

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, SEPTEMBER 14, 2009**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 14, 2009** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C August 17, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: September 14, 2009

MOTION: Salinas

I move **approval** of the Monday, **August 17, 2009** public hearing minutes.

SECONDED: Moore

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-106

BUILDING OFFICIAL’S REPORT:

Application of Charles Wilson for a special exception to the fence height regulations at 5405 Falls Road. This property is more fully described as Lot 8 in City Block 2/5603 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, 10 inch fence which will require a special exception of 4 feet, 10 inches.

LOCATION: 5405 Falls Road

APPLICANT: Charles Wilson

REQUEST:

- A special exception to the fence height regulations of 4’ 10” is requested in conjunction with constructing and maintaining the following in the site’s 40’ front yard setback on a site being developed with a single family home:
 - a 5’ 4” high open ornamental iron fence with 5’ 8” high brick columns; and
 - a 6’ 6” high iron gate flanked by two, 8’ 10” high brick entry columns and solid brick entry wing walls (each about 12’ in length) ranging in height from 6’ 2” – 7’ 2”.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and an elevation document indicating a fence/column/gate proposal that would be located in the site's front yard setback and would reach a maximum height of 8' 10".
- The following information was gleaned from the submitted site plan:
 - The proposal would be approximately 175' in length parallel to Falls Road with a recessed entryway, and approximately 40' in length perpendicular to Falls Road in the front yard setback on the east and west "sides" of the site in the front yard setback.
 - The proposed fence is shown to be located approximately on the property line or about 15' from the pavement line.
 - The proposed gate is shown to be located approximately 7' from the property line or about 22' from the pavement line.
- The proposal is located on a site where one single family home (with an open link fence in its front yard setback that appears to be less than 4' in height) would have direct frontage.
- The Board Administrator conducted a field visit of the site and surrounding area along Falls Road (approximately 500 feet east and west of the site) and noted no other fence/walls.

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:

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

Timeline:

- July 31, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 20, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 5' 4" high open ornamental iron fence with 5' 8" high brick columns; and a 6' 6" high iron gate flanked by two, 8' 10" high brick entry columns and solid brick entry wing walls (each about 12' in length) ranging in height from 6' 2" – 7' 2" on a site being developed with a single family home.
- A site plan and an elevation document have been submitted indicating the location of the proposed fence/gate/columns in the front yard setback relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The site plan indicates that the open ornamental iron fence is to be located approximately on the front property line or about 15' from the pavement line; that the proposed vehicular gate is to be located approximately 7' from the front property line or about 22' from the pavement line. The proposal is shown to be about 175' long parallel to Falls Road,

- The proposal is located on a site where one single family home would have direct frontage – a site with an open link fence in its front yard setback that appears to be less than 4’ in height.
- No other fence/walls higher than 4’ which appeared to be located in a front yard setback were noted by the Board Administrator in a field visit of the site and surrounding area (approximately 500 feet east and west of the site).
- As of September 8, 2009, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8’ 10” in height) will not adversely affect neighboring property.
- Granting this special exception of 4’ 10” with a condition imposed that the applicant complies with the submitted site plan and elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 089-106** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-108

BUILDING OFFICIAL'S REPORT:

Application of David Gregory, represented by Robert Baldwin, for a special exception to the parking regulations at 3636 Forest Lane. This property is more fully described as Lot 1 in City Block B/6445 and is zoned CR, which requires parking to be provided. The applicant proposes to construct and maintain a restaurant with drive-in or drive-through service use and provide 18 of the required 24 parking spaces which will require a special exception of 6 spaces.

LOCATION: 3636 Forest Lane

APPLICANT: David Gregory
Represented by Robert Baldwin

REQUEST:

- A special exception to the off-street parking regulations of 6 parking spaces (or a 25% reduction of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 2,400 square foot restaurant with drive-in or drive through use (Taco Bell) on the subject site that is currently undeveloped. The applicant proposes to provide 18 of the required 24 parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 6 spaces automatically and immediately terminates if and when the restaurant with drive-in or drive through use on the site is changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to this request based on the sales data of eat-in patrons at the existing Taco Bell Restaurant at 3617 Forest Lane for the second quarter of 2007 through the first quarter of 2009.

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 the following off-street parking requirement:
 - Restaurant with drive-in or drive-through service: 1 space per 100 square feet of floor area; with a minimum of four spacesThe application materials and Building Official's Report state that 18 (or 75 percent) of the required 24 spaces are proposed to be provided.

- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - letters that provide additional details about the request;
 - a copy of what the applicant’s representative described as “a recent parking demand study completed by Clintoville, Ohio” for six locations in this city – one of which included a Taco Bell restaurant; and
 - recent sales data from an existing Taco Bell Restaurant at 3617 Forest Lane.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: CR (Community Retail)
West: CR (Community Retail)

Land Use:

The subject site is undeveloped. The areas to the north, south, east, and west are developed with retail uses.

Zoning/BDA History:

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|---|---|
| <ol style="list-style-type: none"> 1. BDA 990-232, Property at 3798 Forest Lane (the subject site) | <p>On March 21, 2000, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the submitted landscape plan as a condition to the request. The case report states that the request was made in conjunction with maintaining an existing approximately 11,000 square foot retail use (Eckerd) on the site. (The Eckerd store was either never constructed on the site or has been demolished).</p> |
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Timeline:

- July 31, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- August 20, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 31, 2009 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.
- Sept. 3, 2009 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Based on sales data of eat-in patrons at the existing Taco Bell Restaurant at 3617 Forest Lane for the second quarter of 2007 through the first quarter of 2009."

STAFF ANALYSIS:

- This request focuses on the applicant's proposal to construct and maintain an approximately 2,400 square foot restaurant with drive-in or drive through use (Taco Bell) on the subject site that is currently undeveloped, and provide 18 (or 75 percent) of the required 24 parking spaces.
- The applicant's representative has submitted a letter that states among other things how "extensive studies conducted by Taco Bell reveals that approximately 75 percent of the customers to Taco Bell come through the drive through."
- The Development Services Senior Engineer has no objections to this request based on the recent sales data at an existing Taco Bell Restaurant at 3617 Forest Lane.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the restaurant with drive-in or drive through use does not warrant the number of off-street parking spaces required, and
 - The special exception of 6 spaces (or 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 6 spaces automatically and immediately terminates if and when the restaurant with drive-in or drive through use is changed or discontinued, the

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Moore

I move that the Board of Adjustment grant application **BDA 089-108** 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 with drive-in or drive through use on the site is changed or discontinued.

SECONDED: Maten

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-079(K)

BUILDING OFFICIAL’S REPORT:

Application of Jeff Browning represented by Roger Albright for a special exception to the landscaping regulations at 1135 S. Lamar Street. This property is more fully described as Lot 10 in City Block 1082 and is zoned PD-317(Subdistrict 3A), which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 1135 S. Lamar Street.

APPLICANT: Jeff Browning
 Represented by Roger Albright

REQUESTS:

The applicant seeks to develop the property with a non-residential use and seeks a special exception to the landscape regulations.

STAFF RECOMMENDATION:

Undetermined

Rationale:

- After reviewing the submitted materials and conferring with the applicant of the case, the Chief Arborist has determined that there are still questions concerning the basis of the request and the extent of time a special exception should allow for the completion of any conditioned landscaping. Staff continues to expect additional submittals and if provided, will present it to the board on the day of the hearing

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

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

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS:

- The property is developed with a non-residential use and is seeking relief from the landscape requirements of PD-317.
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BACKGROUND INFORMATION:

Zoning:

Site: PD 317 (Sub district 3A) (Transit-oriented mixed use)
North: PD 317 (Sub district 3A) (Transit-oriented mixed use)
South: PD 317 (Sub district 3A) (Transit-oriented mixed use)
East: PD 317 (Sub district 3A) (Transit-oriented mixed use)
West: PD 317 (Sub district 3A) (Transit-oriented mixed use)

Land Use:

The site is developed with a non-residential use. The properties to the north and east are developed with parking lots. The properties to the west and south are undeveloped.

Zoning/BDA History:

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

Timeline:

April 24, 2009: The applicant's represent submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 21, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

May 22, 2009: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the 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 1st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the June 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

- June 8, 2009 The Chief Arborist submitted a memorandum referencing the material submitted in conjunction with the application.
- June 15, 2009 The Board of Adjustment held this case under advisement until September 14, 2009.
- September 1, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The site is currently developed with The Palladium Ballroom, Studio Bar and Grill, and The Loft.
- According to DCAD the site was developed in 1928 and has a total lease space of approximately 92,000 square feet.
- The applicant has submitted an alternate landscape plan and is requesting a special exception to the landscape regulations. The Chief Arborist has reviewed the revised alternate landscape plan submitted on June 8, 2009, and stated “I believe this case is not ready to present for consideration and I cannot, at the time, provide a recommendation to the Board.”
- The applicant has the burden of proof in establishing the following:
 1. that granting the special exception the landscape regulations is necessary because strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council;
- After reviewing the submitted materials and conferring with the applicant of the case, the Chief Arborist has determined that there are still questions concerning the basis of the request and the extent of time a special exception should allow for the completion of any conditioned landscaping. At this time, the Chief Arborist has agreed to a recommendation of undetermined. Staff continues to expect additional submittals and if provided, will present it to the board on the day of the hearing.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Salinas

I move that the Board of Adjustment in Appeal No. **BDA 089-079**, hold this matter under advisement until **October 19, 2009**.

SECONDED: Moore

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-091

BUILDING OFFICIAL’S REPORT:

Application of Ed Simons of Masterplan for a variance to the front yard setback regulations and for a special exception to the fence height regulations at 4430 Abbott Avenue. This property is more fully described as Lot 1 in City Block A/2022 and is zoned PD-193(D) which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct structures and provide a 0 foot front yard setback which will require a 25 foot variance to the front yard setback regulation, and to construct a 10 foot, 6 inch high fence which will require a special exception of 6 feet, 6 inches to the fence height regulations.

LOCATION: 4430 Abbott Avenue.

APPLICANT: Ed Simons of Masterplan

September 14, 2009 Public Hearing Notes:

- The applicant testified at the public hearing that his submitted site plan dated 08-26-09 indicated a small portion of the proposed main single family residential structure encroaching into the site’s Cragmont Avenue 25’ front yard setback.

REQUESTS:

- The following appeals have been made in this application on a site that is currently undeveloped:
 1. Variances of up to 23’ to the Cragmont Avenue 25’ front yard setback regulations are requested in conjunction with constructing and maintaining a “fireplace” structure, a “concrete steps” structure, a “concrete porch “structure,” a “cover over porch” structure, a “pool” structure, and a “second level terrace” structure in association with or would attach to a proposed main single family residential structure with an approximately 2,800 square foot building footprint (127’ x 22’);
 2. A variance of 3’ to the Abbott Avenue 25’ front yard setback regulations is requested in conjunction with constructing and maintaining a “concrete steps’ structure in the site’s 25’ front yard setback on Abbott Avenue – the same

3. A special exception to the fence height regulations of 6' 4" is requested in conjunction with according to the revised "elevations" document dated 08-26-09 constructing/maintaining stucco wall in the front yard setback along Cragmont Avenue that would reach 10' 4" in height.

STAFF RECOMMENDATION (front yard variances):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan dated 08-26-09 is required.

Rationale:

- The site is different from other parcels of land in that it has two 25' front yard setbacks (one on its southern boundary along Cragmont Avenue, another on its western boundary along Abbott Avenue). The lot's 25' Cragmont Avenue front yard setback leaves only 20' of developable space on the 50' wide site once it is accounted for on the south and a 5' side yard setback is accounted for on the north – a developable width that is 20' (or half as) less in width that would be the case if two more typically 5' side yard setbacks were accounted for on the north and south sides of the 50' wide lot.
- Granting the variances would not be contrary to the public interest since the structures to be "varied" are all ancillary to the proposed main single family structure which will be in compliance with setback requirements.

STAFF RECOMMENDATION (fence height special exception):

No staff recommendation is made on this request given the applicant's admission that he failed to post the required notification signs on the site in accordance with provisions set forth in the Dallas Development Code.

STANDARD FOR A VARIANCE:

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

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

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 (related to the front yard variances):

- The subject site is located at the northeast corner of Abbott Avenue and Cragmont Avenue. The site has a 25' front yard setback along Abbott Avenue given that this frontage is the shorter of the two street frontages, and a 25' front yard setback along Cragmont Avenue given that the continuity of the established setback must be maintained on this street since houses face Cragmont Avenue immediately east of the subject site.
- The minimum front yard setback on a D Duplex Subdistrict zoned lot in PD 193 is 25 feet.
The applicant has submitted a revised site plan dated 08-26-09 indicating a structure that is to be located as close 2' from the site's Cragmont Avenue front property line or as much as 23' into the 25' front yard setback on Cragmont, and a structure that is to be located 22' from the site's Abbott Avenue front property line or as much as 3' into the site's 25' front yard setback on Abbott (see Attachment E).
- According to calculations taken by the Board Administrator from the revised site plan submitted on August 28th (Attachment E), the entire area of the "fireplace" structure, a "concrete steps" structure, a "concrete porch" structure, a "cover over porch" structure, a "pool" structure, and a "second level terrace" structure are to be located in the Cragmont Avenue 25' front yard setback – 8 square feet, 66 square feet, 110 square feet, 120 square feet, 430 square feet, 250 square feet, respectively. It appears that entire approximately 2,800 square foot building footprint of the main structure is to be located outside or in compliance with the Cragmont Avenue 25' front yard setback.
- According to calculations taken by the Board Administrator from the revised site plan submitted on August 28th (Attachment E), it appears that about half of the 66 square foot stair "concrete steps" structure is to be located in the Abbott Avenue 25' front yard setback.
- The site appears to be relatively flat, is rectangular in shape (160' x 50'), and is (according to DCAD) 8,000 square feet in area. The site is zoned PD No. 193 (D Duplex Subdistrict). The site is atypical from most lots zoned D in that it has *two* 25' front yard setbacks (with two 5' side yard setbacks). (Note that the applicant has submitted a site plan/topo map of the site and a letter that denotes/describes a 3' slope from the northeast corner of the property to the elevation at the property line along Cragmont at Abbott.
- According to DCAD records, the property is developed with the following:
 - a single family home in "average" condition built in 1925 with 1,329 square feet of living area; and
 - a 330 square foot detached garage.

- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A, C, and E). This information included the following:
 - revised elevations and revised site plans;
 - a letter that provides additional information about the requests, and
 - a site plan/topo map of the site.
- The applicant submitted an additional letter beyond what was submitted with the original application and what was discussed at the July 28th staff review team meeting (see Attachment D). This letter that stated among other things the following: "I understand that the fact that I failed to post the notice signs within 14 days of the board application requires that the case be delayed for one month or denied. The signs have been posted since July 13th. I am briefing the Oak Lawn Committee today. Please forward my request that the board postpone this case until the September hearing date."
- The Board determined at their August 17th hearing that the applicant failed to comply with the Dallas Development Code provision related to the posting of notification signs. As a result, the board chose to delay hearing testimony on this application until their next regularly scheduled hearing – September 14, 2009.

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

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
A revised site plan and a revised elevation submitted on August 28th (Attachment E) indicates a "stucco wall" with two dimensions – one being 9' in height, the other being 10' 4".
The application submitted on June 24, 2009, however mentions a 6' 6" special exception for a 10' 6" high wall – dimensions that do not appear to correspond with heights that appear on the revised elevation submitted on August 28th (Attachment E) indicating a 10' 4" high wall.
- The following additional information was gleaned from the revised site plan and elevation submitted on August 28th (Attachment E):
 - The fence/wall proposed to be located in the Cragmont Avenue front yard setback over 4' in height is to be approximately 90' in length parallel to the street, and 18' – 23' in length perpendicular to the street for the "sides" in the front yard setback.
 - The fence/wall is shown to be located approximately 0' – 5' from the front property line or about 12' – 17' from the pavement line.
 - Six, 3" – 4" caliper Magnolia trees denoted on the street side of the wall parallel to Cragmont Avenue, and four 3" – 4" caliper Magnolia trees denoted on the street side of the wall perpendicular to Cragmont Avenue.
- One single family home would have indirect frontage to the proposed fence/wall on the subject site. The house immediately across Cragmont Avenue to the south actually "fronts" west onto Abbott Avenue.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A, C, and E). This information included the following:
 - revised elevations and revised site plans;
 - a letter that provides additional information about the requests, and
 - a site plan/topo map of the site.
- The applicant submitted an additional letter beyond what was submitted with the original application and what was discussed at the July 28th staff review team meeting (see Attachment D). This letter that stated among other things the following: "I understand that the fact that I failed to post the notice signs within 14 days of the board application requires that the case be delayed for one month or denied. The signs have been posted since July 13th. I am briefing the Oak Lawn Committee today. Please forward my request that the board postpone this case until the September hearing date."
- The Board determined at their August 17th hearing that the applicant failed to comply with the Dallas Development Code provision related to the posting of notification signs. As a result, the board chose to delay hearing testimony on this application until their next regularly scheduled hearing – September 14, 2009.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (D Subdistrict) (Planned Development Duplex)
North: PD No. 193 (D Subdistrict) (Planned Development Duplex)
South: PD No. 193 (D Subdistrict) (Planned Development Duplex)
East: PD No. 193 (D Subdistrict) (Planned Development Duplex)
West: PD No. 193 (R-7.5 Subdistrict) (Planned Development Single family)

Land Use:

The subject site is undeveloped. 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.

Timeline:

June 24, 2009: 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 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 13, 2009: The Board Administrator conducts a field visit of the site (19 days after the application was filed on June 24, 2009) and observes no notification signs posted on the subject site. The Board Administrator leaves a message with the applicant informing him of his observation.
- July 14, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 16 & 24, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A and C).
- July 16, 2009 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).
- July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- August 4, 2009 The applicant submitted additional information to the Board Administrator (see Attachment D). This information includes a letter that states among other things the following: "I understand that the fact that I failed to post the notice signs within 14 days of the board application requires that the case be delayed for one month or denied. The signs have been posted since July 13th. I am briefing the Oak Lawn Committee today. Please forward my request that the board postpone this case until the September hearing date."

- August 17, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their September 14th public hearing in order for the applicant to comply with the Dallas Development Code provisions related to the posting of notification signs.
- August 20, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 28, 2009 The applicant submitted additional information to the Board Administrator (see Attachment E).
- Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, Building Inspection Development Code Specialists, 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 front yard variances):

- The requests for variances to the front yard setback regulations focus on constructing and maintaining a "concrete steps" structure in the site's two, 25 foot front yard setbacks along Abbott Avenue and Cragmont Avenue, and additionally constructing and maintaining a "fireplace" structure, a "concrete porch "structure," a "cover over porch" structure, a "pool" structure, and a "second level terrace" structure in association with or would attached to a proposed main single family residential structure in the site's 25 foot Cragmont Avenue front yard setback.
- The site is relatively flat, is rectangular in shape (160' x 50'), and is (according to DCAD) 8,000 square feet in area. The site is zoned PD No. 193 (D Duplex Subdistrict). But unlike typical residentially-zoned lots that have one front yard setback, the site has two – one along the shorter of the frontages on Abbott Avenue that is typically a front yard, and another along the longer of the frontages on Cragmont Avenue that is typically a side yard but in this case/or on this lot is a front yard in order to maintain continuity of the established setback of three homes directly east that front southward onto Cragmont Avenue.

- Once a 25' front yard setback is accounted for on the south and a 5' side yard setback is accounted for on the north, the developable width remaining on the 50' wide site is 20'. Other 50' wide lots with a more typical scenario of having *one* front yard setback would have a developable width of 40' once two 5' side yard setbacks are accounted for.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations of up to 23' requested in conjunction with constructing/maintaining a "steps" structure in the Abbott Avenue front yard setback and "fireplace," "concrete porch," "cover over porch," "pool," and "second level terrace" structures in the Cragmont Avenue front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site (a site that is undeveloped, and a site that is rectangular in shape, 8,000 square feet in area with two front yard setbacks) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (D) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 193 (D) zoning classification.
- If the Board were to grant the front yard variance requests of up to 23', imposing a condition whereby the applicant must comply with the submitted revised site plan dated 08-26-09, the structures in the front yard setbacks would be limited to that shown on this plan – which in this case is a structure located 22' from the site's Abbott Avenue front property line (or 3' into the site's Abbott Avenue 25' front yard setback) and structures located as close as 2' from the site's Cragmont Avenue front property line (or 23' into the site's Cragmont Avenue 25' front yard setback).

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

- This request focuses on constructing and maintaining a stucco wall in the front yard setback along Cragmont Avenue that would reach 10' 4" in height.
- A revised site plan dated 08-26-09 and a revised "elevations" document dated -08-26-09 have been submitted documenting that the proposed fence/wall to be located in the Cragmont Avenue front yard setback over 4' in height at approximately 90' in length parallel to the street, and 18' – 23' in length perpendicular to the street for the "sides" in the front yard setback, and approximately 0' – 5' from the front property line or about 12' – 17' from the pavement line.
- The revised site plan dated 08-26-09 denotes six, 3" – 4" caliper Magnolia trees on the street side of the wall parallel to Cragmont Avenue, and four 3" – 4" caliper Magnolia trees on the street side of the wall perpendicular to Cragmont Avenue.

- One single family home would have indirect frontage to the proposed fence/wall on the subject site. The house immediately across Cragmont Avenue to the south actually “fronts” west onto Abbott Avenue.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted in the immediate area in a field visit conducted by the Board Administrator.
- As of September 8, 2009, one letter/email had been submitted in opposition and no letter had been submitted in support of this request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6’ 4” (whereby the proposed stucco wall reaching 10’ 4” in height) does not adversely affect neighboring property.
- Granting this special exception of 6’ 4” with a condition imposed that the applicant complies with the submitted revised site plan dated 08-26-09 and revised “elevations” document dated 08-26-09 would assure that the proposal exceeding 4’ in height would be constructed and maintained in the location and of the height and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Salinas**

I move that the Board of Adjustment, in Appeal No. **BDA 089-091**, hold this matter under advisement until **September 14, 2009**.

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2009

APPEARING IN FAVOR: Ed Simons, 900 Jackson, #640, Dallas, TX
Lionel Morrison, 1722 Routh Street, Dallas, TX

APPEARING IN OPPOSITION: Patricia Pelehach, 3504 Gragmont Ave, Dallas, TX

MOTION #1: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 089-091**, on application of Ed Simons, **grant** the Cragmont Avenue 23-foot variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to

this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan dated 08-26-09 is required.

SECONDED: **Moore**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 089-091**, on application of Ed Simons, **grant** the Abbott Avenue 3-foot variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan dated 08-26-09 is required.

SECONDED: **Moore**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION #3: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 089-091**, on application of Ed Simons, **grant** the request of this applicant to construct and maintain an 10-foot-four-inch tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and submitted revised elevation, both dated 08-26-09 is required.

SECONDED: **Moore**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-109(K)

BUILDING OFFICIAL’S REPORT:

Application of Glenn Lickstein represented by Christopher Russell for a special exception to the landscaping regulations at 3232 McKinney Avenue. This property is more fully described as Lot 1C in City Block 1/638 and is zoned PD-193 (LC), which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 3232 McKinney Avenue

APPLICANT: Glenn Lickstein
Represented by Christopher Russell

REQUESTS:

The applicant seeks to develop the property with a non residential use in PD 193 and seeks a special exception to the landscape regulations.

STAFF RECOMMENDATION (landscape regulations):

Approval with the following conditions;

- New and existing trees on the property that must be removed in the future will be replaced with a tree of an equivalent species as approved for the zoning district.
- Pear trees along Oak Grove that may be removed in the future and may be replaced by a small tree species at a density of 8 parkway trees, as allowed per code, instead of the current provision of 12 parkway trees.

Rationale:

- The Chief Arborist has reviewed the submitted site plan and does not have any objections to the special exception to the landscape regulations for this site.
- The special exception will not adversely affect neighboring properties.

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

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

GENERAL FACTS:

- The applicant proposes to construct and maintain a nonresidential structure in Pd 193.
- The applicant is seeking relief from the general requirements for landscaping under PD 193 Part 1, primarily the tree planting zone and sidewalk width and locations.
- The subject site has street frontage along McKinney Ave, Hall Street, and Oak Grove Avenue.
- The Dallas Development Code provides a means of relief of the landscape requirements in PD 193 by way of a special exception to the landscape requirements.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (Planned Development District)
North: PD 193 (Planned Development District)
South: PD 193 (Planned Development District)
East: PD 193 (Planned Development District)
West: PD 193 (LC) (Planned Development District, Light Commercial)

Land Use:

The subject site is developed with a nonresidential structure (One McKinney Plaza). The properties to the north, south, east and are developed with nonresidential uses. The property to the west is developed with a multifamily use.

Zoning/BDA History:

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

Timeline:

- July 31, 2009: The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 24, 2009: The Board Senior Planner contacted the applicant by telephone and email and conveyed the following information:
- the public hearing date and panel that will consider the application;

- the criteria and standard that the board will use in their decision to approve or deny the request;
- the 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 31st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the September 8th 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 September public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

September 1, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

September 1, 2009 The Chief Arborist submitted a memorandum referencing the submitted alternate landscape plan (attachment A).

STAFF ANALYSIS:

- The applicant proposes to construct and nonresidential structure and provide an alternate landscape plan for the site.
- The site is currently developed with an office tower and vacant retail space. This application is triggered by changes to the existing site, including a new building façade. The site has street frontage along McKinney Ave, Hall Street, and Oak Grove.
- The applicant is requesting a special exception to the landscape requirements of PD 193. Specifically, relief from the general requirements for the planting zone and sidewalk width and location.
- The Chief Arborist has reviewed the submitted landscape plan and submitted a memorandum with an analysis of the alternate landscape plan (summarized below):
 1. The site will be deficient in the location of trees that will be offset from the tree planting zone of 2.5'-5' from the back of the curb, and in the location of the required minimum sidewalks between 5'-12' from back of curb
 2. Most of the landscape plant materials are currently existing on the site.

3. The planned removal of eleven trees from the site will be mitigated under Article X regulations.
 4. The parkway along Oak Grove contains 12 peer trees in the tree planning zone. Due to line-of-site concerns any future reductions and removals of the aging pear trees should account for site limitations for future compliance.
 5. Approval of landscaping should account for adjustments for aging and declining trees to allow for replacement of those trees with smaller size species where appropriate.
- The applicant has the burden of proof of showing strict compliance with the landscaping regulations will unreasonable burden the property, the special exception will not adversely affect neighboring property; and, the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
 - Staff recommends compliance with a submitted alternate landscape plan, should the Board grant a special exception to the landscape regulations.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2009

APPEARING IN FAVOR: Christopher Russell, 5925 LaVista, Dallas, TX
 Mark Reed, 3710 Rollins, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 089-109**, hold this matter under advisement until **October 19, 2009**.

SECONDED: **Moore**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-104

BUILDING OFFICIAL’S REPORT:

Application of Brian Shroyer for a special exception to the fence height regulations at 6822 Lupton Drive. This property is more fully described as Lot 4 in City Block B/5476 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 3 inch fence which will require a special exception of 4 feet, 3 inches.

LOCATION: 6822 Lupton Drive

APPLICANT: Brian Shroyer

REQUEST:

- A special exception to the fence height regulations of 4' 3" is requested in conjunction with completing and maintaining an 8' high open wrought iron entry gate flanked by two, 8' 3" high brick columns and two solid brick entry wing walls ranging from 6' – 7' 7" in height located in the site's 50' front yard setback on a site developed with a single family home. The total length of the proposal over 4' in height in the front yard setback is 26' 7" parallel to the street and 6' in length on both sides perpendicular to the street in the front yard setback. (The proposal is located 44' from the front property line where if it were located 6' further back, it would no longer be in the front yard setback and therefore no longer require a fence height special exception from the board of adjustment).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and an elevation document indicating a fence/column/gate proposal that would be located in the site's 50' front yard setback (created by a platted building line) and would reach a maximum height of 8' 3".
- The following information was gleaned from the submitted site plan:
 - The proposal would be approximately 26.5' in length parallel to Lupton Drive and approximately 6' in length perpendicular to Lupton Drive on both "sides" of the motor court in the front yard setback.
 - The proposal is shown to be located 44' from front the front property line or about 55' from the pavement line.
- The proposal is located on a site where one single family home with no fence in its front yard setback would have direct frontage.
- The Board Administrator conducted a field visit of the site and surrounding area along Lupton Drive (approximately 500 feet east and west of the site) and noted no other fence/walls.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A and C). This information included the following:

- a set of revised plans dated 8-23-09 – plans that according to the applicant are identical to the previously submitted plans with the exception of adding “coach lanterns” on the street side of each of the 8’ 3” high entry columns;
 - a letter that provided additional details about the request;
 - copies of petitions signed by 14 owners/neighbors in support of the request (along with a map showing where these owners are located in relation to the subject site); and
 - photographs of the subject site and neighboring properties.
- An attorney representing opposing property owners and residents of property located at 6806 Lupton Drive (the lot immediately west of the subject site) submitted a document for the board’s consideration (see Attachment B). This information included a letter and photographs that explained/documented his clients’ opposition to the application.

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:

- July 16, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 20, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
 - an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis;

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

Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.

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

Sept. 1, 2009 The Building Inspection Development Code Specialist forwarded additional information to the Board Administrator that had been submitted to him by the applicant (see Attachment A).

Sept. 2, 2009 An attorney representing opposing property owners and residents of property located at 6806 Lupton Drive (the lot immediately west of the subject site) submitted a document for the board’s consideration (see Attachment B). This information included a letter and photographs that explained/documented his clients’ opposition to the application.

Sept. 8, 2009 The applicant submitted additional information (dated September 14, 2009) to the Board Administrator (see Attachment C).

STAFF ANALYSIS:

- The request focuses on completing and maintaining an 8’ high open wrought iron entry gate flanked by two, 8’ 3” high brick columns and two solid brick entry wing walls ranging from 6’ – 7’ 7” in height in the site’s 50’ front yard setback on a site developed with a single family home.
- The total length of the proposal over 4’ in height in the front yard setback is 26’ 7” parallel to the street and 6’ in length on both sides perpendicular to the street in the front yard setback, and the proposal is located 44’ from the front property line where if it were located 6’ further back, it would no longer be in the front yard setback and therefore no longer require of a fence height special exception from the board of adjustment.
- A revised site plan and an elevation document dated 08-23-09 have been submitted indicating the location of the proposal in the front yard setback relative to its proximity to the front property line and pavement line, the length of the proposal

- The proposal is located on a site where one single family home with no fence in its front yard setback would have direct frontage.
 - No other fence/walls higher than 4' which appeared to be located in a front yard setback were noted by the Board Administrator in a field visit of the site and surrounding area (approximately 500 feet east and west of the site).
 - As of September 8, 2009, petitions signed by 14 neighbors/owners had been submitted to staff in support of the request, and one document/notebook from two property owners/neighbors located at 6806 Lupton Drive had been submitted to staff in opposition to the request.
 - The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 3" (whereby the proposal that would reach 8' 3" in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 3" with a condition imposed that the applicant complies with the submitted revised site plan and elevation dated 08-23-09 would assure that the proposal would be completed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2009

APPEARING IN FAVOR: Brian Shroyer, 1543 Silver Springs Dr., Allen, TX
 Mark Francis, 6822 Lupton, Dallas, TX

APPEARING IN OPPOSITION: Tom James, 9289 County Road 134, Celina, TX
 Brenda Lockhart, 6806 Lupton, Dallas, TX

MOTION#1: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 089-104** on application of Brian Schroyer, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

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

MOTION#2: Maten

I move that the Board of Adjustment in Appeal No. **BDA 089-104** hold this matter under advisement until **October 19, 2009**.

SECONDED: Salinas

AYES: 4– Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Moore

AYES: 4 –Boyd, Moore, Maten, Salinas

NAYS: 0 - None

MOTION PASSED: 4 – 0 (Unanimously)

2:16 P. M. - Board Meeting adjourned for **September 14, 2009**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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