

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, JUNE 14, 2010**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Alex Salinas, alternate member

MEMBERS ABSENT FROM BRIEFING: Robert Moore, Panel Vice-Chair

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Alex Salinas, alternate member

MEMBERS ABSENT FROM HEARING: Robert Moore, Panel Vice-Chair,

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer and Trena Law, Board Secretary

10:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 14, 2010** docket.

1:00 P.M.

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

11:35 P.M.: Break

11:40 P.M.: Resumes

11:56 P.M.: Executive Session Begins
12:00 P.M.: Executive Session Ends

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C May 17, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

MOTION: Coulter

I move **approval** of the Monday, **May 17, 2010** public hearing minutes.

SECONDED: Salinas

AYES: 4–Boyd, Maten, Coulter, Salinas

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 090-067

BUILDING OFFICIAL’S REPORT:

Application of Cruz Gutierrez for a special exception to the fence height regulations at 4111 Middlefield Road. This property is more fully described as Tract 16 in City Block 8780 and is zoned A(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 14 foot high fence which will require a special exception of 10 feet.

LOCATION: 4111 Middlefield Road

APPLICANT: Cruz Gutierrez

REQUEST:

- A special exception to the fence height regulations of 10’ is requested in conjunction with:
 1. maintaining a 14’ high metal entry feature (two metal poles on either side of the driveway with metal crossing bar), and
 2. constructing and maintaining an 8’ high open metal gate flanked by two approximately 20’ long, 6’ high flanking wing walls (4’ open iron picket fence atop a 2’ solid brick base), and a 6’ high approximately 80’ long open metal fence in the site’s 50’ 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 has submitted a site plan and a fence elevation indicating the proposal that would exceed 4’ in height in the site’s front yard setback. The site plan and elevation indicates a fence/column/gate proposal that would be located in the site’s front yard setback and would reach a maximum height of 14’.
- The following additional information was gleaned the submitted site plan:
 - The proposal would be approximately 110’ in length parallel to Middlefield Road.
 - The proposal is shown to be located approximately 1’ from the front property line. (The distance of the proposal from the pavement line cannot be determined since the site plan does not denote a pavement line).
- The proposal is located on the site adjacent to one single family lot which has no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences in the area that appeared to be over 4’ in height and located in a front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: A(A) (Agriculture)
North: A(A) (Agriculture)
South: A(A) (Agriculture)
East: A(A) (Agriculture)
West: A(A) (Agriculture)

Land Use:

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

Zoning/BDA History:

- | | |
|---|--|
| 1. BDA 87-213, Property at 4111 Middlefield Road (the subject | On August 25, 1987, the Board of Adjustment provided a termination date of |
|---|--|

site)

April 30, 1988 for the nonconforming business of landscaping materials (sand, stone, gravel, etc.) and for a mining operation currently being operated on the subject property.

Timeline:

- April 29, 2010: 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 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 11, 2010: The Board Administrator spoke with the applicant and shared the following information via email:
- the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- June 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D visibility requirements."

STAFF ANALYSIS:

- The request focuses on maintaining a 14' high metal entry feature (two metal poles on either side of the driveway with metal crossing bar), and constructing and maintaining an 8' high open metal gate flanked by two approximately 20' long, 6'

- A scaled site plan and an elevation document have been submitted documenting the location of the proposal relative to the property line, the length of the proposal relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately 1' from the property line. The proposal is about 110' long parallel to the street. Elevations shown on the elevation document provide representations of the specific heights and materials of each component of the proposal as described earlier in this case report.
- No other fences in the area that appeared to be over 4' in height and located in a front yard setback were noted in a field visit of the site and surrounding area conducted by the Board Administrator.
- As of June 7, 2010, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 14' in height) will not adversely affect neighboring property.
- Granting this special exception of 10' with a condition imposed that the applicant complies with the submitted site plan and the elevation document would assure that the proposal would be completed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

APPEARING IN FAVOR: No one

APPEARIN IN OPPOSITION: No one

MOTION: **Salinas**

I move that the Board of Adjustment grant application **BDA 090-067** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Maten**

AYES: 4–Boyd, Maten, Coulter, Salinas

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 090-066

BUILDING OFFICIAL'S REPORT:

Application of Donald and Mazell Ligon, represented by Steven Coleman, for a special exception to the single family use regulations at 3553 Jordan Valley Road. This property is more fully described as Lot 2 in City Bock 8836 and is zoned A(A) which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which will require a special exception.

LOCATION: 3553 Jordan Valley Road

APPLICANT: Donald and Mazell Ligon
Represented by Steven Coleman

REQUEST:

- A request for a special exception to the single family use development standard regulations is requested with constructing and maintaining a one-story, approximately 2,100 square foot (approximately 70' x 30') "dwelling unit"/single family modular home structure on a site developed with a dwelling unit/single family home/modular home structure that has (according to DCAD) approximately 1,144 square feet of living area.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit 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 SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

GENERAL FACTS:

- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties. 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.” A site plan has been submitted denoting the location of the building footprint of the “existing manufactured residence” and the “approximate location of proposed modular structure” relation to the entire site. An elevation has been submitted of the second/additional dwelling unit on the site (denoting a one-story 12’ structure) and a floor plan (denoting a structure with a living room, a family room, a kitchen, a dining room, three bedrooms, two baths, and a utility room). The Building Official has reviewed the submitted floor plan and deemed it a “dwelling unit.”
- DCAD records indicate that the site is developed with a modular home built in 1987 in excellent condition with 1,144 square feet of living area.

BACKGROUND INFORMATION:

Zoning:

Site: A(A) (Agriculture)
North: A(A) (Agriculture)
South: A(A) (Agriculture)
East: A(A), SUP 84 (Agriculture and Specific Use Permit)
West: A(A) (Agriculture)

Land Use:

The subject site is developed with a single family home. The areas to the north, south, and west appear to be developed with single family uses; and the area to the east is developed with a sewage treatment plant (SUP #84).

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 28, 2010: 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 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 12, 2010: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a one-story, approximately 2,100 square foot "dwelling unit"/single family modular home structure on a site developed with a dwelling unit/single family home/modular home structure that has approximately 1,144 square feet of living area.
- The site is zoned A(A) Agricultural 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 construct and maintain a second/additional dwelling unit on the site hence the special exception request.
- Building Inspection has reviewed the submitted floor plan of the proposed additional dwelling unit/ modular home structure and deemed it a "dwelling unit" - that is (per Code definition) "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 submitted floor plan shows this proposed structure to include a living room, a family room, a kitchen, a dining room, three bedrooms, two baths, and a utility room.
- This request centers on the function of what is proposed to be located inside the proposed modular home structure. If the board were to deny this request, it appears that this structure could be constructed and maintained with merely modifications to

- 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, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, the Board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan is necessary in assuring that the special exception will not adversely affect neighboring properties – granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. the site and the development on the site must meet all required setback and coverage requirements).
- 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 14, 2010

APPEARING IN FAVOR: Steven Coleman, 11072 FM 3094, Kaufman

APPEARIN IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 090-066** on application of Donald and Mazell Ligon, represented by Steven Coleman, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.
- For as long as the additional dwelling unit is on the property, neither dwelling units may be used as rental accommodations.

SECONDED: **Maten**

AYES: 4–Boyd, Maten, Coulter, Salinas

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 090-068

BUILDING OFFICIAL’S REPORT:

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

LOCATION: 5516 North Forty Place

APPLICANT: David Weinreb
Represented by Bill Rehnert

REQUEST:

- A special exception to the fence height regulations of 5’ is requested in conjunction with completing and maintaining (according to the submitted revised site plan and elevation) an 8’ – 9’ high, approximately 160’ long primarily solid stone veneer wall with 8’ - 9’ high cast stone columns in the site’s 40’ front yard setback along Frankford Road on a site 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 corner of Frankford Road and North Forty Place. Even though the Frankford Road side of the site functions as the site’s front yard and the North Forty Place side functions as one of the site’s two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along North Forty Place given that this frontage is the shorter of the two street frontages, and a front yard setback along Frankford Road given that the continuity of the established setback must be maintained on this street given the lots

The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a revised site plan and a revised "fence elevations" document indicating the proposal that would exceed 4' in height in the site's Frankford Road front yard setback (see Attachment A). The revised plans indicate a fence/wall/column proposal that would be located in the site's Frankford Road front yard setback and would reach a maximum height of 9'. (There is no part of this special exception request made to address any fence/column/gate proposal higher than 4' in height in the site's 40' North Forty Place front yard setback).

- The revised site plan indicates the location of the proposal in the site's Frankford Road front yard setback. The following additional information was gleaned from this revised site plan:
 - The proposal would be approximately 80' in length on both sides of the recessed entry way into the site from Frankford Road for a total length of about 160' of the total approximately 375' Frankford Road frontage.
 - The proposed fence/wall in the required front yard setback is shown to be located at a range of approximately 13' – 40' from the Frankford Road right-of-way line or about 21' – 47' from the Frankford Road pavement line.
 - The location of a gate and "existing permitted fence" is also shown on the revised site plan but is located at or behind the 40' setback line therefore permitted by right and not part of the special exception request.
- The proposal is located on the site adjacent to about three single family lots none of which front the proposal/Frankford Road since all are located behind an approximately 9' high solid masonry wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted a series of approximately 7' - 9' high fence/walls immediately east of the subject site, an approximately 9' high wall immediately south of the subject site, and no fences/walls west of the subject site.
- On May 26, 2010, the applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that provided additional details about the request;
 - a revised site plan; and
 - a revised elevation document.
- On June 4, 2010, the applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a notebook divided into the following sections: application; site plan; fence elevation & fence landscape plan; signed letters of support; photos of existing neighboring walls photos of entry; photos of subject property; applicable comments from board of adjustment meeting BDA hearing #141 obtained from City of Dallas; City of Dallas Works & Transportation Traffic Count 2005."

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is 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 089-025, Property at 5516 North Forty Place (the subject site)
On March 16, 2009, the Board of Adjustment Panel C denied a request for special exception to the fence height regulations of 5' without prejudice. The case report stated that the request was made in conjunction completing and maintaining (according to the submitted revised site plan and elevations document) an 8' high, approximately 240' long solid decorative iron fence/wall with 9' high cast stone columns in the site's 40' front yard setback along North Forty Place. (The entry gate is shown on the revised site plan to be located behind the 40' building line).

2. BDA 089-026, Property at 5516 North Forty Place (the subject site)
On March 16, 2009, the Board of Adjustment Panel C denied a request for a special exception to the fence height regulations of 5' without prejudice. The case report stated that the request was made in conjunction with completing and maintaining (according to the submitted revised site plan and elevations document) the following in the site's 40' front yard setback along Frankford Road:
 - An 8' high, approximately 220' long solid decorative iron fence/wall with 9' high columns; and
 - An 8' high, approximately 120' long solid stone veneer wall with 9' high columns.

(The entry gate is shown on the revised site plan to be located behind the 40' building line).

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

Timeline:

- April 26, 2010: 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 13, 2010: 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."
- May 13, 2010: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 26, 2010: The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D visibility requirements."

June 4, 2010: The applicant's representative submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- The request focuses on completing/maintaining (according to the submitted revised site plan and elevation) an 8' – 9' high, approximately 160' long primarily solid stone veneer wall with 8' - 9' high cast stone columns in the site's 40' front yard setback along Frankford Road on a site developed with a single family home. (There is no part of this special exception request made to address any fence/column/gate proposal higher than 4' in height in the site's 40' North Forty Place front yard setback).
- A revised scaled site plan and elevation have been submitted documenting the location of the proposal relative to their proximity to the Frankford Road right-of-way line, the length of the proposal relative to the entire lot, and the proposed building materials. The proposal is shown to be located at a range of approximately 13' – 40' from the Frankford Road right-of-way line or about 21' – 47' from the Frankford Road pavement line. The proposal is shown to have an approximate total length of 160' which accounts for about 40 percent of the site's frontage along Frankford Road. The submitted elevation shows that of the approximately 160' length all but 17' of the proposal is stone veneer- 17' of the proposal on the far eastern side of the subject site is denoted to be "w.i. fence."
- The proposal is located on the site adjacent to about three single family lots none of which front the proposal/Frankford Road since all are located behind an approximately 9' high solid masonry wall.

- A series of approximately 7' - 9' high fence/walls were noted in a field visit conducted by the Board Administrator immediately east of the subject site, as well as the approximately 9' high wall immediately south of the subject site. No fences/walls were noted immediately west of the subject site.
- As of June 7, 2010, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal would reach 9' in height) will not adversely affect neighboring property.
- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would assure that the proposal would be completed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

APPEARING IN FAVOR: Steven Coleman, 11072 FM 3094, Kaufman, TX
 David Weinreb, 5516 N Forty Pl., Dallas, TX
 Carlos Ido, 5512 Frankford Ct., Dallas, TX
 Mike Oneil, 5550 N. Forty Pl., Dallas, TX
 Leon Ido, 5943 Desert Trail, Dallas, TX

APPEARIN IN OPPOSITION: Sara Marshall, 3340 Amherst Ave., Dallas, TX
 Carol Hildebrand, 5595 N. Forty Pl., Dallas, TX

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 090-068**, on application of David Weinreb, represented by Bill Rehnert, **grant** the request of this applicant to construct and maintain a 9-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Salinas**

AYES: 4–Boyd, Maten, Coulter, Salinas

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 090-057

BUILDING OFFICIAL'S REPORT:

Application of Lauren Bryant, represented by Truett Roberts, for a variance to the side yard setback regulations at 3620 Edgewater Drive. This property is more fully described as Lot 4 in City Block 5/2022 and is zoned PD-193 (Subdistrict D) which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a duplex structure and provide a 0 foot side yard setback which will require a variance of 5 feet.

LOCATION: 3620 Edgewater Drive

APPLICANT: Lauren Bryant
Represented by Truett Roberts

REQUESTS:

- Variances to the side yard setback regulations of 5' are requested in conjunction with obtaining a final building permit on a recently constructed three-story duplex, portions of which (existing staircases) are located and to be redesigned in the site's eastern and western 5' side yard setbacks. According to documents submitted with the application, the "structures" located in the setbacks were "flatwork, stairs and landings" structures and/or concrete stair structures in the site's eastern and western 5' side yard setbacks, however, according to a document submitted by the applicant's representative on June 4th, the existing concrete stair structures that completely fill the 5' setbacks are to be redesigned to be 3' 8" wide, and to be made of steel and wood (see Attachment C).

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the originally submitted site plan shows the site sloping northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120', and being slightly irregular in shape (60' on the north, approximately 48' on the south, approximately 131' on the east, and approximately 100' on the west), the applicant has not substantiated how these features result in being unable to develop the subject site/parcel of land in a manner commensurate with development found on other PD No. 193 (D Subdistrict) zoned lots.
- The applicant has not substantiated how the physical features of the subject site precluded him from developing the site with reasonably-sized duplex that is commensurate with other duplexes in the zoning district while simultaneously being able to comply with the development standards in the Dallas Development Code including but not limited to the side yard setbacks.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

UPDATED GENERAL FACTS:

- The Board of Adjustment Panel C conducted a briefing and public hearing on this application on May 17, 2010. The Board Administrator circulated additional written documentation to the Board at the May 17th briefing (see Attachment B). This information included a revised site plan and revised elevation prepared by the applicant's representative.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the structure that located in the site's eastern 5' side yard setback is approximately 200 square feet (or approximately 7 percent) of the approximately 2,600 square foot building footprint; and the area of the structure located in the site's western 5' side yard setback is approximately 120 square feet (or approximately 5 percent) of the approximately 2,600 square foot building footprint.
- The Board of Adjustment Panel C delayed action on the matter until their June 14th hearing in part to allow time for the applicant to possibly garner additional support of the application and/or to possibly submit a redesign of the stair structures in the setbacks.
- The applicant's representative submitted information beyond what was submitted with the original application and at the May 17th public hearing (see Attachment C). This information included the following:
 - a narrative providing additional details about the request,
 - a revised site plan and elevation of the revised request; and
 - three letters of support from "individuals with residences in the neighborhood."
- According to calculations taken by the Board Administrator from the submitted June 4th revised site plan, the area of the each structure located in the site's eastern and western 5' side yard setback is approximately 90 square feet (or approximately 3 percent) of the approximately 2,600 square foot building footprint.

ORIGINAL GENERAL FACTS:

- The minimum side yard setback on a PD No. 193 (Subdistrict D) zoned lot is 5 feet. The applicant had submitted a site plan indicating “structures” (described on information submitted with the application as “flatwork, stairs and landings” and/or concrete stair structures) located as close as on the site’s western side property line (or 5’ into the required 5’ side yard setback) and as close as 1’ from the site’s eastern side property line (or 4’ into the required 5’ side yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure that located in the site’s eastern 5’ side yard setback was approximately 130 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint; and the area of the structure located in the site’s western 5’ side yard setback is approximately 120 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint.
- The site plan shows that the site slopes northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120’. The site is slightly irregular in shape (60’ on the north, approximately 48’ on the south, approximately 131’ on the east, and approximately 100’ on the west), and according to the application is 0.18 acres in area. The site is zoned PD No. 193 (D Subdistrict).
- According to DCAD records, the property is developed with the following:
 - a structure built in 2008 with 5,600 square feet of living area;
 - a 440 square foot attached garage; and
 - a 399 square foot attached garage.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request, as well as photos of what the applicant’s representative describes as “examples of single family and duplex structures in PD 193, subsection D, that extend to the side yard setback limit on both sides of the property...and are three stories in height.”

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 193 (D) (Planned Development District, Duplex)
<u>North:</u>	CD No. 17 (Conservation District)
<u>South:</u>	PD No. 193 (D) (Planned Development District, Duplex)
<u>East:</u>	PD No. 193 (D) (Planned Development District, Duplex)
<u>West:</u>	PD No. 193 (D) (Planned Development District, Duplex)

Land Use:

The subject site is developed with a duplex. The areas to the north, south, and west are developed with residential uses; and the area to the east is undeveloped.

Zoning/BDA History:

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

Timeline:

March 26, 2010: 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 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 22, 2010: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

The Board Administrator also posed the following questions from having seen the structure on the site that he thought the applicant's representative may want to establish in conjunction with his appeal:

1) How did the structure reach its point of completion? (Regardless of whether there is any point to the answer in terms of the variance standard, the board may want to know).

2) Does the structure as it stands and/or as it is proposed to be finished as shown on the submitted plans only violate side yard setbacks? (In other words, does the structure as it stands and/or as it is shown on the submitted plans comply with every development standard other than side yard setbacks? Even though one may assume "yes" since it is the only variance being requested, to a layperson, the house looks large in terms of its bulk and height. It may be beneficial to the application if the applicant can establish for the board (and for any concerned citizen) that the structure as shown on the submitted plans only violates PD 193 (D Subdistrict) side yard setbacks.

May 4, 2010 Staff received additional information from the applicant's representative dated March 26, 2010 (see Attachment A).

May 4, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

The Building Inspection Senior Plans Examiner/Development Code Specialist commented that the side yard setback requirements were noted on the construction drawings at the time the permit was issued, and that in his opinion, the reason for the appeal appeared to be a design change after permits were issued whereby no variance is warranted.

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

May 13, 2010: The applicant's representative submitted additional information to the Board Administrator (see Attachment B).

May 17, 2010: The Board of Adjustment conducted a public hearing on this request and delayed action until their June 14th public hearing.

May 18, 2010: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 4, 2010: The applicant's representative submitted additional information to the Board Administrator (see Attachment C).

STAFF ANALYSIS:

- This request focuses on obtaining a final building permit on a recently constructed three-story duplex, portions of which (existing staircases) are located and to be

- The applicant's representative had stated among other things in a document (see Attachment A) that:
 - The owner received permit for construction from the City of Dallas in July of 2008 using plans by VirtualArchitect.com, and that the stairs for the entries in the side yard setbacks were noted by the architect as flatwork. The City inspector amended the document with the annotation "flatwork 6" above grade, max." with the East and West elevations included in the permit documents showing stairs extending well above the grade.
 - The request for variance is limited to the issues surrounding the side yard setback, and "to the Owner's best knowledge, the structure is currently in compliance with all other development codes for PD 193. A "previously non-conforming deck which extended into rear yard setback has been modified so that it does not extend into the setback."
- The revised site plan submitted on June 4th indicates "proposed steel and wood stairs and landing" located as close as 1' away from the site's western side property line (or 4' into the required 5' side yard setback) and as close as about 1.5' away from the site's eastern side property line (or 3.5' into the required 5' side yard setback).
- According to calculations taken by the Board Administrator from the submitted June 4th revised site plan, the area of the each structure located in the site's eastern and western 5' side yard setback is approximately 90 square feet (or approximately 3 percent) of the approximately 2,600 square foot building footprint. (According to calculations taken by the Board Administrator from the originally submitted site plan, the area of the structure located in the site's eastern 5' side yard setback was approximately 130 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint; and the area of the structure located in the site's western 5' side yard setback was approximately 120 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint).
- The originally submitted site plan shows that the site slopes northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120'. The site is slightly irregular in shape (60' on the north, approximately 48' on the south, approximately 131' on the east, and approximately 100' on the west), and according to the application is 0.18 acres in area. The site is zoned PD No. 193 (D Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The 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 PD No. 193 (D Subdistrict) 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 PD No. 193 (D Subdistrict) zoning classification.
- If the Board were to grant the side yard variances of 5', imposing a condition whereby the applicant must comply with the revised site plan and elevation submitted on June 4th, the structures encroaching into this setback would be limited to that what is shown on these plans which in this case are "proposed steel and wood stairs and landing "structures" attached to a duplex that appear to located as close as 1' from the side property lines or as much as 4' into the 5' side yard setbacks.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2010

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #640, Dallas, TX
Lauren Bryant, 3608 Asbury Ave, Dallas, TX

APPEARING IN OPPOSITION: Judy Desanders, 3619-21 Springbrook, Dallas, TX
Sherryl Thomas, 4228 Glenwood Ave., #4, Dallas, TX

MOTION: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 090-057**, hold this matter under advisement until **June 14, 2010**.

SECONDED: Maten

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

NAYS: 0–

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

APPEARING IN FAVOR: Truett Roberts, 6438 Vickery, Dallas, TX
Lauren Bryant, 3608 Asbury Ave, Dallas, TX
Ed Simons, 900 Jackson St., #640, Dallas, TX
Bryan Luter, 3518 Springbrook Dr., Dallas, TX

APPEARING IN OPPOSITION: Sherryl Thomas, 4228 Glenwood Ave., #4, Dallas, TX
Judy Desanders, 3619-21 Springbrook, Dallas, TX

MOTION: Salinas

I move that the Board of Adjustment, in Appeal No. **BDA 090-057**, hold this matter under advisement until **August 16, 2010**.

SECONDED: Maten

AYES: 4– Boyd, Maten, Coulter, Gaspard

NAYS: 0–

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 090-053

BUILDING OFFICIAL’S REPORT:

Application of Santos T. Martinez for a variance to the front yard setback regulations at 2326 N. Henderson Avenue. This property is more fully described as Lot 11 in City block 1/1975 and is zoned PD No. 462 which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback which will require a variance of 15 feet.

LOCATION: 2326 N. Henderson Avenue

APPLICANT: Santos T. Martinez

REQUEST:

- A variance to the front yard setback regulations of 15’ is requested where (according to the application) the “owner seeks to amend the conditions of the approved variance that allows an open trellis above the new patio. The owner seeks to install a retractable canopy over the patio within the required front yard setback. The existing right of way places the patio at a zero front yard setback. The patio will be over 10 feet from the existing curb line.” The site is currently developed with a restaurant use (Hacienda Restaurant and Bar).

The “retractable canopy” that is mentioned on the application that is the issue of the applicant’s variance request appears to be approximately 650 square feet in area and located in the site’s 15’ front yard setback – a patio/trellis structure that was “varied” by the Board of Adjustment in June of 2009 - BDA089-072. Although the applicant made an application at that time for a variance to the front yard setback regulations of 15’ to construct and maintain a “covered patio”/trellis structure, the Board granted the variance of 15 feet as stated in the motion to grant the request “for an open patio, totally unenclosed, no sides with trellises on the top,” and imposed the submitted revised site plan as a condition to the request – the same site plan that has been submitted in conjunction with BDA090-027. The BDA-089-027 case report stated that the proposed covered patio/trellis structure would attach to an existing main structure on the site that has an approximately 2,600 square foot building footprint which (according to the applicant) was a 1940’s duplex structure-turned retail structure-turned restaurant structure planned to transition to a new restaurant/bar use (Hacienda Restaurant and Bar).

The applicant made an application for a variance to the front yard setback regulations of 15’ in March of 2010 (BDA090-027) – an application made where (according to the application) the “owner seeks to install a retractable canopy over the patio within the required front yard setback “ – a structure that would “cover” or enclose an open patio “structure” that was “varied” by the Board of Adjustment Panel C in June of 2009. This request was denied without prejudice.

STAFF RECOMMENDATION:

Denial

- There is no property hardship to the site that warrants a front yard variance of 15’ requested to install and maintain the requested retractable canopy over the patio previously “varied” by the Board of Adjustment Panel C in June of 2009, and/or to construct/maintain “retractible clear vynil wind panel for winter months shown here, typ. around patio” shown on the applicant’s submitted document “awning exhibit” in the site’s required 15’ front yard setback.
- The site is rectangular in shape, relatively flat, and of a size no thinner or shorter than the parcels of land to its east and west zoned PD No. 462 (Subdistrict 3). There is no physical characteristic/feature of the subject site that warrants either: 1) the requested “retractable canopy over the patio;” or 2) any other type of enclosure of the patio on its sides. (Although the application makes no specific mention of vinyl sides to be installed and maintained for the portion of the structure in the front yard setback, an “awning exhibit” has been submitted that denotes “retractible clear vynil wind panel for winter months shown here, typ. around patio.” – panels that would appear to function as “sides” on the patio structure that would (if installed) would appear to be in violation of the board’s order in June of 2009 where the board specifically stated in their motion to grant the request “for an open patio, totally unenclosed, no sides with trellises on the top.”)

- The applicant had not substantiated how the physical features of this relatively flat, rectangular-shaped, 7,250 square foot site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 462 (Subdistrict 3) zoning classification (developments in the specific zoning district that are legal conforming structures that have not been previously “varied” by the Board of Adjustment) while simultaneously complying with: 1) the Board’s June 2009 order allowing “for an open patio, totally unenclosed, no sides with trellises on the top,” and/or 2) with code development standards including but not limited to front yard setback regulations.
- The site is currently developed with a restaurant use with (according to the submitted site plan) a building footprint of over 1,400 square feet excluding the area denoted on this plan as “covered patio” at approximately 850 square feet. The total building footprint located outside the 15’ front yard setback is over 2,000 square feet – an area that the applicant has not substantiated is less than commensurate than other legal conforming developments in the same PD No. 462 (Subdistrict 3) zoning district.
- Regardless of whether the proposed development meets the intent of PD No. 462, the board can only grant a variance to the front yard setback regulations of this 15’ front yard setback ordinance provision upon the applicant’s demonstration of property hardship that precludes this parcel of land from being developed in a manner commensurate with legal conforming development found on other Subdistrict 3 zoned lots (not development on lots on the same street located outside of PD No. 462, Subdistrict nor illegal or non-permitted development on lots in PD No. 462).

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- Structures on lots zoned PD No. 462 (Subdistrict 3) are required to provide a minimum front yard setback of 15’ and a maximum front yard setback of 30 feet.

The applicant has submitted a site plan indicating a “covered patio” structure that is located on the site’s N. Henderson Avenue front property line (or as much as 15’ into the 15’ front yard setback).

- The submitted site plan denotes information related to “Parking Analysis.” Notes on this plan list uses and floor area as follows: uses - restaurant, floor area: 4495, office, 345; required parking: 46, provided parking: 56. According to calculations taken by the Board Administrator from the submitted site plan, the area of the “covered patio” structure to be located in the site’s 15’ minimum front yard setback is approximately 650 square feet (approximately 43’ long and 15’ deep). Approximately 75 percent of the proposed covered patio would be located in the front yard setback (about 650 square feet of the total 850 square foot “covered patio.”)
- The site is virtually flat, rectangular in shape (145’ x 50’), and is (according to DCAD) 7,250 square feet in area. The site is zoned PD No. 462 (Subdistrict 3).
- According to DCAD records, the property is developed with a 4,440 square foot restaurant built in 1940.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 462 (Subdistrict 3) (Planned Development)
<u>North:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>South:</u>	PD No. 462 (Subdistrict 3) (Planned Development)
<u>East:</u>	PD No. 462 (Subdistrict 3) (Planned Development)
<u>West:</u>	PD No. 462 (Subdistrict 5) (Planned Development)

Land Use:

The subject site is developed with a bar/restaurant use (Hacienda Restaurant and Bar). The area immediately north is developed as single family uses; and the areas immediately east, south, and west are developed with retail uses.

Zoning/BDA History:

1. BDA089-072, 2326 N. Henderson Avenue (the subject site)
On June 15, 2009, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15 feet “for an open patio, totally unenclosed, no sides with trellises on the top,” and imposed the submitted revised site plan as a condition to the request. The case report stated that the request was made in conjunction with completing and maintaining an approximately 750 square foot portion of an approximately 1,000 square foot “covered patio”/trellis structure that is located in the

site's 15' front yard setback. The "covered patio"/trellis structure would attach to an existing main structure on the site that has an approximately 2,600 square foot building footprint which according to the applicant, is a 1940's duplex structure-turned retail structure-turned restaurant structure being renovated as a new restaurant/bar use (Hacienda Restaurant and Bar).

2. Miscellaneous Item # 2, BDA089-072, 2326 N. Henderson Avenue (the subject site)

On March 15, 2010, the Board of Adjustment Panel C waived the two year limitation on a request for a variance to the front yard setback regulations of 15' that was granted "for an open patio, totally unenclosed, no sides with trellises on the top" by Board of Adjustment Panel C on June 15, 2009 in order for the applicant to resubmit the same type of application on the subject site – in this case, on the same day as the actual variance request.

3. BDA090-027, 2326 N. Henderson Avenue (the subject site)

On March 15, 2010, the Board of Adjustment Panel C denied a request for a variance to the front yard setback regulations of 15' without prejudice. The case report stated that the request was made to install a retractable canopy over the patio within the required front yard setback " – a structure that would "cover" or enclose an open patio "structure" that was "varied" by the Board of Adjustment Panel C in June of 2009. The site is currently developed with a restaurant use (Hacienda Restaurant and Bar).

Timeline:

March 22, 2010: 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 22, 2010: 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."

April 22, 2010: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 30, 2010: The applicant emailed the Board Administrator requesting to postpone the application until June. The email stated that "the operator at 2326 N. Henderson is continuing to work with adjacent property owners regarding the open patio requirement for this property. There are more meetings scheduled to take place during the month of May, but not in time for the scheduled Board case. At this time, we respectfully request that this case be scheduled for the June hearing so that we can continue these conversations with our neighbors." (The Board Administrator emailed a response back that informed that the application would be scheduled for June 14th per his request).

May 11, 2010: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

- June 2, 2010: The applicant emailed the Board Administrator requesting to postpone the application until August. The email stated that “We continue to work with a new neighborhood association regarding this request.” (The Board Administrator emailed a response back that informed that the application would remain scheduled for June 14th).
- June 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” with the following comments: “Setback is measured from property line not curb. Still need to comply with C.O.D. visibility requirements on all driveways, both sides of patio. Also need to comply with Mill Creek Drainage Guidelines.” (Note that the applicant responded in an email to these comments with the following: “We comply with all city requirements. No visibility obstructions, we understand setback is from property line (but we note the clearance to the curb). Mill Creek concerns were addressed on building permit.”)

STAFF ANALYSIS:

- The applicant has requested a variance to the front yard setback regulations of 15’ where (according to the application) the “owner seeks to amend the conditions of the approved variance that allows an open trellis above the new patio. The owner seeks to install a retractable canopy over the patio within the required front yard setback. The existing right of way places the patio at a zero front yard setback. The patio will be over 10 feet from the existing curb line.” The structure that is requested to be “varied” in this application would “cover” or enclose an open patio “structure” that was “varied” by the Board of Adjustment Panel C in June of 2009.
- Although the applicant has technically only requested on his application a variance for a retractable canopy structure, he has submitted an “awning exhibit” that denotes retractable clear vinyl wind panels “for winter months.” While the submitted “awning exhibit document shows what may be deemed a “side” on the structure - “sides” on the patio structure that appear to be in violation of the board’s order in June of 2009 where the board specifically stated in their motion to grant the request “for an open patio, totally unenclosed, no sides with trellises on the top,” the application does not specifically request that these “sides” by “varied.” Conversely the submitted “awning exhibit” document does not show or reference what has been denoted on the application to be “varied” – a retractable canopy.
- The applicant has submitted a site plan indicating a “covered patio” structure that is located on the site’s N. Henderson Avenue front property line (or as much as 15’ into the 15’ front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the “covered patio” structure located in the site’s 15’ minimum front yard setback is approximately 650 square feet (approximately 43’ long and 15’ deep). Approximately 75 percent of the covered patio would be located in the front yard setback (about 650 square feet of the total 850 square foot “covered patio.”)
- The site is virtually flat, rectangular in shape (145’ x 50’), and is (according to DCAD) 7,250 square feet in area. The site is zoned PD No. 462 (Subdistrict 3). According to DCAD records, the property is developed with a 4,440 square foot restaurant built in 1940.
- The applicant has the burden of proof in establishing the following:

- That granting the variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 462 (Subdistrict 3) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 462 (Subdistrict 3) zoning classification.
- If the Board were to grant the variance to the minimum front yard setback regulations of 15', imposing a condition whereby the applicant must comply with the submitted site plan and "awning exhibit" document, the board may want to specifically mention in their motion what structure or structures that they intend to vary - the "structure" denoted on this "awning exhibit" document with "awning tracks," the "8" shade housing," the "side fascia trim painted to match pergola to conceal track shown dashed," and/or the other part of what is denoted on the submitted "awning exhibit" – the "retractible clear vinyl wind panel for winter months shown here, typ. around patio."

2:24 P.M: Executive Session Begins

2:28 P.M: Public Hearing Resumes

***Member Joel Maten recused himself and did not hear or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., 940, Dallas, TX

APPEARING IN OPPOSITION: Bruce Richardson, 5607 Richmond Ave., Dallas, TX

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 090-053**, hold this matter under advisement until **August 16, 2010**.

SECONDED: **Salinas**

AYES: 3– Boyd, Coulter, Salinas

NAYS: 0–

MOTION PASSED: 3– 0 (unanimously)

FILE NUMBER: BDA 090-075

BUILDING OFFICIAL’S REPORT:

Application of Bruce Bernbaum of Bernbaum/Magadini Architects for a variance to the side yard setback regulations at 2913 Sale Street. This property is more fully described as Lot 8 and part of Lot 6 and 7 in City Block 1030 and is zoned PD-193 (MF-3 Subdistrict) which requires a side yard setback of 30 feet for the portions of structures over 36 foot in height. The applicant proposes to construct a duplex structure and provide a 5 foot side yard setback for the portion of the building over 36 foot in height which will require a variance of 25 feet.

LOCATION: 2913 Sale Street

APPLICANT: Bruce Bernbaum of Bernbaum/Magadini Architects

REQUESTS:

- Variances to the side yard setback regulations of 25’ are requested in conjunction with constructing and maintaining a three-level, 47’ high duplex structure on a site currently under development where the portion of this structure over 36’ in height (the “upper floor” of the three level duplex with approximately 620 square feet of living area) would be located in the site’s southwestern and northeastern 30’ side yard setbacks. (No portion of the structure under 36’ in height requires variance).

STAFF RECOMMENDATION:

Denial

Rationale:

- The site is relatively flat, is rectangular in shape (approximately 215’ x 52), and according to the application is 0.2482 acres (or approximately 11,000 square feet) in area. The applicant has not substantiated how the physical features of the site preclude him developing it with a reasonably-sized duplex that is commensurate with other duplexes in the PD No. 193 (MF-3 Subdistrict) zoning district while simultaneously being able to comply with the development standards in the Dallas Development Code including but not limited to the side yard setbacks.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (D) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

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

GENERAL FACTS:

- The minimum side yard setback on a PD No. 193 (Subdistrict MF-3) zoned lot is 5 feet. However, in the MF-3 and MF-4 Subdistricts of PD No. 193, if a building is erected or altered to exceed 36 feet in height, an additional setback must be provided that is equal to one-half of the total height of the building, up to a maximum of 50 feet.
The applicant has submitted a site plan indicating that while the proposed duplex structure provides a 5’ side yard setback on its southwestern and northeastern sides, revised floor plans and elevations show that the structure is 47’ in height whereby the portion of it over 36’ in height (the entire “upper floor”) is located in the combined 30’ side yard setbacks originating from the site’s two side property lines on the 52’-wide lot.
- According to materials submitted by the applicant, only about 5 percent of the total living area of the proposed duplex requires variance (about 620 square feet of the total approximately 12,000 square feet of living area).
- The site is relatively flat, is rectangular in shape (approximately 215’ x 52), and according to the application is 0.2482 acres (or approximately 11,000 square feet) in area. The site is zoned PD No. 193 (MF-3 Subdistrict).
- According to DCAD records, the property has “no improvements.”
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A, C, and D). Note that while staff factored in the information included in Attachment A and C in their staff recommendation, staff did not factor in the information included in Attachment D since it was submitted after the June 1st staff review team meeting – the date in which the staff recommendation was formed.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 193 (MF-3) (Planned Development District, Multifamily)
- North: PD No. 193 (MF-3) (Planned Development District, Multifamily)
- South: PD No. 193 (O-2) (Planned Development District, Office)
- East: PD No. 193 (MF-3) (Planned Development District, Multifamily)
- West: PD No. 193 (MF-3) (Planned Development District, Multifamily)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- May 3, 2010: 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 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 12, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 21, 2010: The applicant submitted additional information to the Board of Adjustment Chief Planner (see Attachment A).
- May 25, 2010: The Board of Adjustment Chief Planner amended the Building Official’s Report given the revised plans that were submitted by the applicant (see Attachment B).
- May 28, 2010: The applicant submitted additional information to the Board Administrator (see Attachment C).
- June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

June 4, 2010: The applicant submitted additional information to the Board Administrator (see Attachment D). (Note that this information was not factored into the staff recommendation since it was submitted after the June 1st staff review team meeting – the date in which the recommendation was formed).

STAFF ANALYSIS:

- The side yard variance requests focus on constructing and maintaining a three-level, 47’ high duplex structure on a site currently under development where the portion of this structure over 36’ in height (the “upper floor” of the three level duplex with approximately 620 square feet or about 5 percent of the total living area) would be located in the site’s southwestern and northeastern 30’ side yard setbacks. (No portion of the structure under 36’ in height requires variance).
- The site is relatively flat, is rectangular in shape (approximately 215’ x 52), and according to the application is 0.2482 acres (or approximately 11,000 square feet) in area. The site is zoned PD No. 193 (MF-3 Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The 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 PD No. 193 (MF-3 Subdistrict) 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 PD No. 193 (MF-3 Subdistrict) zoning classification.

If the Board were to grant the side yard variances of 25’, imposing a condition whereby the applicant must comply with the submitted revised site plan and elevations, the structure encroaching into these setbacks would be limited to that what is shown on these plans which in this case is the portion of the structure over 36’ in height – a portion of the structure (the entire upper floor) that represents only 5 percent of the structure’s total approximately 12,000 square feet of living area.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

APPEARING IN FAVOR: Bruce Bernbaum, 4645 N. Central Expwy #220, Dallas, TX

APPEARIN IN OPPOSITION: Leslie Sorrell, 3503B, Dickason Ave., Dallas, TX

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 090-075**, on application of Bruce Bernbaum of Bernbaum/Magadini Architects, **grant** the 25-foot variance to the side yard setback regulations (in the southwestern [and] northeastern side yard setback[s]) because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Maten**

AYES: 4–Boyd, Maten, Coulter, Salinas

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Coulter**

AYES: 4–Boyd, Maten, Coulter, Salinas

NAYS: 0 - None

MOTION PASSED: 4 – 0 (Unanimously)

2:57 P. M. - Board Meeting adjourned for **June 14, 2010.**

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.

