

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, L1FN AUDITORIUM
MONDAY, AUGUST 14, 2006**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Carol Scott, alternate member Linda Wise, alternate member

MEMBERS ABSENT FROM BRIEFING: Frank Madrigal, Vice-Chair, Joel Maten, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Carol Scott, alternate member Linda Wise, alternate member

MEMBERS ABSENT FROM HEARING: Frank Madrigal, Vice-Chair, Joel Maten, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Mike Sultan, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Mike Sultan, Chief Arborist and Trena Law, Board Secretary

10:04 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 14, 2006** docket.

1:10 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 June 19, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

MOTION: Moore

I move **approval** of the Monday, June 19, 2006 public hearing minutes.

SECONDED: Scott

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive an additional \$1,200.00 filing fee to be submitted in conjunction with potential Board of Adjustment appeals

LOCATION: 3907 Odessa Street

APPLICANT: Virginia Lozano, represented by Ernest E. Warnock

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
- If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
- In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of a filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A). This letter contained some details on the applicant's finances.
- On August 2, 2006, the Board Administrator contacted the applicant's representative and established that the applicant is requesting a waiver of possibly \$1,200.00 in additional filing fees to be submitted with potentially two additional items/appeals to the board.
- If the Board were to waive these filing fees, a total of \$3,600.00 in filing fees would be waived in conjunction with a number of appeals requested on the subject site.

Timeline:

- June 15, 2005 The applicant submitted a letter requesting a fee waiver of \$1,200.00 for a Board of Adjustment application that may be requested at the address referenced above.
- June 21, 2005: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel C.
- August 16, 2005: The Board Adjustment Panel C conducted a public hearing and granted the request for a waiver of filing fees in the amount of \$1,200.00.
- Sept. 7, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents.
- Feb. 15, 2006: The Building Inspection Development Code Specialist forwarded a case file to the Board Administrator that included appeals for: 1) a special exception to the side yard regulations; 2) a special exception for a second dwelling unit; 3) a variance to the side yard setback regulations; and 4) a variance to the floor area ratios.
- Feb. 15, 2006: The Board Administrator contacted the applicant's representative and established that only \$1,200.00 of the total \$2,400.00 filing fee was waived by the Board of Adjustment in August of 2005. The administrator explained to the applicant's representative that he had an option of requesting a fee reimbursement that would be considered on the same day as the appeals that would be considered in March, or to request a fee waiver in March whereby

the variance and special exception requests would follow in April or May of 2006.

March 13, 2006: The Board Adjustment Panel C conducted a public hearing and granted the request for a waiver of additional filing fees in the amount of \$1,200.00.

June 21, 2006 The applicant's representative submitted a letter requesting a fee waiver for additional appeals that may be requested at the address referenced above (see Attachment A).

June 21, 2006: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:

- the public hearing date and panel that will consider the request;
- 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 noon, August 4th 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Ernest Warnock, 3907 Odessa, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment **waive** the filing fee to be submitted in conjunction with potential Board of Adjustment appeals.

SECONDED: **Moore**

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 8730 Blossom Lane

APPLICANT: Eloise Coleman

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to the Board Administrator requesting a waiver of the filing fee submitted in conjunction with a potential appeal to the Board of Adjustment pertaining to an illegal carport on the subject site (see Attachment A). This letter contained some details on the applicant's finances but did not specify the dollar amount of the fee (or fees) to be waived.

Timeline:

June 9, 2006 The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above.

June 13, 2006: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel C.

June 13, 2006: The Board Administrator wrote the applicant a letter that conveyed the following information:

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

- 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 noon, August 4th 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Eloise Coleman, 8730 Blossom Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment **waive** the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal.

SECONDED: **Scott**

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 4

A briefing will be conducted by the Board of Adjustment Chief Planner and the Assistant City Attorney to the Board of Adjustment on the status of providing staff recommendations on specific types of board of adjustment appeals.

***This was not an action item.**

FILE NUMBER: BDA 056-188(J)

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves for a special exception to the landscaping regulations at 3090 Olive Street. This property is more fully described as a tract of land in City Block A/394 and is zoned PD-582 which requires mandatory landscaping for new construction. The applicant proposes to construct a parking lot and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 3090 Olive Street

APPLICANT: Robert Reeves

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a parking lot.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The Board of Adjustment 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 the granting of this special exception.

GENERAL FACTS:

- The landscaping provisions of Planned Development District No. 582, the Victory Planned Development District, require full compliance with the Landscape Regulations for development that increases the existing building height, floor area, or nonpermeable coverage of the lot
- The applicant has submitted a landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- PD No. 582 requires a development plan for any new development. A portion of the request site has an approved development plan, the other portion does not. In order to develop the parking lot as proposed, the applicant will need approval of a minor amendment to the development plan and a development plan for the remaining portion as well as the landscape special exception for relief to the landscaping requirements.
- According to the submitted landscape plan, the 1.3425 acre site will be developed with a parking lot.

- According to DCAD, the site is undeveloped.
- The City of Dallas Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner that stated the following:
 - The applicant is seeking a landscape special exception, specifically seeking relief from the street tree requirements.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. Required to provide (1) large street tree for each 30' of street frontage and be located either in the tree planting zone (sidewalk area or within 15' of the street curb, whichever is greater) = 24 trees; providing only 21 street trees in the tree planting zone.
 - Factors for consideration:
 1. PD allows substituting (2) small trees for (1) large tree, to meet the street tree requirements, and
 2. Proposed alternate landscape plan includes (10) small trees that would qualify for the street trees they are lacking, but they are not located in the tree planting zone - they are located between 17' and 30' from the street curb, as well as being outside of the sidewalk area.

BACKGROUND INFORMATION:

Zoning:

Site: PD 582 (Victory Planned Development District)
North: PD 582 (Victory Planned Development District)
South: PD 582 (Victory Planned Development District)
East: PD 582 (Victory Planned Development District)
West: PD 582 (Victory Planned Development District)

Land Use:

The 1.3425-acre subject site is developed with a parking lot. The area to the north is developed with a sports arena; the area to the east is under construction for office uses; the area to the south is developed and under construction of a hotel and residential uses; and the area to the west is developed with an electrical substation, parking, and a DART station.

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:

- June 15, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2006: The Board Senior Planner contacted the applicant and conveyed 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 August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 25, 2006 The applicant provided a letter to the Board to further explain his request (Attachment A).
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.
- July 26, 2006 Chief Arborist Sultan provided a review comment letter on the request.

STAFF ANALYSIS:

- The applicant has submitted an alternate landscape plan that provides the location of the proposed street trees.

- The Chief Arborist in his memo recommended approval of the landscape special exception.
- Granting this request, subject to a condition that the applicant comply with the submitted landscape plan, will allow the site to be developed with a parking use and provide 21 out of the 24 required street trees in the tree planting zone.
- The applicant must comply with the requirements of PD 582 for development plan, which is approved by City Plan Commission. If the special exception is subject to the landscape plan, the special exception would only apply to the landscaping requirements, not the configuration of the parking spaces.
- The applicant has the burden of proof to establish that strict compliance with the requirements of this article will not compromise the spirit and intent of PD 582.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

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:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Wise**

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 056-189(J)

BUILDING OFFICIAL’S REPORT:

Application of Robby Rahmani for a special exception to the landscaping regulations at 2816 Thomas Avenue #2. This property is more fully described as Lot 1C in City Block H/573 and is zoned PD-225 which requires mandatory landscaping for new construction. The applicant proposes to construct a single family dwelling and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2816 Thomas Avenue #2

APPLICANT: Robby Rahmani

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a single family dwelling.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscaping requirements of PD 225, the State-Thomas Special Purpose District, upon making a special finding from the evidence presented that strict compliance with the requirements of this section will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

GENERAL FACTS:

- The landscaping provisions of Planned Development District No. 225, the State-Thomas Special Purpose District, require full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet, increases the floor area by more than 10% or 10,000 square feet, increases the number of buildings, or the number of stories on a lot.
- The applicant has submitted a landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the submitted landscape plan, the 1,604-square foot (0.0368 acres) site will be developed with a single family use (townhouse).
- According to DCAD, the site is developed with 2,357 square foot single family use constructed in 2005.
- The City of Dallas Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner that stated the following:
 - The applicant is seeking a landscape special exception, specifically seeking relief from the point requirements of PD No. 225.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. Required to earn 20 design points; Proposed alternate landscape plan provides enough design elements to earn only 16 points.
 2. Required to provide (1) 4" dia. street tree for every 25' of street frontage within the tree planting zone (between 2.5 and 4') = 1 tree; Proposed alternate landscape plan provides 0 street trees.

- Factors for consideration:
 1. Original landscape plan was approved under the misunderstanding that this project was one lot and not five individual lots,
 2. Providing 1 street tree w/in 12' of the street curb, and
 3. PD 225 allows the board to grant a special exception if strict compliance would cause substantial financial hardship without a corresponding benefit to the city.

BACKGROUND INFORMATION:

Zoning:

Site: PD 225 (State-Thomas Special Purpose District)
North: PD 225 (State-Thomas Special Purpose District)
South: PD 225 (State-Thomas Special Purpose District)
East: PD 225 (State-Thomas Special Purpose District)
West: PD 225 (State-Thomas Special Purpose District)

Land Use:

The 1,604-square foot subject site is developed with a single family uses. The areas to the north, south, east, and west are developed with multifamily and single family residential uses. To the northeast, there are some neighborhood retail uses.

Zoning/BDA History:

- | | |
|----------------|--|
| 1. BDA 989-269 | On August 16, 1999, the Board of Adjustment granted a variance to the parking regulations and a variance to the front yard setback regulations at 2812 Thomas. |
| 2. BDA 023-036 | On January 28, 2003, the Board of Adjustment granted a variance to the parking regulations for an enclosed parking space at 2812 Thomas. |

Timeline:

- | | |
|----------------|--|
| June 21, 2006 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| July 12, 2006: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C. |
| July 17, 2006: | The Board Senior Planner contacted the applicant and conveyed 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 August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

July 28, 2006 Chief Arborist Sultan provided a review comment letter on the request.

STAFF ANALYSIS:

- The applicant has submitted an alternate landscape plan that provides the location of the proposed landscaping.
- The request site is adjacent to residential uses to the north, south, east and west.
- The Chief Arborist in his memo recommended approval of the landscape special exception.
- Granting this request, subject to a condition that the applicant comply with the submitted landscape plan, will allow the site to be developed with a townhouse use and provide 16 out of the 20 landscaping points.
- The applicant has the burden of proof to establish that strict compliance with the requirements of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Robby Rahamni, 2816 Thomas Ave., #1, Dallas, TX

APPEARING IN OPPOSITION: Jack Irwin, 2708 Fairmount, Dallas, TX
Michele Costello, 2806 Thomas Ave., Dallas, TX

MOTION #1: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-189** suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Scott

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2: Scott

I move that the Board of Adjustment in Appeal No. **BDA 056-189**, on application of Robby Rahmani, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the landscape regulations of PD No. 225 will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city or its citizens in accomplishing the objectives and purposes of the landscape regulations in PD No. 225. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: No one

AYES:

NAYS:

***MOTION FAILED FOR LACK OF A SECOND**

MOTION #3: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-189**, on application of Robby Rahmani, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that strict compliance with the landscape regulations of PD No. 225 will not result in substantial financial hardship or inequity to the applicant with sufficient corresponding benefit to the city or its citizens in accomplishing the objectives and purposes of the landscape regulations in PD No. 225.

SECONDED: No one

***MOTION FAILED FOR LACK OF A SECOND**

MOTION #4: Wise

I move that the Board of Adjustment in Appeal No. **BDA 056-189** hold this matter under advisement until **September 18, 2006** so that the original landscape plan that was submitted to the city be presented to the board.

SECONDED: Scott

AYES: 3– Boyd, Moore, Wise

NAYS: 1–Scott

MOTION PASSED: 3 – 1

FILE NUMBER: BDA 056-190(J)

BUILDING OFFICIAL’S REPORT:

Application of Robby Rahmani for a special exception to the landscaping regulations at 2816 Thomas Avenue #3. This property is more fully described as Lot 1D in City Block H/573 and is zoned PD-225 which requires mandatory landscaping for new construction. The applicant proposes to construct a single family dwelling and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2816 Thomas Avenue #3

APPLICANT: Robby Rahmani

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a single family dwelling.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscaping requirements of PD 225, the State-Thomas Special Purpose District, upon making a special finding from the evidence presented that strict compliance with the requirements of this section will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

GENERAL FACTS:

- The landscaping provisions of Planned Development District No. 225, the State-Thomas Special Purpose District, require full compliance with the Landscape

Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet, increases the floor area by more than 10% or 10,000 square feet, increases the number of buildings, or the number of stories on a lot.

- The applicant has submitted a landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the submitted landscape plan, the 1,604-square foot (0.0368 acres) site will be developed with a single family use (townhouse).
- According to DCAD, the site is developed with 2,357 square foot single family use constructed in 2005.
- The City of Dallas Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner that stated the following:
 - The applicant is seeking a landscape special exception, specifically seeking relief from the point requirements of PD No. 225.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. Required to earn 20 design points; Proposed alternate landscape plan provides enough design elements to earn only 15 points.
 2. Required to provide (1) 4" dia. street tree for every 25' of street frontage within the tree planting zone (between 2.5 and 4') = 1 tree; Proposed alternate landscape plan provides 0 street trees.
 - Factors for consideration:
 1. Original landscape plan was approved under the misunderstanding that this project was one lot and not five individual lots,
 2. Providing 1 street tree w/in 12' of the street curb, and
 3. PD 225 allows the board to grant a special exception if strict compliance would cause substantial financial hardship without a corresponding benefit to the city.

BACKGROUND INFORMATION:

Zoning:

Site: PD 225 (State-Thomas Special Purpose District)
North: PD 225 (State-Thomas Special Purpose District)
South: PD 225 (State-Thomas Special Purpose District)
East: PD 225 (State-Thomas Special Purpose District)
West: PD 225 (State-Thomas Special Purpose District)

Land Use:

The 1,604-square foot subject site is developed with a single family uses. The areas to the north, south, east, and west are developed with multifamily and single family residential uses. To the northeast, there are some neighborhood retail uses.

Zoning/BDA History:

- | | |
|----------------|--|
| 1. BDA 989-269 | On August 16, 1999, the Board of Adjustment granted a variance to the parking regulations and a variance to the front yard setback regulations at 2812 Thomas. |
| 2. BDA 023-036 | On January 28, 2003, the Board of Adjustment granted a variance to the parking regulations for an enclosed parking space at 2812 Thomas. |

Timeline:

- | | |
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| June 21, 2006 | The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. |
| July 12, 2006: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C. |
| July 17, 2006: | The Board Senior Planner contacted the applicant and conveyed 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 August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;• 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties. |
| July 26, 2006: | The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August |

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

July 28, 2006 Chief Arborist Sultan provided a review comment letter on the request.

STAFF ANALYSIS:

- The applicant has submitted an alternate landscape plan that provides the location of the proposed landscaping.
- The request site is adjacent to residential uses to the north, south, east and west.
- The Chief Arborist in his memo recommended approval of the landscape special exception.
- Granting this request, subject to a condition that the applicant comply with the submitted landscape plan, will allow the site to be developed with a townhouse use and provide 15 out of the 20 landscaping points.
- The applicant has the burden of proof to establish that strict compliance with the requirements of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Robby Rahamni, 2816 Thomas Ave., #1, Dallas, TX

APPEARING IN OPPOSITION: Jack Irwin, 2708 Fairmount, Dallas, TX
Michele Costello, 2806 Thomas Ave., Dallas, TX

MOTION: Wise

I move that the Board of Adjustment in Appeal No. **BDA 056-190** hold this matter under advisement until **September 18, 2006** so that the original landscape plan that was submitted to the city be presented to the board.

SECONDED: Boyd

AYES: 4– Boyd, Moore, Wise Scott

NAYS: 0–

MOTION PASSED: 4 – 0

FILE NUMBER: BDA 056-191(J)

BUILDING OFFICIAL’S REPORT:

Application of Robby Rahmani for a special exception to the landscaping regulations at 2816 Thomas Avenue #4. This property is more fully described as lot 1E in City Block H/573 and is zoned PD-225 which requires mandatory landscaping for new

construction. The applicant proposes to construct a single family dwelling and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2816 Thomas Avenue #4

APPLICANT: Robby Rahmani

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a shared access development.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscaping requirements of PD 225, the State-Thomas Special Purpose District, upon making a special finding from the evidence presented that strict compliance with the requirements of this section will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

GENERAL FACTS:

- The landscaping provisions of Planned Development District No. 225, the State-Thomas Special Purpose District, require full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet, increases the floor area by more than 10% or 10,000 square feet, increases the number of buildings, or the number of stories on a lot.
- The applicant has submitted a landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the submitted landscape plan, the 1,604-square foot (0.0368 acres) site will be developed with a single family use (townhouse).
- According to DCAD, the site is developed with 2,357 square foot single family use constructed in 2005.
- The City of Dallas Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner that stated the following:
 - The applicant is seeking a landscape special exception, specifically seeking relief from the point requirements of PD No. 225.
 - The special exception request is triggered by new construction.
 - Deficiencies:

1. Required to earn 20 design points; Proposed alternate landscape plan provides enough design elements to earn only 15 points.
- Factors for consideration:
 1. Original landscape plan was approved under the misunderstanding that this project was one lot and not five individual lots,
 2. PD 225 allows the board to grant a special exception if strict compliance would cause substantial financial hardship without a corresponding benefit to the city.

BACKGROUND INFORMATION:

Zoning:

Site: PD 225 (State-Thomas Special Purpose District)
North: PD 225 (State-Thomas Special Purpose District)
South: PD 225 (State-Thomas Special Purpose District)
East: PD 225 (State-Thomas Special Purpose District)
West: PD 225 (State-Thomas Special Purpose District)

Land Use:

The 1,604-square foot subject site is developed with a single family uses. The areas to the north, south, east, and west are developed with multifamily and single family residential uses. To the northeast, there are some neighborhood retail uses.

Zoning/BDA History:

- | | |
|----------------|--|
| 1. BDA 989-269 | On August 16, 1999, the Board of Adjustment granted a variance to the parking regulations and a variance to the front yard setback regulations at 2812 Thomas. |
| 2. BDA 023-036 | On January 28, 2003, the Board of Adjustment granted a variance to the parking regulations for an enclosed parking space at 2812 Thomas. |

Timeline:

- | | |
|----------------|--|
| June 21, 2006 | The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. |
| July 12, 2006: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C. |

- July 17, 2006: The Board Senior Planner contacted the applicant and conveyed 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 August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.
- July 28, 2006 Chief Arborist Sultan provided a review comment letter on the request.

STAFF ANALYSIS:

- The applicant has submitted an alternate landscape plan that provides the location of the proposed landscaping.
- The request site is adjacent to residential uses to the north, south, east and west.
- The Chief Arborist in his memo recommended approval of the landscape special exception.
- Granting this request, subject to a condition that the applicant comply with the submitted landscape plan, will allow the site to be developed with a townhouse use and provide 15 out of the 20 landscaping points.
- The applicant has the burden of proof to establish that strict compliance with the requirements of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Robby Rahamni, 2816 Thomas Ave., #1, Dallas, TX

APPEARING IN OPPOSITION: Jack Irwin, 2708 Fairmount, Dallas, TX
Michele Costello, 2806 Thomas Ave., Dallas, TX

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 056-191** hold this matter under advisement until **September 18, 2006** so that the original landscape plan that was submitted to the city be presented to the board.

SECONDED: **Boyd**

AYES: 4– Boyd, Moore, Wise Scott

NAYS: 0–

MOTION PASSED: 4 – 0

FILE NUMBER: BDA 056-163(J)

BUILDING OFFICIAL’S REPORT:

Application of Masterplan for a variance to the front yard setback regulations, a variance to the height regulations, a variance to the parking regulations, and a special exception to the parking regulations at 1951 Empire Drive. This property is more fully described as Lot 7 in City Block 1/2143 and is zoned MF-2(A) which requires a front yard setback of 15 feet, limits the height of a structure to 26 feet (due to the residential proximity slope), requires a 20 foot setback for an enclosed parking space, and requires parking to be provided for new construction. The applicant proposes to construct a multi-family dwelling and provide a 10 foot front yard setback which would require a variance of 5 feet to the front yard setback regulations, to provide a height of 41 feet which would require a variance of 15 feet to the height regulations, provide a 15 foot setback for an enclosed parking space which would require a variance of 5 feet to the parking regulations, and to provide 10 of the required 13 parking spaces which would require a special exception of 3 spaces to the parking regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) and 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant variances and special exceptions.

LOCATION: 1951 Empire Drive

APPLICANT: Masterplan

REQUEST:

- A variance to the front yard setback regulations of 5 feet, a variance to the height regulations of 15 feet, and a special exception to the parking regulations of 2 spaces are requested in conjunction with constructing a multifamily structure.

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 (regarding the variance):

- The request site is currently undeveloped.
- The property is zoned MF-2(A). The property to the south is zoned PD 63, which requires any development on the request site to respect a 1-to-3 residential proximity slope.
- Residential proximity slope requires a setback for development on properties adjacent to residential districts at a specified ratio or distance. In this case, RPS applies to any portion of a structure over 26 feet.
- The proposed height of the multifamily structure is 41 feet, which would require a setback of 123 feet from the site of origination, the property line of the parcels that are causing the RPS.
- A structure that is 26 feet in height could be constructed without additional setbacks or a height variance.
- The plat map shows that the request site is 50 feet by 176.9 feet, or 8,845 square feet in area.
- The front yard setback in an MF-2(A) zoning district is 15 feet for a multifamily use. In a multifamily district, a yard that has street frontage is considered to be a front yard. In this case, the request site has a front yard adjacent to Empire Drive and Oram Street.
- The submitted site plan shows the proposed structure to provide a 15'1" front yard setback adjacent to Oram Street and a 10 foot front yard setback adjacent to Empire Drive.
- The original site plan showed the 5th proposed dwelling unit adjacent to the alley providing a setback of 15 feet to the property line and a setback of 20 feet to the center line of the alley. A variance for an enclosed parking space was in the original

request, but the revised site plan eliminated the 5th dwelling unit and the need for this variance.

- The site appears to be flat, rectangular in shape, and approximately 8,845 (50'x 176.9') in area.
- The MF-2(A) determines minimum lot area based upon the bedroom count of multifamily structures. The information on the number of bedrooms per unit was not provided with the application.
- DCAD indicates that the request site is developed with a 2,988 square foot residential structure that was in average condition built in 1938. The site visit shows that the structure has since been demolished.

GENERAL FACTS (regarding the Special Exception):

- The site plan has been revised to propose four dwelling units instead of five dwelling units shown in the original site plan.
- The number of required off-street parking spaces is determined by the proposed multifamily use. The request site is not subject to any special conditions of an ordinance or specific use permit.
- The Dallas Development Code states the parking requirements for the following uses:
 - 1 space per 500 square feet of multifamily dwelling units;
 - Not less than 1 or more than 2 ½ spaces are required for each dwelling unit in a multifamily structure under 36 feet in height.
- The proposed multifamily use requires 10 off-street parking spaces. The site plan provides 8 off-street parking spaces to be enclosed in 2-car garages.
- The applicant is proposing to provide 8 (or 80%) of the total 10 required off-street parking spaces.
- The driveways are 20 feet in length to the property line adjacent to Empire Drive. The driveways adjacent to Empire Drive can serve as 8 off-street parking spaces.
- In an MF-2(A) district, no required or excess parking may be placed in the required front yard.
- The site plan provides the 2 off-street parking spaces tandem in the driveway.
- The request site is not in a modified delta overlay.

BACKGROUND INFORMATION:

Zoning:

<u>Request Site:</u>	MF-2(A) (Multifamily)
<u>North:</u>	MF-2(A) (Multifamily)
<u>South:</u>	PD 63
<u>East:</u>	MF-2(A) (Multifamily)
<u>West:</u>	MF-2(A) (Multifamily)

Land Use:

The request site is undeveloped. The areas to the west, north, and south are developed with single family residential; the areas to the east and northeast are developed with multifamily 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 28, 2006: 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 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 30, 2006: The Board Administrator contacted the applicant via email 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 June 9th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, 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.

June 5, 2006: 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 Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

June 8, 2006: The applicant submitted additional information (Attachment A).

Transportation Engineer Nguyen provided a review comment sheet (Attachment B).

August 4, 2006 The applicant submitted a revised site plan (Attachment C).

STAFF ANALYSIS:

- Attachment A is a color drawing demonstrating the effect of RPS on the request site.
- Attachment B is review comment sheet from Transportation Engineer Nguyen indicating a recommendation of denial. He notes that it appears that the guest parking spaces either partially block the driveways or do not have sufficient clearance from the sidewalks or both. (Note that the initial application indicated the off-street parking issue was regarding a variance for the location of guest parking. The application was revised to seek a relief from the required number of spaces.)
- Attachment C is a revised site plan showing the proposed four dwelling units and the location of the eight off-street parking spaces.
- Granting this variance, subject to the submitted site plan, would allow a multifamily structure to encroach into the Empire Drive front yard setback by 5 feet, and encroach 15 feet in height into the Residential Proximity Slope.
- The applicant has the burden of proof in establishing the following in regards to the three variance requests (front yard setback, and height):
 - That granting the variances 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 appears to be flat, rectangular in shape, and approximately 8,845 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
 - The variances would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) zoning classification.
- Granting the off-street parking special exception, subject to the condition that the special exception automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued, would allow the construction of 4 units of multifamily residential.
- The applicant has the burden of proof in establishing the following as related to the request for a special exception of 2 parking spaces:
 - The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
- The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
- The availability of public transit and the likelihood of its use.
- The feasibility of parking mitigation measures and the likelihood of their effectiveness.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

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

APPEARING IN OPPOSITION: Winston Line, 6223 LaVista Dr., Dallas, TX
 John Oberpriller, 6219 LaVista Dr., Dallas, TX
 John McCrary, 6241 LaVista Dr., Dallas, TX
 Virginia McAllister, 5703 Swiss Ave., Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 056-163**, on application of Gregory J. Homes, represented by Masterplan, **deny** the variance to the front yard setback regulations 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: 3– Boyd, Moore, Wise
NAYS: 1– Scott
MOTION PASSED: 3 – 1

MOTION#2: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 056-163**, on application of Gregory J. Homes, represented by Masterplan, **deny** the variance to the height regulations 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: 3– Boyd, Moore, Wise
NAYS: 1– Scott
MOTION PASSED: 3 – 1

MOTION #3: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 056-163**, on application of Gregory J. Homes, represented by Masterplan, **deny** the variance to the off street parking regulations 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– Boyd, Moore, Wise, Scott
NAYS: 0–
MOTION PASSED: 4 – 0 (unanimously)

MOTION #4: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 056-163**, on application of Gregory J. Homes, represented by Masterplan, **deny** the special exception to the off street parking regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: Boyd
AYES:3 – Boyd, Moore, Wise
NAYS: 1– Scott
MOTION PASSED: 3 – 1

FILE NUMBER: BDA 056-171

BUILDING OFFICIAL’S REPORT:

Application of Jerry W. Mooty, represented by Michael R. Coker, for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 8545 Midway Road. This property is more fully described as a tract of land in City Block 5072 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 14 foot 6 inch fence in the required front yard setback which would require a special exception of 10 feet 6 inches to the fence regulations. In addition the applicant proposes to locate items in the visibility triangles which require a special exception to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6), and 51A-4.602 (d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 8545 Midway Road

APPLICANT: Jerry W. Mooty
Represented by Michael R. Coker

REQUESTS:

The following appeals have been made in this application on a site developed with a single family home:

1. A special exception to the fence height regulations of 10' 6" is requested to construct and maintain the following in the site's Midway Road 30' front yard setback:
 - a 7' high open wrought iron fence with 8' high stucco columns;
 - a solid stucco wall and solid stucco entry wing walls (of unspecified heights);
 - two, approximately 8' high arched vehicular entry gates with 10' high columns; and
 - a 14' 6" high, 6' wide decorative archway over a pedestrian gate.
2. Special exceptions to the visibility obstruction regulations are requested to locate and maintain portions of a proposed open wrought iron fence and/or solid stucco wall as described above in four, 20' visibility triangles at the two drive approaches onto the site from Midway Road.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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

- 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 site plans and elevations indicating that portions of the proposal would reach a maximum height of 14' 6" to account for the top of a decorative archway over a pedestrian gate.
- A scaled site plan was submitted with the application. This site plan denoted the following characteristics of the proposal:
 - the fence/wall in the site's front yard setback totals about 165' in length;
 - the fence/wall is shown to be parallel to Midway Road and linear in design located approximately on the site's front property line or about 12' from the pavement;
 - the vehicular gates are shown to be located about 9' from the front property line or about 21' from the pavement line;
 - what appears to be seven trees that would be located behind the proposed fence/wall.

- A scaled elevation document was submitted with the application. Note that this elevation did not specify building materials of any component of the fence/wall or gates.
- The applicant's representative submitted a revised site plan on July 31, 2006 which did not provide a scale (see Attachment A). This revised site plan denoted the following characteristics of the proposal:
 - the location of 10' columns, 7' fence, 8' columns and "bushes/shrubs (30" or less); and
 - the delineation of the four, 20' visibility triangles on the site.
- The applicant's representative submitted two revised elevation documents on July 31, 2006, neither of which provided a scale (see Attachment A). Beyond what was previously described earlier in this case report, these elevations specified a 7' high open wrought iron fence and entry gate, an 8' high solid stucco wall, solid stucco entry wing walls (of an unspecified height), and 8' high stucco columns.
- Neither the originally submitted site plan nor revised site plan notes how much of the proposal will be comprised of open wrought iron material or solid stucco material.
- Neither the originally submitted elevation nor revised elevation provides both a scale and building materials of the proposal.
- The fence/wall proposal is located on a site where there is no single family home that would front it. (The lots immediately south of the subject site are oriented east or west to Swananoah Road that runs north to south).
- The Board Administrator conducted a field visit of the site and surrounding area and noted that one other fence/wall located in what would appear to be a front yard setback. An approximately 8' high open metal fence with 10' high columns was noted on a lot two lots east of the subject site.

GENERAL FACTS (related to the visibility obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 The applicant has submitted site plans and elevations that indicate a "7' fence" and "8' columns" in the site's four 20'-visibility triangles at the two drive approaches. (None of the submitted plans and elevations indicates whether the "fence" in the visibility triangles would be comprised of solid stucco or open wrought iron materials.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter explaining the nature of the request along with revised site plan and elevations.

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 areas to the north, east, and south are developed with single family uses; and the area to the west 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 25, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 12, 2006: 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 requests;
 - 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 July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 4th 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.
- July 26, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied." The engineer added the following comments:
- "The fence/columns can be recessed or angled so that they can comply with the 20' x 20' driveway visibility triangles."
- July 31, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

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

- Although elevations have been submitted that denote an "open wrought iron fence" and a solid "stucco" wall, neither the originally submitted site plan nor revised site plan notes how much of the proposal will be comprised of these materials.
- Neither the originally submitted elevation nor revised elevation provides both a scale and building materials of the proposal.
- The fence proposal is located on a site where there is no single family home that would front it.
- The Board Administrator conducted a field visit of the site and surrounding area and noted that one other fence/wall located in what would appear to be a front yard setback. An approximately 8' high open metal fence with 10' high columns was noted on a lot two lots east of the subject site.
- As of August 7th, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 10' 6" (whereby a proposed open wrought iron fence and gates, solid stucco walls and columns, and pedestrian archway that exceeds 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 10' 6" with conditions imposed that the applicant complies with the submitted revised site plan and elevations would provide some assurance that the fence, gates, wall, and archway are constructed and maintained on the site as shown on these documents. But note that given the notations on these submitted documents, there is no assurance as to how much (or what length) of the proposal will be of solid stucco or open wrought iron.

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

- Neither the originally submitted site plan nor revised site plan notes how much of the proposal in the required visibility triangles will be comprised of open wrought iron material or solid stucco material.

- The Development Services Senior Engineer has submitted a review comment sheet recommending that the requests for special exceptions to the visibility obstruction regulations be denied commenting: “The fence/columns can be recessed or angled so that they can comply with the 20’ x 20’ driveway visibility triangles.”
- The applicant has the burden of proof in establishing the following:
 - That granting the special exceptions to the visibility obstruction regulations (whereby solid stucco columns and either a solid stucco wall or an open wrought iron fence to be located in the four drive approach visibility triangles) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted revised site plan and elevations, solid stucco columns and either a solid stucco wall or an open wrought iron fence would be “excepted” in the site’s four, 20’ drive approach visibility triangles.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Michael Coker, 2700 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: Thomas Alcala, 8408 Midway Rd., Dallas, TX

MOTION #1: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-171**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Wise

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-171**, on application of Jerry Mooty, represented by Michael Coker, **deny** the special exception to the height requirements 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: Wise

AYES: 3– Boyd, Moore, Scott,

NAYS: 1– Wise

MOTION PASSED: 3 – 1

MOTION #3: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-171**, on application of Jerry Mooty, represented by Michael Coker, **deny** the special exception to the visibility obstruction regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Wise

AYES: 4 – Boyd, Moore, Wise, Scott

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 056-180

BUILDING OFFICIAL’S REPORT:

Application of Stephen Akin for a special exception to the fence height regulations at 5110 Meaders Lane. This property is more fully described as Lot 1 in City Block 5517 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 the required front yard setback which would require a special exception of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602(a)(6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5110 Meaders Lane

APPLICANT: Stephen Akin

August 14, 2006 Public Hearing Notes:

- The applicant amended the originally submitted site plan and elevation by adding notations stating that the fence would be constructed with board on board cedar or equivalent.

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high fence/wall and gate in the site's Inwood Road 40' front yard setback on a site developed with a single family home.

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 elevation indicating a fence/wall that would reach a maximum height of 8'.
- The subject site has two front yard setbacks: one along Meaders Lane, the other along Inwood Road. The only front yard setback where a fence is proposed to exceed 4' in height is the site's Inwood Road front yard setback.
- The following additional information was gleaned from the submitted site plan:
 - The proposed fence/wall located in the Inwood Road 40' front yard setback would be approximately 145' in length parallel to Inwood Road and 35' in length on the two sides perpendicular to Inwood Road.
 - The proposed fence/wall is to be located about 5' from the Inwood Road front property line or about 30' from the Inwood Road pavement line.
- The following additional information was gleaned from the submitted elevation plan:
 - A notation of "Mixture of trees & crepe myrtle" on the street side of the fence/wall.
- Fence/wall materials have not been specified on either the submitted site plan or elevation.
- There appears to be only one single family home across the four lane divided Inwood Road that would have frontage to the proposed Inwood Road fence/wall, and one single family home across Meaders Lane that would have frontage to the proposed fence/wall in the Inwood Road front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Inwood Road (approximately 500 to the north and south of the site) and noted one other visible fences/entry gate above four (4) feet high which appeared to be located in the front yard setback. This fence/entry gate was located immediately southwest of the subject site and appeared to be 8' -12' in height.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 89-021, 5110 Meaders Lane (the subject site) On March 14, 1989, the Board of Adjustment granted a request for a special exception to the fence height regulations of 2' 7" and imposed the following conditions: The fence shall be setback 4 feet along Inwood Road; and evergreen shrubs planted on the outside of the fence along Inwood Road and Meaders Lane should be in compliance with the submitted landscape plan dated March 2, 1989. The case report stated that the request was made to locate a 6' high solid wood (board and batten style) fence with 6' 7" high columns approximately 4' from the property line along Inwood Road.

Timeline:

- June 22, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (A color photo submitted with the application and described as "Inwood Side: Proposed Look of Berm" will be available for review at the briefing/public hearing).
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 12, 2006: The Board Administrator contacted with the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the 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 July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 4th 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 26, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the entire proposed fence/wall in the site's Inwood Road front yard setback (about 145' long parallel to Inwood Road and 35' long on the two sides perpendicular to Inwood Road), and its location relative to the front property line (about 5' off) and pavement line (about 30' off).
- A scaled elevation has been submitted that denotes the maximum height of the proposed fence/wall (8'- 0") with a notation of landscape materials to be placed on the street side of the proposed fence/wall: "Mixture of trees & crepe myrtle".
- Neither the submitted site plan nor elevation specifies the building materials of the proposed fence/wall. The board may want the applicant to note the materials of the proposed fence/wall on the submitted site plan and/or elevation (or impose a condition that the fence/wall must be comprised of a certain type of material). This would ensure that the proposed fence/wall over 4' in height in the front yard setback is constructed and maintained of a particular type of building material. Otherwise, the fence/wall would only be held to a specific height and location, and in turn could be comprised of any material (chain link, chicken wire, solid board, solid brick, solid corrugated metal, plywood, open wrought iron, etc).
- There appears to be only one single family home across the four lane divided Inwood Road that would have frontage to the proposed Inwood Road fence/wall, and one single family home across Meaders Lane that would have frontage to the proposed fence/wall in the Inwood Road front yard setback.

- The Board Administrator conducted a field visit of the site and surrounding area along Inwood Road (approximately 500 to the north and south of the site) and noted one other visible fences/entry gate above four (4) feet high which appeared to be located in the front yard setback. This fence/entry gate was located immediately southwest of the subject site and appeared to be 8' -12' in height.
- As of August 7th, no letters had been submitted in support of 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 proposed 8' high fence/wall and gate of unspecified building materials) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed fence/wall and gate would be constructed and maintained as shown on these documents where, in this case, would be fence/wall of a specific height and in a specific location, but *not* of specific building materials.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Steven Akin, 5110 Meaders Ln., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 056-180**, hold this matter under advisement until **September 18, 2006** so that the applicant may come back with a detailed landscape plan.

SECONDED: **Scott**

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION: **Scott**

I move to adjourn this meeting.

SECONDED: **Moore**

AYES: 4 –Boyd, Moore, Scott, Wise

NAYS: 0 - None

MOTION PASSED: 4 – 0 (Unanimously)

3:22 P. M. - Board Meeting adjourned for **August 14, 2006.**

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.