

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, MAY 14, 2012**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Danny Alan Scott, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Danny Alan Scott, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Building Official, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Building Official, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 14, 2012** docket.

1:00 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 April 16, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

MOTION: **Maten**

I move **approval** of the Monday, **April 16, 2012** public hearing minutes.

SECONDED: **Richard**

AYES: 5– Richardson, Maten, Coulter, Richard, Scott

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-054

BUILDING OFFICIAL’S REPORT:

Application of Scott Mueller of Hixson Architecture Engineering Interiors for a special exception to the off-street parking regulations at 3333 Dan Morton Drive. This property is more fully described as Lot 2B in City Block B/8023 and is zoned IR, which requires off-street parking. The applicant proposes to construct/maintain an industrial (inside)/warehouse/office use/structure and provide 250 of the required 453 off-street parking spaces, which will require a special exception of 203 spaces.

LOCATION: 3333 Dan Morton Drive

APPLICANT: Scott Mueller of Hixson Architecture Engineering Interiors

REQUEST:

- A request for a special exception to the off-street parking regulations of 203 off-street parking spaces (or a 45 percent reduction of the 453 off-street parking spaces required) is requested in conjunction with constructing and maintaining an approximately 115,900 square foot addition to an existing approximately 280,000 square foot industrial inside/warehouse/office use on a site (WhiteWave Food, Inc). The applicant proposes to provide 250 (or 55 percent) of the required 453 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 203 off-street parking spaces shall automatically and immediately terminate if and when the industrial inside, warehouse, and office uses are changed or discontinued.

Rationale:

- The applicant substantiated how the parking demand generated by the industrial inside, warehouse, and office uses 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 Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to the applicant's request.

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 25 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 Dallas Development Code requires the following off-street parking requirement:
 - Light industrial: One space per 600 square feet of floor area.
 - Office: One space per 333 square feet of floor area.
 - Warehouse: One space per 1,000 square feet of floor area up to 20,000 square feet; one space per 4,000 square feet of floor area over 20,000 square feet.
 On April 25, 2012, the applicant submitted revised materials to the City regarding his request (see Attachment A). The applicant proposes to provide a total of 250 (or 55 percent) of the required 453 off-street parking spaces.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial/research)
North: IM, SUP 1054 (Industrial manufacturing, Specific Use Permit)
South: IR (Industrial/research)
East: IR (Industrial/research)
West: IR (Industrial/research)

Land Use:

The subject site is currently developed with an industrial inside/office/warehouse use (WhiteWave Food, Inc.) The area to the north is developed as an auto auction site; the areas to the east and south are developed with what appears to be industrial inside/office/warehouse uses; and the area to the west appears to be 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:

March 23, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 18, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded additional documentation submitted by the applicant as well as an amended Building Official's Report to the Board Administrator (see Attachment A).

May 4, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 115,900 square foot addition to an existing approximately 280,000 square foot industrial

inside/warehouse/office use on a site (WhiteWave Food, Inc.) where the applicant proposes to provide 250 (or 55 percent) of the required 453 off-street parking spaces.

- The applicant has submitted a document stating that the 453 parking spots required for full capacity far exceeds the parking demand required for full- build out of the site since the maximum anticipated employee count is 110 employees per shift and 180 employees at shift change.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the industrial inside, warehouse, and office uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 203 spaces (or a 45 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board grants this request subject to the condition that the special exception of 203 off-street parking spaces shall automatically and immediately terminate if and when the industrial inside, warehouse, and office uses are changed or discontinued, the applicant would be allowed to maintain the existing structure on the property with the proposed addition with these specific uses, and provide only 250 of the 453 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

APPEARING IN FAVOR: Greg Hammond, 659 Yan Meater St., Cincinnati, OH

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 112-054**, on application of Scott Mueller, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 203 spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 203 off-street parking spaces shall automatically and immediately terminates if and when the industrial inside, warehouse, and office uses are changed or discontinued.

SECONDED: **Richard**

AYES: 5– Richardson, Maten, Coulter, Richard, Scott

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-039

BUILDING OFFICIAL’S REPORT:

Application of Pithou Nuth for a special exception to the fence height regulations at 10757 Lennox Lane. This property is more fully described as Lot 2B in City Block B/5534 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 and maintain a 7 foot high fence in a required front yard, which will require a special exception of 3 feet.

LOCATION: 10757 Lennox Lane

APPLICANT: Pithou Nuth

REQUEST:

- A special exception to the fence height regulations of 3’ is requested in conjunction with constructing and maintaining an approximately solid stucco wall ranging in height from 6’ 4” – 6’ 8” (given grade changes on the property) with 7’ high stucco columns in the site’s Royal Lane 40’ front yard setback on a site that is developed with a single family home. (No part of this application is made to construct and/or maintain a fence higher than 4’ in the site’s Lennox Lane 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 Board of Adjustment conducted a public hearing on April 16, 2012. The applicant submitted written documentation to the Board at the public hearing including a map with corresponding photographs of other fences in the immediate

area, and a revised elevation that amended the originally submitted elevation by increasing the height of the proposed wall from 6' 1" to 6' 9" (see Attachment A). The Board delayed action on this application until May 14th to allow the applicant an opportunity to meet with an opposing property owner and possibly submit a revised proposal with consideration given to a proposal with partial if not entirely open materials and/or some landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

- On April 27, 2012, the applicant submitted additional information to staff beyond what he submitted with the original application and beyond what he submitted to the Board at the April 16th public hearing (see Attachment B). Part of the applicant's submittals including a revised site plan and a revised elevation that included among other things the notations of certain landscape materials to be located on the street-side of the proposed fence/wall.
- The subject site is a corner lot zoned R-1ac (A) with two street frontages of unequal distance. The site is located at the southwest corner of Royal Lane and Lennox Lane. Even though the Lennox Lane frontage of the subject site appears to function as its front yard and the Royal Lane frontage appears to function as its side yard, the subject site has two 40' front yard setbacks along both streets. The site has a 40' front yard setback along Royal Lane (the shorter of the two frontages which is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a 40' front yard setback along Lennox Lane (the longer of the two frontages of this corner lot of unequal frontage distance) which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's Lennox Lane frontage is deemed a front yard to maintain the continuity of the established front yard setback along this street for the lot immediately south that fronts eastward and has a front yard setback along Lennox Lane.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The applicant had originally submitted a scaled site plan indicating a "new stucco wall" in the site's Royal Lane front yard setback and an elevation that shows the wall in the required Royal Lane front yard setback reaching a maximum height of 7'- in this case the 7' maximum height being columns with is slightly higher than the denoted 6' $\frac{3}{4}$ " high solid stucco wall. However, on April 24th, the applicant submitted a revised site plan that the applicant has stated among other things shows the new fence to be constructed 3 feet from the property line to accommodate vegetation ("new Holly Shrubs along the entire new wall") and "cut in on the east corner that will greatly improve drivers vision on traffic heading east on Royal Lane," and a revised elevation that the applicant states among other things shows a fence height between 6' 4" – 6' 8".
- The following additional information was gleaned from the submitted revised site plan:
 - Approximately 165' in length parallel to Royal Lane and approximately 35' in length perpendicular on the west side of the site in the front yard setback.

- Approximately 3' from the Royal Lane front property line and approximately 12' from the pavement line.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 94-126, Property at 10757 Lennox Lane (the subject site)
On October 25, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations to maintain a 7' fence on the site with the following conditions: the fence must be setback a minimum of 10 feet from the property line; the fence must of an acceptable open metal material and the fence must not exceed 6' in height; columns of metal or solid materials not exceeding 7' in height; and a landscape plan approved by his Board (landscaping in front of fence between the fence and the property line).
2. BDA 978-231, Property at 10757 Lennox Lane (the subject site)
On October 19, 1998, the Board of Adjustment Panel C denied requests for special exceptions to the fence height and visual obstruction regulations without prejudice. The case report stated that the requests were made to construct and maintain an 8' high solid masonry wall in the front yard setback and in the 45' visibility triangle at Royal Lane and Lennox Lane.
3. BDA 045-172, Property at 4610 Royal Lane (two lots west of the subject site)
On May 18, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' imposing the following condition: Compliance with the newly submitted

- “Preliminary Concept Plan/Site Plan and Elevation” dated May 18, 2005 is required. The case report stated that the request was made in conjunction with constructing a wall in the 40’ Royal Lane front yard setback on a site developed with a single family home.
4. BDA 88-119, Property at 4707 Royal Lane (the lot immediately northeast of the subject site) On November 8, 1988, the Board of Adjustment granted a request for a special exception to the fence height regulations to maintain a 6’ 10” open metal fence with brick columns subject to compliance with a site plan and landscape plan.
5. BDA 056-225, Property at 10770 Lennox Lane (the lot immediately east of the subject site) On November 13, 2006, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 5’ and imposed the following condition to the request: compliance with the submitted revised site plan Option B elevation, and landscape plan is required. The case report states the request was made to construct and maintain an 8’ high solid stucco fence with 9’ high stucco columns and a sliding gate to be located in the site’s Lennox Lane and Royal Lane front yard setbacks on a site developed with a single family home.

Timeline:

- February 22, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 20, 2012: 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.”
- March 21, 2012: 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 30th deadline to submit additional evidence for staff to factor into their analysis;

and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

April 16, 2012: The Board of Adjustment conducted a public hearing on April 16, 2012. The applicant submitted written documentation to the Board at the public hearing including a map with corresponding photographs of other fences in the immediate area, and a revised elevation that amended the originally submitted elevation by increasing the height of the proposed wall from 6' 1" to 6' 9" (see Attachment A). The Board delayed action on this application until May 14th to allow the applicant an opportunity to meet with an opposing property owner and possibly submit a revised proposal with consideration given to a proposal with partial if not entirely open materials and/or some landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

April 27, 2012: The applicant submitted additional information to staff beyond what he submitted with the original application and beyond what he submitted to the Board at the April 16th public hearing (see Attachment B). Part of the applicant's submittals including a revised site plan and a revised elevation.

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a solid stucco wall ranging in height from 6' 4" – 6' 8" (given grade changes on the property) with 7' high stucco columns in the site's Royal Lane 40' front yard setback on a site that is developed with a single family home.
- The submitted revise site plan and revised elevation documents the location, height, and materials of the fence over 4' in height in the required front yard. The site plan shows the proposal to be approximately 165' in length parallel to Royal Lane and approximately 35' in length *perpendicular* on the west side of the site in the required front yard; and to be located approximately 3' from the front property line or about 12' from the pavement line.
- Two single family homes "front" to the proposed fence/wall, one of which has an existing approximately 7' high open metal fence behind significant landscaping that appears to be a result of an approved fence height special exception in 1988: BDA 88-119.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500 feet east and west of the subject site) and noted one other fence above four (4) feet high immediately east of the subject site – an approximately 7' high combination open iron fence/solid stucco base fence/wall that appears to be a result of an approved fence height special exception in 2006: BDA 056-225.
- As of May 7, 2012, no letters had been submitted to staff in support of the request, and 2 letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 7' in height) will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would require the proposal exceeding 4' in height in the Royal Lane front yard setback to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Pithou Nuth, 10757 Lennox Lane, Dallas, TX

APPEARING IN OPPOSITION: Sherrill Stone, 4625 Royal Lane, Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment in Appeal No. **112-039** suspend the rules and accept the evidence that is presented today.

SECONDED: **Maten**
AYES: 5–Moore, Maten, Coulter, Richard
NAYS: 0 –
MOTION PASSED: 5-0 (unanimously)

MOTION #2: **Coulter**

I move that the Board of Adjustment in Appeal No. **BDA 112-039**, hold this matter under advisement until **May 14, 2012**.

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Ste 160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 112-039**, on application of Pithou Nuth, **grant** the request of this applicant to construct and maintain a 7-foot-high fence on the property as a special exception to the height requirement for fences 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: **Coulter**
AYES: 4– Richardson, Maten, Coulter, Scott
NAYS: 1 – Richard
MOTION PASSED: 4– 1

FILE NUMBER: BDA 112-042

BUILDING OFFICIAL’S REPORT:

Application of Mark Molthan for special exceptions to the fence height and visual obstruction regulations at 5322 Walnut Hill Lane. This property is more fully described as Lot 2 in City Block 1/5602 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5322 Walnut Hill Lane

APPLICANT: Mark Molthan

REQUESTS:

- The following appeals had been made in this application on a site that is being developed with a single family home:
 1. a special exception to the fence height regulations of 4' is requested in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard, and
 2. special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway).

(Note that this application is adjacent to two other properties where the same applicant/owner seeks similar fence height special exception requests of the Board of Adjustment Panel C: BDA 112-043 and 044).

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.
- The applicant has substantiated how the location of portions of an existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane does not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (fence height special exception):

- The Board of Adjustment conducted a public hearing on this application on April 16, 2012, and delayed action until May 14th to allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.
- On April 24, 2012, the applicant submitted a revised site/landscape/elevation plan to the staff (see Attachment A). The applicant represented that this revised site/landscape/elevation plan only amended what was originally submitted by adding certain landscape materials adjacent to the wall (i.e. no amendments have been made in the revised plan with regard to fence heights or the location of the fence from what was originally submitted), and that all of the added *landscape materials* on the revised submitted plan were code-compliant with regard to the visual obstruction regulations.
- 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/landscape/elevation plan that denotes that the proposal reaches a maximum height of 8 feet.
- The submitted site plan denotes the following regarding the proposal:
 - Approximately 175' in length parallel to the street.
 - Fence ranging from approximately 5'- 13' from the property line (or about 13' – 18' from the pavement line).
 - Gates at approximately 19' from the property line (or about 28' from the pavement line).

GENERAL FACTS (visual obstruction special exceptions):

- The Board of Adjustment conducted a public hearing on this application on April 16, 2012, and delayed action until May 14th to allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.
- On April 24, 2012, the applicant submitted a revised site/landscape/elevation plan to the staff (see Attachment A). The applicant represented that this revised site/landscape/elevation plan only amended what was originally submitted by adding certain landscape materials adjacent to the wall (i.e. no amendments have been made in the revised plan with regard to fence heights or the location of the fence from what was originally submitted), and that all of the added *landscape materials* on

the revised submitted plan were code-compliant with regard to the visual obstruction regulations.

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A scaled site plan/elevation document has been submitted that denotes portions of the existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway).

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, east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 067-082, Property at 5404 Walnut Hill Lane (the lot immediately east subject site) On September 17, 2007, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' imposing the following condition with the request: compliance with the submitted revised site/landscape plan and revised elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.
2. BDA 112- 044, Property at 5404 Walnut Hill Lane (the lot immediately east of subject site) On April 16, 2012, the Board of Adjustment Panel C delayed action on requests for special exceptions to the fence height regulations made in conjunction with

- maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns on a site developed with a single family home until May 14, 2012.
3. BDA 112-043, Property at 5414 Walnut Hill Lane (two lots east of the subject site) On April 16, 2012, the Board of Adjustment Panel C delayed action on a request for a special exception to the fence height made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns on a site developed with a single family home until May 14, 2012.
4. BDA 88-096, 5414 Walnut Hill Lane (two lots east of the subject site) On September 27, 1988, the Board of Adjustment Panel granted a request for a special exception to fence height regulations of 1' 6", and imposed the following conditions: 1. The fence shall be constructed in accordance with the revised fence elevation plan submitted; 2. The pilasters shall be evenly spaced approximately 16 feet apart; 3. The fence shall be located at least 5 feet from the front property line, and the area between the fence and the street shall be landscaped; 4. The fence on the west property line shall be eliminated; and 5. The fence shall comply with all visibility obstruction triangles. The case report states that a request was made to construct an 8' high fence; however, the board specified in their motion that the special exception was granted to erect a fence 5' 6" high.
5. BDA 90-023, 9995 Hollow Way (three lots east of the subject site) On April 10, 1990, the Board of Adjustment granted a request for a special exception to fence height regulations of 2' and imposed the following conditions to the request: submit a revised landscape plan that indicates the wall recessed and additional landscaping as provided. The case report states that the case report was made to construct a 6' high solid masonry fence in the site's Walnut Hill front yard setback.
6. BDA 956-193, 9930 Meadowbrook Drive (the lot immediately west of the subject site) On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of

site)

3' 8" imposing the following condition with the request: compliance with the submitted revised landscape/site plan and elevation is required. The case report states that the request was made to construct and maintain an approximately 176' long, 7' 6" high solid stone wall with 8' high stone columns, and two, approximately 7' high open wrought iron gates

Timeline:

February 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

March 21, 2012: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

April 5, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

April 16, 2012: The Board of Adjustment conducted a public hearing on this application on April 16, 2012, and delayed action until May 14th to

allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

April 24, 2012: The applicant submitted a revised site/landscape/elevation plan to the staff (see Attachment A).

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

May 4, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS (fence height special exception):

- The request focuses on maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard on a property being developed with a single family home.
- This site abuts two properties directly west where the same applicant/owner has made applications to maintain a fence of similar features than that which is on the subject site –requests for special exceptions to fence height regulations made to Board of Adjustment Panel C on April 16, 2012: BDA 112-043 and 044.
- A revised scaled site/landscape/elevation plan has been submitted documenting the location of the existing fence/wall/columns/gates 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 proposal is shown to be located approximately 5' – 13' from the property line or about 13' – 18' from the pavement line. (The gates are shown to be located about 19' from the front property line or about 28' from the pavement line). The proposal is shown to be about 175' long parallel to the street.
- The revised site/landscape/elevation plan denotes a number of landscape materials to be planted on the street-side of the fence/wall.
- There are 2 single family homes that have direct frontage to the fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, the Board Administrator noted two other fences/walls in the immediate area above 4 feet high which appeared to be located in the front yard setback. There

- As of May 7, 2012, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that reaches 8' in height) does not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site/landscape/elevation plan would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on this document.

STAFF ANALYSIS (visual obstruction special exceptions):

- These requests focus on maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway).
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain approximately 8' lengths of existing wall in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane will not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted revised site/landscape/elevation plan would require that the items in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane to be limited to the location, height and materials of those items as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Mark Molthan, 4347 W Northwest Hwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 112-042**, hold this matter under advisement until **May 14, 2012**.

SECONDED: **Moore**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

APPEARING IN FAVOR: Nancy Rodriguez, 4347 W. NW Hwy., Ste 120-240 Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal Nos. **BDA 112-042** on application of Mark Molthan, **grant** the request of this applicant to construct and maintain an 8-foot-high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code and to maintain items in the visibility triangles as a special exception to the visual obstruction regulation in the Dallas Development Code, because our evaluation of the properties and the testimony shows that this special exception will not adversely affect neighboring property and will not constitute a traffic hazard. 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/landscape/elevation plan is required.

SECONDED: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Scott, Richard

NAYS: 0 –

MOTION PASSED: 5– 0(Unanimously)

FILE NUMBER: BDA 112-043

BUILDING OFFICIAL’S REPORT:

Application of Mark Molthan for a special exception to the fence height regulations at 5414 Walnut Hill Lane. This property is more fully described as Lot 4 in City Block 1/5602 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 and maintain an 8 foot high fence in a required front yard, which will require a special exception of 4 feet.

LOCATION: 5414 Walnut Hill Lane

APPLICANT: Mark Molthan

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns, a 7' high pedestrian gate, and two, 8' high sliding wrought iron gates in the site's 40' front yard setback on a site being developed with a single family home.

(Note that this application is adjacent to two other properties where the same applicant/owner seeks similar fence height special exception requests of the Board of Adjustment Panel C: BDA 112-042 and 044).

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 Board of Adjustment conducted a public hearing on this application on April 16, 2012, and delayed action until May 14th to allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.
- On April 24, 2012, the applicant submitted a revised site/landscape/elevation plan to the staff (see Attachment A). The applicant represented that this revised site/landscape/elevation plan only amended what was originally submitted by adding certain landscape materials adjacent to the wall (i.e. no amendments have been made in the revised plan with regard to fence heights or the location of the fence from what was originally submitted), and that all of the added *landscape materials* on the revised submitted plan were code-compliant with regard to the visual obstruction regulations.
- 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/landscape/elevation plan that denotes that the proposal reaches a maximum height of 8 feet.
- The submitted site plan denotes the following regarding the proposal:
 - Approximately 175' in length parallel to the street.
 - Fence at its closest is approximately 10' from the property line (or about 18' from the pavement line).

- Gates are approximately 20' from the property line (or about 30' from the pavement line).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 067-082, Property at 5404 Walnut Hill Lane (the lot immediately west of the subject site)
On September 17, 2007, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' imposing the following condition with the request: compliance with the submitted revised site/landscape plan and revised elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.
2. BDA 112- 044, Property at 5404 Walnut Hill Lane (the lot immediately west of subject site)
On April 16, 2012, the Board of Adjustment Panel C delayed action on requests for special exceptions to the fence height and visual obstruction regulations made in conjunction with approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns in the site's 40' front yard setback on a site developed with a single family home until May 14, 2012.
3. BDA 112-042, Property at 5322 Walnut Hill Lane (two lots immediately west of the subject site)
On April 16, 2012, the Board of Adjustment Panel C delayed action on a request for a special exception to the fence height made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and

two 8' high wrought iron gates in the site's 40' front yard, and a request for special exceptions to the visual obstruction regulations requested in conjunction with maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway) until May 14, 2012.

4. BDA 88-096, 5414 Walnut Hill Lane (the subject site)

On September 27, 1988, the Board of Adjustment Panel granted a request for a special exception to fence height regulations of 1' 6", and imposed the following conditions: 1. The fence shall be constructed in accordance with the revised fence elevation plan submitted; 2. The pilasters shall be evenly spaced approximately 16 feet apart; 3. The fence shall be located at least 5 feet from the front property line, and the area between the fence and the street shall be landscaped; 4. The fence on the west property line shall be eliminated; and 5. The fence shall comply with all visibility obstruction triangles. The case report states that a request was made to construct an 8' high fence; however, the board specified in their motion that the special exception was granted to erect a fence 5' 6" high.

5. BDA 90-023, 9995 Hollow Way (the lot immediately east of the subject site)

On April 10, 1990, the Board of Adjustment granted a request for a special exception to fence height regulations of 2' and imposed the following conditions to the request: submit a revised landscape plan that indicates the wall recessed and additional landscaping as provided. The case report states that the case report was made to construct a 6' high solid masonry fence in the site's Walnut Hill front yard setback.

6. BDA 956-193, 9930 Meadowbrook Drive (three lots west of the subject site)

On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 8" imposing the following condition with the request: compliance with the submitted

revised landscape/site plan and elevation is required. The case report states that the request was made to construct and maintain an approximately 176' long, 7' 6" high solid stone wall with 8' high stone columns, and two, approximately 7' high open wrought iron gates

Timeline:

February 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

March 21, 2012: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

April 16, 2012: The Board of Adjustment conducted a public hearing on this application on April 16, 2012, and delayed action until May 14th to allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open

materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

April 24, 2012: The applicant submitted a revised site/landscape/elevation plan to the staff (see Attachment A).

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and 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 maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard on a property being developed with a single family home.
- This site abuts two properties directly east where the same applicant/owner has made applications to maintain a fence of similar features than that which is on the subject site –requests for special exceptions to fence height regulations made to Board of Adjustment Panel C on April 16, 2012: BDA 112-042 and 044.
- A revised scaled site/landscape/elevation plan has been submitted documenting the location of the existing fence/wall/columns/gates 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 proposal is shown to be located at its closest point approximately on the property line or about 18' from the pavement line. (The gates are shown to be located about 20' from the front property line or about 30' from the pavement line). The proposal is shown to be about 175' long parallel to the street.
- The revised site/landscape/elevation plan denotes a number of landscape materials to be planted on the street-side of the fence/wall.
- There are 2 single family homes that have direct frontage to the fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, the Board Administrator noted two other fences/walls in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There is an approximately 7' high solid concrete/wood fence located one lot east of the site that appears to be a result of a previous board case at this location (BDA 90-023) and an approximately 7' high solid concrete wall located three lots west of the

site that appears to be a result of a previous board case at this location (BDA 956-193).

- As of May 7, 2012, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that reaches 8' in height) does not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site/landscape/elevation plan would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Mark Molthan, 4347 W Northwest Hwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 112-043**, hold this matter under advisement until **May 14, 2012**.

SECONDED: **Moore**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

APPEARING IN FAVOR: Nancy Rodriguez, 4347 W. NW Hwy., Ste 120-240 Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal Nos. **BDA 112-043** on application of Mark Molthan, **grant** the request of this applicant to construct and maintain an 8-foot-high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code and to maintain items in the visibility triangles as a special exception to the visual obstruction regulation in the Dallas Development Code, because our evaluation of the properties and the testimony shows that this special exception will not adversely affect neighboring property and will not constitute a traffic hazard. 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/landscape/elevation plan is required.

SECONDED: Coulter

AYES: 5– Richardson, Maten, Coulter, Scott, Richard

NAYS: 0 –

MOTION PASSED: 5– 0(Unanimously)

FILE NUMBER: BDA 112-044

BUILDING OFFICIAL’S REPORT:

Application of Mark Molthan for a special exception to the fence height regulations at 5404 Walnut Hill Lane. This property is more fully described as Lot 3 in City Block 1/5602 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 and maintain an 8 foot high fence in a required front yard, which will require a special exception of 4 feet.

LOCATION: 5404 Walnut Hill Lane

APPLICANT: Mark Molthan

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with maintaining an approximately 7’ 6” high solid stone/brick wall with 8’ high stone/brick columns in the site’s 40’ front yard setback on a site developed with a single family home.

(Note that this application abuts two other properties where the same applicant/owner seeks similar fence height special exception requests of the Board of Adjustment Panel C: BDA 112-042 and 043. Additionally note that Board of Adjustment Panel C granted a request for a fence height special exception request on this site/property in September of 2007- BDA 067-082- an exception made to construct and maintain a 7’ 6” high solid stone wall with 8’ high stone columns and two, approximately 7’ high sliding electric open wrought iron gates in the site’s 40’ front yard setback on a site that at that time was being developed with a single family home).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Board of Adjustment conducted a public hearing on this application on April 16, 2012, and delayed action until May 14th to allow the applicant an opportunity to submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact of the fence on neighboring properties.
- On April 24, 2012, the applicant submitted a revised site/landscape/elevation plan to the staff (see Attachment A). The applicant represented that this revised site/landscape/elevation plan only amended what was originally submitted by adding certain landscape materials adjacent to the wall (i.e. no amendments have been made in the revised plan with regard to fence heights or the location of the fence from what was originally submitted), and that all of the added *landscape materials* on the revised submitted plan were code-compliant with regard to the visual obstruction regulations.
- 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/landscape/elevation plan that denotes that the proposal reaches a maximum height of 8 feet.
- The submitted site plan denotes the following regarding the proposal:
 - Approximately 175' in length parallel to the street.
 - Ranging from approximately 6'- 10' from the property line (or about 16' – 20' from the pavement line).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 067-082, Property at 5404 Walnut Hill Lane (the subject site)

On September 17, 2007, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' imposing the following condition with the request: compliance with the submitted revised site/landscape plan and revised elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.

2. BDA 112- 042, Property at 5322 Walnut Hill Lane (the lot immediately west of subject site)

On April 16, 2012, the Board of Adjustment Panel C delayed action on requests for special exceptions to the fence height and visual obstruction regulations made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard, and maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane until May 14, 2012.

3. BDA 112-043, Property at 5414 Walnut Hill Lane (the lot immediately east of the subject site)

On April 16, 2012, the Board of Adjustment Panel C delayed action on a request for a special exception to the fence height made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns, a 7' high pedestrian gate, and two, 8' high sliding wrought iron gates in the site's 40' front yard setback on a site being developed with a single family home until May 14, 2012.

4. BDA 88-096, 5414 Walnut Hill Lane (the lot immediately east of the subject site)

On September 27, 1988, the Board of Adjustment Panel granted a request for a special exception to fence height regulations of 1' 6", and imposed the following conditions: 1. The fence shall be constructed in accordance with the revised fence elevation plan submitted; 2. The pilasters shall be evenly spaced approximately 16 feet apart; 3. The fence shall be located at least 5 feet from the front

property line, and the area between the fence and the street shall be landscaped; 4. The fence on the west property line shall be eliminated; and 5. The fence shall comply with all visibility obstruction triangles. The case report states that a request was made to construct an 8' high fence; however, the board specified in their motion that the special exception was granted to erect a fence 5' 6" high.

- 5. BDA 90-023, 9995 Hollow Way (two lots immediately east of the subject site)

On April 10, 1990, the Board of Adjustment granted a request for a special exception to fence height regulations of 2' and imposed the following conditions to the request: submit a revised landscape plan that indicates the wall recessed and additional landscaping as provided. The case report states that the case report was made to construct a 6' high solid masonry fence in the site's Walnut Hill front yard setback.

- 6. BDA 956-193, 9930 Meadowbrook Drive (two lots west of the subject site)

On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 8" imposing the following condition with the request: compliance with the submitted revised landscape/site plan and elevation is required. The case report states that the request was made to construct and maintain an approximately 176' long, 7' 6" high solid stone wall with 8' high stone columns, and two, approximately 7' high open wrought iron gates

Timeline:

February 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2012: 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."

March 21, 2012: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 23, 2012: The Board Administrator emailed the applicant the following information:

- A picture that he photographed on the property at 5404 Walnut Hill Lane several days ago; and a question as to whether the existing "fence" matches what is represented on your submitted site plan/elevation; and if not, what was his proposal to the board: 1) to change the existing "fence" on the property to match what is shown on his submitted site plan/elevation; or 2) to change what is shown on his submitted site plan/elevation to match the existing "fence"?
- An observation for him to be aware of the fact that if/when the board grants this type of request they almost always impose the applicant's submitted site plan and/or elevation as a condition to the request. With this in mind, you may want to make sure that whatever is on your submitted plan is what you are willing to construct/modify/maintain on the property.

April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

April 16, 2012: The Board of Adjustment conducted a public hearing on this application on April 16, 2012, and delayed action until May 14th to allow the applicant an opportunity to submit a revised proposal with consideration given to a proposal with partial open materials and/or

landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

April 24, 2012: The applicant submitted a revised site/landscape/elevation plan to the staff (see Attachment A).

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and 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 maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns in the site's 40' front yard setback on a site developed with a single family home.
- This site abuts properties directly east and west where the same applicant/owner has made applications to maintain a fence of similar features than that which is on the subject site –requests for special exceptions to fence height regulations made to Board of Adjustment Panel C on April 16, 2012: BDA 112-042 and 043.
- A revised scaled site/landscape/elevation plan has been submitted documenting the location of the existing fence/wall/columns 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 proposal is shown to be located approximately 6' – 10' from the property line or about 16' – 20' from the pavement line. The proposal is shown to be about 175' long parallel to the street.
- There are 2 single family homes that have direct frontage to the fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, the Board Administrator noted two other fences/walls in the immediate area above 4 feet high which appeared to be located in the front yard setback. There is an approximately 7' high solid concrete/wood fence located two lots east of the site that appears to be a result of a previous board case at this location (BDA 90-023) and an approximately 7' high solid concrete wall located two lots west of the site that appears to be a result of a previous board case at this location (BDA 956-193).

- As of May 7, 2012, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that reaches 8' in height) does not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site/landscape/elevation plan would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Mark Molthan, 4347 W Northwest Hwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 112-044**, hold this matter under advisement until **May 14, 2012**.

SECONDED: **Moore**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

APPEARING IN FAVOR: Nancy Rodriguez, 4347 W. NW Hwy., Ste 120-240 Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal Nos. **BDA 112-044** on application of Mark Molthan, **grant** the request of this applicant to construct and maintain an 8-foot-high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code and to maintain items in the visibility triangles as a special exception to the visual obstruction regulation in the Dallas Development Code, because our evaluation of the properties and the testimony shows that this special exception will not adversely affect neighboring property and will not constitute a traffic hazard. 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/landscape/elevation plan is required.

SECONDED: Coulter

AYES: 5– Richardson, Maten, Coulter, Richard, Scott

NAYS: 0 –

MOTION PASSED: 5– 0(Unanimously)

FILE NUMBER: BDA 101-121

BUILDING OFFICIAL’S REPORT:

Application of Lucila Toraya, represented by Construction Concepts, for a variance to the side yard setback regulations at 3546 Gaspar Drive. This property is more fully described as Lot 11 in City Block 16/6144 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a structure and provide a 0 foot side yard setback, which will require a variance of 5 feet.

LOCATION: 3546 Gaspar Drive

**APPLICANT: Lucila Toraya
Represented by Construction Concepts**

REQUEST:

- A variance to the side yard setback regulations of 5’ is requested in conjunction with maintaining (what is represented on the submitted site plan) a “one story frame” single family home structure, a portion of which is located in the site’s western 5’ side yard setback.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how the subject site differs from other lots zoned R-7.5(A) where either its restrictive size, shape, or slope precludes it from being developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning. The site is flat, virtually rectangular in shape, and is 0.21 acres (or approximately 9,100 square feet) in area – a lot area larger than the typical lot area in R-7.5(A) zoning at 7,500 square feet.

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;
- 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
- 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 southwest corner of Gaspar Avenue and El Centro. The property has one 25' front yard setback on the north along Gaspar Avenue, two 5' side yard setbacks on the east (along El Centro) and west, and one 5' rear yard setback on the south.
- The minimum side yard setback on an R-7.5(A) zoned lot is 5 feet. The applicant has submitted a site plan indicating a structure that is located as close on from the site's western side property line (or 5' into the required 5' side yard setback).
- The site is flat, virtually rectangular in shape (49.5' on the north, 65' on the south, 140 on the east, and 139' on the west), and is (according to the application) 0.21 acres (or approximately 9,100 square feet) in area. The plat map of the site indicates that the property has a 30' platted building line along Gaspar Avenue. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD records, the property at 3546 Gaspar has the following improvements:
 - "main improvement" built in 1950 with 868 square feet of living area, and
 - "additional improvement" – 380 square foot detached carport.

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

Zoning/BDA History:

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

Timeline:

March 29, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 17, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th 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 requests;
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence; and
- a picture that he photographed on the property from the alley northward in March of 2012 with the note that if/when the board grants a variance, they typically impose the applicant's submitted site plan as a condition to the request. (The Board Administrator advised the applicant's representative with this in mind, to please note that his submitted plan should be an accurate representation of what he is seeking variance for, and to make any amendments to the plan that he feels is necessary with submittal of any revised plan (if he deem necessary) to Todd Duerksen and him no later than noon April 27th).

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on maintaining (what is represented on the submitted site plan) a “one story frame” single family home structure, a portion of which is located in the site’s western 5’ side yard setback.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 120 square feet (or about 40 percent) of the approximately 300 square foot addition (or 13 percent of the approximately 900 square foot building footprint) is located in the site’s western 5’ side yard setback.
- The applicant has been advised that when the board grants a variance, they typically impose the applicant’s submitted site plan as a condition; thus, his submitted site plan should be an accurate representation of what he is seeking a variance for, and that any amendments to the site plan should be submitted to the City no later than April 27th.
- The site is flat, virtually rectangular in shape (49.5’ on the north, 65’ on the south, 140 on the east, and 139’ on the west), and is (according to the application) 0.21 acres (or approximately 9,100 square feet) in area. The plat map of the site indicates that the property has a 30’ platted building line along Gaspar Avenue. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the 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 variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) (Single family) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) (Single family) zoning classification.
- If the Board grants the side yard variance of 5’, imposing the site plan as a condition the structure encroachment into the setback would be limited to what is shown on this plan, which in this case is a portion of an existing single family home (represented on the submitted plan as an approximately 120 square foot portion of the approximately 300 square foot addition of the approximately 900 square foot building footprint) located on the site’s western side property line or 5’ into this 5’ side yard setback.

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 101-121**, on application of Lucila Toraya, represented by Construction Concepts, **deny** the 5-foot side yard setback variance 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: **Scott**

AYES: 5– Richardson, Maten, Coulter, Richard, Scott

NAYS: 0 –

MOTION PASSED: 5– 0(Unanimously)

FILE NUMBER: BDA 112-046

BUILDING OFFICIAL’S REPORT:

Application of Steven L. Besly for a variance to the floor area regulations at 5319 Bryan Street. This property is more fully described as Lot 5 in City Block X/1861 and is zoned MF-2(A), which states that an accessory structure to a single family use may not exceed 25% of the floor area of the main structure. The applicant proposes to construct an accessory structure with 1,121 square feet of floor area (44.8% of the 2,502 square foot floor area of the main structure), which will require a variance to the floor area regulations of 495.5 square feet.

LOCATION: 5319 Bryan Street

APPLICANT: Steven L. Besly

REQUEST:

- According to the Building Official’s report, a variance to the floor area regulations for a structure accessory to single family use of 495.5 square feet is requested in conjunction with constructing and maintaining (what is represented on the submitted site plan) a “new two-story frame garage” structure on a site developed with an “existing two-story frame residence,” an accessory structure that would exceed 25 percent of the floor area of the existing main structure.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how the subject site differs from other lots zoned MF-2(A) where either its restrictive size, shape, or slope precludes it from being developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning. The site is flat, rectangular in shape (160' x 51'), and is (according to the application) 8,160 square feet in area. The applicant has not demonstrated how the property cannot be retained with/developed with a commensurately-sized single family home and accessory structure in accordance with development code standards due to the restrictive area, shape, or slope of the property.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area 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;
- 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
- 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:

- "Accessory structure" is defined in the Dallas Development Code as "a structure located on the same lot as the main building that is subordinate in floor area, location, and purpose to the main building and use for a permitted accessory use. "
- The Dallas Development Code states that "an accessory use must be a use customarily incidental to the main use."
- The subject site is zoned MF-2(A), which permits a "single family" use by right.
- The subject site is developed with a single family use.
- For single family uses, the Dallas Development Code states that, except in the agricultural district, "the floor area of any individual accessory structure on a lot, (excluding floor area used for parking), may not exceed 25 percent of the floor area of the main building."
- The applicant has submitted a site plan indicating an "existing two-story frame residence" and a "new two-story frame garage." The applicant has submitted a floor plan of the accessory structure where its first floor includes a garage space, and its second floor includes a living room, two bedrooms, and bath spaces. The applicant

has stated on his application that an appeal has been made for variance of “floor area ratio for unattached carriage house. Entitled to 625.5 square feet as 25% of 2502 square feet and seek variance of up to 495.5 square feet.” The related Building Official’s Report states that the applicant proposes to construct an accessory structure with 1,121 square feet of floor area (44.8 percent of the 2,502 square feet of floor area of the main structure) which will require a 495.5 square foot variance to the floor area ratio regulation.

- The site is flat, rectangular in shape (160’ x 51’), and is (according to the application) 8,160 square feet in area. The site is zoned MF-2(A).
- According to DCAD records, the property at 5319 Bryan has the following improvements:
 - “main improvement” built in 1914 with 2,502 square feet of living area, and
 - “additional improvements;” a 200 square foot attached carport and a 200 square foot detached carport.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: MF-2(A) (Multifamily)
South: PD 63 (Planned Development District)
East: MF-2(A) (Multifamily)
West: MF-2(A) (Multifamily)

Land Use:

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

Zoning/BDA History:

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

Timeline:

February 29, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 19, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 1, 2012:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on a variance to the floor area regulations for an accessory structure to a single family use of 495.5 square feet that has been requested in conjunction with constructing and maintaining (what is represented on the submitted site plan) a "new two-story frame garage" structure on a site developed with an "existing two-story frame residence," an accessory structure that would exceed 25 percent of the floor area of the existing main structure.
- The site is flat, rectangular in shape (160' x 51'), and is (according to the application) 8,160 square feet in area. The site is zoned MF-2(A).
- According to DCAD, the property is developed with a structure with about 2,500 square feet of living area and a 200 square foot attached carport and a 200 square foot detached carport. (Note that this referenced detached carport appears from the Board Administrator's field trip of the site in April of 2012 to have been demolished).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the floor area for structures accessory to single family uses 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 variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) (Multifamily) zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) (Multifamily) zoning classification.
- If the Board were to grant the variance to the floor area regulations for an accessory structure to a single family use of 495.5 square feet, the property could be developed with an accessory structure that could exceed the floor area of the main structure by 495.5 square feet. The applicant would be required to adhere to all other development code provisions on this property.

BOARD OF ADJUSTMENT ACTION: MAY 14, 2012

APPEARING IN FAVOR: Steven Besly, 5319 Bryan St., Dallas, TX
 Yves Duhoux, 5309 Bryan St., Dallas, TX
 Jill Clayton, 5305 Bryan St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 112-046**, on application of Steven L. Besly, **grant** the variance of 495.5 square feet to the floor area regulations for an accessory structure to a single family use, 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.

SECONDED: **Scott**

AYES: 3–Maten, Coulter, Scott

NAYS: 2 – Richardson, Richard

MOTION FAILED: 3– 2 (Therefore deemed denied with prejudice)

MOTION #2: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 112-046**, on application of Steven L. Besly, **deny** the variance 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: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Richard Scott

NAYS: 0 –

MOTION PASSED: 5– 0(Unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Coulter

AYES: 5– Richardson, Maten, Coulter, Richard, Scott

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

2:25 P. M. - Board Meeting adjourned for **May 14, 2012.**

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.