

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, NOVEMBER 17, 2008**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Elizabeth Wahlquist, regular member and Tony Rios, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Elizabeth Wahlquist, regular member and Tony Rios, regular member

MEMBERS ABSENT FROM HEARING: No one

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

11:04 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 17, 2008** 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 October 13, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2008

MOTION: Rios

I move **approval** of the Monday, **October 13, 2008** public hearing minutes.

SECONDED: Wahlquist

AYES: 5–Boyd, Moore, Maten, Wahlquist, Rios

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

To reconsider the adopted Board of Adjustment Panel C 2009 public hearing schedule specifically amending Panel C’s scheduled public hearing in February from Monday, February 16th (which is a City-recognized holiday – Presidents Day) to Thursday, February 19th.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2008

MOTION: Rios

I move adopt Board of Adjustment Panel C 2009 public hearing schedule specifically amending Panel C’s scheduled public hearing in February from Monday, February 16th (which is a City-recognized holiday – Presidents Day) to Thursday, February 19th.

SECONDED: Moore

AYES: 4–Boyd, Moore, Wahlquist, Rios

NAYS: 1 – Maten

MOTION PASSED: 4 – 1

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

REQUEST: To waive the filing fees to be submitted in conjunction with potential Board of Adjustment appeals

LOCATION: 3003 Irwindell Bouelvard

APPLICANT: Mark Morley

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 waivers/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 has submitted letters (and related financial documentation) to the Board Administrator that requested a waiver of the \$1,200.00 filing fees to be submitted in conjunction with potential appeals to the Board of Adjustment (see Attachment A). These letters and related information provided some details as to why the applicant felt that the fees should be waived.

Timeline:

November 3, 2008 The applicant submitted a letter requesting a waiver of the \$600.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).

November 6, 2008: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel C.

November 6, 2008: The Board Administrator contacted the applicant informing him of the next available Panel C hearing dates in which the miscellaneous request could be scheduled: November 17 or December 15, 2008 where the applicant chose to have the matter scheduled for November 17th. The board administrator followed the phone conversation with an email (with attachments) to the applicant that conveyed the following information:

- the public hearing date and panel that will consider the request (where his attendance would be strongly encouraged);

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the November 7th 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 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

November 6, 2008 After having discussed the issue at hand on the subject site, the applicant submitted additional information and another letter requesting an additional waiver of the \$600.00 filing fee for another Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A). (The applicant had determined that in addition to the fence being over the maximum height allowed in a front yard setback, that the fence was also most likely located in a required visibility triangle hence a potential total application fee of \$1,200.00).

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2008

APPEARING IN FAVOR: Mark Morely, 3003 Irwindell Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Maten**

I move to **approve** to waive a \$600 filing fee to be submitted in conjunction with potential Board of Adjustment appeals.

SECONDED: **No one**

MOTION #2: **Moore**

I move to **approve** to waive the filing fees to be submitted in conjunction with potential Board of Adjustment appeals

SECONDED: **Rios**

AYES: 5–Boyd, Moore, Maten, Wahlquist, Rios

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-143(K)

BUILDING OFFICIAL'S REPORT:

Application of Santos Martinez represented by Masterplan Consultants for a special exception to the landscaping regulations at 3530 Gillespie Street. This property is more fully described as Lot 1-3 in City Block 1030 and is zoned PD-193 (MF-3), which requires mandatory landscaping. The applicant proposes to construct a single family residential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 3530 Gillespie Street.

APPLICANT: Santos Martinez
Represented by Masterplan Consultants

REQUEST:

- A special exception to the landscape requirements of PD 193.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Two trees from the 'approved list of planting materials' for PD 193 must be planted in the front yard along Gillespie Street prior to final building inspection. The trees must be planted no further than 8 feet from the sidewalk.

Rationale:

Although the property owner is taking great efforts to preserve the existing tree canopy covering the property, the arborist believes that the trees nearest Gillespie Street are a species that are in locations, and physical conditions, that will require removal in a few years. The placement of new trees will help reduce the loss of southern profile tree shade for the owner while also providing mandated trees in a more safe, suitable growing environment in the open yard.

STANDARD FOR A SPECIAL EXCEPTION TO LANDSCAPE REQUIREMENTS:

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 a special exception under this subsection.

GENERAL FACTS:

- Single family structures in the PD 193 MF-3 zoning district are required to adhere to specific landscaping regulations, site area designation, fence and street tree location, and sidewalk requirements.
- The site is flat and rectangular being 41' x 134' in dimension or 5,504 square feet.
- The site has been designated new construction due to the extensive renovations above the foundation. The new construction designation triggers the need to comply with the landscaping requirements of PD193 MF-3.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 MF-3 (Planned Development, Multi-family)
North: PD 193 MF-3 (Planned Development, Multi-family)
South: PD 193 MF-3 (Planned Development, Multi-family)
East: PD 193 Sub district 29 (Planned Development,)
West: PD 193 MF-3 (Planned Development, Multi-family)

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and west, are developed with multi-family structures. Properties to the east are in PD 193 Subdistrict 29 and are developed with single family structures.

Zoning/BDA History:

BDA 078-069 The Board of Adjustment Panel C granted a variance to the front yard setback requirement and granted a variance to the parking regulations on June 23, 2007 for this property.

Timeline:

September 26, 2008: 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.

October 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

October 21, 2008: The Board of Adjustment’s Senior Planner contacted the applicant’s representative and shared the following information by phone and letter:

- 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 October 29th deadline to submit additional evidence for staff to factor into their analysis;
- the November 7th 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 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 November public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

October 23, 2008 The applicant's representative submitted additional information for the Board's review (see attachment B).

October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. 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.

November 10, 2008 The City's Chief Arborist submitted a memorandum regarding the case (see attachment B).

STAFF ANALYSIS:

- The subject site is being developed with a single family structure located in a multi-family zoning district. The site is flat and rectangular (41' x 134') and 5,504 square feet according to DCAD. The site is zoned PD 193 MF-3 where lots in the vicinity are typically developed with multi-family structures.
- The site's new construction designation requires compliance with landscaping regulations for PD 193.
- The site is deficient in the number of parkway trees provided, sidewalk location, landscape site area designation, fence requirements, and trees. The Chief Arborist has submitted a memorandum detailing each deficiency (see attachment A).
 1. Parkway trees. All off the existing trees on the site are located within the lot boundaries and parkway trees will not be provided.
 2. Sidewalks. The current sidewalk on Hood Street is approximately 1.5 feet from the curb and the Gillespie Street sidewalk is 3 feet from the curb, each being 4 feet in width.
 3. Landscape site area designation. Landscape site area has not been specified but is estimated to be slightly over the required 1,108 square feet (20% of 5,540 square feet of lot area).

- 4. Fences. The applicant's representative has informed staff that the fencing located on the site will comply with code requirements for PD 193 M-F3 for a single family use.
- 5. Trees. There are a sufficient number of trees to provide the required number of site trees.
- The applicant has the burden of proof in establishing that granting the special exception to the required landscape regulation will not compromise the spirit and intent of this section (51P-193.126).

If the Board were to grant the special exception to the landscaping requirements, the board shall, when feasible, require that the applicant submit, and the property comply with, a landscape plan as a condition to granting a special exception.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Rios**

I move that the Board of Adjustment grant application **BDA 078-143** 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 alternate landscape plan is required.
- Two trees from the PD 193 "approved list of planting materials" must be planted in the front yard along Gillespie Street prior to final building inspection. The trees must be planted no further than eight feet from the sidewalk.

SECONDED: **Moore**

AYES: 5–Boyd, Moore, Maten, Wahlquist, Rios

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-145

BUILDING OFFICIAL'S REPORT:

Application of Peter Kavanagh, Zone Systems, Inc., for a variance to the rear yard setback regulations and for a variance to the height regulations at 3520 Greenville Avenue. This property is more fully described as Lot 1B in City Block A/2894 and is zoned CR which requires a rear yard setback of 20 feet where there is adjacent

residential zoned property and which limits the height of a structure to 26 feet due to the residential proximity slope regulations. The applicant proposes to construct a structure and provide a 1 foot rear yard setback which will require a variance of 19 feet to the rear yard setback regulations, and to construct a structure with a height of 65 feet which will require a variance 39 feet to the height regulations due to the residential proximity slope.

LOCATION: 3520 Greenville Avenue.

APPLICANT: Peter Kavanagh, Zone Systems, Inc.

November 17, 2008 Public Hearing Notes:

- The Board Administrator circulated a letter from the applicant at the briefing requesting that the board delay action on the requests until December in order to meet with the Lowest Greenville West Neighborhood Association (Attachment C). The Board Administrator circulated a letter from the Lowest Greenville West Neighborhood Association at the briefing requesting that the board honor the applicant's request for this delay (Attachment D).

REQUESTS:

- The following appeals have been made in this application in conjunction with constructing and maintaining a 65' high "stealth antenna facility" on a site that is currently developed with a retail use (M Street Bar):
 1. A variance to the rear yard setback regulations of 19'; and
 2. A variance to the height regulations (specifically to the residential proximity slope or RPS) of 39'.

STAFF RECOMMENDATION:

Denial of both variance requests

Rationale:

- Although the subject site is located immediately adjacent to a lot with a structure (the Grenada Theater) that is eligible for National Register of Historic Places (NRHP) designation whereby the Texas Historical Commission (THC) had written in August of 2008 that the monopole tower as shown at that time* on the subject site would have an adverse effect on this structure's NRHP eligibility, there appears to be no physical site constraints on (or hardship to) the subject site that precludes the applicant from locating the proposed "stealth antenna facility" further west on the site – a location that would be in compliance with the rear yard setback and height regulations related to the residential proximity slope.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the applicable development standards including rear yard and height regulations created

by the residential proximity slope) in a manner commensurate with other developments found on other similarly CR (Community Retail) zoned lots.

- * Note that the applicant did not submit the proposed monopole plans and photo simulations that were submitted to the THC (and which the THC wrote their August 14, 2008 comments) in conjunction with this board of adjustment application. While the August 18th THC letter specifically referenced a 75' high tower with exposed transmission antennas, the tower shown on the elevation plan submitted in conjunction with this board application is denoted as a "65' – 0" - stealth monopole tower," implying that modifications were made to the height and design of the monopole from when it was presented to the THC in August of 2008 where they had concluded that the monopole tower as proposed at that time would have an adverse impact on the Grenada Theater's NRHP eligibility.

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:

- The minimum rear yard setback for structures on lots zoned CR where adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district is 20'. (The subject site is immediately adjacent to property zoned MF-2(A) otherwise no minimum rear yard setback would be required).
The original application and original Building Official's Report stated that a variance of 17' was needed since a 3' setback was provided from the rear property line although the site plans appeared to show a structure that was approximately 2.5' from the rear property line which would require a 17.5' variance.
On October 20, 2008, a revised Building Official's Report (see Attachment A) was forwarded to staff stating that a 19' rear yard variance was needed since a structure was to be located only 1' from the rear property line. (According to the Building Inspection Development Code Specialist, the "structure" located 1' away from the rear property line is a concrete slab on which the monopole tower and related equipment would be located atop).

- The maximum height for a monopole cellular tower in a CR zoning district is 65' (with RAR required), however, any portion of a structure over 26' in height cannot be located above a residential proximity slope which in this case given that the subject site is immediately adjacent to property zoned MF-2(A) is a 1:1 slope (or 1 foot in height for every 1 foot away from private property in a residential zoning district). This slope on the subject site begins at the MF-2(A) zoned property immediately east of the site that is currently developed as a surface parking lot. The original application and Building Official's Report states that a variance of 39' was needed since the proposed cell tower was to be 65' in height and located 3' from the rear property line. Although a revised Building Official's Report was forwarded to staff stating that a 19' rear yard variance was needed since a structure was to be located only 1' from the rear property line, the revised Building Official's Report did not amend any original reference to the RPS variance request.
- The subject site is flat, rectangular in shape (approximately 136' long and approximately 112' wide), and, according to the application, 0.393 square feet in area.
- DCAD states that the site is developed with the following:
 - a restaurant built in 2000 that is 3,037 square feet in area.
- On October 29, 2008, staff received additional information from the applicant (see Attachment B). This information included the following information:
 - a letter from the applicant providing additional details about the request;
 - a letter from the Texas Historical Commission regarding their position on the proposed construction of the 75' monopole tower on the site – a position as it relates to the tower on the site and its relationship to/effect on the Grenada Theater (a structure that is eligible for listing on the National Register of Historic Places) immediately to the site's north;
 - a letter from an environmental regulatory consultant regarding their position on the proposed construction of the tower on the site – a tower that should be a stealth tower and should be moved to the east edge of the site.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: MF-2(A) (Multifamily district)
West: CR (Community Retail)

Land Use:

The subject site is developed with a retail use (M Street Bar). The areas to the north, south, and east are developed with a retail uses; and the area to the west is developed with a surface parking lot.

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:

- Sept. 24, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 16, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 16, 2008: The Board Administrator emailed the applicant 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 October 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the November 7th 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 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 matters at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 29, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment A).
- October 29, 2008 Staff received additional information from the applicant (see Attachment B).
- October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, the Assistant Building Official, 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.

The Historic Preservation Senior Planner submitted a Review Comment Sheet marked "Has no objections if certain conditions are met" with the following comments: "Proposed project is adjacent to the Grenada Theater, an eligible City of Dallas Landmark. It is also close to two City of Dallas Conservation Districts, M Streets and M Streets East. Staff supports recommendations outlined in letter by Texas Historical Commission dated August 14, 2008.

STAFF ANALYSIS:

- The requests for variances to the rear yard setback and height regulations (created by the residential proximity slope) are made in conjunction with constructing a 65' high "stealth antenna facility" on a site developed with a retail use (M Street Bar) - a site that is immediately adjacent to a site developed with the Grenada Theater - a structure eligible for designation on the National Register of Historic Places.
- The subject site is flat, rectangular in shape (approximately 136' long and approximately 112' wide), and, according to the application, 0.393 square feet in area. According to DCAD, the site is developed with a restaurant built in 2000 that is 3,037 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the rear yard and height regulations due to the residential proximity slope requested to construct and maintain a 65' high stealth tower structure (and related equipment structures) will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR (Community Retail) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR (Community Retail) zoning classification.

If the Board were to grant the rear yard variance of 19' and height variance of 39', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structures encroaching into the rear yard setback and above and beyond the residential proximity slope would be limited to what is shown on the submitted plan and elevation which in this case is a 65' high stealth monopole structure (and related equipment structures) that is as close as 1' away from the rear property line (or 19' into the 20' setback) and 39' above the residential proximity slope line.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 078-145**, hold this matter under advisement until **December 15, 2008**.

SECONDED: **Moore**

AYES: 5—Boyd, Moore, Maten, Wahlquist, Rios

NAYS: 0—

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-141(K)

BUILDING OFFICIAL’S REPORT:

Application of David Weinreb, represented by Bill Rehnert for a special exception to the fence height regulations at 5516 North Forty Place. This property is more fully described as tract 1 in City Block 8732 and is zoned R-1/2ac(A) and R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot fence in a required front yard setback which will require a special exception of 5 feet.

LOCATION: 5516 North Forty Place

APPLICANT: David Weinreb
Represented by Bill Rehnert

REQUEST:

A special exception to the fence height regulations of 5 feet requested in conjunction with constructing and maintaining a solid fence and gate in the site’s 40’ front yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located on North Forty Place. The site has two front yard setbacks one along North Forty Place and another on Frankfort Road.
- The applicant is proposing to maintain a 9' solid fence and gate in the property's front yards.
- 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. And a person shall not erect or maintain a fence in a required yard more than nine feet above grade.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-1ac and R ½ ac (A) (Single family district 1 acre and ½ acre)
<u>North:</u>	R-1ac and R ½ ac (A) (Single family district 1 acre and ½ acre)
<u>South:</u>	R-½ ac (A) (Single family district ½ acre)
<u>East:</u>	R-1ac and R ½ ac (A) (Single family district 1 acre and ½ acre)
<u>West:</u>	R-½ ac (A) (Single family district ½ 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 is no case history for the site.

Timeline:

- September 19 2008 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.
- October 16 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- October 20 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via telephone and letter:
- 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 October 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the November 7th 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 November public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

October 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November 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:

- A scaled site has been submitted that documents the location of the proposed wall, fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the stone wall to be 8'6" in height, the columns and stone caps to be 9' in height, and an decorative gate 8' in height.
- There are other solid fences existing on neighboring properties on Frankford Road.
- The scaled site plan details the following information regarding the placement and dimensions of the fence.
 - The existing fence runs the total length of the property line on Frankford Road and along North Forty Place.
 - The fence is constructed of stone veneer and solid iron.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.

Should the Board vote to grant the special exception to the fence height regulation, staff recommends imposing the submitted elevation and site plan as conditions of approval.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2008

APPEARING IN FAVOR: Bill Rehnert, 13355 Noel Road, #950, Dallas, TX

APPEARING IN OPPOSITION: Helen Rosenbert, 5525 North Forty Place, Dallas, TX
Carol Hildebrand, 5595 North Forty Place, Dallas, TX

MOTION #1: Moore

I move that the Board of Adjustment in Appeal No. **BDA 078-141**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Maten

AYES: 5–Boyd, Moore, Maten, Wahlquist, Rios,

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Wahlquist

I move that the Board of Adjustment, in Appeal No. **BDA 078-141**, on application of David Weinreb, represented by Bill Rehnert, **deny** the special exception requested by this applicant on Frankford Road **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Moore

AYES: 4–Moore, Maten, Wahlquist, Rios

NAYS: 1 –

MOTION PASSED: 4 –1

MOTION #3: Wahlquist

I move that the Board of Adjustment, in Appeal No. **BDA 078-141**, on application of David Weinreb, represented by Bill Rehnert, **deny** the special exception requested by this applicant on North Forty Place **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Maten

AYES: 4–Moore, Maten, Wahlquist, Rios

NAYS: 1 – Boyd

MOTION PASSED: 4 –1

FILE NUMBER: BDA 078-153(K)

BUILDING OFFICIAL’S REPORT:

Application of Greg Baten represented by Joe Shannon for a special exception to the fence height regulation at 4001 Turtle Creek Blvd. This property is more fully described as Lot 11 in City Block 1/2062 and is zoned PD-193 (R-7.5), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 11 foot 8 inch fence in a required front yard setback which will require a special exception of 7 feet 8 inches.

LOCATION: 4001 Turtle Creek Blvd.

APPLICANT: Greg Baten
Represented by Joe Shannon

REQUEST:

A special exception to the fence height regulations of 5 feet is requested in conjunction with constructing and maintaining a solid fence in the site’s 25 foot front yard setback and to maintain an 11’- 7 ¼” fence.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located on Turtle Creek Blvd. The site has two front yard setbacks one along Turtle Creek Blvd and another on Avondale Ave.
- The applicant is proposing to maintain a 11'- 7 ¼ " solid fence along Avondale Ave. frontage.
- 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. And a person shall not erect or maintain a fence in a required yard more than nine feet above grade.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (R7.5-A) (Single family district 7,500 square feet)
North: PD 193 (R7.5-A) (Single family district 7,500 square feet)
South: PD 350 (Planned Development)
East: PD 21 (Planned Development)
West: PD 193 (R7.5-A) (Single family district 7,500 square feet)

Land Use:

The subject site is being developed with a single family home. The areas to the north and west are developed with single family uses. The area to the north is developed with a multifamily use.

Zoning/BDA History:

There is neither case history for this site nor sites in the immediate vicinity.

Timeline:

- October 10, 2008 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.
- October 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- October 21, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via telephone and letter:
- 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 October 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the November 7th 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 November public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November 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:

- A scaled site plan has been submitted that documents the location of the proposed wall, fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the stucco wall to be 11'-7 ¼" in height.
- There is a solid fence on a multifamily use south of the subject site.
- The scaled site plan details the following information regarding the placement and dimensions of the fence.
 - The fence along the Avondale Avenue front yard (south elevation);
 - Stucco wall running approximately 125 linear feet varying in height from 9 feet to 11'-7 ¼ "
 - The fence along the western property line (western elevation):
 - A stucco wall vary in height from 6'-2" to a maximum height of 9'-0"
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the stucco wall that is proposed to exceed 4' in height) will not adversely affect neighboring property.

If the Board votes to approve this special exception to the fence height regulation, staff recommends imposing the submitted site plan and elevation as conditions to the approval.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2008

APPEARING IN FAVOR: Joe Shannon, 4440 Mockingbird Pkwy, Dallas, TX

APPEARING IN OPPOSITION: Mel Klein, 4313 Avondale, Dallas, TX
Duane Bouliyuy, 4317 Avondale, Dallas, TX
Vaugh Rice, 4325 Avondale, Dallas, TX

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 078-153**, on application of David Weinreb, represented by Bill Rehnert, **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: **Rios**
AYES: 3–Boyd, Moore, Rios
NAYS: 2– Maten, Wahlquist
MOTION PASSED: 3 – 2

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Wahlquist**
AYES: 5 –Boyd, Moore, Maten, Wahlquist, Rios
NAYS: 0 - None
MOTION PASSED: 5 – 0 (Unanimously)

3:12 P. M. - Board Meeting adjourned for **November 17, 2008.**

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.