

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 5ES
MONDAY, JUNE 11, 2007**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member and Joel Maten, regular member

MEMBERS ABSENT FROM BRIEFING: Johnny Jefferson, regular member

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member and Joel Maten, regular member

MEMBERS ABSENT FROM HEARING: Johnny Jefferson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Interim Chief Arborist and Chau Nguyen, Traffic Engineer

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Interim Chief Arborist, Chau Nguyen, Traffic Engineer, and Yolanda Hernandez, Secretary

10:08 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 11, 2007** docket.

1:18 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 May 14, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

MOTION: Boyd

I move **approval** of the Monday, May 14, 2007 public hearing minutes.

SECONDED: Moore

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 067-088

BUILDING OFFICIAL’S REPORT:

Application of NT 101 Development 2006 GP LLC, represented by Kirk Williams and Tommy Mann, Winstead P.C, for a special exception to the landscape regulations at 3333 Harry Hines Blvd. (aka 3333 and 3350 Harry Hines Blvd.) This property is more fully described as Lot 1 in City Block 999 1/2 and is zoned PD-193 (I-2) which requires mandatory landscaping. The applicant proposes to construct a multifamily residential structure and provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 3333 Harry Hines Blvd. (aka 3333 and 3350 Harry Hines Blvd.)

APPLICANT: NT 101 Development 2006 GP LLC
Represented by Kirk Williams and Tommy Mann, Winstead P.C

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an apartment complex on a site that is undeveloped.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The applicant shall fully comply with the “Landscape, Streetscape, Screening, and Fencing Standards” of PD No. 193 with one exception:
 - The applicant is waived the sidewalk and tree planting requirements of PD No. 193 along the Houston Street Extension as shown on the submitted “Conceptual Site Plan.”

Rationale:

- The City’s Acting Chief Arborist supports the request if the board were to grant the request and impose the condition mentioned above since the site would be required to be in full compliance with the landscape regulations of PD No. 193 except for sidewalk and tree planting requirements along the Houston Street Extension. (The area of the site where the landscape special exception is sought is an area that, according to the City’s Acting Chief Arborist, has an extreme grade change and slope variance from the development area downward to the street level – an area that would require extensive engineering to bring it into compliance with the landscape regulations including cutting into the rock in some places with the removal of existing native vegetation; an area where an existing pedestrian pathway would require removal; and an area where a new wider walkway if installed would not be in line (or of comparable width) with the remainder of the Houston Street sidewalk to the north).

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 a “conceptual site plan” that denotes a line along the Houston Street Extension labeled “This hatch depicts the area for a special exception request to deviate from the sidewalk and tree planting requirements of PD 193. All other landscape requirements of PD 193 shall be met.”

- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the request;
 - a copy of a site plan of the subject site; and
 - photographs of the subject site.
- The Acting City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:

- The applicant is requesting relief from the landscape requirements of PD 193, more specifically, a special exception to the tree planting zone requirements along Houston Street.
- The special exception request is triggered by new construction of a multifamily development on the site.
- Deficiencies:
 - o There is no alternate landscape plan submitted for approval to gauge if the site will be in compliance with the remaining provisions upon completion. The arborist notes existing street frontage site deficiencies for the board's consideration.
 - o An existing 4' wide sidewalk along Houston Street Extension was installed in conjunction with the City of Dallas road improvements and construction that does not conform to PD 193 sidewalk requirements. No trees were planted with the improvements.
 - o The site frontage along Harry Hines Boulevard does not currently comply with ordinance requirements (same PD 193 conditions for Houston Street) for the tree planting zoned and sidewalk.

Factors for consideration:

- o PD 193 (I-2) required landscaping that includes 1) a "tree planting zone" that is 2.5' – 5' from back of the curb, 2) a sidewalk from 5' – 12' to back of the curb and a minimum width of 6', and 3) screening. The request is for a special exception to the tree planting zoned and for the sidewalk width and location along Houston Street only, as identified on the conceptual site plan.
- o There is no alternative landscape plan submitted for approval. If approved, the applicant states in a letter that the "landscaping requirements of PD 193 will be met or exceeded to the extent possible on the rest of the site.
- o A Specific Use Permit has been requested for a multifamily use, approved by the City Plan Commission, and scheduled for City Council on June 13, 2007.
- o The Houston Street Extension frontage has an extreme grade change and slope variance from the development area downward to street level. In order to bring this frontage into compliance, extensive engineering would be needed to cut into rock in some places with the removal of existing native vegetation. The existing pedestrian pathway would require removal and new wider walkway would be installed that would not be in line (or comparable width) with the remainder of the Houston Street sidewalk to the south.
- o The applicant is not seeking a special exception to the tree planting zoned or sidewalk requirements of PD 193 for the Harry Hines street frontage. Harry Hines Boulevard is regulated by the Texas Department of Transportation that has the right to limit any development along the road frontage.

Recommendation:

- o Approval of the special exception request along Houston Street Extension identified on the conceptual site plan.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)

North: PD No. 193 (1-2 Subdistrict) (Planned Development District, Industrial)
South: PD No. 193 (1-3 Subdistrict) (Planned Development District, Industrial)
East: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)
West: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)

Land Use:

The subject site is undeveloped. The areas to the north, east, and west are undeveloped and/or major thoroughfares/highways. The area immediately south is developed with multifamily uses separated from the subject site by the Katy Trail.

Zoning/BDA History:

1. Z067-196, area bounded by Houston Street, Harry Hines Boulevard, and Dallas North Tollway, (the subject site) On May 10, 2007, the City Plan Commission recommended approval of a request for an SUP (Specific Use Permit) for multifamily uses on property zoned PD No. 193 (I-2 Subdistrict). The City Council is scheduled to hear this request at their June 13, 2007 public hearing.

Timeline:

- April 26, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 21, 2007: The Board Administrator contacted the applicant's representative 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 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 25th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 24, 2007 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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 Acting Chief Arborist, and the Assistant City Attorney to the Board.

June 4, 2007 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

STAFF ANALYSIS:

- A request for a special exception to the landscape regulations has been made specifically to deviate from a specific provision of the PD 193 "Landscape, Streetscape, Screening, and Fencing Standards:" that being the sidewalk and tree planting requirements of PD No. 193 along the Houston Street Extension as shown on a submitted "Conceptual Site Plan."
- The Acting City of Dallas Chief Arborist has stated that the applicant is seeking relief from the tree planting zone requirements along Houston Street.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where the applicant has submitted a "Conceptual Site Plan" denoting a line along the Houston Street Extension labeled "This hatch depicts the area for a special exception request to deviate from the sidewalk and tree planting requirements of PD 193. All other landscape requirements of PD 193 shall be met") 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 shall fully comply with the "Landscape, Streetscape, Screening, and Fencing Standards" of PD No. 193 with one exception: The applicant is waived the sidewalk and tree planting requirements of PD No. 193 along the Houston Street Extension as shown on the submitted "Conceptual Site Plan," the site would only be "excepted" from this specific provision of the Oak Lawn PD landscape ordinance in one specific area of the subject site: the Houston Street Extension.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The applicant must fully comply with the “Landscape, Streetscape, Screening, and Fencing Standards” of PD 193 with one exception:
 - The sidewalk and tree planting requirements of PD 193 are waived along the Houston Street Extension as shown on the submitted “Conceptual Site Plan.”

SECONDED: **Moore**

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4-0(unanimously)

FILE NUMBER: BDA 067-082

BUILDING OFFICIAL’S REPORT:

Application of Michael Dees for a special exception to the fence height regulations at 5404 Walnut Hill Lane. This property is more fully described as Lot 3 in City Block 1/5602 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which would require a 4 foot special exception.

LOCATION: 5404 Walnut Hill Lane

APPLICANT: Michael Dees

June 11, 2007 Public Hearing Notes:

- The board delayed action on this request until their August 13th public hearing, and encouraged the applicant’s representative to consider submitting (prior to/or at this public hearing) a more detailed account of landscape materials that is intended to be located adjacent to the proposed wall.

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high solid stone wall with two, 7.5' high sliding electric open wrought iron gates in the site's 40' front yard setback. (The site is being developed with a single family home).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The 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 scaled site plan/elevation that denotes a wall that will reach a maximum height of 8 feet.
- The following additional information regarding the proposed fence/wall was gleaned from the submitted site plan:
 - Approximately 176' in length parallel to the street (and approximately 22' on either side of the site perpendicular to the street in the front yard setback).
 - Ranging from 4'- 17' from the property line (or about 9' – 22' from the pavement line).
- There are approximately 2 single family homes that would have direct frontage to the proposed fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, the Board Administrator noted three other fences/walls in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There are approximately 5' high solid walls located immediately east and west of the site (with the fence to the east of the site having Board of Adjustment history: BDA88-096), and an approximately 7' high solid concrete wall located two lots west of the site that appears to be a result of a previous board case at this location (BDA 956-193).
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included photographs of the site and neighboring fences.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 8" imposing the following condition with the request: compliance with the submitted revised landscape/site plan and elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.
2. BDA 88-096, 5414 Walnut Hill Lane (the lot immediately east of the subject site)

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

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

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

Timeline:

April 23, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 17, 2007: The Board Administrator contacted with the applicant's representative 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 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 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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 Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

May 30, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- A scaled site plan/elevation has been submitted that documents the location and materials of the proposal to exceed 4' in height in the front yard setback which in this case is an approximately 176' long, 8' high solid stone wall with two, 7.5' high open wrought iron gates.
- There are approximately 2 single family homes that would have direct frontage to the proposed fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, three other fences/walls were noted in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There are approximately 5' high solid walls located immediately east and west of the site (with the fence to the east of the site having Board of Adjustment history: BDA88-096), and an approximately 7' high solid concrete wall located two lots west of the site that appears to be a result of a previous board case at this location (BDA 956-193).
- As of June 4th, no letters had been submitted in support or in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan/elevation would assure that the proposed wall and gates would be limited to and constructed/maintained with the materials and in the location shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

APPEARING IN FAVOR: Michael Dees, 13012 Berrywood Trl, Keller, TX 76248

APPEARING IN OPPOSITION: No one

MOTION: **Boyd**

I move that the Board of Adjustment in Appeal No. **BDA 067-082**, hold this matter under advisement until **August 13, 2007**.

SECONDED: Maten

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4-0 (unanimously)

FILE NUMBER: BDA 067-097

BUILDING OFFICIAL’S REPORT:

Application of Douglas and Vicki Rippeto, represented by Robert Baldwin, for a special exception to the fence height regulations at 9639 Hollow Way Road. This property is more fully described as Lot 2 in City Block 2/5590 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 9 foot 6 1/2 inch fence in a required front yard setback, which will require a special exception of 5 feet 6 1/2 inches.

LOCATION: 9639 Hollow Way Road

APPLICANT: Douglas and Vicki Rippeto
Represented by Robert Baldwin

June 11, 2007 Public Hearing Notes:

- The applicant’s representative submitted a series of photos of fences in the immediate area to staff/the board at the June 11th briefing.

REQUEST:

- A special exception to the fence height regulations of 5’ 6.5” is requested in conjunction with constructing and maintaining an 8’ high decorative wrought iron gate with 9’ 6.5” high masonry columns in the site’s 40’ front yard setback. (The site is developed with a single family home).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The 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's representative has submitted a revised scaled site plan/elevation indicating that the proposal to exceed 4' in height located in a front yard setback is an entry gate/column feature that would reach a maximum height of 9' 6.5".
- The following additional information was gleaned from the submitted site plan/elevation:
 - An existing "4' high wrought iron fence" to be located across most of the subject site (which is permitted by right);
 - An "8'-0" high decorative iron entry gate" with "9'-6 1/2" high masonry columns" to be located across approximately 20' of the site's total 170' of Hollow Way Road frontage (at the driveway), about 10' from the property line (or about 28' from the projected pavement line).
- Other than an approximately 5' high gate with 6' high masonry entry columns on the subject site (which the applicant intends to replace with this proposal), there are no single family homes that would have direct frontage to the proposed entry gate/columns. The lot immediately east of the site appears to be vacant and oriented northward to Winston Court rather than westward to Hollow Way Road.
- The Board Administrator conducted a field visit and noted no other fences/walls in the immediate area above four (4) feet high which appeared to be located in the front yard setback.

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:

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

Timeline:

April 27, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 17, 2007: The Board Administrator contacted with the applicant's representative 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 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 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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 Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A revised scaled site plan/elevation has been submitted that documents the location and materials of the proposal that would exceed 4' in height in the front yard setback which in this case is an approximately 20' long 8' high open decorative iron gate with

two, 9' 6.5" high masonry columns. The proposal is to be located about 10' from the property line or about 28' from the pavement line. (No fence is noted on the submitted plan that would exceed the maximum 4' height that is permitted by right).

- Other than an approximately 5' high gate with 6' high masonry entry columns on the subject site (which the applicant intends to replace with this proposal), there are no single family homes that would have direct frontage to the proposed entry gate/columns. The lot immediately east of the site appears to be vacant and oriented northward to Winston Court rather than westward to Hollow Way Road.
- No other fences/walls were noted in the immediate area above four (4) feet high which appeared to be located in the front yard setback.
- As of June 4th, no letters had been submitted in support or in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' 6.5" (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 5' 6.5" with conditions imposed that the applicant complies with the submitted revised site plan/elevation would assure that the proposed gate and entry columns would be limited to and constructed/maintained with the materials and location shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

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

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 067-097**, on application of Douglas and Vicki Rippetto, **grant** the request of this applicant to construct and maintain an nine-foot-six-and-a-half-inch-tall fence on the property 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/elevation is required.

SECONDED: **Boyd**

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4-0(unanimously)

FILE NUMBER: BDA 067-086

BUILDING OFFICIAL'S REPORT:

Application of Rajan Dudhwala for a special exception to the parking regulations and variances to the front yard and urban form front yard setback regulations at 1521 Inwood Road. This property is more fully described as Lot 2B in City Block A/7910 and is zoned MU-3 which requires off-street parking, a front yard setback of 15 feet for a portion of a structure 45 feet in height or less, and an urban form front yard setback of 35 feet for any portion of a structure exceeding 45 feet in height. The applicant proposes to construct a nonresidential building for a hotel/motel use and to provide 76 of the 94 required parking spaces which will require a special exception of 18 spaces to the parking regulations. In addition, the applicant proposes to provide a 5 foot front yard setback which will require a variance of 10 feet to the front yard setback regulations for the portion of the structure 45 feet in height or less, and a variance of 30 feet to the urban form front yard setback regulations for the portion of the structure over 45 feet in height.

LOCATION: 1521 Inwood Road

APPLICANT: Rajan Dudhwala
Represented by Masterplan

June 11, 2007 Public Hearing Notes:

- The applicant's newly designated representative submitted a letter written by the applicant to the Board Administrator at the June 11th briefing. This letter requested that the board delay action on the requests until their next meeting in order for his newly hired representative to prepare the presentation to the board.

REQUESTS:

- The following appeals have been made in this application:
 1. a variance to the front yard setback regulations of 10' for a portion of a proposed structure less than 45' in height;
 2. a variance to the "urban form" front yard setback regulations of 30' for a portion of a proposed structure over 45' in height; and
 3. a special exception to the off-street parking regulations of 18 spaces (or 19% of the parking requirement).

These appeals are requested in conjunction with constructing and maintaining an approximately 64' high, 4-level hotel tower structure (Holiday Inn Express) on a site that is undeveloped.

STAFF RECOMMENDATION (related to the variances):

Denial

Rationale:

- Although the site is pan-handle/irregular in shape and partially in the floodplain, these physical features do not preclude the applicant from developing the approximately 1.2 acre undeveloped parcel of land/subject site in a manner commensurate with development found on other MU-3 zoned lots.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude it from being developed (in this case, with a structure that could meet the applicable development standards including the 15' front yard setback and the 35' urban form front yard setback for the portion of the structure that would exceed 45' in height) in a manner commensurate with development found on other MU-3 zoned lots.

STAFF RECOMMENDATION (related to the parking special exception):

Denial

Rationale:

- The Development Services Senior Engineer has commented this request should be denied given the lack of supporting documentation.
- The applicant has not substantiated how the parking demand generated by the hotel or motel use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

STANDARD FOR A VARIANCE:

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

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and

nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

GENERAL FACTS (related to the variances):

- Development on lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height. The applicant has submitted a site plan and elevation indicating a structure that is about 64' in height located as close as 5' from the site's Inwood Road front property

line (or 10' into the 15' front yard setback and 30' into the 35' urban form front yard setback).

- Staff has interpreted that the additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The subject site is flat, pan-handle/irregular in shape, and 1.175 acres in area. A part of the subject site is located in the flood plain. The site was recently rezoned from CS (Commercial Service) to MU-3 (Mixed Use).
- According to calculations taken from the submitted site plan by the Board Administrator, about 100 square feet of the proposed 12,300 square foot building footprint is proposed to be located in the 15' front yard setback, and about 1,300 square feet of the proposed 12,300 square foot building footprint is proposed to be located in the additional 20' urban form front yard setback.

GENERAL FACTS (related to parking special exception):

- The Dallas Development Code requires the following off-street parking requirements for a hotel or motel use:
 - 1 space for each unit for units 1 to 250;
 - 3/4 space for each unit for units 251-500;
 - 1/2 space for all units over 500;
 - plus one space per 200 square feet of meeting room.The submitted site plan denotes that the hotel will have 92 guestrooms, and the Building Official's Report states that the applicant proposes to provide 76 (or 81%) of the required 94 parking spaces.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: CS (Commercial Service)
South: CS (Commercial Service)
East: PD No. 312 (Planned Development District)
West: MU-3 and IR (Mixed Use and Industrial Research)

Land Use:

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

Zoning/BDA History:

1. Z067-183, Inwood Road and IH On May 23, 2007, the City Council created an

35E (the subject site)

ordinance establishing MU-3 (Mixed Use) zoning on property that had been zoned CS (Commercial Service).

Timeline:

April 26, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 17, 2007: The Board Administrator discussed/emailed the applicant's representative 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 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 25th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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 Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

- May 30, 2007: The Building Inspection Development Code Specialist forwarded an amended Building Official's Report on this appeal – a report that added a variance request for the portion of the proposed structure under 45' in height (see Attachment A).
- May 31, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked "Recommends that this be denied" with the following additional comment: "(Ref. Z 067-183) No supporting documentation."

STAFF ANALYSIS (related to the variances):

- The subject site is flat, pan-handle/irregular in shape, and 1.175 acres in area. A part of the subject site is located in the flood plain. The site was recently rezoned from CS (Commercial Service) to MU-3 (Mixed Use).
- According to calculations taken from the submitted site plan by the Board Administrator, about 100 square feet of the proposed 12,300 square foot building footprint is proposed to be located in the 15' front yard setback, and about 1,300 square feet of the proposed 12,300 square foot building footprint is proposed to be located in the additional 20' urban form front yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback and the urban form front yard setback regulations requested to construct and maintain a 64' high, 4-level hotel tower structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant the front yard variance request of 10' and the urban form front yard variance request of 30', imposing a condition whereby the applicant must comply with the submitted site plan and section drawings, the structure would be limited to that what is shown on these submitted plans – a structure below 45' in height that is located at its closest point 5' from the site's Inwood Road front property line (or 10' into the 15' front yard setback); and a structure above 45' in height that is located at its closest point 5' from the site's Inwood Road front property line (or 30' into the 35' urban form front yard setback for portions of a structure that exceeds 36' in height).

STAFF ANALYSIS (related to the parking special exception):

- 81 percent of the required off-street parking spaces (76 of 94 spaces) are proposed to be provided in conjunction with constructing and maintaining a 92 room hotel on the site.
- Granting this request, subject to the condition that the special exception of 18 spaces automatically and immediately terminates if and when the hotel or motel use is changed or discontinued, would allow the site to be developed with the proposed 92 room hotel.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed hotel or motel use does not warrant the number of off-street parking spaces required, and
 - The special exception of 18 spaces (or 19% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has commented that this request should be denied given no supporting documentation (i.e. documentation that establishes how the parking demand generated by the proposed hotel or motel use does not warrant the number of off-street parking spaces required, and how the special exception of 18 spaces (or 19% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 067-086**, hold this matter under advisement until **August 13, 2007**.

SECONDED: **Moore**

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4-0 (unanimously)

FILE NUMBER: BDA 067-092

BUILDING OFFICIAL’S REPORT:

Application of Patricia Ann Sims, represented by Ralph Bush of Bush Design Group, for a variance to the side yard setback regulations and a special exception to the single family use regulations at 5842 Falls Road. This property is more fully described as Lot 2A and the north 25 feet of Lot 7A in City Block B/5614 and is zoned R-1ac(A) which requires a 10 foot side yard setback and limits the number of dwelling units to one. The applicant proposes to construct a residential structure and provide a 2 foot side yard setback which will require a variance of 8 feet, and to construct an additional dwelling unit which would require a special exception to the single family regulations.

LOCATION: 5842 Falls Road

APPLICANT: Patricia Ann Sims
Represented by Ralph Bush of Bush Design Group

REQUESTS:

- The following appeals have been made in this application:
 1. a variance to the side yard setback regulations of 8' is requested in conjunction with constructing and maintaining additions to an existing single family home that are proposed to be located in the site's western 10' side yard setback; and
 2. a special exception to the single family regulations is requested in conjunction with constructing and maintaining an addition that the Building Official has deemed as a "second dwelling unit" that would attach to the existing single family structure on the site.

STAFF RECOMMENDATION (related to the variance):

Approval, subject to compliance with the submitted revised site plan

Rationale:

- The site is approximately 27,550 square feet (or 0.63 acres) in area in an R-1ac(A) zoning district where lots are typically 43,560 square feet (or 1 acre) in size. The site is additionally constrained by mature "18' – 20" – 20" – 24" red oak trees that appear to preclude the proposed additions from relocated further eastward on the site outside of the 10' side yard setback area.
- The site's restrictive area constraints created by its smaller size and mature trees preclude its development in a manner commensurate with the development found upon other parcels of land in the same R-1ac(A) zoning district. (According to information submitted by the applicant's representative, the residence will have "a little under 9,000 sq. ft." of living space with the proposed additions while the average living spaces of 9 other properties in the immediate area are over 10,000 square feet).

STAFF RECOMMENDATION (related to the single family special exception):

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STANDARD FOR A VARIANCE:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

GENERAL FACTS (related to the variances):

- A 10' side yard setback is required for main structures and for accessory structures over 15' in height on R-1ac(A) zoned properties.
A revised site plan has been submitted indicating one of the additions to be about 24' wide and 18' long and another addition to be about 35' wide and 30' long. The additions are shown to be located as close as 2' 2" from the site's western side property line (or about 8' into the 10' side yard setback). The additions are shown on elevations to be 2 stories and approximately 21' in height.
- The site is flat, is rectangular in shape (190' x 145') and approximately 27,550 square feet (or 0.63 acres) in area. The site is zoned R-1ac(A) where lots are typically 1 acre in size. The applicant has noted "18' – 20" – 20" – 24" red oaks to remain" on the site plan located immediately east of the additions.
- DCAD records indicate that the site is developed with a single family home built in 1951 with 6,227 square feet of living space and a pool.
- According to information submitted by the applicant's representative, the residence will have "a little under 9,000 sq. ft." of living space with the proposed additions while the average living spaces of 9 other properties in the immediate area are over 10,000 square feet.
- According to calculations taken from the submitted site plan by the Board Administrator, about 400 square feet of the proposed total 1,500 square foot building

footprints for the additions is proposed to be located in the site's western 10' side yard setback. (The existing building footprint appears to be about 3,570 square feet in area).

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - letters that provide additional details about the requests;
 - a letter in support of the request; and
 - a revised site plan.

GENERAL FACTS (related to the single family special exception):

- The Dallas Development Code limits the number of dwelling units on a lot zoned R-1ac (A). In addition, the Dallas Development Code defines "single family" use as "one dwelling unit located on a lot;" and a "dwelling unit" as "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms."
The applicant has submitted a second floor plan of an addition that denotes a new section of the existing single family home that the Building Official has identified as a "dwelling unit." This addition includes rooms labeled as new kitchen, new guest suite, new guest bedroom, guest bath, closet, storage, and pantry. The addition is shown to be dimensioned at 35' wide and 30' long (or about 1,100 square feet in area).
- The site plan indicates that the additional "dwelling unit" structure/room addition is located near the southwest corner of the site, approximately 2' at its closest point to the property to the west, and approximately 12.5' at its closest point to the property to the south.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - letters that provide additional details about the requests;
 - a letter in support of the request; 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 developed as a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|---|--|
| 1. BDA 978-142, 5842 Falls Road
(the subject site) | On March 16, 1998, the Board of Adjustment Panel C granted a request for a special exception to fence height regulations of 4' and imposed the following condition: compliance with the submitted site plan, elevation plan, and revised landscape plan is required. The case report stated that the request was made in conjunction with constructing and maintaining a 6' – 7' high combination open wrought iron fence/solid masonry fence/wall with 8' high masonry columns. |
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Timeline:

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|----------------|---|
| April 27, 2007 | The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. |
| May 17, 2007: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C. |
| May 17, 2007: | The Board Administrator contacted the applicant’s representative and discussed the following information: <ul style="list-style-type: none">• the public hearing date and panel that will consider the application;• the criteria/standard that the board will use in their decision to approve or deny the request;• the 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 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;• the June 1st 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 June public hearing after considering the information/evidence and |

testimony presented to them by the applicant and all other interested parties.

May 29 & 30, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B).

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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 Acting 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 (related to the variance):

- The site is flat, is rectangular in shape (190' x 145') and approximately 27,550 square feet (or 0.63 acres) in area. The site is zoned R-1ac(A) where lots are typically 1 acre in size. The applicant has noted "18' – 20" – 20" – 24" red oaks to remain" on the site plan located immediately east of the additions.
- According to information submitted by the applicant's representative, the residence will have "a little under 9,000 sq. ft." of living space with the proposed additions while the average living spaces of 9 other properties in the immediate area are over 10,000 square feet.
- According to calculations taken from the submitted site plan by the Board Administrator, about 400 square feet of the proposed total 1,500 square foot building footprints for the additions is proposed to be located in the site's western 10' side yard setback. (The existing building footprint appears to be about 3,570 square feet in area).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations of 8' requested to construct and maintain additions 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 to side yard setback regulations of 8' 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) zoning classification.
 - The variance to side yard setback regulations of 8' 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) zoning classification.

- If the Board were to grant the side yard variance request of 8', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the setback would be limited to that what is shown on this document – additions that would be located as close as 2' from the site's western side property line (or 8' into the 10' side yard setback).

STAFF ANALYSIS (related to the single family special exception):

- The site is zoned R-1ac(A) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to add a 2nd dwelling unit/quarters addition on the site.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions) and not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, subject to imposing a condition that the applicant comply with the submitted revised site plan, the "dwelling unit" structure would be restricted to the specific location and size shown on the plan, which in this case is an approximately 1,100 square foot "dwelling unit" addition that would attach to an existing single family home situated on a 0.6 acre site, approximately 2' at its closest point to the property to the west, and approximately 12.5' at its closest point to the property to the south.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

APPEARING IN FAVOR: Ralph Bush, 14881 Quorum Dr, #240, Dallas, TX

APPEARING IN OPPOSITION: Alicia Waggoner, 5831 Watson Ave., Dallas, TX

MOTION#1: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 067-092** on application of Patricia Ann Simms, represented by Ralph Bush of Bush Design Group, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without** prejudice, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit on the site will adversely affect neighboring properties.

SECONDED: Maten

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4-0 (unanimously)

MOTION#2: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 067-092**, on application of Patricia Ann Simms, represented by Ralph Bush of Bush Design Group, **deny** the variance requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Boyd

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4-0 (unanimously)

FILE NUMBER: BDA 067-095

BUILDING OFFICIAL’S REPORT:

Application of Julia Fraga, represented by Masterplan, for a special exception to the fence height regulations at 1511 N. Buckner Blvd. This property is more fully described as Lot 1 in City Block H/5316 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 6 foot 10 inch fence in a required front yard setback which will require a special exception of 2 feet 10 inches.

LOCATION: 1511 N. Buckner Boulevard

APPLICANT: Julia Fraga
Represented by Masterplan

REQUEST:

- A special exception to the fence height regulations of 2’ 10” is requested in conjunction with maintaining a 6’ high solid polyvinyl fence with 6’ 10” posts and five 6’ high brick columns in the site’s 30’ Hermosa Drive front yard setback. (The site is developed with a single family home).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the southwest corner of Hermosa Drive and Buckner Boulevard. The site has two front yard setbacks, one along Buckner Boulevard (given that this frontage is the shorter of the two street frontages) and another along Hermosa Drive due to the requirement that continuity of an established setback must be maintained. 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.
A revised site plan/elevation has been submitted that denotes a "6' ht. polyvinyl fence" with "6'-10" ht. posts" and "15 gallon red-tipped Photinia" to be planted/located 5' on center on the street side of the fence wall in the site's Hermosa Drive front yard setback. The site plan also denotes five, "6' high posts" that are described in a letter written by the applicant's representative as "six foot brick columns." (No elevation of these columns has been submitted).
- The submitted site plan shows that the existing fence in the Hermosa Drive 30' front yard setback has the following additional characteristics:
 - Approximately 140' in length parallel to Hermosa Drive located approximately 3 feet from the property line;
 - Approximately 7' at the driveway intersection, and 20' perpendicular to Hermosa Drive and adjacent to the driveway;
 - Approximately 8' at the alley intersection, and 23' on the "side" perpendicular to Hermosa Drive and adjacent to the alley located approximately 8' from the property line and 3'6" from the alley line; and
 - Five 6' gate posts within the 30' front yard setback on each side of the circular driveway.
- The revised submitted site plan/elevation shows the provision of 34, 15 gallon Photinia shrubs (at 5' on center) located on the street side of the fence along Hermosa Drive.
- There are two single family homes that would have direct/indirect frontage to the proposed fence located in the Hermosa Drive front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Hermosa Drive and noted one other fence above four (4) feet high which appeared to be located in the front yard setback This fence is located immediately north of the site and appears to be about a 6' high open iron fence. There is no history of fence special exceptions in this area.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the request;
 - a site map indicating where support letters have been obtained;
 - photos of the site; and

- an elevation drawing of proposed landscape materials to be installed on the street-side of the existing fence.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. BDA 067-048, 1511 N. Buckner Boulevard (the subject site) | <p>On April 16, 2007, the Board of Adjustment Panel C denied a request for a special exception to fence height regulations of 2’ 10” without prejudice. The case report stated that the request was made in conjunction with maintaining a 6’ 10” high solid vinyl fence in the site’s 30’ Hermosa Drive front yard setback.</p> |
|--|--|

Timeline:

- | | |
|------------------------|--|
| <p>April 27, 2007:</p> | <p>The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.</p> |
| <p>May 17, 2007:</p> | <p>The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”</p> |
| <p>May 17, 2007:</p> | <p>The Board Administrator met with the applicant’s representative and discussed the following information:</p> <ul style="list-style-type: none"> • the public hearing date and panel that will consider the application; • the criteria/standard that the board will use in their decision to approve or deny the request; |

- the 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 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the June 1st 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 24, 2007 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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 Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A revised scaled site plan/elevation has been submitted that documents the location and materials of the proposal that exceeds 4' in height in the front yard setback which in this case is an approximately 140' long, 6' high solid polyvinyl wall with 6' 10" high posts and five, 6' high posts on either side of the circular driveway.
- The revised submitted site plan/elevation shows the provision of 34, 15 gallon Photinia shrubs (at 5' on center) located on the street side of the fence along Hermosa Drive.
- There are two single family homes that would have direct/indirect frontage to the proposed fence located in the Hermosa Drive front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Hermosa Drive and noted one other fence above four (4) feet high which appeared to be located in the front yard setback This fence is located immediately north of the site and appears to be about a 6' high open iron fence. There is no history of fence special exceptions in this area.

- As of June 4th, one letter has been submitted in support and one letter has been opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 10" (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' 10" with a condition imposed that the applicant complies with the submitted site plan/elevation would assure that the existing wall and posts would be limited to and maintained with the materials (both building and landscape) and in the location shown on this document (which in this case, is a fence exceeding 4' in height in the site's Hermosa Drive front yard setback only).

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: Jennifer Rodas, 8807 Eustis, Dallas, TX
Richard Cartwright, 1516 N Buckner, Dallas, TX
Bonnie Miller Wilson, 9410 Hermosa Dr., Dallas, TX

MOTION#1: Boyd

I move that the Board of Adjustment in Appeal No. **BDA 067-095**, hold this matter under advisement until **August 13, 2007**.

SECONDED: No One
Motion Failed for lack of a second.

MOTION#2: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 067-095**, on application of Julia Fraga, represented by Masterplan, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Moore
AYES: 2– Moore, Maten
NAYS: 2– Madrigal, Boyd
MOTION FAILED: 2-2

MOTION #3: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 067-095**, on application of Julia Fraga, represented by Masterplan, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Moore

AYES: 3– Boyd, Moore, Maten
NAYS: 1– Madrigal,
MOTION PASSED: 3-1

MOTION: **Boyd**

I move to adjourn this meeting.

SECONDED: **Moore**
AYES: 4 – Madrigal, Boyd, Moore, Maten
NAYS: 0 - None
MOTION PASSED: 4 – 0 (Unanimously)

3:10 P. M. - Board Meeting adjourned for **June 11, 2007**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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