

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, NOVEMBER 16, 2005**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Linda Wise, alternate member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Linda Wise, alternate member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

STAFF PRESENT AT HEARING: Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Frank Dominguez, Senior Planner and Trena Law, Board Secretary

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**10:06 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's November 16, 2005 docket.**

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**1:15 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B October 19, 2005 public hearing minutes

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

**MOTION: Jaffe**

I move **approval** of the **Wednesday, October 19, 2005** Board of Adjustment Public Hearing minutes.

**SECONDED: Brannon**

**AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe**

**NAYS: 0 – None**

**MOTION PASSED 5 – 0 (Unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

To approve the Board of Adjustment Panel B’s 2006 Public Hearing Schedule.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

**MOTION: Wise**

I move to approve the Board of Adjustment Panel B’s 2006 Public Hearing Schedule Proposal Number One.

**SECONDED: Brannon**

**AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe**

**NAYS: 0 – None**

**MOTION PASSED 5 – 0 (Unanimously)**

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**FILE NUMBER: BDA 056C-01**

**BUILDING OFFICIAL'S REPORT:**

Application of Thirteen Homeowners Association, represented by Dolores G. Wolfe requesting a compliance date and discontinuance of a non-conforming manufactured home park use located at 1802 Highland Road. This property is more fully described as a tract of land in City Block 7028 and is zoned R-7.5 (A) which does not permit a manufactured home park use. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (4) of the Dallas Development Code, as amended, which states the power of the Board to bring about the discontinuance of a nonconforming use.

**LOCATION: 1802 Highland Road**

**APPLICANT:** Thirteen Homeowners Association  
Represented by Dolores G. Wolfe

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming manufactured home park use.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- (1) Amortization of nonconforming uses.
- (A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.
- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
  - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
  - (iii) The manner in which the use is being conducted.
  - (iv) The hours of operation of the use.
  - (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a

compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
  - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
  - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - (cc) Any return on investment since inception of the use, including net income and depreciation.
  - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

**GENERAL FACTS:**

- Building Inspection states that the manufactured home park use on the subject site became nonconforming on July 22, 1952. This conclusion was reached by research conducted by the Building Inspection Development Code Specialist who found that this "House Trailer Park" was annexed into the City of Dallas on July 22, 1952. In addition, the code specialist found that at that time, the property was zoned for single family uses only and then later zoned R-7.5 which did not allow for "House Trailer Parks" therefore it was granted a nonconforming status.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned R-7.5(A).
- The Dallas Development Code combines "manufactured home park" use in a grouping of other use including "manufactured home subdivision," and "campground" in Section 51A-4.209(b)(4). This section of the code provides the following:
  - 'Manufactured home park, manufactured home subdivision or campground.'

- “Definition: A manufactured home park is a unified development of transient stands arranged on a lot under single ownership.”
- “Definition: A manufactured home subdivision is plat designed specifically for manufactured home development.”
- “Definition: A campground is a lot used to accommodate recreation vehicles, tents, or manufactured homes on a rental basis for temporary camping purposes.”
- “Districts permitted: By right in the MH(A) district.”
- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining a change in zoning to MH(A) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site’s existing R-7.5(A) zoning classification. Uses permitted by right in this zoning district include crop production use, temporary construction or sales office use, public park, playground, or golf course use, or single family use.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included notebook of information including the following series of exhibits and documents:
  - Certificate of Occupancy;
  - Original Application;
  - DCAD Property Records;
  - Detailed Compliance Records;
  - Police Records;
  - Texas Criminal History Records; and
  - Dallas Code and Ordinances.

**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 site is currently developed with a manufactured home park use. The areas to the north, east, south, and west appear to be undeveloped tracts of land.

**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:**

- August 26, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 23, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board.
- October 3, 2005: The Board Administrator contacted the applicant and shared the following information:
- the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- October 5, 2005: City staff postponed scheduling this case until November 16<sup>th</sup>. (The Board Administrator informed the applicant of this postponement).

- October 6, 2005: The Board Administrator wrote/sent the owner of the site a certified letter that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
  - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
  - a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
  - a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “manufactured home park, manufactured home subdivision, or campground” use (Section 51A-4.209(b)(4));
  - a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704).

The letter also informed the owner of the date, time, and location of the public hearing.

- Oct. 24, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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.

November 2, 2005: The Board Administrator wrote/sent the owner of the site a certified letter that:

- included an enclosure of the most current section of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704); and
- a reminder of the date, time, and location of the public hearing on this matter.

November 4, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- The manufactured home park use on the subject site is a nonconforming use.
- The manufactured home park use on the subject site became nonconforming on July 22, 1952.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining a change in zoning to MH(A) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site’s existing R-7.5(A) zoning classification. Uses permitted by right in this zoning district include crop production use; temporary construction or sales office use; public park, playground, or golf course use; or single family use.
- The purpose of the Board of Adjustment’s November 16<sup>th</sup> public hearing shall be to determine whether continued operation of the nonconforming manufactured home park use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

**\*Due to an administrative error, the board lacked jurisdiction to hear this case and it was therefore held over to December 14, 2005.**

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**FILE NUMBER:** BDA 056-017

**BUILDING OFFICIAL'S REPORT:**

Application of Jose Rodriguez for a variance to the front yard setback regulations at 10002 Stebbins Drive. This property is more fully described as lot 8 in City Block F/6652 and is zoned R-7.5 (A), which requires a 25-foot front yard setback. The applicant proposes to construct an addition (install brick) to a single family dwelling and provide a 22-foot 1-inch front yard setback, which would require a variance of 2-feet 11-inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 10002 Stebbins Drive

**APPLICANT:** Jose Rodriguez

**REQUEST:**

- A variance to the front yard setback regulations of 2'11" is requested in conjunction with constructing an addition.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**GENERAL FACTS:**

- A 25'-front yard setback is required in the R-7.5 (A) zoning district.
- The site is flat, rectangular in shape (56' x 180'), and approximately 10,080 square feet in area.
- A typical lot size in R-7.5 (A) zoning district is 7,500 square feet for single family structures.

- A site plan has been submitted that indicates the area located in the 25'-front yard setback is approximately 58 square feet or 20' x 2'11" in area.
- DCAD records indicate that the site is developed with a single family residence in average condition that was built in 1952 and has 712 square feet of living area.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

There have been no recent Board of Adjustment requests in the immediate area.

**Timeline:**

- Sept. 14, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 24, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the November 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: 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 Building Inspection Development Code Specialist, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The plat map indicates the request site is approximately 10,080 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the front yard setback would be limited in this case to an area approximately 58 square feet,
- Granting this variance would allow an approximately 712 square foot single family residence to encroach 2'11" into the 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Brannon**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Gillespie**

**AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe**

**NAYS: 0 – None**

**MOTION PASSED: 5 – 0 (Unanimously)**

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**FILE NUMBER: BDA 056-022**

**BUILDING OFFICIAL'S REPORT:**

Application of Haroon Abdoh, P.E., City of Dallas, Project Manager, for a special exception to the visibility obstruction regulations at 3801 Gaston Avenue. This property is more fully described as a tract of land in City Block 764 and is zoned PD 298 which requires that no structure may be located in the required visibility corner clip. The applicant proposes to maintain a building within the visibility corner clip which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION: 3801 Gaston Avenue**

**APPLICANT: Haroon Abdoh, P.E., City of Dallas, Project Manager**

**REQUEST:**

- A special exception to the visibility obstruction regulations is requested in conjunction with maintaining an existing building (3801 Gaston Mondrian Medical) that is currently located in the 45' visibility triangle at the intersection of Gaston Avenue and Washington Avenue. The amount of structure in this intersection triangle will become greater once/if the City right of way acquisition and widening has been/is completed at this intersection.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - In a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
  - Between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

- According to DCAD records, the subject site is developed with a “medical office building” structure built in 1973 with 28,958 square feet of area, and a “parking garage” built in 1975 with 37,833 square feet.
- The applicant’s representative has provided an attachment that establishes the following:
  - The project calls for the widening of Gaston Avenue and Washington Avenue to provide left turns at all approaches.
  - As a result of the proposed widening, the pavement edge will move closer to the structure on the subject site and reduce the visibility triangle from 35’ to 30’.
  - The existing building on the subject site was constructed in 1973 and the visibility triangle at that location has been less than what is required by city standards.
  - The intersection is a signalized intersection in which all movements through the intersection are controlled, and that the project will improve safety at the intersection and reduce the impacts of inadequate visibility triangle.
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). The information includes the following:
  - a letter that provides further details about the request; and
  - drawings/site plans that show existing conditions at the Gaston/Washington intersection and the subject intersection with the proposed improvements.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 298 (Planned Development District)  
North: PD No. 298 (Planned Development District)  
South: PD No. 298 (Planned Development District)  
East: PD No. 298 (Planned Development District)  
West: PD No. 298 (Planned Development District)

**Land Use:**

The subject site is developed with an office use. The areas to the north, east, south, and west are developed with a mix of office and retail 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:**

Sept. 29, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. (This information included photographs of

the site and surrounding area that will be available for review at the briefing/public hearing).

October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

October 20, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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. The Development Services Senior Engineer has informed the Board Administrator that he will provide his facts/observations during the November 16<sup>th</sup> briefing and hearing.

November 7, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- The existing structure on the subject site (constructed in the 70's) is located in the visibility triangle at the intersection of Gaston Avenue and Washington Avenue. The amount of this structure in the triangle will be increased with the City's plans to widen Gaston Avenue and Washington Avenue.
- If the request were granted, subject to compliance with the submitted site plans, the existing structure would be "excepted" into the existing and proposed (widened) Gaston Avenue/Washington Avenue 45' visibility triangle.
- According to calculations made by the Board Administrator from the submitted site plans, the amount of the existing structure in the intersection is a triangular area that is about 8' x 10' (or 40 square feet in total area).
- According to calculations made by the Board Administrator from the submitted site plans, the amount of the existing structure in the *proposed widened* intersection is a triangular area that is about 18' x 20' (or 80 square feet in total area).

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Gillespie**

AYES: 5--Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 – None

MOTION PASSED: 5 – 0 (Unanimously)

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FILE NUMBER: BDA 056-001

**BUILDING OFFICIAL'S REPORT:**

Application of Lawrence W. Bonanno for a special exception to the fence regulations at 8668 Langdale Circle. This property is more fully described as Lot 7A in City Block 2/7082 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 6 inch fence in the required front yard setback which would require a special exception of 4 feet 6 inches. Referred to the

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

**LOCATION:** 8668 Langdale Circle

**APPLICANT:** Lawrence W. Bonanno

**REQUEST:**

- A special exception to the fence height regulations of 4' 6" is requested in conjunction with maintaining an open metal fence and two open metal gates in the 25' Langdale Circle front yard setback. The existing fence and gates range in height (given grade changes on the site) from 8.1' – 8.6'. The site is developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The following additional information was gleaned from the submitted site plan:
  - Three notations indicating the "metal fence" height to be 8.4', 8.1', and 8.6' in height.
  - The existing fence and gates total approximately 110 in length, and are parallel to Langdale Circle.
  - The existing fence and gates are located approximately 5' from the property line or depending on which of two lines on the submitted site plan that may denote the pavement line, either 17' or 20' from the pavement line. (The Board Administrator left a message with the applicant on October 25<sup>th</sup> requesting clarification of these lines since depending on the location of the actual pavement line, the fence and gates may require relocation or a special exception to the visibility obstruction regulations. The applicant has responded in an email of October 27<sup>th</sup> by stating that "the fence is outside the visibility triangle." The applicant is fully aware that if any component of the fence, gates, and or landscape materials are deemed to be in the visibility triangles at the drive approaches then the elements will be required to comply with the visibility obstruction regulations, or the applicant will be required to seek a special exception to these regulations from the Board of Adjustment with a new application and filing fee.



- The elevation submitted with the application depicted the existing fence and gates on the site but did not specify building materials or provide a scale.
- The applicant submitted a revised elevation on October 27<sup>th</sup> (see Attachment A). This elevation specified the following:
  - the fence and gate were comprised of “½’ iron pickets 4” in spacing open design;”
  - the maximum height of the fence and gates was 8’ 6”;
  - a 22’ distance from the fence to the “city line.”
- Neither a site plan with landscape materials nor a landscape plan has been submitted in conjunction with the application.
- There is no single family home that has direct frontage to the existing fence given the orientation of the fence on the site which faces south, and the homes immediately adjacent which either face west on Plano Road, or east or west further south of the site on Langdale Circle.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4’ in height and located in a front yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A and B). This information included the following:
  - an email to the Board Administrator that amended his original request to maintain an 8’ high fence to an 8’ 6” high fence, described the materials of the fence, and stated his belief that the fence is outside the visibility triangle;
  - a petition signed by seven neighbors/owners who support his request;
  - an amended elevation that denotes the materials, height, and distance of the fence from the “city line;”
  - photos of the existing fence and gates.

**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:**

- August 10, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 23, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application; and
  - the criteria/standard that the board will use in their decision to approve or deny the request.
- Sept. 23, 2005: The applicant requested that this matter be delayed until Panel B's November 16<sup>th</sup> hearing given a schedule conflict he had with being able to attend Panel B's October 19<sup>th</sup> hearing.
- October 20, 2005: The Board Administrator left a message with the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 25, 2005: The Board Administrator left the applicant a message that conveyed his concerns with the following:
- the need for clarification on a submitted site plan as to the location of the pavement line (which in turn may lead to the applicant relocating the gates and fence outside visibility

triangles, or requesting special exceptions to the visibility obstruction regulations);

- the need for clarification on the submitted site plan (and elevation) as to the maximum height of the existing fence which may result in the need for an amended Building Official's Report that reflects a request beyond 4' to maintain a fence higher than 8' on the site..

October 27, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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.

November 3, 2005 The applicant submitted photos of the existing fence and gates (see Attachment B).

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the existing fence and gates relative to the property line. (The distance between the existing fence and gates to the Langdale Circle pavement line cannot be determined from the site plan since there are two lines on this plan that may denote the location of the actual pavement line). The site plan shows the length of the existing fence and gates relative to the lot as well as the height of the fence ranging from 8.1' -8.6'.
- A revised elevation plan (not to scale) has been submitted that documents the maximum height of the fence and gates (8' 6"). The elevation plan also documents the building materials of the fence and gates (iron pickets).
- There is no single family home that has direct frontage to the existing fence given the orientation of the fence on the site which faces south, and the homes immediately adjacent which either face west to Plano Road, or east or west further south of the site to Langdale Circle.
- As of November 4th, a petition with seven neighbors/owners in support has been submitted to staff, and no letters have been submitted in opposition to the proposal.
- Granting this special exception of 4' 6" with conditions imposed that the applicant complies with the submitted site plan and revised elevation would assure that the existing fence and gates as shown on these documents are maintained as shown on these documents.

- Granting this fence height special exception request subject to the site plan and revised elevation does not provide any relief to the applicant pertaining to the City's visibility obstruction regulations.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

APPEARING IN FAVOR: Lawrence Bonanno, 8668 Langdale Cr., Dallas, TX  
 Mary Webster, 8675 Langdale Cr., Dallas, TX  
 Rainer Schneck, 8676 Langdale Cr., Dallas, TX  
 Dennis Platt, 8642 Langdale Cr., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION#1: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 056-001**, on application of Lawrence Bonanno, **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: No one

**\*Motion failed for lack of a second.**

**MOTION#2: Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 056-001**, hold this matter under advisement until **December 14, 2005**.

SECONDED: No one

**\*Motion failed for lack of a second.**

**MOTION#3: Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 056-001**, on application of Lawrence Bonanno, **grant** the request of this applicant to maintain an eight foot, six inch high 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Wise**

AYES: 3—Cox, Brannon, Wise

NAYS: 2 – Jaffe, Gillespie

MOTION FAILED: 3 – 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

**MOTION#4: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 056-001**, on application of Lawrence Bonanno, **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: Jaffe**

**AYES: 3– Gillespie, Wise, Jaffe**

**NAYS: 2 – Cox, Brannon**

**MOTION PASSED: 3 – 2**

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**FILE NUMBER: BDA 056-021**

**BUILDING OFFICIAL'S REPORT:**

Application of David Benners Architecture, represented by David Benners, for a variance to the front yard and side yard setback regulations at 6602 Avalon Avenue. This property is more fully described as part of Lot 2 in City Block L/2797 and is zoned CD-2 which requires a 60 foot front yard setback and a 6 foot side yard setback. The applicant proposes to construct an addition and provide a 23 foot front yard setback and a 0 foot side yard setback which would require a variance of 37 feet to the front yard setback regulations and a variance of 6 feet to the side yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION: 6602 Avalon Avenue**

**APPLICANT: David Benners Architecture  
Represented by David Benners**

**REQUESTS:**

- The following appeals have been made in conjunction with adding an approximately 560 square foot garage on an existing a single family home:
  1. a variance to the front yard regulations of 37'; and
  2. a variance to the side yard regulations of 6'.

**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 site has two 60' front yard setbacks: one on Avalon Avenue on the north side of the site, the other on Cambria Boulevard on the west side of the site.  
The applicant is proposing to provide a 23' front yard setback along Cambria Boulevard for the garage addition which would require a variance of 37' to the front yard setback.
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
  - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site's longer frontage is along Cambria Boulevard, however, this longer frontage is deemed a front yard setback in order to maintain the established setback of lot/home to the south that "fronts" Cambria Boulevard.
- The existing house (that has no garage) is located in the site's two 60' front yard setbacks, however, the applicant has indicated that he only seeks variance for the addition of the proposed garage and not to remedy any existing structure that may be nonconforming to the current setback regulations. (The house was built decades ago and appears to have "nonconforming structure" status which allows the owner to replace the house back in the same footprint in the front yard setback if a natural cause would destroy or damage the house).
- The site has two 6' side yard setbacks: one along the east side of the site, the other along the south side of the site.  
The applicant is proposing to provide no side yard setback on the south side of the house (adjacent to a 15' wide alley) which would require a variance of 6' to the side yard setback.
- According to DCAD records, the site is developed a structure built in 1941 that is in "good" condition with 3,280 square feet of living area.

- According to the submitted site plan, the proposed 560 square foot garage addition would be located entirely in the Cambria Boulevard 60 foot front yard setback.
- According the to submitted site plan, the area of the proposed addition in the 6' side yard setback is approximately 28.5' x 6' (or 171 square feet in area).
- The subject site is zoned CD No. 2, is flat, irregular in shape (82' on the north, 125' on the east, 76' on the south, and 115' on the west), and approximately 9,600 square feet in area.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter that provides additional details about the requests;
  - photos of the subject site;
  - a graphic that shows the amount of buildable lot based on current setbacks;
  - photos of neighboring properties with development similar to what the applicant requests; and
  - a table of area comparisons.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 2 (Conservation District)  
North: CD No. 2 (Conservation District)  
South: CD No. 2 (Conservation District)  
East: CD No. 2 (Conservation District)  
West: CD No. 2 (Conservation District)

**Land Use:**

The subject site is developed with 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:**

- Sept. 29, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- October 20, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 24, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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:**

- The subject site is zoned CD No. 2, is flat, irregular in shape (82' on the north, 125' on the east, 76' on the south, and 115' on the west), and approximately 9,600 square feet in area. The site has two 60' front yard setbacks and two 6' side yard setbacks.
- Although the existing structure is located in the two 60' front yard setbacks, the applicant only requests that the Board consider variances to the 60' Cambria Boulevard front yard setback and the 6' side yard setback along the southern border of the site for the proposed garage addition.
- If the Board were to grant the front yard variance request (along with the request for a variance to the side yard regulations), subject to the submitted site plan, the site



could be retained with a nonconforming single family home structure that has about 3,300 square feet of living area, and further developed with a garage addition with a building footprint of about 560 square feet. In addition, if this condition were imposed, the front yard encroachment would be limited to a structure in the site's western Cambria Boulevard front yard setback; an area in this front yard setback that is about 28.5' long and 19.5' wide (or 560 square feet), resulting in a 23' front yard setback.

- If the Board were to grant the side yard variance request (along with the request for a variance to the front yard regulations), subject to the submitted site plan, the site could be retained with a nonconforming single family home structure that has about 3,300 square feet of living area, and further developed with a garage addition with a building footprint of about 560 square feet. In addition, if this condition were imposed, the side yard encroachment would be limited to a structure in the site's southern side yard setback; an area in this side yard setback that is about 28.5' long and 6' wide (or 170 square feet), resulting in a 0' side yard setback adjacent to a 15' wide alley.
- The applicant has submitted a graphic/site plan that shows the remainder of buildable lot on the site based on current setback guidelines (two 60' front yard setbacks and two 6' side yard setbacks). The remaining buildable lot area on the approximately 9,600 square foot site appears to be about 60' x 6' (or 360 square feet).

#### **BOARD OF ADJUSTMENT ACTION: November 16, 2005**

APPEARING IN FAVOR: David Benners, 5319 W Mockingbird, Dallas, TX

APPEARING IN OPPOSITION: No one

#### **MOTION#1: Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 056-021**, on application of David Benners Architecture, **grant** the 37 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 literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

#### **SECONDED: Brannon**

AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 – None

MOTION PASSED: 5 – 0 (Unanimously)

#### **MOTION#2: Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 056-021**, on application of David Benners Architecture, **grant** the 6 foot variance to the side yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Brannon**

**AYES:** 5–Cox, Brannon, Gillespie, Wise, Jaffe

**NAYS:** 0 – None

**MOTION PASSED:** 5 – 0 (Unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 056-028

**BUILDING OFFICIAL'S REPORT:**

Application of James B. Reeder, represented by Masterplan, for a special exception to the handicapped at 3028 and 3032 Bryan Street. This property is more fully described as a tract of land in City Block 500 and is zoned PD 298 which limits the height of a structure to 50 feet. The applicant proposes to construct a structure with a height of 64 feet, 1 inch which would require a special exception of 14 feet, 1 inch. This appeal is being referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 3028 and 3032 Bryan Street.

**APPLICANT:** James B. Reeder  
Represented by Masterplan

**REQUEST:**

- A special exception for the handicapped is requested in conjunction with constructing and maintaining a 64' 1" high "elevator penthouse" that would serve a multifamily structure that is currently under development on the subject site.

**STANDARD FOR A SPECIAL EXCEPTION TO AFFORD A HANDICAPPED PERSON EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING:** Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Act Amendment of 1988, as amended.

## **GENERAL FACTS:**

- The PD No. 298 zoning district imposes a 50' maximum height limit.
- The applicant proposes to construct and maintain a 64' 1" high "elevator penthouse," hence the applicant's request to exceed the height regulations via a special exception for the handicapped (as opposed to a variance to the height regulations). More specifically, the applicant's representative has stated in an attachment with the application: "In order to access the roof deck and comply with ADA rules for equal access both stairs and an elevator are necessary."
- In January of 2005, an application was made to the Board of Adjustment Panel B that involved three appeals all of which were requested in conjunction with developing a 4-story, 38-unit multifamily structure on a site developed with a 2-story vacant office structure (BDA045-115). (The case report explained that two floors were proposed to be added to an existing building in addition to expansions to the south and west of the existing building). More specifically, the following appeals were made within this application:
  1. A special exception for the handicapped was requested in conjunction with constructing a 62'-high elevator (which in turn, according to the applicant, would allow handicapped persons equal opportunity to use and enjoy the proposed roof deck).
  2. A variance to the height regulations was requested in conjunction with constructing a 54'-high rooftop railing and to accommodate a proposed pitched roof that will "give the building a more residential look as well as screening AC compressors on the roof."
  3. A special exception to the off-street parking regulations was requested in conjunction with providing only 65 (or 86%) of the 76 off-street parking spaces required.

The first height encroachment in this previous case on the subject site involved a special exception for the handicapped whereby the applicant contended that a 62'-high elevator was needed in order to allow a handicapped person equal opportunity to use and enjoy a dwelling unit, in this case the ability to enjoy a roof deck on the proposed multifamily structure.

The second height encroachment in this previous case involved the more typically-seen request: a variance to the height regulations where in this case, the applicant had to demonstrate some form of hardship related to the site's restrictive area, shape or slope that precluded it from being developed in a manner commensurate with developments in the same PD No. 298. The height variance was requested for the proposed structure's 54'-high roof railing and roof pitch.

On January 19, 2005, the Board of Adjustment Panel B took the following actions on this case:

- The Board granted the request for a special exception of 12 feet for an elevator penthouse, subject to compliance with the submitted site plan and a revised elevation indicating a maximum 62 foot high elevator tower to be submitted to the Board Administrator (an elevation that was never submitted to staff); that the special exception is valid only for as long as the structure is needed to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and the elevator tower can never be used for advertising of any kind.

- The Board granted the request for a variance of 4' to the height regulations, subject to compliance with the submitted site plan and elevation.
- The Board denied the request for a special exception to the off-street parking regulations without prejudice.

(See Attachment A for a copy of the decision letter on this case and copies of the site plan and elevations that were imposed as conditions to these requests).

- In April of 2005, an application was made to the Board of Adjustment Panel B that involved a special exception to the off-street parking regulations of 10 spaces (or 13% less than the required 76 spaces). This special exception was requested in conjunction with developing a 4-story, 38-unit multifamily structure on a site developed with a 2-story vacant office structure (BDA045-188). (The case report explained that two floors were proposed to be added to an existing building in addition to expansions to the south and west of the existing building). The Board granted this request and imposed the following condition: The special exception shall automatically and immediately terminate if and when the multifamily use on the site is changed or discontinued.
- The applicant proposes in this request to construct a 64' 1" high "elevator penthouse," hence the applicant's request to exceed the height regulations via a special exception for the handicapped (as opposed to a variance to the height regulations).
- Section 51A-1.10 (b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Act Amendment of 1988, as amended.

A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:

"(h) "Handicap" means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
  2. a record of having such an impairment, or
  3. being regarded as having such an impairment,
- but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."

- DCAD records indicate that the property located at 3028 Bryan Street has "no improvements;" and that the property located at 3032 Bryan Street is developed as an "office building" built in 1960 with 24,102 square feet of improvements.
- The applicant submitted information beyond what was submitted with the original application (see Attachment B and C). This information included the following:
  - a copy of a revised application (amending the height of the elevator penthouse that would exceed 50' from 13' to 14' 1");
  - a copy of a document indicating two sections of the proposed structure;
  - a revised attachment (amending the height of the structure that would exceed 50' from 8' to 4'); and
  - "presentation material" related to the case.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD No. 298 (Planned Development District 298)
<u>North:</u>	PD No. 298 (Planned Development District 298)
<u>South:</u>	PD No. 298 (Planned Development District 298)
<u>East:</u>	PD No. 298 (Planned Development District 298)
<u>West:</u>	PD No. 298 (Planned Development District 298)

### **Land Use:**

The subject site is under development. The areas to the north and east are developed with single family residential uses; the area to the south is developed with surface parking and warehouse uses; and the area to the west is a mix of undeveloped land and multifamily uses.

### **Zoning/BDA History:**

1. BDA 023-144, 3015 Bryan Street (the lot immediately west of the subject site) On November 17, 2003, the Board of Adjustment Panel B followed the staff recommendation and denied a request for a special exception to the off-street parking regulations of 36 spaces (or 25% of the total parking required) without prejudice. The special exception was requested in conjunction with constructing 72-unit, 90-bedroom condominium that required 144 off-street parking spaces.
2. BDA 045-115, 3028 and 3032 Bryan Street (the subject site) On January 19, 2005, the Board of Adjustment Panel B granted a request for a special exception of 12 feet for an elevator penthouse; granted a request for a variance to the height regulations of 4 feet; and denied a request for a special exception to the parking regulations without prejudice. (For more specific information about this case, refer to the "General Facts" section of this case report).
3. BDA 045-188, 3028 and 3032 Bryan Street (the subject site) On April 20, 2005, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 10 spaces. (For more specific information about this case, refer to the "General Facts" section of this case report).

### **Timeline:**

- Undated: 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 20, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- Oct. 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 31, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B).
- October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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.

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

**STAFF ANALYSIS:**

- Granting this special exception for the handicapped would allow a 64' 1' high "elevator penthouse" (or according to the applicant's representative's attachment, both stairs and an elevator) to be constructed and maintained on a multifamily structure that can not exceed 54' in height (per a variance granted by Board of Adjustment Panel B in January of 2005).
- This special exception request is essentially the same request made to (and granted by) the Board of Adjustment Panel B in January of 2005. The height of the "elevator penthouse" that was proposed to reach 62' in height in January has increased to reach 64' 1" in height in this request.
- It appears from a review of the original elevations submitted (and imposed as conditions) in January of 2005 and the revised elevation submitted with this application, that a "stair penthouse" structure (noted to be 60' in height) has been added as part of this request along with the "elevator penthouse" that is shown on both the original and revised elevations.
- Historically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and areas of the "elevator penthouse" that can exceed the maximum 50' height limit, and would allow the special exception for as long as a handicapped person resides on the site:
  1. Compliance with the submitted elevation is required.
  2. The special exception expires when a handicapped person no longer resides on the property.

If the Board were inclined to impose similar conditions as to what was imposed on the special exception in January of 2005, a third condition would be that the elevator tower can never be used for advertising of any kind.

- Granting this special exception for the handicapped, subject to the conditions mentioned above, cannot impact the building footprint and height of the structure (excluding the "elevator penthouse") as shown on the site plan and elevations that the board imposed as conditions to a variance to the height regulations of 4' granted in January of 2005 for the structure's 54'-high roof railing and roof pitch.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

APPEARING IN FAVOR: William Cothrum, 900 Jackson, #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 056-028**, on application of James B. Reeder, **grant** the 14 foot 1 inch special exception to the height regulations, in PD 298 because our evaluation of the property and testimony show that an exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted elevation is required; and
- The elevator tower can never be used for advertising of any kind.

**SECONDED:** **Brannon**

**AYES:** 5–Cox, Brannon, Gillespie, Wise, Jaffe

**NAYS:** 0 – None

**MOTION PASSED:** 5 – 0 (Unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 056-030

**BUILDING OFFICIAL'S REPORT:**

Application of Robert L. Gould for a special exception to the fence regulations at 4005 Flintridge Drive. This property is more fully described as Lot 1 in City Block A/8389 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in the required front yard setback which would require a special exception of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 4005 Flintridge Drive

**APPLICANT:** Robert L. Gould

**REQUEST:**

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high solid "board over board" wall and open wrought iron fence in the 15' Candlenut Lane front yard setback on a site developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**



- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The subject site has two front yard setbacks: one along Flintridge Drive, the other along Candlenut Lane. An elevation and a revised site plan have been submitted that indicate that the proposed fence and wall exceeding 4' in height is limited to the site's front yard setback on Candlenut Lane. (No fence higher than 4' is proposed to be located in the Flintridge Drive front yard setback).
- The following additional information was gleaned from the submitted elevation that depicts a full view of the proposed fence and wall in the Candlenut Lane front yard setback:
  - A notation of "eight foot tall, 6" board over board fence" that labels a wall that runs parallel to Candlenut Lane
  - A notation of "black wrought iron" that labels a fence that runs perpendicular to Candlenut Lane.
- The site plan submitted with the original application did not indicate the location of the proposed fence. However, a revised site plan was submitted on October 27<sup>th</sup> (see Attachment A) provides the following information:
  - The proposed fence/wall that is to exceed 4' in height and to be located in the 15' front yard setback along Candlenut Lane is about 90' long parallel to this street, and about 15' long perpendicular to the street;
  - The proposed fence/wall is to be located on the Candlenut Lane front property line or about 13' from the pavement line.
- Neither a site plan that notes landscape materials nor a landscape plan has been submitted in conjunction with the application.
- Three single family homes would have direct/indirect view of the proposed fence/wall none of which have fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4' in height that appeared to be located in a front yard setback.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan that indicated the location of the proposed fence/wall in the Candlenut Lane front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-10 (A) (Single family district 10,000 square feet)
- North: R-10 (A) (Single family district 10,000 square feet)
- South: R-10 (A) (Single family district 10,000 square feet)
- East: R-10 (A) (Single family district 10,000 square feet)
- West: R-10 (A) (Single family district 10,000 square feet)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, east, 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:**

- October 3, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (This information included photographs of the site and surrounding area that will be available for review at the briefing/public hearing).
- Oct. 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Oct. 21, 2005: The Board Administrator met the applicant in the field and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 27, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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 revised site plan has been submitted that documents the location of the proposed wall and fence relative to the property line and pavement line. The site plan also clearly shows the length of the proposed wall and fence relative to the lot.
- An elevation plan has been submitted that documents the height of the proposed wall and fence (8'). The elevation plan also documents the building materials of the wall (6" board over board) and fence (black wrought iron).
- Three single family homes would have direct/indirect view of the proposed fence/wall none of which have fences in their front yards.
- As of November 7<sup>th</sup>, a petition signed by 8 neighbors/owners in support of the request has been submitted to staff, and no letters have been submitted in opposition to the proposal.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted elevation and revised site plan would assure that the proposed fence and wall are constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

APPEARING IN FAVOR: Robert Gould, 4005 Flintridge Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. BDA **056-030**, on application of Robert L. Gould, **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: **Jaffe**

AYES: 5–Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 – None

MOTION PASSED: 5 – 0 (Unanimously)

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FILE NUMBER: BDA 056-011

**BUILDING OFFICIAL'S REPORT:**

Application of Josue Correa for a special exception to the fence regulations at 9746 Hathaway Street. This property is more fully described as a tract of land in City Block 5608 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 a 9 foot fence in the required front yard setback which would require a special exception of 5 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 9746 Hathaway Street

APPLICANT: Josue Correa

**REQUEST:**

- A special exception to the fence height regulations of 5' is requested in conjunction with constructing and maintaining an approximately 4.5' high open wrought iron fence, 7' high stone/stucco columns, and a 9' high open wrought iron gate in the 40' Hathaway Street front yard setback on a site that is being developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

### **GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The originally submitted site plan delineated an "Existing Fence" on a site where there is currently no fence that exists. This plan did not delineate the location of the proposed fence, columns, or gate.
- On November 4, 2005, the applicant revised the originally submitted site plan by relabeling what had been shown as "Existing fence" to "Proposed fence" (see Attachment A). The following information was gleaned from this revised site plan:
  - The proposed fence is to be located approximately 160' in length parallel to Hathaway Street with one recessed entryway.
  - The proposed fence is to be located approximately on the property line or approximately 16' from the pavement line.
  - The proposed gate is to be located approximately 4' from the property line or approximately 20' from the pavement line.
- The following information was gleaned from the originally submitted scaled partial elevation:
  - an approximately 4.5' high fence;
  - 7' high columns; and
  - a 9' high arched entry gate.(Although materials were not identified on this elevation, it appeared that the fence and gate were to be comprised of open wrought iron material).
- On November 4, 2005, the applicant amended the originally submitted elevation by adding the materials of the fence and columns (see Attachment A). This elevation identified the materials of the fence to be "open wrought iron" and the columns to be "stone/stucco."
- Neither a site plan with landscape materials nor a landscape plan has been submitted in conjunction with the application.
- No single family home will have direct frontage to the proposed fence that would face west given the lots immediately adjacent to the proposed fence face/front north and south on Falls Road.
- The Board Administrator conducted a field visit of the site and surrounding area along Hathaway Street (approximately 500 feet north and south of the site) and noted the following fence/wall in a front yard setback higher than 4' in height:
  - an approximately 5' high open wrought iron fence with 6' high columns and a 9' high entry gate with 7 high entry columns located immediately south of the site (which is a result of Board action on BDA034-209).

### **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, south, and west are developed with single family uses; and the area east of the site is the Dallas North Tollway.

**Zoning/BDA History:**

1. BDA 034-209, 9736 Hathaway Street (the lot immediately south of the subject site) On October 27, 2004, the Board of Adjustment Panel B granted a request to the fence height special regulations of 5'. The board imposed the following condition with this request: Compliance with the site plan and fence elevation indicating a 5 foot fence with 6 foot columns, and a 9 foot entry gate with 7 foot entry columns (as submitted by the applicant's attorney at the public hearing) is required. The case reports states that a fence special exception of 7' was requested to construct an approximately 6' high open iron fence with 7' high columns, and an approximately 11' high entry gate with approximately 8.5' high entry columns.

**Timeline:**

- Sept. 2, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (This information included photographs of the site and surrounding area that will be available for review at the briefing/public hearing).
- Oct. 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Oct. 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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.

November 4, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- A revised scaled site plan has been submitted that delineates the location of the proposed fence, columns, and gate relative to the property line and what appears to be the Hathaway Street pavement line. The revised site plan shows the length of the proposal relative to the lot.
- A revised scaled partial elevation has been submitted that documents the height of the proposed fence (approximately 4.5'), columns (7'), and gate (9'). (A full elevation of the proposal has not been submitted).
- The revised scaled partial elevation documents the materials of the fence (open wrought iron) and columns (stone/stucco).
- No single family home will have direct frontage to the proposed fence that would face west given the lots immediately adjacent to the proposed fence face/front north and south on Falls Road.

- As of November 7th, three letters have been submitted to staff in support of the request, and one letter as been submitted in opposition.
- Granting this special exception of 5' with conditions imposed that the applicant complies with the submitted revised site plan and revised elevation would assure that the proposed fence, columns, and gate are constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

APPEARING IN FAVOR: Joshua Correa, 2612 Leath Ct., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Jaffe**

I move that the Board of Adjustment, in Appeal No. **BDA 056-011**, on application of Josue Correa, **grant** the request of this applicant to construct a 7 foot 8 inch 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 revised elevation dated 11/16/05 is required.

SECONDED: **Brannon**

AYES: 4– Cox, Brannon, Wise, Jaffe

NAYS: 1 – Gillespie

MOTION PASSED: 4 – 1

**3:00 P.M. Break**

**3:10 P.M. Resumed**

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FILE NUMBER: BDA 056-012

**BUILDING OFFICIAL'S REPORT:**

Application of Josue Correa for a special exception to the fence regulations at 9520 Hathaway Street. This property is more fully described as a tract of land in City Block 7/5597 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 a 10 foot fence in the required front yard setback which would require a special exception of 6 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 9520 Hathaway Street



**APPLICANT:** Josue Correa

**REQUEST:**

- A special exception to the fence height regulations of 6' is requested in conjunction with maintaining the following in the 40' Hathaway Street front yard setback on a site that is developed with a single family home:
  - a 6' high chain link fence;
  - approximately 5.5' – 6' high entry wing walls with 6' high columns;
  - a 6' high pedestrian wood door/gate; and
  - a 10' high arched wood vehicular gate with 7' high entry columns.

**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 following additional information was gleaned from the originally submitted site plan:
  - The entry wing walls are located at a range of approximately 2' – 16' from the property line (or at a range of approximately 20' – 34' from the pavement line shown on this plan).
  - The gate is located approximately 16' from the property line (or approximately 34' from the pavement line shown on this plan).
- On November 4, 2005, the applicant amended the originally submitted site plan by adding the following notations: "Existing 6' chain link fence" and "Existing 7 foot Hollies" (see Attachment A). The revised site plan indicates that the existing chain link fence runs the full length of the approximately 140' long site (excluding the entry way), is located about 1' – 4' from the property line (or about 20' – 24' from the pavement line) and behind an existing 7' holly hedge.
- The following additional information was gleaned from the originally submitted elevation:
  - Each of the two entry wing walls is approximately 20' long (or 40' in total length), the vehicular gate is 13' long, and the pedestrian gate is 4' long.  
(Although materials were not identified on this elevation, it appeared from this elevation that the wing walls and columns were comprised of solid stone material).
- On November 4, 2005, the applicant amended the originally submitted elevation by adding a notation that specified the material of the wall: "stone" (see Attachment A).
- No single family home will have direct frontage to the proposed fence given that the lot immediately west and adjacent to the subject site faces south on Kemper Court.

- The Board Administrator conducted a field visit of the site and surrounding area along Hathaway Street (approximately 500 feet north and south of the site) and noted the following fence/walls higher than 4' in height:
  - an approximately 5' high open wrought iron fence with 5' high columns located immediately west of the site (which appears to be located in a side yard setback);
  - an approximately 9' high solid wood fence located immediately northwest of the site (which appears to be located in a side yard setback);
  - an approximately 6' open chain link fence behind significant landscaping located immediately north of the site (which is a result of Board action on BDA045-291); and
  - an approximately 5' high open wrought iron fence with 5.5' high columns with a 6' high open wrought iron gate with 6.5' high entry columns located immediately south of the site (which is a result of Board action on BDA88-129).

**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 developed with a single family home. The areas to the north, south, and west are developed with single family uses; and the area east of the site is the Dallas North Tollway.

**Zoning/BDA History:**

- |                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. BDA 045-291, 5600 Park Lane (the lot immediately north of the subject site)</p> | <p>On September 21, 2005, the Board of Adjustment Panel B granted a request to the fence height special regulations of 6'. The board imposed the following condition with this request: Compliance with the revised site plan/landscape/elevation is required. The case reports states that a fence special exception of 6' was requested to maintain an 8' high solid board-on-board wood fence and gate (with a 10' high arbor) located in the 40' front yard setbacks along Park Lane and Hathaway Street; and a 6' high open chain link fence in the Hathaway Street front yard setback.</p> |
| <p>2. BDA 88-129, 9446 Hathaway Street (the lot immediately south</p>                 | <p>On December 13, 1988, the Board of Adjustment granted a request to the fence</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

of the subject site)

height special regulations of 11'. The board imposed the following condition with this request: "That the fence shall be built in accordance to the site plan and fence elevation plan submitted." The case report does not specify the features of the proposal.

**Timeline:**

- Sept. 2, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Oct. 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Oct. 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the October 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the November 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 20, 2005 The Board Administrator left the applicant a message concerning what appeared to be a fence on the site in the front yard setback higher than 4' that was not shown on either the site plan or elevation.
- October 26, 2005 The administrator spoke with the applicant and explained that the only proposal the Board will consider will be what is conveyed to them through what is provided in written documentation and/or conveyed on a site plan and elevation either before or at the public

hearing. The administrator encouraged the applicant to add any element in the front yard setback that is higher than 4' on a site plan and/or elevation. Otherwise, the board will "except" only that what is documented on the submitted site plan and elevation which to date are entry wing walls, columns, vehicular gate, and pedestrian gate.

October 31, 2005: 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 Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, 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.

November 4, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

#### **STAFF ANALYSIS:**

- A revised scaled site plan has been submitted that documents:
  - the location of an existing chain link fence, vehicular gate, pedestrian gate, columns, and entry wing walls relative to the property line and pavement line;
  - the length of the fence, gates, columns, and entry wing walls relative to the lot; and
  - "existing 7 foot hollies" that are located on the street side of the open chain link fence.
- A revised scaled elevation plan has been submitted that documents the height of the existing fence (6'), wing walls (approximately 5.5' – 6.5'), columns (6'), pedestrian gate (6'), and vehicular gate (10'), and entry columns (7').
- The revised elevation documents the materials of the fence (open chain link), the entry wing walls and columns (stone), and gates (wood).
- No single family home will have direct frontage to the proposed fence given that the lot immediately west and adjacent to the subject site faces south on Kemper Court.
- As of November 7th, one letter has been submitted to staff in support and one letter has been submitted in opposition to the existing fence, columns, and gates.
- Granting this special exception of 6' with conditions imposed that the applicant complies with the submitted revised site plan and revised elevation would assure that the existing fence, entry wing walls, columns, and gates are maintained as shown on these documents.

#### **BOARD OF ADJUSTMENT ACTION: November 16, 2005**

##### **APPEARING IN FAVOR:**

Joshua Correa, 2612 Leath Ct., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 056-012**, on application of Josue Correa, **grant** the request of this applicant to construct a 10 foot 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 revised elevation plan is required.

SECONDED: **Wise**

AYES: 4– Cox, Brannon, Wise, Jaffe

NAYS: 1 – Gillespie

MOTION PASSED: 4 – 1

\*\*\*\*\*  
MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Wise**

AYES: 5– Cox, Brannon, Gillespie, Wise, Jaffe

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

**3:25 P.M.** - Board Meeting adjourned for November 16, 2005.

\_\_\_\_\_  
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.