

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
CITY HALL, COUNCIL CHAMBERS  
MONDAY, AUGUST 15, 2005**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair, Suzanne Smith, Panel Vice-Chair, Linda Wise, alternate member and Maria Gomez, alternate member

MEMBERS ABSENT FROM BRIEFING: David Chortek, regular member

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair, Suzanne Smith, Panel Vice-Chair, Linda Wise, alternate member and Maria Gomez, alternate member

MEMBERS ABSENT FROM HEARING: David Chortek, regular member

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

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

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**10:20 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 15, 2005** docket.  
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**1:15 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C June 13, 2005 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

**MOTION: Wise**

I move approval of the Monday, June 13, 2005, Board of Adjustment Public Hearing minutes.

**SECONDED: Smith**

**AYES: 4 – Madrigal, Smith, Wise, Gomez**

**NAYS: 0–**

**MOTION PASSED: 4 – 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** Unassigned

**REQUEST:** To waive the \$1,200.00 filing fee to be submitted in conjunction with a potential Board of Adjustment application

**LOCATION:** 3907 Odessa Street

**APPLICANT:** Virginia Lozano, represented by Ernest 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 the \$1,200.00 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.

**Timeline:**

- June 15, 2005      The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).
- June 21, 2005:      The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel C.
- June 21, 2005:      The Board Administrator wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);
  - the criteria/standard that the Board will use in their decision to approve or deny the request; and
  - 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.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

**APPEARING IN FAVOR:** Ernest Warnock, 4834 Sunny Hill Ln, Farmers Branch, TX  
Virginia Lozano, 3907 Odessa St., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Gomez

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

**SECONDED:** Wise

**AYES:** 4 – Madrigal, Smith, Wise, Gomez

**NAYS:** 0–

MOTION PASSED: 4 – 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA 034-136

**REQUEST:** To waive the two year limitation on a special exception to the parking regulations of 26 spaces that was granted, subject to conditions by Board of Adjustment Panel C on March 15, 2004

**LOCATION:** 3910 Gaston Avenue

**APPLICANT:** Robert Reeves of Robert Reeves and Associates, Inc.

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to board action:
  - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
  - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
  - The applicant may apply for a waiver of the two year limitation in the following manner:
    - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
    - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outline in the code.
- The applicant submitted a letter to staff requesting that the two year limitation on BDA 034-136 be placed on the miscellaneous agenda for consideration by Board of Adjustment Panel C (see Attachment A).
- The applicant seeks a waiver of the two year time limitation on a special exception to the parking regulations of 26 spaces that was approved by Board of Adjustment Panel C on March 15, 2004. The parking special exception was requested in conjunction with converting an existing 26,712 square foot building from office use to medical clinic use. The board imposed the following conditions with this request:

- The special exception of 26 spaces shall automatically and immediately terminate if and when the medical clinic use on the site is changed or discontinued.
- The special exception of 26 spaces shall be tied to the City's parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue.
- A copy of the parking agreement shall be submitted to the Board's Administrator once executed.
- A waiver of this two-year time period must occur before the Board considers the special exception request to the parking regulations submitted in conjunction with BDA045-272 on August 15th for property at 3910 Gaston Avenue – the same subject site of BDA034-136.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

**APPEARING IN FAVOR:** Robert Reeves, 900 Jackson St., #160, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Smith

I move that the board of adjustment waive the two year limitation on a parking special exception that was approved, subject to conditions.

**SECONDED:** Wise

**AYES:** 4 – Madrigal, Smith, Wise, Gomez

**NAYS:** 0–

**MOTION PASSED:** 4 – 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 4**

**FILE NUMBER:** BDA045-263

**REQUEST:** To reimburse the \$1,250.00 filing fee submitted in conjunction with a potential Board of Adjustment application

**LOCATION:** 4037-39 Gilbert Avenue

**APPLICANT:** Alberto Galue and Russell Rippamonti

**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 reimbursement of the \$1,250.00 filing fee submitted in conjunction with BDA045-263 (see Attachment A).

## **Timeline:**

- June 15, 2005      The applicant submitted an application to the Board of Adjustment for a special exception to the landscape regulations and a request to reimburse the filing fee submitted in conjunction with this application.
- July 15, 2005:      The Board of Adjustment Secretary randomly assigned the landscape special exception and fee reimbursement requests to Board of Adjustment Panel C.
- July 16, 2005:      The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application and the fee reimbursement request;
  - 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 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 22, 2005      The applicant submitted a letter to the Board Administrator that provided additional information pertaining to the fee reimbursement request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

**APPEARING IN FAVOR:**                      Russell Rippamonti, 4039 Gilbert Ave., Dallas, TX  
Alberto Galue, 4037 Gilbert Ave., Dallas, TX  
**APPEARING IN OPPOSITION:**      No one

**MOTION:**      **Wise**

I move that the Board of Adjustment reimburse the filing fee to be submitted in conjunction with a potential board application.

**SECONDED:**      **Smith**  
**AYES:**      4 – Madrigal, Smith, Wise, Gomez  
**NAYS:**      0–  
**MOTION PASSED:**      4 – 0 (unanimously)

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**FILE NUMBER:**      BDA 045- 255

**BUILDING OFFICIAL’S REPORT:**

Application of Leetha Buttler, represented by Willie McDowell, for a special exception to the side yard setback regulations at 3255 Kinmore Street. This property is more fully described as Lot 14 in City Block K/2111 and is zoned R 7.5 (A) which requires a 5 foot side yard setback. The applicant proposes to maintain a carport and provide a 3 foot setback which would require a special exception of 2 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:**                      3255 Kinmore Street

**APPLICANT:**                      Leetha Buttler  
Represented by Willie McDowell

**REQUEST:**

- A special exception to the side yard setback regulations of 2’ is requested in conjunction with maintaining a carport on a site developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

### **GENERAL FACTS:**

- A 5'-side yard setback is required in the R-7.5(A) zoning district.
- The existing carport is located 2' from the site's eastern side property line.
- The existing carport has the following characteristics:
  - 20' x 10' (or 200 square feet) in area;
  - constructed of metal materials; and
  - 9' 5" in height.
- The subject site is 149' x 50' (or 7,450 square feet) in area.
- According to DCAD, the site is developed with a single family home in fair condition built in 1925 with 1,169 square feet of living area, and a 616 square foot detached garage.
- Building Inspection states that no permit was issued by the City for the existing carport on this site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: R-7.5 (A) (Single family residential 7,500 square feet)  
North: R-7.5 (A) (Single family residential 7,500 square feet)  
South: R-7.5 (A) (Single family residential 7,500 square feet)  
East: R-7.5 (A) (Single family residential 7,500 square feet)  
West: R-7.5 (A) (Single family residential 7,500 square feet)

**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:**

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| 1. Unassigned, 3255 Kinmore (the subject site) | On March 14, 2005, the Board of Adjustment Panel C waived the filing fee to be submitted in conjunction with a potential board appeal. |
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**Timeline:**

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|----------------|---|
| June 10, 2005  | 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 14, 2005: | 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 any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."  |
| July 15, 2005: | The Board Administrator contacted the applicant's representative and shared the following information: <ul style="list-style-type: none"><li>• the public hearing date and panel that will consider the application;</li><li>• the criteria/standard that the board will use in their decision to approve or deny the request;</li><li>• 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;</li><li>• the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;</li><li>• the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;</li><li>• 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</li><li>• that the board will take action on the matter at the August public hearing after considering the information/evidence and</li></ul> |

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

July 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- Granting this special exception would allow the carport to remain in its current location which is 3' away from the side property line (or 2' into the required 5' side yard setback).
- The applicant has submitted a petition from 9 neighbors/owners who support the request. (This petition has been included in the case report).
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport's location in the side yard setback; would require the carport in the side yard setback to be retained in its current design, materials, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
  1. Compliance with the submitted site plan and elevation is required.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. All applicable building permits are obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Smith**

I move that the Board of Adjustment **grant** application **BDA 045-255** 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:

- The carport must remain open at all times;

- There must be no lot-to-lot drainage in conjunction with this proposal;
- All applicable building permits must be obtained;
- Compliance with the submitted site plan and elevation is required; and
- No item (other than a motor vehicle) may be stored in the carport.

**SECONDED: Gomez**

**AYES: 4 – Madrigal, Smith, Wise, Gomez**

**NAYS: 0–**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA 045-265**

**BUILDING OFFICIAL’S REPORT:**

Application of Randall Goss, represented by Ray Martinez, Ford and Harrison, for a special exception to the fence regulations at 9863 Rockbrook Drive. This property is more fully described as Lot 32 in City Block 5543 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-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION: 9863 Rockbrook Drive**

**APPLICANT: Randall Goss  
Represented by Ray Martinez, Ford and Harrison**

**REQUEST:**

- A special exception to the fence height regulations of 4’ is requested in conjunction with (according to the application) the following:
  - “Compliment the fence by maintaining 8’-00” in height brick wall in south corner of property with existing brick caps; 6’-00” in height wrought iron gate will be installed between existing columns; construct alley fence with max. height of 8’-00”.”

**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.
- A document has been submitted with the application with a series of drawings that include the following:
  - two fence sections;
  - one column section;
  - one wall section,
  - a gate elevation;
  - an "alley wood fence" elevation; and
  - a site plan.

The document does not make an association between the location of any of the section/elevation drawings on this document with the site plan on the same document.

- On July 20<sup>th</sup>, the applicant's representative met with the Board Administrator and indicated that a revised site plan would be submitted that more clearly detailed what was being requested of the board. The applicant's representative informed the Board Administrator at this meeting that he would submit a revised site plan that would clearly portray the proposal (a plan that would clearly show and detail any fence, column, gate that would exceed 4' in height and be located in either the 40' Rockbrook Drive or 40' Meadowood Road front yard setback). The administrator restated that a revised plan submitted before July 27<sup>th</sup> could be analyzed by staff and discussed at the July 27<sup>th</sup> staff review team meeting, and that August 5<sup>th</sup> was the deadline to submit any revised plan (or additional information) that would be incorporated into the board's docket (without staff analysis).
- On July 25<sup>th</sup>, the applicant's representative left a message with the Board Administrator stating that the applicant's architect was out of town which would prevent the creation/submission of a revised plan for staff analysis purposes and for the July 27<sup>th</sup> staff review team meeting.
- There are three single family homes would have direct/indirect frontage to any proposed fence, wall, columns or gate to be located along Rockbrook Drive. The home immediately to the east has an approximately 6'-high open chain link fence, the homes immediately northeast and southeast have no fences higher than 4' in the Rockbrook front yard setback.
- There are no single family homes that would have direct/indirect frontage to any proposed fence, wall, columns or gate to be located along Meadowood Lane.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fence which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
  - Along Rockbrook Drive:
    - An approximately 6' high open chain link fence that is located east of the site (and a result of BDA88-063)
    - An approximately 6' high open wrought iron fence with 6.5' high brick columns and 10' high brick columns about 20' from the pavement line that is located two lots south of the site (and a result of BDA045-222);
    - An approximately 6.5' high open metal fence behind significant landscaping that is located two lots southwest of the site (and a result of board action on BDA 92-051);

- Along Meadowood Road:
  - An approximately 6' high open fence behind significant landscaping that is located immediately east (and a result of board action on BDA012-139).

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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|--|--|
| 1. BDA034-178, 9863 Rockbrook Drive (the subject site) | On April 18, 2005, the Board of Adjustment Panel C denied a request to the fence height regulations of 4' without prejudice. The case report stated that the request was made to construct a 6'-high decorative wrought iron fence with 6'-6" high masonry columns, and 6'-high wrought iron entry gates in the required Rockbrook Drive and Meadowood Road front yard setbacks; and maintaining a portion of an existing 8' high masonry wall in the Rockbrook Drive front yard setback.  |
| 2. BDA034-177, 9863 Rockbrook Drive (the subject site) | On April 18, 2005, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 23 feet, and imposed the following conditions: 1) compliance with the submitted site/landscape plan and elevation is required; and 2) relocation of the air conditioning units outside a required setback. The case report states that variances were requested to maintain an approximately 700 square foot portion of a two-story single family home, and to add an a/c unit both either located or to be located in the Meadowood Road front yard setback. |
| 3. BDA023-138, 9863 Rockbrook Drive (the subject site) | On April 19, 2004, the Board of Adjustment Panel C denied a request for a variance to  |

- the front yard setback regulations of 23 feet without prejudice. The staff had recommended that the board grant the request, subject to compliance with the submitted site plan. The case report states that variances to the front yard setback regulations were requested to maintain an approximately 700 square foot portion of a two-story single family home, and to add an a/c unit both either located or to be located in the Meadowood Road front yard setback.
4. BDA88-063, 9844 Rockbrook Drive (the lot at the southeast corner of Rockbrook Drive and Meadowood Road) On May 10, 1988, the Board of Adjustment followed the staff recommendation and granted the appeals as requested for a variance to the front yard setback regulations of 30' and a "variance" to the fence regulations of 4 feet. The case report indicates that the front yard variance was requested for to maintain a swimming pool in the Meadowood Drive front yard setback, and an 8' high chain link fence.
  5. BDA95-063, 9815 Rockbrook Drive (the lot located four lots south of the subject site) On May 23, 1995, the Board of Adjustment followed the staff recommendation and denied a request for a variance to the height regulations of 3', granted a special exception to the single family regulations, and denied a request for a special exception to the fence height regulations of 7 feet. The case report indicated that the height variance was requested in conjunction with a home that would reach 53' in height, a special exception to the single family regulations for a home with an additional kitchen in a cabana, and a fence special exception to erect a 10' high open metal fence with 11' high masonry columns.
  6. BDA92-051, 9839 Rockbrook Drive (the lot located two lots southwest of the subject site) On June 23, 1992, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence height regulations of 4' 4". The board imposed the following condition: That the gate and driveway meet all requirements of the visibility obstruction provided in the Dallas Development Code. The case report indicated that request was to maintain a wrought iron and chain link fence with "an average height of 7 feet with a maximum height of 8' 4").
  7. BDA012-139, 9908 Rockbrook Drive (the lot located at the northeast corner of Rockbrook Drive and Meadowood Road) On February 26, 2002, the Board of Adjustment Panel A followed the staff recommendation and granted a request for a special exception to the fence height regulations of 2' 6" and imposed the

following conditions: Compliance with the submitted site/fence elevation plan and landscape plan is required; and the existing landscaping (hedge) shall remain in place along the entire length of the 6' high vinyl coated (black) cyclone fence along Meadowood Road, or when needed must be replaced and retained with minimum 6' height at maturity such that the entire length of the fence will not be visible from Meadowood Road. The case report states that the special exception was requested in conjunction with erecting a "6' 0" high vinyl coated (black) cyclone fence" in the Meadowood Road front yard to replace a "6' 6" high existing galvanized cyclone fence." (The request did not include any proposed fence in the Rockbrook Drive front yard setback).

8. BDA989-191, 9662 Rockbrook Drive (the lot located three lots northeast of the subject site)

On April 20, 1999, the Board of Adjustment Panel B followed the staff recommendation and denied a request for a special exception to the fence height regulations of 6 feet. The case report indicated that request was to construct an 8' high open metal fence, 8', 8" high columns, and 10' high open metal entry gates.

9. BDA045-222, 9824 Rockbrook Drive (the lot located two lots southeast of the subject site)

On June 13, 2005, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 7' 2". The board imposed the following condition: Compliance with the submitted site plan dated June 13, 2005 and fence elevation is required. The case report indicated that request was to maintain an open wrought iron picket fence with brick columns, and entry gate in the 40'-Rockbrook Drive front yard setback on a site developed with a single family home.

**Timeline:**

- June 20, 2005      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 14, 2005:      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."

- July 18, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- According to the applicant's representative, a scaled site plan that delineates what is being requested of the board with regard to a fence, wall, column, and/or gate over 4' in height and located in the Rockbrook Drive and Meadowood Road front yard setbacks could not be submitted for staff review and analysis by the July 27<sup>th</sup> staff review team meeting given that applicant's architect's vacation schedule. As a result, these basic components of the application have not been documented in plan form and/or subsequently described.
- Minimal information can be gleaned from the application itself. The application states that a request has been made to: "compliment the fence by maintaining 8'-00" in height brick wall in south corner of property with existing brick caps; 6'-00" in height

wrought iron gate will be installed between existing columns; construct alley fence with max. height of 8'-00".

- If the Board were to grant the special exception, subject to the submitted document (which has a series of elevations, sections, and a site plan drawing) there is no documentation or limitations as to where the various open and solid wood fences, and or columns could be located on the site.
- In addition, the Board may want to establish that any plan submitted by the applicant regarding this appeal is not in conflict with the condition imposed by the Board in a variance granted to the front yard regulations on the site (BDA034-177), specifically, the site/landscape plan and elevation submitted in conjunction with this variance request, before imposing any plan or elevation as a condition to this fence height special exception request (BDA045-265),.
- As of August 5<sup>th</sup>, no letters had been submitted to staff either in support or in opposition to the proposal.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Smith**

I move that the Board of Adjustment **grant** application **BDA 045-265** 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 revised submitted site plan/fence elevation/wall elevation is required.

**SECONDED: Gomez**

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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**FILE NUMBER:** BDA 045-267

**BUILDING OFFICIAL’S REPORT:**

Application of Pittman Haymore for a special exception to the landscape regulations at 2999 Turtle Creek Blvd. This property is more fully described as a Lot 4 in City Block A/1031 and is zoned P.D. 193 O-2 D which requires landscaping to be provided with new construction. The applicant proposes to construct a building and provide an

alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 2999 Turtle Creek Boulevard

**APPLICANT:** Pittman Haymore

**REQUEST:**

- A special exception to the landscape regulations is requested/triggered in conjunction with constructing an office structure.

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the sidewalk requirements at the corner of Turtle Creek Boulevard and Dickason Street and a section along Gillespie Street, and relief from the location of street trees along Turtle Creek Boulevard.
- The City of Dallas Chief Arborist identified the following ways in which the alternate landscape plan does not comply with the landscape regulations:
  - The applicant is required to provide a 6'-wide sidewalk between 5' and 12' from the back of curb.  
The applicant is *proposing* to retain a 6'-wide sidewalk located at the back of curb at the corner of Turtle Creek Boulevard and Dickason; and to retain the existing 4'-wide sidewalk located between 2' – 4' from the back of the curb along a 35'-long section of the site's 130'-long Gillespie frontage.
  - The applicant is required to provide 1 street tree for every 25' of street frontage between 2.5' – 5' from the back of the curb (which in this case would be 8 trees)  
The applicant is *proposing* to provide 3 existing Post Oaks at the corner of Turtle Creek Boulevard and Dickason Street, as well as 13 trees in a row along the southern property line where the property abuts an adjacent building.

- The City of Dallas Chief Arborist identified the following “Factors for Consideration:”
  - By curving the sidewalk to the back of curb at the corner of Turtle Creek Boulevard and Dickason Street, it allows more room for preserving the root system of the largest of the three existing Post Oaks (this is especially helpful with maintaining the existing grade because installing the sidewalk in the required location would necessitate a retaining wall and further disturbance to the existing Post Oak).
  - Maintaining the existing 4'-wide sidewalk along a section of Gillespie Street allows several small existing Elms and other trees to remain that create a nice canopy over the existing sidewalk.
  - The applicant wants to “swing” the Turtle Creek Boulevard street trees to the section of the southern property line that is perpendicular to Turtle Creek to preserve a view of the building.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a modified landscape plan that the applicant states is the result of input and suggestions from the City of Dallas Chief Arborist and the city arborist responsible for this section of the city;
  - a letter that explained in further detail why the request should be granted;
  - support letters from area associations; and
  - photos of the site and surrounding area.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (O-2 D Subdistrict) (Planned Development District, Office Dry)  
North: PD No. 193 (O-2 D Subdistrict) (Planned Development District, Office Dry)  
South: PD No. 193 (O-2 D Subdistrict) (Planned Development District, Office Dry)  
East: PD No. 193 (O-2 D Subdistrict) (Planned Development District, Office Dry)  
West: PD No. 193 (O-2 D Subdistrict) (Planned Development District, Office Dry)

**Land Use:**

The approximately 2.4-acre subject site is being developed with an office use. The areas to the north, east, south, and west are developed predominantly with office 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:**

June 24, 2005: 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 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 15, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the 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 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

### **STAFF ANALYSIS:**

- The submitted landscape plan is deficient from fully complying with the landscape regulations of PD No. 193 with regard to sidewalk requirements at the corner of Turtle Creek Boulevard and Dickason Street and along about ¼ of the site's

Gillespie Street frontage, and with regard to the street tree location along Turtle Creek Boulevard.

- Granting this request (subject to a condition that the applicant complies with the submitted revised landscape plan) will result in allowing the site to deviate from the PD No. 193 landscape regulations in the following ways:
  - The applicant could provide a 6'-wide sidewalk at the back of the curb at the corner of Turtle Creek Boulevard and Dickason Street and could provide a 4'-wide sidewalk along a portion of the site's Gillespie Street frontage when a 6'-wide sidewalk is required to be located between 5'-12' from the curb.
  - The applicant could maintain along Turtle Creek Boulevard 3 large existing Post Oaks at the corner of Turtle Creek Boulevard and Dickason Street as well as provide 13 trees in a row that are located perpendicular to Turtle Creek Boulevard when only 8 street trees are required to be located between 2.5 and 5' from the back of the curb of the street, parallel to the street.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: No one  
APPEARING IN OPPOSITION: No one

**MOTION: Smith**

I move that the Board of Adjustment **grant** application **BDA 045-267** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised landscape plan is required.

**SECONDED: Gomez**  
**AYES:** 4 – Madrigal, Smith, Wise, Gomez  
**NAYS:** 0–  
**MOTION PASSED:** 4 – 0 (unanimously)

\*\*\*\*\*  
**FILE NUMBER:** BDA 045-276

**BUILDING OFFICIAL'S REPORT:**

Application of Stephen M. Sullivan for a variance to the front yard setback regulations at 8568 Bargiames Lane. This property is more fully described as Lot 2 in City Block C/5445 and is zoned R-7.5(A) which requires a 25 foot front yard setback. The applicant proposes to construct a swimming pool and provide a 5 foot front yard setback which would require a variance of 20 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 8568 Bargiames Lane

**APPLICANT:** Stephen M. Sullivan

**REQUEST:**

- A variance to the front yard setback regulations of 20 feet\* is requested in conjunction with constructing an approximately 920 square foot swimming pool on a lot developed with a single family home.

\* Note that there is a discrepancy from the provided setback indicated in the Building Official's Report (5') verses the provided setback indicated on the revised site plan (13').

**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.

**GENERAL FACTS:**

- A 25'-front yard setback is required in the R-7.5(A) zoning district.
- The approximately 18,000 square foot subject site is located near the center of the 8500 block of Bargiames Lane between Lanshire Drive and Forest Trail.
- The site/lot has two, 25'-front yard setbacks since the site is a full "block-deep" (or about 155' in depth) with its northwestern edge along Bargiames Lane and its southeastern edge along Square Drive.
- The variance is requested to construct a swimming pool to be located either 5' (according to the Building Official's Report) or 13' (according to a revised site plan) from the site's front property line on Bargiames Lane. Nothing is proposed to be located or is located in the Square Drive 25'-front yard setback.
- The site plan submitted with the application did not provide the location of the swimming pool on the site. However, a revised site plan was submitted to the Board

Administrator on July 25<sup>th</sup> that showed the location of the pool relative to the entire lot.

- If information in the Building Official's Report is correct, a 20' front yard variance is needed for the pool. If information on the revised site plan is correct, a 12' front yard variance is needed for the pool.
- According to a letter submitted by the applicant, the pool is approximately 23' x 40' (or 920 square feet) in area.
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
  - If a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, the following structures in the yard along that frontage are governed by the rear yard regulations: swimming pool, game courts, fences, garages, accessory storage buildings."
- Building Inspection has interpreted that access to the site along Bargiames Lane is NOT prohibited by plat nor can be prohibited by the city, hence the need to request a variance for the swimming pool on this site.
- The subject site is developed with, according to DCAD records, the following:
  - a single family home that is in excellent condition, built in 2000 with 3,703 square feet of living area; and
  - a 778 square foot attached garage.
- The site is sloped, somewhat irregular in shape (172' on the northeast, 140' on the southeast, 155' on the southwest, and 90' on the northwest), and approximately 18,000 square feet in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A and B). This information included the following:
  - a revised site plan that indicates the location and size of the swimming pool that is proposed to be located on the site in the Bargiames front yard setback; and
  - a letter that provides additional details about the proposal.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5 (A) (Single family district 7,500 square feet)  
North: R-7.5 (A) (Single family district 7,500 square feet)  
South: R-7.5 (A) (Single family district 7,500 square feet)  
East: R-7.5 (A) (Single family district 7,500 square feet)  
West: R-7.5 (A) (Single family district 7,500 square feet)

**Land Use:**

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

**Zoning/BDA History:**

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

**Timeline:**

June 24, 2005      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 14, 2005:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 19, 2005:      The Board Administrator wrote the applicant a letter that 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 July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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, 2005      The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005:      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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

August 3, 2005      The applicant submitted additional information beyond what was submitted with the original application (see Attachment B).

**STAFF ANALYSIS:**

- The site has two, 25'-front yard setbacks, is sloped, somewhat irregular in shape (172' on the northeast, 140' on the southeast, 155' on the southwest, and 90' on the northwest), and approximately 18,000 square feet in area.
- The applicant has submitted a petition from 18 neighbors/owners who support the request. (This petition has been included in the case report).
- If the Board were to grant the front yard variance request, subject to the submitted revised site plan, the encroachment into the site's front yard setbacks would be limited to a portion of an approximately 920 square foot (23' x 40') swimming pool located in the Bargiames Lane-front yard setback, resulting in a 13' front yard setback.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR:            No one

APPEARING IN OPPOSITION:    No one

**MOTION: Smith**

I move that the Board of Adjustment **grant** application **BDA 045-276** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED: Gomez**

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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**FILE NUMBER:**    BDA 045-278

**BUILDING OFFICIAL'S REPORT:**

Application of Steven Halpin, represented by Carney Engineering Co., for a special exception to the parking regulations at 5631 LBJ Frwy. This property more fully described as Lot 2 in City Block A/7020 and is zoned RR which requires parking to be provided with new construction. The applicant proposes to construct a retail building and provide 43 of the required 51 parking spaces which would require a special exception of 8 parking spaces or 15.7%. Referred to the Board of Adjustment in

accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5631 LBJ Frwy

**APPLICANT:** Steven Halpin  
Represented by Carney Engineering Co

**REQUEST:**

- A special exception to the off-street parking regulations of 8 spaces (or 16 percent) is requested in conjunction leasing 1,533 square feet of an 8,600 square foot strip center with restaurant use (Starbucks Coffee). The site is developed as a strip center that is only partially leased.

**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:**

- The Dallas Development Code requires that the following parking requirements for the existing and proposed uses in the existing center:
  - 1 space per 200 square feet for retail use; and
  - 1 space per 100 square feet of restaurant use.
- The applicant is proposing to provide 43 (or 84%) of the total 51 required off-street parking spaces for the 8,600 square foot center the applicant plans to occupy with 7,067 square feet of retail use and 1,533 square feet of restaurant use.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: RR (Regional retail)  
North: RR (Regional retail)  
South: GO (A) (General office)  
East: RR (Regional retail)  
West: RR (Regional retail)

**Land Use:**

The subject site is developed with a partially leased strip center. The areas to the north, east, and west are developed with retail uses; and the area to the south is the LBJ Freeway.

**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 24, 2005      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 14, 2005:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 15, 2005:      The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 27, 2005:      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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application on July 29, 2005. The engineer commented that he has no objections to the request. The engineer made the following comments:
1. Site visit on 7/25/05

2. The submitted parking demand study on June 17-20, 2005 for Starbucks in Plano, Texas.
3. The submitted parking analysis indicating that the morning peak demand for parking spaces for Starbucks does not happen simultaneously with the other two retail uses.

**STAFF ANALYSIS:**

- 84 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing a restaurant use on the site.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the restaurant use on the site is changed or discontinued, would allow the leasing of the strip center on this site with a 1,533 square foot restaurant use.
- The Development Services Transportation Engineer has indicated that he has no objections to the request. The engineer has made this conclusion given his site visit and the applicant's parking study for a Starbucks in Plano, Texas. The engineer agrees with the conclusions in this study stating that the morning peak demand for parking spaces for Starbucks does not happen simultaneously with the other two retail uses in the strip center.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: No one  
APPEARING IN OPPOSITION: No one

**MOTION: Smith**

I move that the Board of Adjustment **grant** application **BDA 045-278** 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:

- The special exception shall automatically and immediately terminate if and when the restaurant use on the site is changed or discontinued.

**SECONDED: Gomez**

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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**FILE NUMBER:** BDA 045- 215

**BUILDING OFFICIAL'S REPORT:**

Application of James R. Schnurr, Winstead Sechrest & Minick P.C., for a special exception to the fence height and the front yard setback regulations at 9039 Briarwood Lane. This property is more fully described as Lot 1 in City Block 2/5575 and is zoned R-1 Ac (A) which limits the height of a fence in the front yard to 4 feet and requires a 40 foot front yard setback. The applicant proposes to construct an 11 foot fence in the required front yard which will require a special exception of 7 feet and to construct a guardhouse in the required front yard and provide a 3 foot setback which will require a variance of 37 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

**LOCATION:** 9039 Briarwood Lane.

**APPLICANT:** James R. Schnurr, Winstead Sechrest & Minick P.C

**REQUESTS:**

- The following appeals have made been in this application:
  1. A special exception to the fence height regulations of 7 feet\* is requested in conjunction with constructing the following in the 40'-Shadywood Lane and Briarwood Lane front yard setbacks on a site developed with a single family home:
    - a 9'-high open wrought iron fence,
    - a 9'-high stone wall, and
    - two, 9'-high solid wood gates with 10.5'-high columns.(This fence would replace a 7'-high open iron fence that exists on the site).
  2. A variance to the front yard setback regulations of 37' is requested in conjunction with constructing an approximately 48 square foot, 12'-high "guard house" in the 40'-Briarwood Lane front yard setback.

\* Note that there is a small discrepancy from the maximum fence height indicated in the Building Official's Report (11') verses the maximum height of the fence, wall, gates and columns indicated on the submitted site/landscape plan and elevation (10.5').

**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 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.

**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 submitted site plan makes the following notations:
  - The proposed fence is to be located parallel to Shadywood Lane and Briarwood Lane with two recessed vehicular entryways;
  - The proposed 9'-high open iron fence is shown to be approximately 325 feet long along Shadywood Lane and approximately 300 feet long along Briarwood Lane;
  - The proposed 9'-high solid stone wall is shown to be approximately 62' long at the intersection of Shadywood Lane and Briarwood Lane, 40' long at the Shadywood Lane entryway; and approximately 60' long at the Briarwood Lane entryway; and
  - The proposed fence and stone wall are shown to be located on the property lines and approximately 16' from the Shadywood Lane and Briarwood Lane pavement lines.
- The submitted elevation plan makes the following notations:
  - An elevation indicating 9'-high "conceptual open iron fence section;"
  - An elevation indicating two 9'-high "solid wood gates" with 10.5'-high entry gate columns;
  - An elevation indicating a 9'-high solid wall (materials not specified).
- A "9039 Briarwood Landscape Plan" has been submitted in conjunction with the application that details the landscape materials to be located adjacent to the proposed fence and wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following which appeared to be located in the front yard setbacks. (Note that these locations and dimensions are approximations):
  - A 6'-high open metal fence with 7' high brick columns east of the site;
  - A 6'-high open metal fence two lots southwest of the site.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - A letter that explained in further detail why the request should be granted; and
  - Photos of the site and surrounding area.In addition, the applicant has submitted two letters of support of the requests on the site which will be presented to the board at the briefing/public hearing.

**GENERAL FACTS (related to the front yard variance):**

- A 40'-front yard setback is required in the R-1(A) zoning district.
- The site/lot has two, 40'-front yard setbacks, one along Shadywood Lane, the other along Briarwood Lane.
- The variance is requested to construct a "guard house" to be located 3' from the site's front property line on Briarwood Lane. No structure is proposed to be located in the Shadywood Lane-front yard setback.
- The subject site is developed with, according to DCAD records, the following:
  - A single family home built in 1996 with 13,845 square feet of living area;
  - A 576 square foot "outbuilding;"
  - A 913 square foot "attached garage;"
  - A 560 square foot "detached servants quarters;" and
  - A 560 square foot "detached garage."
- The site is sloped, irregular in shape (363' on the west, 157' on the north, 315' on the south, and 408' on the south), and approximately 2 acres in area.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - A letter that explained in further detail why the request should be granted; and
  - Photos of the site and surrounding area.In addition, the applicant has submitted two letters of support of the requests on the site which will be presented to the board at the briefing/public hearing.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

- |   |   |
|---|---|
| 1. BDA 95-036, 9039 Briarwood Lane (the subject site) | On March 28, 1995, the Board of Adjustment granted a request for a special exception to fence height regulations of 3' 9", subject to the following conditions: 1) Compliance with the submitted site plan, |
|---|---|

landscape plan, and elevation is required; 2) compliance with the provision that no protected trees (8 inch caliper or greater) can be removed without a permit. The case report states that the request was made in conjunction with constructing approximately 825 linear feet of a 7' 3" open metal fence with metal posts located approximately 7' on center along Briarwood Lane and Shadywood Lane; and an approximately 50 linear foot 7' 6" solid stone fence along Shadywood Lane.

2. BDA 89-047, 9039 Briarwood Lane (the subject site)

On June 13, 1989, the Board of Adjustment Panel A denied a request to erect a 7' 9" fence without prejudice. It appears from information within the case file that the fence was to be constructed of open metal cyclone material.

3. BDA 034-162, 4618 Shadywood Lane (the lot northwest of the subject site)

On May 18, 2004, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6', subject to the submitted site plan and elevation. The case report states that the request was made to construct a 7.5'-high solid wood fence with 8'-high wood columns and a 8'-high wood gate with 10'-high entry columns in the Northwest Highway front yard setback.

**Timeline:**

July 15, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 15, 2005: 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 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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, 2005      The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005:      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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

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

- A scaled site plan and landscape plan has been submitted that documents the location of the proposed fence, wall, gates, and columns relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed fence and wall relative to the lot.
- A scaled elevation has been submitted that documents the height of the proposed fence and wall (9'), entry gates (9') and entry gate columns (10.5'), and the building materials (open iron fence, solid wood gates).
- The proposed fence and wall are to be constructed of durable material (open iron and stone).
- As of August 5th, two letters had been submitted to staff in support of the proposed fence and wall, and no letters in opposition.
- Granting this special exception of 7' with conditions imposed that the applicant complies with the submitted site plan, landscape plan and elevation would assure that the proposed fence, gates, and wall are constructed and maintained as shown on these documents.

**STAFF ANALYSIS (related to the front yard variance request):**

- The site/lot has two, 40'-front yard setbacks, and is sloped, irregular in shape (363' on the west, 157' on the north, 315' on the south, and 408' on the south), and approximately 2 acres in area.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the encroachment into the site's front yard setbacks would be limited to an approximately 48 square foot "guard house" located in the Briarwood Lane front yard setback, resulting in a 3' front yard setback.
- As of August 5th, two letters had been submitted to staff in support of the proposed guard house, and no letters in opposition.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

**APPEARING IN FAVOR:** Jimmy Schnurr, 5400 Renaissance Tower, 1201 Elm St., Dallas, TX  
 Ron Gaswirth, 1601 Elm Street, Dallas, TX

**APPEARING IN OPPOSITION:** John Evans, 9030 Briarwood, Dallas, TX  
 LaRue Henry, 4803 Shadywood Ln, Dallas, TX  
 Susan Echt, 4737 Shadywood Ln., Dallas, TX  
 Katharine Felder, 4722 Shadywood Ln., Dallas, TX  
 Janet Stone, 4922 W NW Highway, Dallas, TX

**MOTION: Smith**

I move that the Board of Adjustment in Appeal No. **BDA 045-215** hold this matter under advisement until **November 14, 2005**.

**SECONDED: Wise**

**AYES: 4 – Madrigal, Smith, Wise, Gomez**

**NAYS: 0–**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA 045-263**

**BUILDING OFFICIAL'S REPORT:**

Application of Alberto J. Galue and Russell N. Rippamonti for a special exception to the landscape regulations at 4037-39 Gilbert Avenue. This property is more fully described as a Lot 11 in City Block F/1569 and is zoned P.D. 193 MF-2 which requires landscaping to be provided with new construction. The applicant proposes to construct an addition and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION: 4037-39 Gilbert Avenue**

**APPLICANT: Alberto J. Galue and Russell N. Rippamonti**

**REQUEST:**

- A special exception to the landscape regulations is requested/triggered in conjunction with a recently constructed two-car garage and one-bedroom apartment atop on a site with a multifamily use.

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the sidewalk requirements along Gilbert Avenue.
- The applicant has provided the following information regarding this request:
  - a building permit for the garage apartment was applied for in August of 2004;
  - the contractor clearly indicated the location of the structure on building plans without requiring additional site or landscape plans;
  - existing sidewalks were removed on Gilbert and Knight Street, and concrete for new sidewalks was poured in the same location as the previous sidewalks;
  - prior to the pouring of the sidewalks, the City of Dallas inspected the forms, reinforcing steel and location of sidewalks and signed off with a green tag;
  - the contractor then poured the sidewalks with the inspector's approval on the green tag;
  - later, Dallas building inspection realized that there were actually three units on the property and required a number of additional site plans, drawings as is required for multifamily use under PD No. 193;
  - a permanent Certificate of Occupancy (CO) cannot be issued because the Gilbert Avenue sidewalk is out of compliance.
- The City of Dallas Chief Arborist identified the following way in which the alternate landscape plan does not comply with the landscape regulations:
  - The applicant is required to provide a 4'-wide sidewalk between 5' and 10' from the back of curb.  
The applicant is *proposing* to retain a 4'-wide sidewalk located between 8'  $\frac{3}{4}$ " – 12'  $\frac{3}{4}$ " from the back of curb.
- The City of Dallas Chief Arborist identified the following "Factors for Consideration:"

- The requested relief from the sidewalk requirements is due to a desire to provide a sidewalk that meets the adjacent sidewalk. The location of the sidewalk does provide more room for future root and trunk development of the newly planted Red Oaks along Gilbert Avenue.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The approximately 8,000 square foot subject site is developed with what appears to be a 3-unit multifamily residential use. The areas to the north, east, south, and west are developed with residential 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. The applicant has request a reimbursement of the filing fee submitted in conjunction with this landscape special exception request which is on the August 15<sup>th</sup> Miscellaneous Item Docket.

**Timeline:**

- June 15, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. (Photographs were submitted with the application and will be available for review at the briefing and public hearing upon request).
- July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 15, 2005: The Board Administrator contacted the applicant’s representative and shared the following information:
  - the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the

applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 27, 2005:

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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal on August 1, 2005 (see Attachment A).

### **STAFF ANALYSIS:**

- The submitted landscape plan is deficient from fully complying with the landscape regulations in one way: the Gilbert Avenue sidewalk is located between 8'  $\frac{3}{4}$ " – 12'  $\frac{3}{4}$ " from the curb when it is required to be located 5' -10' from the curb.
- Granting this request (subject to a condition that the applicant complies with the submitted landscape plan) will result in the applicant being in full compliance with the landscape regulations of PD No. 193 with one exception: the applicant can deviate from the PD No. 193 landscape regulations with regard to the sidewalk location along Gilbert Avenue.

### **BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: Russell Rippamonti, 4039, Gilbert Ave., Dallas, TX  
John Olson, 4038, Holland, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-263** on application of the Alberto J. Galue and Russell N. Rippamonti, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.

**SECONDED: Gomez**

**AYES:** 4 – Madrigal, Smith, Wise, Gomez

**NAYS:** 0–

**MOTION PASSED:** 4 – 0 (unanimously)

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**FILE NUMBER:** BDA 045-271

**BUILDING OFFICIAL’S REPORT:**

Application of Carlyle Toll Hill L.P., represented by Ryan Bibb Consultants for a special exception to the sign regulations at 5310 Harvest Hill Road. This property is more fully described as Lot 2 in City Block A/7000 and is zoned NO (A) which limits the property to one detached sign. The applicant proposes to erect one additional detached sign which would require a special exception to the sign regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5310 Harvest Hill Road

**APPLICANT:** Carlyle Toll Hill L.P.  
Represented by Ryan Bibb Consultants

**August 15, 2005 Public Hearing Notes:**

- The Board Administrator identified his discovery of a full-scale plan in the case file that was entitled “New Revised Site Plan” at the public hearing. The administrator informed the board of the following concerns:
  - The “New Revised Site Plan” had not been discovered earlier in the process in part because there had not been a reduced copy of this plan submitted in conjunction with the request.
  - The case number of the “New Revised Site Plan” was BDA034-195 rather than the case number for the current application: BDA 045-271.
  - The applicant’s representative had not identified the submittal of this “New Revised Site Plan” to either the board or to staff prior to administrator’s discovery at the public hearing.

- Although information on the “New Revised Site Plan” indicated the location and sizes of two existing signs on the site, information pertaining to the additional 3<sup>rd</sup> sign on the “New Revised Site Plan” did not match information pertaining to the 3<sup>rd</sup> additional sign on the other “Site Plan” - the site plan that staff had thought was the only plan submitted in conjunction with the request until discovery of the other plan at the public hearing.
- The sign on the reduced “Site Plan” was linear in design, and the sign on the “New Revised Site Plan” was “V”-shaped.
- A note is made on the “New Revised Site Plan” indicating a “Proposed Leasing Sign 8’ x 4’ Painted Wood, 2 sides “V.” This note contradicted information detailed on the submitted sign elevation indicating that the sign was intended to be 8’ x 8’.
- The applicant informed the Board that he had submitted the “New Revised Site Plan” per the suggestion of city staff.

**REQUEST:**

- A special exception to the sign regulations is requested to allow an additional detached premise sign. The applicant proposes to construct a detached premise “leasing” sign at the southeast corner of the intersection of the Dallas North Tollway service road (or Dallas Parkway) and Harvest Hill Road on a site developed as an office building (Toll Hill Office Park).

**STANDARD A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED PREMISE SIGN:**

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached premise sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

**GENERAL FACTS:**

- The Dallas Development Code states that each non-residential premise may display one detached sign for each 600 feet, or fraction thereof, of frontage along a public way.
- The subject site has a total combined frontage along the Dallas North Tollway service road and Harvest Hill Road of 782.13 feet, and is permitted to have two detached premise signs by right.
- A sign elevation has been submitted with the application. This elevation provides the following information:
  - 8’ x 8’ in size;
  - the text to be placed on the sign; and
  - the height and sizes of the text on the sign.

- The submitted sign elevation does not indicate if or how the sign will be mounted (monument sign on the ground verses monopole-mounted).
- The submitted site plan indicates that the proposed additional sign would be located near the intersection of the Dallas Parkway and Harvest Hill Road.
- The submitted site plan does not indicate the location of existing signs on the site. However, according to a field visit conducted by the Board Administrator, the site appears to have two monument signs: one sign adjacent to the building at the corner of the Dallas North Tollway service road and Harvest Hill Drive; the other sign located on Harvest Hill Drive.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information (submitted after the July 27<sup>th</sup> staff review team meeting therefore not part of the staff analysis on this request) included the following:
  - a letter that explained in further detail why the request should be granted;
  - a table of "Summary of Office Market Indicators;"
  - a map entitled "Locations of lease signage at office;" and
  - Photos of the site and surrounding area (which will be available for review upon request at the briefing/hearing).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: NO (A) (Neighborhood office)  
North: MU-3 (Mixed use district 3)  
South: PD No. 250 (Planned Development District 250)  
East: NO (A) (Neighborhood office)  
West: SUP No. 959 (R-10 (A)) (Specific Use Permit No. 959) (Single family district 16,000 square feet

**Land Use:**

The site is currently developed with a two-story office building (Toll Hill Office Park). The areas to the north and east are developed with office uses, the area to the south is developed with single family uses; and the area to the west is the Dallas North Tollway.

**Zoning/BDA History:**

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. BDA034-195, 5310 Harvest Hill Road (the subject site)</li> </ol> | <p>On September 20, 2004, the Board of Adjustment Panel C denied a request for a special exception to the sign regulations without prejudice. The case report states the request was made to construct a detached premise "leasing" sign at the southeast corner of the intersection of the Dallas North Tollway service road and Harvest Hill Road.</p> |
|--|--|

## **Timeline:**

- June 24, 2005: 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 15, 2005: 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."
- July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

August 5, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information was submitted after the July 27<sup>th</sup> staff review team meeting. Therefore staff did not have an opportunity to review and analyze this information.

**STAFF ANALYSIS:**

- A site plan has been submitted that documents the location of the proposed sign but does not document the location of the existing signs on the site.
- An elevation has been submitted that provides the dimensions of the proposed additional sign (8' x 8' or 64 square feet) but does not document whether the sign will be a pole sign or a monument sign nor detail the height of the sign from grade.
- Granting this special exception with conditions imposed that the applicant complies with the submitted site plan and sign elevation would allow a third sign to be placed on the site.
- Granting the request with conditions imposed that the applicant complies with the submitted site plan and sign elevation would assure that the proposed sign is located as shown of the submitted site plan and is of the size indicated on the elevation. But with regard to whether or not strict compliance with the requirement of the sign regulations (i.e. restricting the site to 2 signs) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations, the board may consider that the submitted documents do not provide any limitations as to the location and sizes of the other signs on the site, nor provide any limitations as to how the 3<sup>rd</sup> or additional sign is to be mounted (monument sign, pole sign, a sign mounted 2 feet above grade, etc) on the site.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: Ryan Bibb, 11520 N Central Expwy, #205, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gomez

I move that the Board of Adjustment in Appeal No. **BDA 045-271** hold this matter under advisement until **September 19, 2005**.

SECONDED: Smith

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

**Break: 3:35**

**Resumed: 3:55**

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**FILE NUMBER:** BDA 045-272

**BUILDING OFFICIAL'S REPORT:**

Application of Gaston Biomedical, L.P., by Granite Genpar, Inc. G.P., represented by Robert Reeves and Associates Inc., for a special exception to the parking regulations at 3910 Gaston Avenue. This property is more fully described as Lot 4A in City Block A/777 and is zoned P.D.298 which requires parking for restaurant, retail, office, medical clinic, and residential uses. The applicant proposes to convert an existing office building to a mixed use development and provide 108 parking spaces, (67 existing on site and 41 by a remote parking agreement) of the 134 required parking spaces which would require a special exception of 26 parking spaces or 19.4%. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 3910 Gaston Avenue

**APPLICANT:** Gaston Biomedical, L.P., by Granite Genpar, Inc. G.P.,  
Represented by Robert Reeves and Associates Inc.

**REQUEST:**

- A special exception to the off-street parking regulations of 26 spaces (or 19.4 percent of the total off-street parking requirement) is requested in conjunction with converting an existing vacant 26,712 square foot building from being exclusively used for medical clinic use to being used with a mix of uses including medical clinic, office, restaurant, retail, and residential uses.

**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:**

- The off-street parking requirements applicable to this application are as follows:
  - 1 space per every 500 square feet of residential use;
  - 1 space per every 333 square feet of office use;
  - 1 space per every 200 square feet of medical clinic use;
  - 1 space per every 200 square feet of retail use; and
  - 1 space per every 100 square feet of restaurant use.
- 108 spaces (80% of the total required parking spaces) are provided by the applicant with 67 spaces being provided on the site, and 41 spaces being provided in a City-recognized remote parking agreement.
- The applicant has requested that the board grant a special exception of 26 spaces to apply to medical clinic uses; office uses; up to 13,230 square feet of retail uses; up to 2,000 square feet of restaurant uses; and residential uses.
- Except for restaurant use, the parking requirement for retail, office, and residential uses are equal to or less than the parking requirement for medical clinic use. The medical clinic use was the specific and only use that Board of Adjustment Panel C specifically imposed as a condition in granting a parking special exception of 26

spaces on the site in March of 2004 (see the “Zoning/BDA History” section of this case report for further details).

- The applicant’s representative has submitted additional information regarding this request. This information included a document with different development scenarios in order to demonstrate that various mixed-use combinations that would fall within the amount of parking provided (see Attachment A).

**BACKGROUND INFORMATION:**

Zoning:

Site: PD No. 298  
North: PD No. 298  
South: PD No. 298  
East: PD No. 298  
West: PD No. 298

Land Use:

The subject site is developed with an approximately 27,000 square foot structure that is currently vacant. The areas to the north, east, south, and west are developed with a mixture of retail, office, and parking uses.

**Zoning/BDA History:**

1. BDA034-136, 3910 Gaston (the subject site)

On March 15, 2004, the Board of Adjustment Panel C granted a request for a special exception to parking regulations of 26 spaces. The board imposed the following conditions: the special exception of 26 spaces shall automatically and immediately terminate if and when the medical clinic use on the site is changed or discontinued; the special exception of 26 spaces shall be tied to the City’s parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue; and a copy of the parking agreement shall be submitted to the Board’s Administrator once executed. The case report states that the request was made in conjunction with converting an existing 26,712 square foot building from an office use to a medical clinic use.

**Timeline:**

- June 14, 2005: 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 14, 2005: 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."
- July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application on July 29, 2005. The engineer commented that he has

no objections to the request. The engineer made the following comments: "Refer to BDA 034-136. Various uses may be better than medical clinic use only because peak demand times may occur at different times of day."

**STAFF ANALYSIS:**

- 80 percent of the required off-street parking spaces are proposed to be provided in conjunction with occupying a vacant 26,712 square foot building (formerly an office use) with a mix of restaurant, retail, office, medical clinic, and residential uses.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the restaurant, retail, office, medical clinic, and residential uses on the site are changed or discontinued, would allow the existing building to be occupied with a mix of uses as opposed to the specific medical clinic use that the Board of Adjustment conditioned a 26-space parking special exception to in March of 2004.
- The Development Services Transportation Engineer has indicated that he has no objections to the request. The engineer has stated that the proposal of utilizing the existing structure with a variety of uses (restaurant, retail, office, medical clinic, and residential) may be better than utilizing the structure with just one use (medical clinic) since the peak parking demands for the mix of uses may be at different times of day.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Wise**

I move that the Board of Adjustment in Appeal No. **BDA 045-272** on application of the Gaston Biomedical, LP by Granite Genspar Inc., GP, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 26 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the restaurant, retail, office, medical clinic, and residential uses on the site are changed or discontinued;
- The special exception of 26 spaces shall be tied to the City's parking agreement which allows for at least 41 extra spaces being made available on 3911 Gaston Avenue; and a copy of the parking agreement shall be submitted to the Board's Administrator once executed; and

- The special exception of 26 spaces shall apply to residential uses, medical clinic uses, offices uses, and up to 13,230 square feet of retail uses, and up to 2,000 square feet of restaurant uses.

**SECONDED: Smith**

**AYES: 4 – Madrigal, Smith, Wise, Gomez**

**NAYS: 0–**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA 045-275**

**BUILDING OFFICIAL’S REPORT:**

Application of Peter Kavanagh, Zone Systems Inc., for a special exception to the fence regulations and to the visibility obstruction regulations at 10727-35 Camellia Drive. This property is more fully described as part of Lots 1 and 2 in City Block 2/5499 and is zoned R-16 (A) which limits the height of a fence in the front yard to 4 feet and requires that no structure be located in a visibility corner clip. The applicant proposes to maintain an 8 foot 5 inch fence in the required front yard setback and be located in a visibility corner clip, which would require a special exception of 3 feet 5 inches to the fence height regulations and a special exception to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION: 10727-35 Camellia Drive**

**APPLICANT: Peter Kavanagh, Zone Systems Inc.**

**REQUEST:**

- A special exception to the fence height regulations of 4’ 5” is requested in conjunction with maintaining an 8’-high wood fence with 8’5”-high stucco and concrete block columns and a 5’10” wrought iron fence with 6’6” wrought iron posts and 8’4” wrought iron gates in the 35’-Camellia Drive front yard setback on a site that is developed with a single family house.
- A special exception to the visibility obstruction regulations are requested in conjunction with maintaining the above referenced fence and gates located in the 45’-visibility triangle at the intersection of Camellia Drive and Mums Place, and in nine 20’-visibility triangles at drive approaches on these two streets and the alley (five drive approach triangles on Mums Place, and four drive approach triangles on Camellia Drive).

**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:**

- 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 Board Administrator conducted a field visit of the site and surrounding area and noted no fences that appeared to be located in the front yard setback.
- The fence located on the south corner of Mums Place and Camellia Drive, south of the request site, appears to be in the side yard and it has not been determined to be in the visibility triangle.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16 (A) (Single family district 16,000 square feet)  
North: R-16 (A) (Single family district 16,000 square feet)  
South: R-16 (A) (Single family district 16,000 square feet)  
East: R-16 (A) (Single family district 16,000 square feet)  
West: CR (Community Retail)

**Land Use:**

The subject site is developed with single family residential. The area to the west is developed with retail uses and surface parking lots for these uses; and the areas to the north, south, and east are developed with single family uses.

**Zoning/BDA History:**

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

**Timeline:**

June 24, 2005: 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, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th 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 27, 2005: 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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

The Transportation Engineer submitted a review comment sheet stating his "site visit on July 25, 2005 indicates that the existing wrought iron fence/gate inside the 45' x 45' intersection and 20' x 20' driveway visibility triangles does not create a traffic hazard due to its open nature."

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the existing wall and gate columns relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed wall relative to the lot.
- An elevation has been submitted that documents the height of the proposed wood fence (8'), stucco/block columns (8'6"), the wrought iron fence (5'10"), wrought iron

posts (6'6") and wrought iron gates (8'4") and the building materials (wood, stucco, and wrought iron).

- The proposed wall is to be constructed of durable material (wrought iron and stucco) and non-durable materials (wood).
- Granting the fence height special exception of 4'5" and the special exception to the visibility obstruction regulations with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the proposed wall and columns are maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gomez

I move that the Board of Adjustment in Appeal No. **BDA 045-275** hold this matter under advisement until **September 19, 2005**.

SECONDED: Smith

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA 045-224

**BUILDING OFFICIAL’S REPORT:**

Application of Ross/Henderson Development Group. LLC., represented by United Equities, Inc. for a special exception to the parking regulations at 5334-A Ross Avenue. This property more fully described as Lot 1A in City Block A/1485 and is zoned CR which requires parking to be provided for retail uses. The applicant proposes to convert a Suite from retail to a restaurant and provide 450 spaces of the required 474 spaces which would require a special exception of 24 parking spaces or 5%. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5334-A Ross Avenue

APPLICANT: Ross/Henderson Development Group. LLC.,  
Represented by United Equities, Inc.

REQUEST:

- A special exception to the off-street parking regulations of 33 spaces is requested in conjunction with a restaurant occupying a suite on a site developed with a shopping center and a remote parking lot.

**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:**

- The subject properties consist of the shopping center at the east corner of Ross and Henderson Avenues (“primary site”), and a remote parking lot located on Hudson Street (“parking site”, labeled as Parcel 2 on the site plan). The restaurant use will be a tenant in the shopping center in the space located closest to Ross Avenue, formally a Blockbuster Video retail store.
- The parking site has deed restrictions limiting the use to parking.
- The owner of the primary site is also the owner of the parking site.
- The primary site provides 391 spaces and the parking site provides 59 spaces.
- The Dallas Development Code states the parking requirements for the following uses:
  - 1 space per 200 square feet of retail floor area;
  - 1 space per 200 square feet of medical office
  - 1 space per 333 square feet of office floor area; and
  - 1 space per 100 square feet of restaurant floor area.
- The applicant is proposing to provide 450 (or 93%) of the total 483 required off-street parking spaces.
  - 402 spaces for the retail uses;
  - 22 spaces for the office uses; and
  - 50 spaces for the restaurant uses.

USE	TOTAL TENANT SF	TOTAL TENANT PER APPLICANT	1 SPACE PER SF	REQUIRED SPACES
Restaurant	5,000	5,000	100	50
Retail	80,341	80,341	200	402
Medical Office	4,500	0	200	23
Office	2,800	7,300	333	8

TOTAL SPACES REQUIRED	483
TOTAL SPACES PROVIDED	450
DEFICIT	33

- The amount of parking requested by the applicant did not differentiate between office and medical office for the dental office in suite 800. The parking requirement for medical office is higher than office. The parking special exception needed is therefore for 33 spaces instead of 24 spaces. The advertising and noticing sent in June stated a request for 24 spaces and has been correctly advertised for this public hearing to reflect the correct number of spaces required. This changes the percent

request from 5.1% to 6.8% which is still under the 25% limitation of the special exception.

- On June 1, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a parking survey for the typical activity at the shopping center.
- There are 10 DART bus stops within 500 feet of the subject properties (see Attachment B).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Primary Site: CR (Community Retail)  
North: CR (Community Retail)  
South: MF-2 and MC-1 (Multifamily and Multiple Commercial)  
East: CR (Community Retail)  
West: PD No. 462 (Planned Development District 462)

Parking Site: CR (Community Retail)  
North: CR (Community Retail)  
South: P (Parking)  
East: MF-2 (Multifamily)  
West: CR (Community Retail)

### **Land Use:**

The primary site is developed with a shopping center. The area to the north is developed with retail and restaurants; the area to the south is a church and senior housing; the area to the east is developed with a restaurant, gas station, and retail uses; and the area to the west is developed with school, retail, gas station, and an undeveloped area.

The parking site is a fenced and gated parking lot. The areas to the north, east, are developed with single family uses; the area to west is developed with a restaurant use; the area to the south is a parking lot use.

### **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 sites.

### **Timeline:**

April 26, 2005: 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 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 21, 2005: 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 June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis;
- 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.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; Senior Planner Pitner and the Assistant City Attorney to the Board.

A review comment sheet was submitted by the Development Services Transportation Engineer in conjunction with this application dated May 26, 2005. The engineer commented that he has no objections but suggested a parking survey. On June 3, 2005, the Development Services Transportation Engineer provided revised comments on the parking survey.

June 1, 2005: The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- The Development Services Transportation Engineer had no objection on May 26, 2005 and after reviewing the parking survey provided on June 3, 2005 provided

additional comments. He stated his observations of the parking survey and reaffirmed that he has no objection.

- The shopping center parking was in compliance before this request for the restaurant use. The parking spaces required for the combination of office, medical office, and retail uses was 433 spaces. 450 spaces were provided, a surplus of 17 parking spaces.
- The applicant verbally indicated that the shopping center may have customers and employees walk from the nearby neighborhood. There are also 10 DART bus stops within 500 feet of the subject properties that increase the feasibility of accessing the shopping center by means other than a vehicle.
- Granting this request, subject to the condition that the special exception automatically and immediately terminates if and when the restaurant use on the site is changed or discontinued, would allow the restaurant to occupy the suite in the shopping center.

If the combination of retail, office, and restaurant uses change, the parking calculations will need to be reevaluated. Any increase in parking needs above the 450 spaces provided will require a new special exception to comply with the parking requirements.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: Tim Sandford, 6210 Southerland Sq, Houston, TX  
Linda Brown, 2010 Kessler Pkwy, Dallas, TX

APPEARING IN OPPOSITION: Maxine Aaronson, 600 N Pearl St., Dallas, TX  
Michelle Love, 5919 Hudson, Dallas, TX  
John Glendenning, 5602 Richmond Ave., Dallas, TX

MOTION: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 045-224** on application of the Ross/Henderson Development Group, LLC, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by **33** parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- An agreement in regard to remote parking be in full force with the City ;
- The special exception shall automatically and immediately terminate at the end of 10 years or if and when the restaurant use on the site is changed or discontinued.

SECONDED: **Gomez**

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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**FILE NUMBER:** BDA 045-274

**BUILDING OFFICIAL’S REPORT:**

Application of Merriman Associates/Architects, Inc. for a special exception to the landscape regulations at 3210 Carlisle Street. This property is more fully described as a Lots 1-9 in City Block 13/969 and is zoned P.D. 193 MF-2 which requires landscaping to be provided with new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 3210 Carlisle Street

**APPLICANT:** Merriman Associates/Architects, Inc.

**REQUEST:**

- A special exception to the landscape regulations is requested/triggered in conjunction with constructing 63 townhomes (Carlisle Townhomes) on a site developed with a multifamily residential use (The Constantine Apartments).

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where the applicant is, according to the City of Dallas Chief Arborist, specifically requesting relief from the street tree requirements along Carlisle Street and extending the time allowed to complete landscaping to allow for phasing of the project.
- On July 25, 2005, the applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:

- A letter that explained the alternate landscape plan in further detail and why the request should be granted; and
- A copy of a revised “conceptual landscape plan.”
- On August 2, 2005, the City of Dallas Chief Arborist submitted a memo to staff (see Attachment B) that identified the following ways in which the alternate landscape plan does not comply with the landscape regulations:
  - The applicant is required to provide one street tree for every 25’ of street frontage (which in this case would be 42 trees: 28 along Carlisle, 7 along Hall Street, and 7 along Bowen Street), and locate these trees between 2.5’ – 5’ from the back of the curb (tree planting zone).  
Along Carlisle Street, the applicant is *proposing* 35 trees (12 existing mature Oak trees and 23 new trees) but only 5 of the new trees are located within the tree planting zone.  
Along Hall Street, the applicant is *proposing* 7 trees (2 existing mature Oak trees and 5 new trees) but none of them are located within the tree planting zone.  
Along Bowen Street, the applicant is *proposing* 7 trees (1 existing mature Oak trees and 6 new trees) but none of them are located within the tree planting zone.
  - The applicant is required to complete landscaping prior to the final inspection of any structure on the lot.  
The applicant is *proposing* to phase landscaping to coincide with construction phases completing landscaping prior to the final building inspection of the last unit or within 2 years of the board’s action, whichever comes first.

The City of Dallas Chief Arborist’s August 2<sup>nd</sup> memo identified the following “Factors for Consideration:”

  - The request is general in nature as they are trying to avoid being tied to a specific landscape plan.
  - A scaled plan has not been reviewed therefore comments cannot be made on either the trees they intend to preserve or on the new trees proposed.
  - The canopies of the existing trees do reduce the amount of tree planting zone available to new trees.
  - The applicant was hopeful that the alternate landscape plan (narrative) would suffice but it is not clear why trees cannot be planted in the tree planting zone along Hall and Bowen.- On August 4, 2005, the applicant’s representative submitted a revised alternate landscape plan to staff (see Attachment C). This revised alternate landscape plan was in a narrative form, specifically requesting that the board grant the request subject to the following condition:
  - All landscape requirements of PD 193 will be met on the subject site with the following exceptions:
    - The tree planting zone (which is required to be an area between 2.5’ – 5’ from the back of curb) be expanded to an area between 2.5’ – 18’ along Carlisle and Bowen Streets, and to an area between 2.5’ – 30’ along Hall Street.
    - All landscaping will be completed prior to the final building inspection of the last unit or within 2 years from the board’s action.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The approximately 2.6-acre subject site is developed with a multifamily use. The areas to the north, east, south, and west are developed predominantly with residential uses.

**Zoning/BDA History:**

- |  |   |
|--|---|
| 1. BDA93-114, 3210 Carlisle (the subject site) | On June 22, 1993, the Board of Adjustment granted requests for special exceptions to the fence height and visibility obstruction regulations in conjunction with constructing a 6'-high fence in the front yard and in the visibility triangles. The board imposed the following conditions to the fence height special exception: that the "exit only" signs be placed on each side of the fence adjacent to the gate, and that the drive be used for an exit only. The board imposed the following conditions to the visibility obstruction regulations: that no landscaping exceeding a height of two feet above the street curb elevation be planted in the visibility triangle in front of or behind gate and fence. |
|--|---|

**Timeline:**

- |                |   |
|----------------|---|
| June 24, 2005: | 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 15, 2005: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.   |
| July 15, 2005: | The Board Administrator contacted the applicant's representative and shared the following information: <ul style="list-style-type: none"> <li>• the public hearing date and panel that will consider the application;</li> <li>• the criteria/standard that the board will use in their decision to approve or deny the request;</li> </ul> |

- 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 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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, 2005      The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005:      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 Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

August 4, 2005      The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment C).

**STAFF ANALYSIS:**

- The applicant has offered conditions that they are requesting that the board impose in conjunction with this request. The applicant is requesting that the Board grant the request with the following conditions imposed:
  - All landscape requirements of PD 193 will be met on the subject site with the following exceptions:
    1. The tree planting zone (which is required to be an area between 2.5' – 5' from the back of curb) be expanded to an area between 2.5' – 18' along Carlisle and Bowen Streets.

- 2. The tree planting zone (which is required to be an area between 2.5' – 5' from the back of curb) be expanded to an area between 2.5' – 30' along Hall Street.
- 3. All landscaping will be complete prior to the final building inspection of the last unit or within 2 years from the board's action.
- Granting this request (subject to the condition offered by the applicant) will result in allowing the site to deviate from the PD No. 193 landscape regulations in only those specific ways and/or areas mentioned above.

**BOARD OF ADJUSTMENT ACTION: August 15, 2005**

APPEARING IN FAVOR: David Master, 721 Mason Ln, Waxahachie, TX  
Matt Dalton, 6004 Lakecrest, Sachse, TX

APPEARING IN OPPOSITION: Randy Johnson, 3205 Carlisle St., #103, Dallas, TX  
Steve Dalbke, 3225 Carlisle St, Dallas, TX

MOTION: Smith

I move that the Board of Adjustment in Appeal No. **BDA 045-274** on application of Merriman Associates/Architects, Inc., **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The tree planting zone will be expanded to an area between 2.5 feet and 18 feet along Carlisle and Bowen Street;
- The tree planting zone will be expanded to an area between 2.5 feet and 30 feet along Hall Street;
- The sidewalk will be allowed to be located at the curb when necessary to preserve existing trees;
- If and when an existing tree is removed or damaged, the applicant will follow the spirit and intent of PD 193 which means that the tree density will be 1 every 25 feet; and
- All landscaping as shown on submitted landscaping plan must be completed prior to the final building inspection of the last unit or within two years from the Board's action.

SECONDED: Wise

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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MOTION: Wise

I move to adjourn this meeting.

**SECONDED: Smith**

**AYES: 4** –Madrigal, Smith, Wise, Gomez

**NAYS: 0** - None

**MOTION PASSED: 4 – 0** (Unanimously)

**5:50 P. M.** - Board Meeting adjourned for **August 15, 2005.**

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CHAIRPERSON

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

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

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