

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, MAY 19, 2008**

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

MEMBERS ABSENT FROM BRIEFING: Joel Maten, regular member

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

MEMBERS ABSENT FROM HEARING: Joel Maten, regular member

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Trena Law, Board Secretary

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**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 19, 2008** docket.  
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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C April 14, 2008 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:    MAY 19, 2008**

**MOTION:    Wahlquist**

I move **approval** of the Monday, **April 14, 2008** public hearing minutes.

**SECONDED:    Moore**

**AYES: 5–Boyd, Moore, Wahlquist, Rios, Bateman**

**NAYS: 0–**

**MOTION PASSED: 5 – 0 (unanimously)**

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**FILE NUMBER:    BDA 078-064(K)**

**BUILDING OFFICIAL’S REPORT:**

Application of Turimex Internacional/Jesus Martinez represented by Jesus Martinez for a special exception to the landscaping regulations at 501 E. Jefferson Boulevard. This property is more fully described as Lot 8 in City Block 108/3091 and is zoned RR which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:            501 E. Jefferson Boulevard**

**APPLICANT:        Turimex Internacional/Jesus Martinez  
                              Represented by Jesus Martinez**

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with the construction and maintenance of a nonresidential structure.

**STAFF RECOMMENDATION:**

Approval

Rationale:

- The City's Chief Arborist recommends approval of this request for the following reasons:
  - Strict compliance with the ordinance will unreasonably burden the use of the property;
  - The special exception will not adversely affect neighboring properties: and
  - The requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
  - The following condition is recommend:
    - i. Wheel stops, a curb, or other permanent barrier must be provided, as required under Section 51A-10.105, to protect the perimeter street buffer and trees on the northwest portion of the property from vehicular traffic.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:**

Section 51A-10.100 specifies that the board of adjustment may grant a special exception to the requirements of the landscape article upon making a special finding of evidence presented that:

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

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

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

**GENERAL FACTS:**

- The site is currently developed with a commercial use Turimex International.
- The applicant is requesting a special exception to the landscape requirements of Article X. More specifically, the request is for relief from street tree requirements specified under Section 51A-10.125 (b)(1), "perimeter landscape buffer strip."
- Article X stipulates the perimeter buffer be maintained where residential adjacency exists and be at least 10 feet wide.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board Chief Planner pertaining to the submitted site plan (see attachment A). The memo stated the following:

- The special exception requested is triggered by new construction on a previously developed lot.
- Deficiencies:
  - Two original structures on the property are positioned within the mandatory perimeter landscape buffer strip.
  - The two plant buffer groups and groundcover cannot be installed in the required buffer.
- Factors:
  - The initial plan review for new construction was conducted in late 2003 to early 2004. A permit was issued February 23, 2004.
  - The site plan for review identified the structures within the perimeter location.
  - A separate landscape plan indicated the buildings were to be removed from the buffer and the site would be in compliance with Article X upon final inspection.
  - Upon final landscape inspection on December 13, 2007, it was determined that the conflict with the existing structures remained on the property. The rest of the landscaping was not yet properly installed as specified in plan review.
  - Preliminary inspection of the property, as of May 7, 2008, indicated that the proposed alternate landscape plan could be completed as requested.
  - All Article X conditions could be met with the exception of the north perimeter landscape buffer strip.
- Recommendation
  - Approval subject to the following condition:
    - Wheel stops, a curb, or other permanent barrier must be provided, as required under section 51A-10.105, to protect the perimeter street buffer and trees on the northwest portion of the property from vehicular traffic.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: RR (Regional Retail)  
North: D A (Duplex)  
South: RR (Regional Retail)  
East: RR (Regional Retail)  
West: CS (Commercial Service)

**Land Use:**

The subject site is developed with a nonresidential use. The property to the north is undeveloped and zoned residential. The properties to the east and south are zoned RR, the property to the west is zoned CS.

**Zoning/BDA History:**

There has been neither any zoning or BDA case history for this site nor sites in the immediate area.

**Timeline:**

March 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.

April 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 18, 2008: The Board’s Senior Planner contacted the applicant’s representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the May 5<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the May 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

May 6, 2008: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

May 7, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

**STAFF ANALYSIS:**

- A landscape plan has been submitted and reviewed by the Board's Senior Planner and the City of Dallas Chief Arborist. A review of the site plan by the Board's Senior Planner shows the plans to include:
  - 30 burford holly
  - 8 live oak 2 ½ " to 3" x 8' h
- A review of the site plan by the Board's Senior planner illustrated:
  - An existing office and wait area 1,816 square feet
  - An existing storage unit 276 square feet
  - An existing office building 576 square feet
  - 22 parking spaces
- The applicant has the burden of proof in establishing the following:
  - strict compliance with the requirements of this article will unreasonably burden the use of this property;
  - the special exception will not adversely affect neighboring property; and
  - the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
  
- If the Board chooses to approve the request the staff recommends imposing the submitted site plans as a condition.

**BOARD OF ADJUSTMENT ACTION:    **MAY 19, 2008****

APPEARING IN FAVOR:                    Jesus Martinez, 501 E. Jefferson, Dallas, TX

APPEARING IN OPPOSITION:    No one

MOTION:    **Bateman**

I move that the Board of Adjustment in Appeal No. **BDA 078-064**, hold this matter under advisement until **June 23, 2008**.

SECONDED:    **Wahlquist**

AYES: 4–Boyd, Wahlquist, Rios, Bateman

NAYS: 1– Moore

MOTION PASSED: 4 – 1

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**FILE NUMBER:** BDA 078-067

**BUILDING OFFICIAL'S REPORT:**

Application of David Holland for a special exception to the landscape regulations at 4220 Herschel Avenue. This property is more fully described as Lot 18A in City Block 8/2026 and is zoned PD-193(O-2) which requires mandatory landscaping. The applicant proposes to construct a multifamily residential structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:** 4220 Herschel Avenue

**APPLICANT:** David Holland

**May 19, 2008 Public Hearing Notes:**

- The Board Administrator circulated a revised alternate landscape plan to the board members at their briefing - a plan that, according to the Chief Arborist, brought the site into full compliance with the landscape regulations with the exception of providing the full 10' wide landscape buffer that is required adjacent to the alley.

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing/maintaining a multifamily development (Park 4200) on a lot that is currently undeveloped.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required with two amendments:
  1. All required street trees must be planted in the tree planting zone; and
  2. The special planting area requirement must be increased to a minimum of 643 square feet of the lot area with a minimum of 107 plants to comply with the code provision.

Rationale:

- If the board were to grant this request with the staff suggested conditions imposed, the site would only be minimally "excepted" from providing the 10' wide landscaping buffer on the alley side of the site while the site would exceed the landscape site area and general planting area requirements.
- The City's Chief Arborist recommends approval of this request whereby if the conditions mentioned above are imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS  
IN OAK LAWN:**

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

**GENERAL FACTS:**

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the garage screening and landscaping requirements of the PD No. 193 landscape regulations.

- The site is PD No. 193 (O-2 Subdistrict). There are public deed restrictions on this site that limit heights, setbacks, and the location of required parking. (The applicant has informed the Board Administrator that the proposed development does not conflict with these publicly-recorded deed restrictions).
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment B). The memo stated the following:
  - The special exception request is triggered by the new construction.
  - Deficiencies:
    1. Since the proposal involves an above ground parking structure, the applicant is required to provide a 10-foot landscaping buffer on any side of a public right-of-way (alley), residential district, residential subdistrict, or residential use. The landscape buffer must contain one tree for every 25 feet of frontage and evergreen shrubs planted three feet on center. Initial plantings must be capable of obtaining a solid appearance within three years .  
The applicant is proposing to provide an 8-foot wide landscape buffer along the alley with an additional portion of the garage along the alley having only a 3-foot wide bed for shrubs alongside a paved "loading area."
    2. 643 square feet of lot area with a minimum 107 plants are required.  
497 square feet of lot area with a minimum 78 plants are provided.
    3. Eight street trees are required to be located between 2.5' – 5' from the curb.  
The applicant is proposing to provide 4 street trees between 2.5" – 5" from the curb and 4 additional trees across the sidewalk outside the required zone. (Although Live Oaks are acceptable, "High Rise Live Oak" variety is recommended).
  - Factors for consideration:

- The existing alley is unimproved.
- An extensive landscape program is proposed for the area abutting the carport structure along the alley to buffer it from other uses. Shrubs extend the length of, and along the proposed structure for the distance of the “Loading” area.
- The ground floor of the structure at grade level, that is adjacent to the alley, is for vehicle parking.
- Recommendation:
  - Approval, subject to the following conditions:
    1. All required street trees must be planted in the tree planting zone.
    2. The special planting area requirement must be increased to a minimum of 643 square feet of the lot area with a minimum of 107 plants to comply with the code provision.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (0-2 Subdistrict) (Deed restricted) (Planned Development District, Office)  
North: PD No. 193 (0-2 Subdistrict) (Deed restricted) (Planned Development District, Office)  
South: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)  
East: PD No. 193 (0-2 Subdistrict) (Deed restricted) (Planned Development District, Office)  
West: PD No. 193 (0-2 Subdistrict) (Deed restricted) (Planned Development District, Office)

**Land Use:**

The subject site is undeveloped. The area to the north is developed with office and retail uses; the areas immediately east and west are undeveloped; and the area to the south is developed with multifamily uses.

**Zoning/BDA History:**

- |   |   |
|---|---|
| <p>1. Z034-289, Property adjacent to Throckmorton Street between Avondale Avenue and Hawthorne Avenue (a site that includes the subject site)</p> | <p>On December 8, 2004, the City Council created an ordinance granting a Planned Development Subdistrict for TH Townhouse and O-2 Office Subdistrict uses within PD No. 193 and a resolution accepting deed restrictions volunteered by the property owner. The zoning application was a result of a City Plan Commission authorized hearing to determine proper zoning on property zoned an MF-1 Multiple-family Subdistrict, an O-2 Office Subdistrict, and Planned Development Subdistrict No. 55 within PD No. 193.</p> |
|---|---|

**Timeline:**

- March 27, 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.
- April 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 18, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- 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 May 5<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the May 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, 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/evidence and testimony presented to them by the applicant and all other interested parties.
- May 5, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).
- May 6, 2008: 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 Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services 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 7, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a multifamily development on an undeveloped site, and seeking an exception from the landscape requirements in the following ways: 1) generally providing an 8' wide landscape buffer on the alley side of the site when a 10' wide buffer is required; 2) providing 4 of the required 8 street trees in their required locations; and 3) providing about 77% of the required

special planting area with about 72% of the required plants. (The submitted plan exceeds the landscape site and general planting areas requirements).

- The City of Dallas Chief Arborist supports the request with the condition that amendments are made to the submitted landscape plan whereby the only deficiency would be the full provision of the 10' wide landscaping buffer along the alley side of the site.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient the landscaping buffer, street tree location, and special planting area requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan with amendments made showing that all required street trees must be planted in the tree planting zone and the special planting area requirement is increased to a minimum of 643 square feet of the lot area with a minimum of 107 plants, the site would be "excepted" from compliance to the landscape buffer requirement of the Oak Lawn PD landscape ordinance.

**BOARD OF ADJUSTMENT ACTION:    MAY 19, 2008**

APPEARING IN FAVOR:                    Michael Pappas, 1925 San Jacinto, Dallas, TX

APPEARING IN OPPOSITION:    Cynthia Heed, 4221 Herschel, Dallas, TX

**MOTION:    Rios**

I move that the Board of Adjustment, in Appeal No. **BDA 078-067**, on application of David Holland, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code.            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 alternate landscape plan is required.

**SECONDED:    Moore**

**AYES: 5–Boyd, Moore, Wahlquist, Rios, Bateman**

**NAYS: 0–**

**MOTION PASSED: 5 – 0(unanimously)**

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**FILE NUMBER:            BDA 078-061(K)**

**BUILDING OFFICIAL’S REPORT:**

Application of Masterplan for a special exception to the fence height regulations at 10564 Lennox Lane. This property is more fully described as Lot 3 in City Block 2/5521 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback, which will require a special exception of 4 feet.

**LOCATION:** 10564 Lennox Lane

**APPLICANT:** Masterplan

**REQUEST:**

A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining a solid fence in the site’s 40’ 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 property is zoned R1ac(A) which requires a front yard setback of 40 feet.
- The subject site has frontage along Harry’s Lane and Lennox Lane.
- The subject site is currently developed.
- The applicant is proposing to construct and maintain a 6’6” solid fence along Harry’s Lane and an 8’ solid fence along Lennox Lane.
- 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.

**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, south, east and west are developed with single family homes.

**Zoning/BDA History:**

1. BDA 956-132, 10595 Strait Lane      On February 27, 1996, the Board of Adjustment Panel C took the following action:
  - Granted a request for a special exception of 5' to the fence height regulation.
  
2. BDA 94-009, 10645 Strait Lane      On January 11, 1994, the Board of Adjustment took the following action:
  1. Granted a request for a special exception to maintain a fence 7 feet six inches in height.
  
3. BDA 956-177, 10615 Strait Lane      On February 27, 1996, the Board of Adjustment granted a fee waiver request in conjunction with this case.  
On April 23, 1996, the Board of Adjustment granted a request to maintain a 6 foot, 6 inch fence with 8 foot columns and 8 foot gate.
  
4. BDA 001-258, 10611 Strait Lane      On September 17, 2001, the Board of Adjustment, denied a request for the special exception to the visibility regulations.

**Timeline:**

- February 28, 2008      The applicant submitted an "Application to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 19, 2008:      The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- March 20, 2008:      The Board of Adjustment Senior Planner contacted the applicant's representative and shared the following information via telephone 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 March 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the April 4, 2008 deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

April 14, 2008 The Board of Adjustment voted to hold this case under advisement until May 19, 2008

May 6, 2008 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 Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the proposed solid wall, fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the fence to vary between 6'6" and 8' in height.

- A site visit by the Senior Planner reveals there are several fences in the immediate area.
- The scaled site plan details the following information regarding the placement and dimensions of the fence.
  - The fence runs the entire perimeter of the property.
  - The fence along Lennox Lane includes the following materials:
    - Wrought iron fence 6' in height
    - Brick columns with capstones 6'6" in height
    - An entry gate 20'9" wide constructed of wrought iron 5'7" in height and 8' stone columns with capstones 8' in height.
  - The fence along Harry's Lane includes the following materials:
    - Wrought iron fence 6' in height
    - An entry gate 15' wide constructed of wrought iron 6' in height
    - Brick columns with capstones 6' 6" in height
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- If the Board chooses to grant this special exception of 4' staff recommends imposing the conditions that the applicant complies with the submitted site plan, and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION:    MAY 19, 2008**

APPEARING IN FAVOR:                    Ed Simons, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION:    No one

**MOTION #1:    Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 078-061**, on application of Masterplan, **grant** the request of this applicant to construct and maintain an eight-foot-tall fence in the property's Lennox Lane 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 elevation is required.

**SECONDED:    Rios**

**AYES: 5–Boyd, Moore, Wahlquist, Rios, Bateman**

**NAYS: 0–**

MOTION PASSED: 5 – 0(unanimously)

MOTION #2: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 078-061**, on application of Masterplan, **grant** the request of this applicant to construct and maintain a six-and-a half foot-tall fence in the property’s Harrys Lane 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 elevation is required.

SECONDED: **Wahlquist**

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

NAYS: 0–

MOTION PASSED: 5 – 0(unanimously)

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FILE NUMBER: BDA 078-062(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Masterplan for a special exception to the fence height regulations at 4770 Harry's Lane. This property is more fully described as Lot 2 in City Block 2/5521 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 6 foot 6 inch fence in a required front yard setback which will require a special exception of 2 feet 6 inches.

LOCATION: 4770 Harry's Lane

APPLICANT: Masterplan

**REQUEST:**

A special exception to the fence height regulations of 2’ 6” is requested in conjunction with constructing and maintaining a solid fence in the site’s 40’ 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 property is zoned R1ac(A) which requires a front yard setback of 40 feet.
- The subject site has frontage along Harry’s Lane and Lennox Lane.
- The subject site is currently vacant.
- The applicant is proposing to construct and maintain an 6’ 6” solid fence along the Harry’s and Lennox frontages.
- 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.

**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, south, east and west are developed with single family homes.

**Zoning/BDA History:**

1. BDA 956-132, 10595 Strait Lane On February 27, 1996, the Board of Adjustment Panel C took the following action:
  - Granted a request for a special exception of 5’ to the fence height regulation.
2. BDA 94-009, 10645 Strait Lane On January 11, 1994, the Board of Adjustment took the following action:
  - Granted a request for a special exception to maintain a fence 7 feet six inches in height.
3. BDA 956-177, 10615 Strait Lane On February 27, 1996, the Board of Adjustment granted a fee waiver request in

conjunction with this case.

On April 23, 1996, the Board of Adjustment granted a request to maintain a 6 foot, 6 inch fence with 8 foot columns and 8 foot gate.

4. BDA 001-258, 10611 Strait Lane

On September 17, 2001, the Board of Adjustment, denied a request for the special exception to the visibility regulations.

**Timeline:**

February 28, 2008 The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.

March 19, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

March 20, 2008: The Board of Adjustment Senior Planner contacted the applicant’s representative and shared the following information via telephone 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 March 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the April 4, 2008 deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

April 14, 2008 The Board of Adjustment voted to hold this case under advisement until May 19, 2008.

May 6, 2008 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 Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the proposed solid wall, fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the fence to be 6'0" in height, the columns and stone caps to be 6' 6" in height, and gates 5' 7" in height.
- A site visit by the Senior Planner reveals there are several fences in the immediate area.
- The scaled site plan details the following information regarding the placement and dimensions of the fence.
  - The fence runs the entire length of the Harry's Lane front yard, the entire length of the Lennox front yard, and the rear property line.
  - The material indicated on the elevation include:
    - brick base 2' in height
    - Wrought iron fence 4' in height
    - Brick columns with capstones 6' 6" in height
    - Operable sliding gate 5'7" in height
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.

If the Board chooses to grant this special exception of 2' 6" staff recommends imposing the conditions that the applicant complies with the submitted site plan, and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

### **BOARD OF ADJUSTMENT ACTION: MAY 19, 2008**

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wahlquist**

I move that the Board of Adjustment, in Appeal No. **BDA 078-062**, on application of Masterplan, **grant** the request of this applicant to construct and maintain an eight-foot-tall fence in the property's Harrys Lane 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 elevation is required.

SECONDED: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0(unanimously)

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MOTION: **Moore**

I move to adjourn this meeting.

SECONDED: **Wahlquist**

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

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

**1:46 P. M.** - Board Meeting adjourned for **May 19, 2008.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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