

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, MAY 18, 2009**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Elizabeth Wahlquist, regular member, Marc Bateman, alternate member and John McBride, alternate member

MEMBERS ABSENT FROM BRIEFING: Joel Maten, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Elizabeth Wahlquist, regular member, Marc Bateman, alternate member and John McBride, alternate member

MEMBERS ABSENT FROM HEARING: Joel Maten, regular member

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

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

10:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 18, 2009** 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 13, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: **MAY 18, 2009**

MOTION: **Wahlquist**

I move **approval** of the Monday, **April 13, 2009** public hearing minutes.

SECONDED: **Moore**

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 067-011

BUILDING OFFICIAL’S REPORT:

Application of James Schnurr for a special exception to the fence height regulations, special exceptions to the visual obstruction regulations, and a variance to the side yard setback regulations at 4674 Meadowood Road. This property is more fully described as lot 1A in City Block 5543 and is zoned R-1ac(A) (Single Family) which limits the height of a fence in the front yard to 4 feet, and requires a 20 foot visibility triangle at driveway approaches, and a 10 foot side yard setback. The applicant proposes to maintain a 6 foot 7 inch high fence which will require a 2 foot 7 inch special exception to the fence regulation, to maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations, and to maintain a structure and provide a 3 foot 6 inch side yard setback which will require a 6 foot 6 inch variance to the side yard setback regulations.

LOCATION: 4674 Meadowood Road

APPLICANT: James Schnurr

REQUESTS:

- The following appeals have been made in this application on a site developed with a single family home:
 1. A variance to the side yard setback regulations of 6' 6" is requested in conjunction with maintaining an approximately 240 square foot portion of an existing single family home structure (with an approximately 10,000 square foot building footprint) in the site's 10' side yard setback along the west side of the site – an portion of an addition to a house constructed in the 1970's that appears to have been erroneously permitted by the City of Dallas in 1994.
 2. A special exception to the fence height regulations of 2' 7" is requested in conjunction with maintaining a 30-year old, open wrought iron fence and gates with brick columns that range in height from 5' 3" – 6' 7" located in the site's 40' front yard setback.
 3. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the 6' 7" high open wrought iron fence and brick columns located in four 20' visibility triangles at the two drive approaches into the site from Meadowood Road, and a call box in one of the four 20' drive approach visibility triangles.

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The site is restricted in its developable area and is different from other parcels of land given its size (restricted by a 30' floodway and a 10' sanitary sewer easement that bisects the site) and irregular shape. The applicant's representative has submitted documents showing that the site's "building pad %" is 35 percent compared to 65 – 79 percent of four other lots in the area once the floodway easement and the "extra-deep" front building line is taken into account.
- The applicant has substantiated that the development on the site is commensurate with development found on other parcels of land in the same zoning district – DCAD shows the total square footage of the house on the site to be about 10,000 square feet where the average of eight other homes on the street is over 11,000 square feet.
- The applicant has also substantiated how granting the variance does not appear to be contrary to the public interest in that there is a permanent easement with the adjoining west property owner for a fence and access easement which provides the owner of the site utilization of 5' of the adjacent property for access and enjoyment and that the fence located on the adjacent property must be 5' from the property line. As a result, the effective setback along the western boundary is 8.5' – 10' when considering the distance from the house to the fence dividing the property from the neighboring lot. In addition, the amount of structure in the side yard setback is approximately 240 square feet in area or roughly 2 percent of the total area of the single family home on the subject site.

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 of the requests, subject to the following conditions:

1. Compliance with the submitted revised site plan and revised partial fence elevation document is required.
2. Landscape materials located within any/all visibility triangles on the site must be brought into/maintained in compliance with the City's visual obstruction regulations.

Rationale:

- The City's Development Services Senior Engineer has no objections to the requests.
- The existing fence, columns, and call box (as shown on the submitted revised site plan and revised partial elevation) in the four 20' drive approach visibility triangles on the subject site do not constitute a traffic hazard.

STANDARD FOR A VARIANCE:

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

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 (related to the side yard variance):

- The minimum side yard setback on an R-1ac(A) zoned lot is 10 feet.
The applicant has submitted a site plan and an application indicating a structure that is located as close as 3' 6" from the western side property line (or as much as 6' 6" into the 10' side yard setback).
- According to calculations taken by the Board Administrator from the site plan, the area of the existing structure that is located in the site's 10' western yard setback is approximately 240 square feet (approximately 40' x 6' in area or approximately 2 percent) of the 10,000 square foot building footprint.
- The site appears to be relatively flat, is irregular in shape (pentagon), and is (according to DCAD) 1.5 acres in area. The site is zoned R-1ac(A). The submitted plat map shows a 30' floodway easement and a 10' sanitary sewer easement that bisects the subject site.
- According to DCAD records, the property is developed with the following:
 - a single family home in "average" condition built in 1978 with 6,642 square feet of living area;
 - a gunite spa;
 - a 960 square foot attached garage;
 - a pool; and
 - a 1166 square foot attached carport.The applicant has prepared a table that shows that the average "house size" of eight other homes on Meadowood is 11,327 square feet, and that the average "garage" is 1,039 square feet.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised elevation and a revised site plan; and
 - a letter that provided additional information related to the requests along with related documents and photographs.

GENERAL FACTS (related to the fence height special exceptions):

- 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 has submitted a revised site plan and a revised partial elevation indicating that the proposal/existing fence in the 40' front yard setback reaches a maximum height of 6' 7".

- The following additional information was gleaned from the submitted original and revised site plans:
 - The existing fence located in the front yard setback over 4' in height is approximately 150' in length parallel to the street.
 - The fence is shown to be located approximately 1' – 2' from the front property line or about 9' from the pavement line.
 - The gates are shown to be located approximately 2' the front property line or about 22' from the projected pavement line.
- No single family home has direct frontage to the existing fence and gates on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence (located west of the site) appears to be a 6' high open iron fence with 7' high masonry pilasters with a 10' high entry gate. This fence appears to have been “special excepted” by the Board of Adjustment Panel B in May of 2001 – BDA 001-194.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised elevation and a revised site plan; and
 - a letter that provided additional information related to the requests along with related documents and photographs.

GENERAL FACTS (related to the visual obstruction special exceptions):

- 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 revised site plan has been submitted that show portions of the maximum 6' 7" high open wrought iron fence and columns located in the site's four 20' visibility triangles at the two drive approaches into the site from Meadowood Road; and a call box in one of the four drive approach triangles. (Although the Board Administrator noted landscape materials that appeared to be located in the visibility triangles, the applicant informed the Board Administrator that any landscape materials on the site that are located in visibility triangles will be brought into compliance with the regulations whereby no special exception is requested to maintain any in a required triangle).
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised elevation and a revised site plan; and
 - a letter that provided additional information related to the requests along with related documents and photographs.

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 001-194, Property at 4669 Meadowood Road (the lot immediately west of the subject site)
On May 15, 2001, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 6' 1" and imposed the following conditions: compliance with the submitted revised site plan and revised elevation plan is required; and the existing hedge along the entire street side of the proposed wall must be retained, and (or if/when needed) the plants (hedge) must be replaced with five-gallon Photinia, Nellie R. Stevens holly, or similar species planted three foot on center. The case report stated that the request was made in conjunction with constructing and maintaining a 6' high open iron fence; 7' high masonry pilasters; and a 10' 1" high entry gate.

Timeline:

- March 24, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- April 16, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th 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 5, 2009: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 8, 2009 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS (related to variance):

- The request for a variance to the side yard setback regulations focuses on maintaining a small portion of a 1994 addition (that appears to have been erroneously permitted by the City) to single family home structure constructed in the mid 70's.
- The submitted revised site plan indicates that the area of the existing structure that is located in the site's 10' western yard setback is approximately 240 square feet (approximately 40' x 6' in area or approximately 2 percent) of the 10,000 square foot building footprint.
- The applicant has stated that the owner of the site entered into a permanent easement with the property owner to the west for a fence and access easement. This easement provides the owner of the site utilization of 5' of the adjacent property for access and enjoyment and that the fence located on the adjacent property must be 5' from the property line. As a result, the effective setback along the western boundary is 8.5' – 10' when considering the distance from the house to the fence dividing the property from the neighboring lot.
- The applicant has prepared a table that shows that his site has a "building pad %" of 35 percent compared to 65 – 79 percent of four other lots in the area once the floodway easement and the "extra-deep" front building line is taken into account.
- The site appears to be relatively flat, is irregular in shape (pentagon), and is (according to DCAD) 1.5 acres in area. The site is zoned R-1ac(A). The submitted plat map shows a 30' floodway easement and a 10' sanitary sewer easement that bisects the subject site.
- 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-1ac(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-1ac(A) (Single family) zoning classification.
- If the Board were to grant the side yard variance of 6' 6", imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into this setback would be limited to that what is shown on the submitted plan which in this case is a structure that is located 3' 6" from the western side property line or 6' 6" into the 10' side yard setback along the west side of the subject site.

STAFF ANALYSIS (related to the fence height special exception):

- This request focuses on maintaining a 30-year old, open wrought iron fence/gates with brick columns that range in height from 5' 3" – 6' 7" in the site's 40' front yard setback.
- A revised site plan has been submitted documenting that the existing fence located in the front yard setback over 4' in height is approximately 150' in length parallel to the street, and approximately 1' – 2' from the front property line where the gates are approximately 22' from the projected pavement line.
- A revised partial elevation document has been submitted that denotes that materials of the fence/gate to be open metal and that the materials of the columns to be brick.
- No single family home has direct frontage to the existing fence and gates on the subject site.
- One other fence above four (4) feet high which appeared to be located in the front yard setback was noted in a field visit conducted by the Board Administrator of the site and surrounding area. This fence (located west of the site) appears to be a 6' high open iron fence with 7' high masonry pilasters with a 10' high entry gate. This fence appears to have been "special excepted" by the Board of Adjustment Panel B in May of 2001 – BDA 001-194.
- As of May 11, 2009, no letters had been submitted in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 7" (whereby the existing fence/gates/columns reaching 6' 7" in height) does not adversely affect neighboring property.

- Granting this special exception of 2' 7" with a condition imposed that the applicant complies with the submitted revised site plan and submitted revised partial elevation document would assure that the existing fence/gates/columns exceeding 4' in height would be maintained in the location and of the height and material as shown on these documents.
- Note that if the board were to grant this request and impose the submitted revised site plan and revised elevation document as conditions, and deny the requests for special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the items in the triangles would not be "excepted."

STAFF ANALYSIS (related to the visual obstruction special exceptions):

- These requests focus maintaining portions of the 6' 7" high open wrought iron fence and columns located in the four 20' visibility triangles at the two drive approaches into the site from Meadowood Road, and a call box in one of the four 20' drive approach visibility triangles.
- Although the Board Administrator noted landscape materials that appeared to be located in some of the visibility triangles in addition to the fence, columns, and call box, the applicant has not submitted any plans that denote landscape materials in the triangles, and has informed the Board Administrator that any landscape materials that are located in a visibility triangle will be brought into compliance with the code regulations.
- The Development Services Senior Engineer submitted a Review Comment Sheet marked "Has no objections."
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing the maintenance of a portion of the existing fence/columns/call box in the 20' drive approach visibility triangles on the subject site will not constitute a traffic hazard.
- If these requests are granted, subject to the conditions that compliance with the submitted revised site plan and revised partial elevation document and that landscape materials located within any/all visibility triangles on the site must be brought into/maintained in compliance with the City's visual obstruction regulations, the existing open wrought iron fence, brick columns, and call box would be "excepted" into these visibility triangles on the subject site.

BOARD OF ADJUSTMENT ACTION: MAY 18, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bateman**

I move that the Board of Adjustment grant application **BDA 067-011** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

Fence height special exception:

- Compliance with the submitted revised site plan and revised partial fence elevation document is required.
- The applicant shall replat the property before applying for a building permit.

Side yard setback variance:

- Compliance with the submitted revised site plan is required
- The applicant shall replat the property before applying for a building permit.

Visual obstruction special exception:

- Compliance with the submitted revised site plan and revised partial fence elevation document is required.
- The applicant shall replat the property before applying for a building permit.
- Landscape materials located within any/all visibility triangles on the site must be brought into/maintained in compliance with the City’s visual obstruction regulations.

SECONDED: **Moore**

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-056

BUILDING OFFICIAL’S REPORT:

Application of Kevin Kadesky, represented by Jared Jackson, for a special exception to the front yard setback regulations for tree preservation at 5832 Lupton Drive. This property is more fully described as being a 0.97 acre lot in City Block 5613 and is zoned R-1ac(A) which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and provide a 27 foot front yard setback which will require a special exception of 13 feet.

LOCATION: 5832 Lupton Drive

APPLICANT: Kevin Kadesky
Represented by Jared Jackson

REQUEST:

- A special exception to the front yard setback regulations for tree preservation of 13' is requested in conjunction with constructing and maintaining a two-story detached accessory structure with an approximately 1,100 square foot building footprint in the site's 40' Falls Road front yard setback on a site that is developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- The requested special exception of 13' for a two-story detached accessory structure with an approximately 1,100 square foot building footprint appears to be compatible with the character of the neighborhood. A review of an aerial photograph of the site and adjacent properties to the east and west and what was noted in a field visit conducted by the Board Administrator showed that: 1) most if not all other homes in this blockface are oriented in the same manner as the development on the subject site where the lot's two front yard setbacks (one on Lupton, the other on Falls), the front yard setback along Lupton Drive functions as the lot's front yard, whereas the front yard setback along Falls Road *functions* as the lot's rear yard; and 2) there are other similar type accessory structures located in the Falls Road front yard setback – however, none with recorded BDA history for either a variance or a special exception).
- The value of the surrounding properties would not appear to be adversely affected by granting the exception. The proposed encroachment into the site's Falls Road front yard setback appears to be reasonably-sized and would far exceed the 10' rear yard setback required in R-1ac(A) zoning.
- The City's Chief Arborist has stated that there is a tree on the site that is "worthy of preservation" - a mature 44" American elm that is located in the center yard area.

STANDARD FOR A SPECIAL TO THE FRONT YARD REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

GENERAL FACTS:

- The subject site is a lot that runs from Lupton Drive on the north to Falls Road on the south where access is not prohibited on either frontage by plat or the city. As a result the site has two 40' front yard setbacks even though the Falls Road side of the site functions as the site's rear yard. No encroachment is proposed to be located in the site's Lupton Drive front yard setback, however an accessory structure is proposed to be located in the site's Falls Road front yard setback.
- Structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'.

The Dallas Development Code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, structures or portions of structures in the yard along that frontage (swimming pools, game courts, fences, garages, and accessory storage buildings) are governed by the rear yard regulations.

The Dallas Development Code states that the front yard setback is measured from the front lot line of the building site or the required right-of-way as determined by the thoroughfare plan for all thoroughfares, whichever creates the greater setback. On minor streets, the front yard setback is measured from the front lot line of the building site or the existing right-of-way whichever creates the greater setback.

The submitted revised site plan denotes an access easement line from Falls Road as well as a property line. The revised site plan denotes a "new detached garage" accessory structure that is providing an approximately 27' setback whereby the structure is 13' into the 40' front yard setback.

- According to calculations taken from the site plan by the Board Administrator, approximately 450 square feet (or about 40 percent) of the proposed accessory structure with an approximately 1,100 square foot building footprint is located in the site's 40' Falls Drive front yard setback.
- According to DCAD records, the property is developed with a single family home in "very good" condition built in 1985 with 5,940 square feet of living area.
- The revised site plan denotes a "41" Elm" near the center of the site.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-1ac(A) (Single family district 1 ac)
<u>North:</u>	R-1ac(A) (Single family district 1 ac)
<u>South:</u>	R-1ac(A) (Single family district 1 ac)
<u>East:</u>	R-1ac(A) (Single family district 1 ac)
<u>West:</u>	R-1ac(A) (Single family district 1 ac)

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 11, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 16, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th 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, 2009 The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).
- May 5, 2009: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- May 8, 2009: The Chief Arborist submitted a memo to the Board Administrator (see Attachment B). This memo stated among other things that the 44” American elm tree is worthy of preservation.

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a portion of a two-story detached accessory structure with an approximately 1,100 square foot building footprint in one of the site’s two 40’ front yard setbacks (Falls Road) - a front yard setback that *functions* on this site (as on other lots east and west in the block face) as its rear yard.

- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a front yard setback on an R-1ac(A) zoned lot either by an application for a variance to the front yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the front yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree is located on a site that is worthy of preservation (not property hardship). The applicant in this case has made an application for a *special exception* to the front yard setback regulations for tree preservation.
- This special exception request is made to allow 450 square feet (or about 40 percent) of the proposed accessory structure with an approximately 1,100 square foot building footprint is located in the site's 40' Falls Drive front yard setback.
- The City's Chief Arborist has stated that there is a 44" American elm tree that is "worthy of preservation."
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
 1. Whether the requested special exception is compatible with the character of the neighborhood.
 2. Whether the value of the surrounding properties will be adversely affected.
 3. Whether the tree is worthy of preservation.
- If the Board were to grant the front yard special exception request of 13', imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure in the front yard setback would be limited to that what is shown on this plan – which in this case is a portion of accessory structure that is providing a 27' setback (or is located 13' into the site's 40' Falls Road front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 18, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Bateman

I move that the Board of Adjustment grant application **BDA 089-056** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. 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 is required.

SECONDED: Moore

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-063(K)

BUILDING OFFICIAL’S REPORT:

Application of Sarah Polley represented by Rob Baldwin for a variance to the front yard setback regulations at 1018 Gallagher Street. This property is more fully described as Lot 1A in City Block B/7099 and is zoned R-5(A), which requires a front yard setback of 20 feet. The applicant proposes to construct and maintain a nonresidential use and provide a 9 foot front yard setback for the off-street parking, which will require an 11 foot variance to the front yard setback regulation for off-street parking.

LOCATION: 1018 Gallagher Street

APPLICANT: Sarah Polley
Represented by Rob Baldwin

REQUEST:

- A variance to the front yard setback regulations for off-street parking.

STAFF RECOMMENDATION:

Approval

Rationale:

- This lot is different from other lots zoned R-5 (A) in that it is encumbered by two front yard setbacks on Gallagher Street and Winnetka Ave. The applicant has substantiated how the variance is necessary to maintain this parcel of land developed with a community center and how the variance is not contrary to public interest.
- The Senior Engineer has submitted a comment sheet marked “recommends that this item be denied (see attachment A).

STANDARD FOR A VARIANCE TO FRONT YARD SETBACK:

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

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

GENERAL FACTS:

- The site is developed with a community center on a property that is zoned R-5(A).
- The required front yard setback for this property is 20 feet. The applicant is seeking a variance of 11 feet to the off-street parking regulations.

BACKGROUND INFORMATION:

Zoning:

Site: R-5(A) (Single family residential 5,000 square feet)
North: R-5(A) (Single family residential 5,000 square feet)
South: R-5(A) (Single family residential 5,000 square feet)
East: R-5(A) (Single family residential 5,000 square feet)
West: R-5(A) (Single family residential 5,000 square feet)

Land Use:

The subject site is developed with a community center. The properties to the north, south, east, and west are developed with single family structures

Zoning/BDA History:

Z 078-307. The applicant has a pending Specific Use Permit application pending with the City Plan Commission. The staff recommendation for the SUP request is approval

Timeline:

March 24, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 28, 2009: The Board of Adjustment’s Senior Planner contacted the applicant and shared the following information via phone and letter:

- the public hearing date and panel that will consider the application;

- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the May 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the May 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

May 1, 2009: The applicant's representative submitted a letter to the Board for its consideration (see attachment B).

May 7, 2009 The Development Services Senior Engineer submitted a comment sheet (see attachment A).

STAFF ANALYSIS:

- The subject site is developed with a community center and is allowed in the R-5(A) by specific use permit only. The applicant has a Specific Use Permit request (Z078-307) pending with the City Plan Commission.
- According to DCAD the property was developed in 1985 with a church building. The site is flat, rectangular in shape and approximately 27,839 square feet.
- The applicant is seeking a variance to the front yard setback requirement for the off-street parking. The proposed use, a community center, is required to provide 1 parking space per 200 square feet of floor area, or 25 required parking spaces. The applicant proposes to provide all of the required off-street parking for this site, two of the parking spaces are located within the required front yard setbacks.
- This property is encumbered with two 20-foot front yard setbacks along Gallagher and Winnetka with one of the required parking spaces in the required front yard of

Winnetka Ave, and another required parking space in the Gallagher Street front yard (northwest corner of property).

- The applicant has the burden of proof in establishing that the off-street parking in the required front yards of Gallagher and Winnetka are necessary to develop this parcel of land that differs from other parcels of land in the same R-5(A) zoning by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R5(A) zoning; and the variance is not granted to relieve a self-created or personal hardship.
- If the board grants the variance to the front yard setback regulations for off-street parking, staff recommends compliance with the submitted site plan as a condition.

BOARD OF ADJUSTMENT ACTION: MAY 18, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bateman**

I move that the Board of Adjustment grant application **BDA 089-063** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: **Moore**

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-064(K)

BUILDING OFFICIAL’S REPORT:

Application of Douglas Jorgensen represented by Signs Manufacturing & Maintenance Corporation for a special exception to the sign regulations at 15203 Knoll Trail Drive (Suite 101). This property is more fully described as being a 3.725 acre tract in City Block E/8222 and is zoned MU-1, which limits the number of words on a sign. The applicant proposes to construct an attached premise sign on a nonresidential building facade with more than eight words which contain characters of a height equal to or

exceeding four inches, which will require a special exception to the sign regulations to allow two additional words.

LOCATION: 15203 Knoll Trail Drive (Suite 101)

APPLICANT: Douglas Jorgensen
Represented by Signs Manufacturing & Maintenance Corporation

REQUEST:

- A special exception to the sign regulations to allow for two additional words.

STAFF RECOMMENDATION:

None

Rationale:

- Staff does not make a recommendation on this type of appeal.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS:

The Dallas Development Code states that the board of adjustment may, authorize up to two additional large letter words on an attached sign in excess of the number permitted, when the board has made special finding from the evidence permitted that strict compliance with the requirement of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of this article.

GENERAL FACTS:

- The site is developed with a retail shopping center.
- The applicant is seeking a special exception to sign regulation for the number of large words permitted by code.
- The Dallas Development Code states a sign may not have more than eight large words.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: R-16(A) (Single family residential 16,000 square feet)
South: RR (Regional Retail)
East: MU-1 (Mixed Use)
West: CR (Community Retail)

Land Use:

The subject site is developed with a shopping center. The property to the north is developed with light rail. The properties to the east, south and west are developed with non-residential commercial/retail uses.

Zoning/BDA History:

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

Timeline:

March 27, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 24, 2009: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information via letter and phone:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the May 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the May 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist,

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

STAFF ANALYSIS:

- The subject site is developed with a retail shopping center. The applicant is requesting a variance to sign regulations for Prestige Community Credit Union.
- The Dallas development code limits the number of large words on a sign to eight. The applicant is proposing to install an attached sign with ten words.
- A submitted elevation illustrates an attached sign located on the east elevation of the building with a logo and the words “Prestige Community Credit Union” and “Serving North Texas since 1936.” The sign will be constructed of Gemini formed plastic
- The applicant has the burden of proof in establishing granting the special exception is necessary due to substantial financial hardship or inequity.
- If the board chooses to grant this request, staff recommends compliance with the submitted elevation.

BOARD OF ADJUSTMENT ACTION: **MAY 18, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bateman**

I move that the Board of Adjustment grant application **BDA 089-064** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted elevation is required.

SECONDED: **Moore**

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-060

BUILDING OFFICIAL’S REPORT:

Application of Steven M. Park, represented by David Zatopek of Corgan Associates, Inc., for special exceptions to the visual obstruction regulations at 1601 S. Lamar

Street. This property is more fully described as being a 1.628 acre lot in City Block 3/1087 and is zoned PD-317(Subdistrict 3A, H/86) which requires 20 foot visibility triangles at driveway approaches. The applicant proposes to maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

LOCATION: 1601 S. Lamar Street

APPLICANT: Steven M. Park
Represented by David Zatopek of Corgan Associates, Inc.

REQUESTS:

- Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of an 8' high open wrought iron fence and gates, gate operators, trees, and parked vehicles located in the five 20' visibility triangles at three drive approaches into the site developed as an office use - the DCCC (Dallas County Community College) District Office from McKee Street.

STAFF RECOMMENDATION:

Denial of the requests

Rationale:

- The City's Development Services Senior Engineer recommends denial of the requests specifically stating the location of the gates on the site may constitute a traffic hazard when entering vehicles block the sidewalk or partially obstruct the traveling lane.

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 (related to the visual obstruction special exceptions):

- 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 site plan and elevation document have been submitted that shows portions of an portions of an 8' high open wrought iron fence and gates, gate operators, trees, and parked vehicles located in the site's five 20' visibility triangles at three drive approaches into the site from McKee Street.

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a photo/site plan/text document that provided additional details about the requests.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 317 (Planned Development)
North: PD No. 317 (Planned Development)
South: PD No. 317 (Planned Development)
East: PD No. 317 (Planned Development)
West: PD No. 317 (Planned Development)

Land Use:

The subject site is developed with an office use (DCCC District Office). The areas to the north, east, south, and west are appear to be developed with a mix of office, retail, and warehouse uses.

Zoning/BDA History:

1. BDA 990-366, Property at 1601 S. Lamar Street (the subject site)
On November 13, 2000, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15'. The Board imposed the following condition: compliance with the submitted architectural plans is required. (The board specified that the garage height could be shorter than as shown on these plans). The case report stated that the request was made in conjunction with constructing and maintaining a 5-story, 525-vehicle parking garage that would provide a 0' front yard setback along McKee Street. (The garage that was the focus of this request appears to have not been constructed based on a recent field visit of the subject site by the Board Administrator).
2. BDA 067-172, Property at 1601 S. Lamar Street (the subject site)
On December 10, 2007, the Board of Adjustment Panel C granted a request for a

special exception to the off-street parking regulations of 61 spaces. The Board imposed the following condition: the special exception automatically and immediately terminates if and when the office use on the site is changed or discontinued. The case report stated that the request was made in conjunction with constructing and maintaining an approximately 81,000 square foot “office building” on a site that is developed with a vacant commercial structure.

Timeline:

- March 26, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 17, 2009: The Board Administrator contacted the applicant’s representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the May 8th 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 25, 2009: The Board Administrator wrote the applicant a letter that included the following information:
- The date in which the public hearing date will take place;
 - The requests that have been made to the board;
 - The criteria/standard that the board will use in their decision to approve or deny the requests;
 - Deadlines to submit additional information to staff and the board;
 - A reference to a city staff person who could provide translation of this information in Spanish.
- May 5, 2009: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Historic Preservation Senior Engineer submitted a Review Comment Sheet marked "Has no objections" commenting "Site plan was approved on 4/1/09 (CA089-312(MD))."

The Trinity River Corridor Senior Planner submitted information stating that the site is located in a Neighborhood Corridor Module of the Trinity River Corridor CLU Plan.

May 7, 2009

The Development Services Senior Engineer forwarded a Review Comment Sheet marked "Recommends that this be denied" with the following comments:

"On the visibility obstruction, the main objection is the location of the gates which may constitute a traffic hazard when entering vehicles may block the sidewalk or partially obstruct the traveling lane."

STAFF ANALYSIS:

- These requests focus on maintaining portions of an 8' high open wrought iron fence and gates, gate operators, trees, and parked vehicles located in the five 20' visibility triangles at three drive approaches into the site developed as an office use - the DCCC (Dallas County Community College) District Office from McKee Street.
- The Development Services Senior Engineer submitted a Review Comment Sheet marked "Recommends hat this be denied" with the following comments: "On the visibility obstruction, the main objection is the location of the gates which may constitute a traffic hazard when entering vehicles may block the sidewalk or partially obstruct the traveling lane."
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing portions of an 8' high open wrought iron fence and gates, gate operators, trees, and parked vehicles located in the five 20' visibility triangles at three drive approaches into the site will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted site plan and elevation document, only those items shown on the submitted site plan and elevation document would be "excepted" into these visibility triangles on the subject site.

BOARD OF ADJUSTMENT ACTION: MAY 18, 2009

APPEARING IN FAVOR:

David Zatopek, 401 N. Houston, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **McBride**

I move that the Board of Adjustment, in Appeal No. **BDA 089-060** on application of Steven M. Park, represented by David Zatopek of Corgan Associates, Inc., **grant** the request of this applicant to maintain portions of an 8 foot high open wrought iron fence and gates, gate operators, trees, and parked vehicles located in both visibility triangles at the western drive approach from McKee Street as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Wahlquist**

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: McBride

I move that the Board of Adjustment, in Appeal No. **BDA 089-060** on application of Steven M. Park, represented by David Zatopek of Corgan Associates, Inc., **grant** the request of this applicant to maintain portions of an 8 foot high open wrought iron fence and gates, gate operators, trees, and parked vehicles located in all visibility triangles in the middle and eastern drive approach from McKee Street as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Wahlquist

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-004

BUILDING OFFICIAL’S REPORT:

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

LOCATION: 5969 Westgrove Circle

APPLICANT: Robert Behringer
Represented by Robert Baldwin

REVISED REQUESTS:

- Special exceptions to the fence height regulations of up to 7’ 9” (reduced from 9’ 9’) are requested in conjunction with constructing and maintaining the following in the site’s two 40’ front yard setbacks on a site being developed with a single family home:
 - in the Westgrove Circle and Ashbourne Drive front yard setbacks *parallel* to these streets:
 - A 6’ 6” high open wrought iron fence (reduced from 8’ 6”) (of which the bottom 1’ 6” is a “chopped leuders limestone wall, ashlar pattern” base) with

- 7' 2" high pickets (reduced from 9' 4"), and three 10' 10" high open wrought arched iron gates (reduced from 13' 4") (one gate on Westgrove Circle, two gates on Ashbourne Drive) that are flanked by 11' 9" high high entry columns (of which the top 2' 9" of these columns being "napa bronze electric lights") (reduced from 13' 9");
- in the Westgrove Circle front yard setback *perpendicular* to this street:
 - A 6' 6" – 7' 6" high open wrought iron fence (of which the bottom 1' 6" is a "chopped leuders limestone wall, ashlar pattern" base) reduced from a 9' 4" high open wrought iron fence; and
 - in the Ashbourne Drive front yard setback *perpendicular* to this street:
 - A 6' 6" – 8' high open wrought iron fence (of which the bottom 1' 6" is a "chopped leuders limestone wall, ashlar pattern" base) which replaces the originally proposed 8' 6" high solid stucco wall with 9' high cast stone columns.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

REVISED GENERAL FACTS:

- The subject site is located at the corner of Westgrove Circle and Ashbourne Drive. Even though the Westgrove Circle side of the site functions as the site's front yard and the Ashbourne Drive side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Westgrove Circle given that this frontage is the shorter of the two street frontages, and a front yard setback along Ashbourne Drive given that the continuity of the established setback must be maintained on this street since houses face Ashbourne Drive immediately north of the subject site. The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts. The applicant has submitted a revised site plan and a revised document with several partial elevations indicating a fence/wall/column/gate proposal that would be located in the site's two front yard setbacks and would reach a maximum height of 11' 9" (replacing the original documents showing a maximum height of 13' 9").
- A revised site plan has been submitted that indicates the location of the proposal in the front yard setbacks. The following additional information was gleaned from this revised site plan for the proposal *along Westgrove Circle*:

- The proposal would be approximately 250' in length parallel to Westgrove Circle with a recessed entryway, approximately 40' in length perpendicular to Westgrove Circle on the west.
- The proposed fence/wall is shown to be located approximately on the Westgrove Circle front property line (or approximately 12' from the Westgrove Circle pavement line).
- The proposed gate is to be located about 13' from the Westgrove Circle front property line (or approximately 25' from the Westgrove Circle pavement line).
- The following additional information was gleaned from the submitted revised site plan for the proposal *along Ashbourne Drive*:
 - The proposal would be approximately 400' in length parallel to Ashbourne Drive, approximately 40' in length perpendicular to Ashbourne Drive on the north.
 - The proposed fence/wall is shown to be located approximately on the Ashbourne Drive front property line (or approximately 12' - 20' from the Ashbourne Drive pavement line).
 - The proposed gates are to be located approximately 12' from the Ashbourne Drive front property line (or approximately 24' from the Ashbourne Drive pavement line).
- The submitted revised site plan shows what appears to be a number of landscape materials adjacent to the proposed fence/wall none of which are denoted with a species name or size.
- The proposal *along Westgrove Circle* would be located on the site facing a vacant lot that is maintained as a park-like space, therefore, no single family homes would have direct/indirect frontage.
- The proposal *along Ashbourne Drive* would be located on the site where three single family homes on the lots across the street would have direct/indirect frontage, one of which has an approximately 6' high fence with approximately 6.5' high columns and an 8' high solid cast stone wall perpendicular to Westgrove Circle – a result of an approved fence height special exception by the Board of Adjustment in 2000.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fence/wall beyond that described above which appeared to be located in the front yard setback above 4' in height.
- On March 16, 2009, the Board of Adjustment conducted a public hearing on this request and delayed action until April 13, 2009 per the applicant's representative request. The applicant's representative requested a month delay to allow him an opportunity to present his proposal to the neighborhood architectural review committee.
- As of April 2, 2009, the applicant's representative submitted a letter to staff (see Attachment A). This letter stated among other things how the applicant's representative is "working diligently with the Preston Trails Neighborhood Association and our neighbors on coming up with a fence design that is appropriate for the neighborhood and acceptable to all parties."
- On April 13, 2009, the Board of Adjustment conducted a public hearing on this request and delayed action until May 18, 2009 per the applicant's representative request. The applicant's representative requested a month delay to allow him an

opportunity to garner the support of his proposal from the neighborhood architectural review committee and/or neighboring property owners. The Board Administrator circulated additional written documentation submitted by the applicant's representative to the Board at the briefing April 13th briefing (see Attachment B). This information included a revised elevation document, a revised site plan, and a document that compared the heights of the original and revised request. The applicant's representative submitted photographs of a neighboring fence at the April 13th public hearing (see Attachment C).

- On April 30, 2009, the applicant's representative submitted the following additional information (see Attachment D):
 - a letter that provided additional details about the request;
 - an annotated revised site plan;
 - a revised elevation document; and
 - a revised site plan.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is being developed with a single family home. The areas to the north and east are developed with single family uses; the area to the south of the site is a undeveloped tract of land maintained as a park-like space; and the area to the west is undeveloped.

Zoning/BDA History:

1. BDA 990-294, Property at 5975 Westgrove Circle (the lot immediately east of the subject site)

On June 19, 2000, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations (subject to compliance with the submitted site plan and elevations). The case report stated that the request was made in conjunction with constructing and maintaining an approximately 6' high open wrought iron fence with approximately 6.5' high cast stone columns along Westgrove Circle and an 8' high solid cast stone wall

perpendicular to Westgrove Circle (within the site's 40' front yard setback).

Timeline:

- Nov. 4, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Nov. 20, 2008: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the deadline to submit additional evidence for staff to factor into their analysis;
 - the deadline to submit additional evidence to be incorporated into the Board's docket materials.
- Nov. 21, 2008: Staff discovered that the site delineated on the submitted plat and zoning map did not encompass the entire site, and that the site was encompassing two lots that would require a re-plat to accommodate the one house shown to encompass the entire site. Staff informed the applicant that the application would be delayed until the subject site was re-platted from two lots to one lot.
- Feb. 17, 2009 Building Inspection forwarded revised application materials which have been included as part of this case report part of which establishes a newly platted subject site.
- Feb. 20, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public

hearings. Review team members in attendance included: the Assistant Building Official, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

March 16, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their April 13th public hearing.

March 19, 2009: The Board Administrator contacted the applicant's representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

March 31, 2009: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

April 2, 2009 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

April 13, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their May 18th public hearing where the applicant submitted additional information to the board (see Attachments B and C).

April 16, 2009: The Board Administrator contacted the applicant's representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the

- May 8th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

April 30, 2009 The applicant's representative submitted information beyond what was submitted with the original application and at the April public hearing (see Attachment D).

May 5, 2009: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The requests focus on constructing/maintaining a 6' 6" high open wrought iron fence (with solid limestone base) in the site's two front yard setbacks parallel to Westgrove Circle and Ashbourne Drive. A 6' 6" – 7' 6" high open wrought iron fence (with solid limestone base) is proposed perpendicular to Westgrove Circle in the front yard setback on the west side of the site, and an 6' 6" – 8' high open wrought iron fence (with solid limestone base) is proposed perpendicular to Ashbourne Drive on the north side of the site. The only component of the proposal that reaches 11' 9" in height is six entry gate columns that flank the three, 10' 10" high entry gates on the site.
- A revised scaled site plan and revised elevation document with several partial fence elevations have been submitted documenting the location of the proposed fence/columns/gates relative to their proximity to the Westgrove Circle and Ashbourne Drive front property lines and pavement lines, the lengths of the proposals relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately on the property lines or about 12' – 20' from the pavement lines. The proposal is about 250' long parallel to Westgrove Circle and about 40' long perpendicular; and the proposal is about 400' long parallel to Ashbourne Drive and about 40' long perpendicular.
- The submitted revised site plan shows what appears to be a number of landscape materials adjacent to the proposed fence/wall none of which are denoted with a species name or size.
- The Westgrove Circle proposal would be located on the site where no single family homes would have direct/indirect frontage, and where no other fences were noted in front yards.
- The Ashbourne Drive proposal would be located on the site where three single family homes would have direct/indirect frontage, and where one of these homes

has an approximately 6' high fence with approximately 6.5' high columns and an 8' high solid cast stone wall perpendicular to Westgrove Circle – a result of an approved fence height special exception by the Board of Adjustment in 2000.

- As of May 11, 2009, two neighbors/owners who had originally submitted letters in opposition to the original proposal submitted an email reversing their opposition and conveyed their support to the revised/reduced proposal. In addition, a letter dated May 7, 2009 from the Preston Trail Homeowners Association, Inc. was submitted that conveyed their approval of the revised perimeter fence plan that was presented to them on May 5th. One letter remains in support and one letter remains in opposition to the original proposal.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 11' 9" in height) will not adversely affect neighboring property.
- Granting these special exceptions of 7' 9" with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 16, 2009

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

APPEARING IN OPPOSITION: No One

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

MOTION: **Maten**

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

SECONDED: **Bateman**

AYES: 4–Boyd, Moore, Maten, Bateman

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: APRIL 13, 2009

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

APPEARING IN OPPOSITION: No One

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 089-004** hold this matter under advisement until **May 18, 2009**.

SECONDED: **Wahlquist**

AYES: 5–Boyd, Moore, Maten, Wahlquist, Bateman
NAYS: 0 –
MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 18, 2009

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

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 089-004** on application of Robert Rehringer, represented by Robert Baldwin, **grant** the request of this applicant to construct and maintain an eleven foot, nine inch fence in the Westgrove Circle front yard and the Ashbourne Drive front yard as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Bateman**

AYES: 5–Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Moore**

I move to adjourn this meeting.

SECONDED: **Bateman**

AYES: 5 –Boyd, Moore, Wahlquist, Bateman, McBride

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

1:18 P. M. - Board Meeting adjourned for **May 18, 2009.**

CHAIRPERSON

BOARD ADMINISTRATOR

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