the plans to include:
 - Removal of 134 inches total caliper of existing trees
 - 6 Live Oak (119 inches total caliper)
 - 1 Crape Myrtle (unknown caliper)
 - 1 Elm (10 inches total caliper)
 - 1 Hackberry (8 inches total caliper)

- Tree Mitigation plan for a total of 102 inches replaced
 - 4 Live oak (16 inches of caliper)
 - 5 Lacebark Elm (20 inches of caliper)
 - 10 Yaupon Holly (30 inches of caliper)
 - 10 Desert Willow (30 inches of caliper)
 - 2 Crepe Myrtle (6 inches of caliper)
 - “Additional 32 inches of required mitigation to be met offsite per section 51A-10.135 of the Dallas Development Code.”
- The site plan indicates “perimeter buffer is not provided due to location of existing mutual access easement and desire to maintain existing traffic flow between adjacent lots.”
- A review of the site plan by chief arborist was completed and included the following information:
 - Trigger—new construction on a building site.
 - Deficiencies—the proposed plan complies with Article X landscape requirements with the exception of
 - 1) the perimeter landscape buffer for residential adjacency to the north of the property
 - 2) non-compliance with the requirement of 9 large street trees.
 - Factors:
 - The proposed construction site has a pre-existing 25-foot wide ‘reciprocal easement agreement’ shared with multi-family development to the north.
 - The property is restricted on the northeast corner of the property from planting by an existing sanitary sewer easement.
 - The restricted shape and size of the lot creates further structure, traffic flow and required parking conflicts with planting areas.
 - The property is restricted on various portions of the property from planting by an existing sanitary sewer easement.
 - An overhead electric utility line existing along a portion of Audelia Road and Walnut Hill Lane.
 - Recommendation—Approval.
- The applicant has the burden of proof in establishing the following:
 - strict compliance with the requirements of this article will unreasonably burden the use of this property;
 - the special exception will not adversely affect neighboring property; and
 - the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- If the Board chooses to approve the request the staff recommends imposing the submitted site plans as a condition.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2009

APPEARING IN FAVOR: Kirk Williams, 5400 Renaissance Tower, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 089-033** on application of Jim Christon, represented by Winstead PC, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Bateman

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-024(K)

BUILDING OFFICIAL’S REPORT:

Application of Mark Morley for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 3003 Irwindell Blvd. This property is more fully described as part of Lot 11 and all of Lot 12 in City Block B/3943 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at the intersection of a driveway and a street and a 45 foot visibility triangle at the intersection of two streets. The applicant proposes to construct a 5 foot, 6 inch fence in a required front yard setback which will require a 1 foot, 6 inch special exception to the fence regulations and to construct and maintain a residential fence in required visibility obstruction triangles, which will require a special exception to the visibility obstruction regulations.

LOCATION: 3003 Irwindell Blvd.

APPLICANT: Mark Morley

REQUESTS:

Special exceptions to the visibility obstruction regulations and fence height regulations are requested in conjunction with constructing and maintaining a fence in the required 20 foot visibility triangle at the drive approach to the garage and at the 45 foot visibility triangle at the intersection of Irwindell Boulevard and Irwindell Boulevard and to maintain a 5 foot and 6 inch high fence in the front yard setback.

STAFF RECOMMENDATION (visibility obstruction):

Approval of the 45' x 45' intersection visibility obstruction.
Denial of the 20' x 20' driveway visibility obstruction to the garage.

Rationale:

The Development Services Senior Engineer has reviewed the request and recommends denial of the 20' x 20' driveway visibility triangle and has no objection to the 45' by 45' intersection visibility obstruction (see attachment A).

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE 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 Irwindell Boulevard and Irwindell Boulevard.
- The applicant's request includes an existing fence that runs parallel to the eastern front property line on Irwindell and in the visibility triangles on the property.
- The site is zoned R-7.5(A) which requires a visibility triangle of 20' at driveway approaches and a visibility triangle of 45' at intersections and that a fence may not exceed 4 foot in height in a required front yard.

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.

Zoning/BDA History:

On November 11, 2008, Panel C of the Board of Adjustment granted a fee waiver for this site.

Timeline:

January 13, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 20, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 24, 2009: 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 March 2nd deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the March 6th 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 March public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March

public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the 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 property is developed with a single family structure. This property is a corner lot that has frontage on Irwindell Boulevard (the eastern property line) and Irwindell Boulevard (the southern property line.)
- The applicant proposes to maintain an existing fence in the 20' visibility triangles at the driveway approach and in the 45' visibility triangle at the intersection.
- The applicant proposes to maintain a 5 foot and 6 inch high fence in the front yard setback of Irwindell (the eastern property line).
- According to DCAD this 2,052 square foot single family structure was constructed in 1924 and is listed in "good" condition.
- The City's Senior Engineer reviewed the site plans and has recommended denial of the special exception to the visibility triangle at the drive approach at the southwestern corner of the property.
- 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.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.

If the Board were to grant the special exception to the visibility obstruction regulations, it may impose compliance with submitted site plan and elevation. If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2009

APPEARING IN FAVOR: Mark Morley, 3003 Irwindell, Dallas, TX
Ben J. Petrick, 522 S Barnett Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Bateman

I move that the Board of Adjustment, in Appeal No. **BDA 089-024**, on application of Mark Morley, **grant** the request of this applicant to construct and maintain a five-foot-six-inch fence as a special exception to the height requirement for fences contained in

the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: **Bateman**

I move that the Board of Adjustment, in Appeal No. **BDA 089-024** on application of Mark Morley, **grant** the request of this applicant to construct and maintain a fence in the visibility triangle at the drive approach to the applicant’s garage as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Gaspard**

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

MOTION #3: **Bateman**

I move that the Board of Adjustment, in Appeal No. **BDA 089-024** on application of Mark Morley, **grant** the request of this applicant to construct and maintain a fence in the next door neighbor’s drive approach visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

MOTION #4: Bateman

I move that the Board of Adjustment, in Appeal No. **BDA 089-024** on application of Mark Morley, **grant** the request of this applicant to construct and maintain a fence in the Irwindell/Irwindell intersection visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Maten

AYES: 5–Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Bateman

AYES: 5 –Boyd, Moore, Maten, Bateman, Gaspard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

3:09 P. M. - Board Meeting adjourned for **March 16, 2009.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

Note: For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.