

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL C**  
**MONDAY, NOVEMBER 14, 2005**

<b>Briefing:</b>	<b>10:00 A.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>
<b>Public Hearing:</b>	<b>1:00 P.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>

**Purpose:** To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

**\* All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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11-14-2005

ZONING BOARD OF ADJUSTMENT, PANEL C  
MONDAY, NOVEMBER 14, 2005  
AGENDA

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BRIEFING	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>	10:00 A.M.
LUNCH		
PUBLIC HEARING	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>	1:00 P.M.

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**Donnie Moore, Chief Planner**  
**Jennifer Hiromoto, Senior Planner**  
**Steve Long, Board Administrator**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Monday, October 17, 2005</b> Board of Adjustment Public Meeting Minutes	M1
	Approval of Panel C's 2006 Public Hearing Schedule	M2
BDA 056-026	3411 El Benito Drive <b>REQUEST:</b> Application of NFLRPA, represented by Mike Connelly, to reimburse the filing fee submitted in conjunction with a variance to the front yard setback regulations	M3

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**UNCONTESTED CASES**

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BDA 056-018	3302 Kinmore Street <b>REQUEST:</b> Application of Donna Bigelow for a special exception to the side yard setback regulations	1
BDA 056-023	801 Hillburn Drive <b>REQUEST:</b> Application of Amador Vazquez for a request to enlarge a non-conforming use	2
BDA 056-025	4240 Bowser Avenue <b>REQUEST:</b> Application of Perry Homes, represented by Robert Baldwin, for a special exception to the landscape Regulations	3

BDA 056-026	3411 EL Benito Drive <b>REQUEST:</b> Application of NFLRPA, represented by Mike Connelly for a variance to the front yard setback regulations	4
BDA 056-032	2606 Ft. Worth Avenue <b>REQUEST:</b> Application of Moran & Murphy Architects Inc., represented by Mike Murphy, for a special exception to the landscape regulations	5
BDA 056-042	4140/4142 Prescott Avenue <b>REQUEST:</b> Application of Jennifer Byford for a variance to the side yard setback regulations	6

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### HOLDOVER CASES

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BDA 045-215	9039 Briarwood Lane <b>REQUEST:</b> Application of James R. Schnurr, Winstead Sechrest & Minick P.C., for a special exception to the fence height and a variance to the front yard setback regulations	7
BDA 045-275	10727-35 Camellia Drive <b>REQUEST:</b> Application of Peter Kavanagh, Zone Systems Inc., for special exceptions to the fence and visibility obstruction regulations	8

## EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C October 17, 2005 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

To approve the Board of Adjustment Panel C's 2006 Public Hearing Schedule (see Attachment A for a selection of two proposed schedules).

**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA 056-026

**REQUEST:** To reimburse the \$600.00 filing fee submitted in conjunction with this Board of Adjustment application for a variance to the front yard setback regulations

**LOCATION:** 3411 El Benito Drive

**APPLICANT:** NFLRPA, represented by Mike Connelly

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant and the Interim Manager of the City's Housing Department have submitted letters to the Board on this matter (see Attachment A).

**Timeline:**

Sept. 30, 2005      The applicant submitted an application to the Board of Adjustment for a variance to the front yard setback regulations.

October 20, 2005:    The Board of Adjustment Secretary randomly assigned the request to Board of Adjustment Panel C.

- October 27, 2005 A planner with the City of Dallas Housing Department forwarded a letter to the Board Administrator on the applicant' behalf requesting that the \$600.00 filing fee submitted in conjunction with the front yard variance appeal be reimbursed (see Attachment A).
- October 28, 2005 The Board Administrator emailed the housing planner since the applicant's address was not on his letter (see Attachment B). The administrator requested that the planner inform the applicant of the following:
- this request would be placed on the November 14<sup>th</sup> Miscellaneous Docket Agenda,
  - the board would reimburse the filing fee if the applicant were able to convince the board that payment of the filing fee results in substantial financial hardship to the applicant;
  - in making this determination, the board may require the production of financial documents;
  - the November 4<sup>th</sup> deadline to submit any additional information on this matter for the board's docket report; and
  - the board's rules limit documentary evidence that can be submitted to them on the hearing day to five pages.
- November 3, 2005: The applicant submitted additional information to this matter (see Attachment C).



**FILE NUMBER:** BDA 056-018

**BUILDING OFFICIAL'S REPORT:**

Application of Donna Bigelow for a special exception to the side yard setback regulations at 3302 Kinmore Street. This property is more fully described as Lot 1 in City Block S/2663 and is zoned R-7.5(A) which requires a 5 foot side yard setback. The applicant proposes to maintain a carport and provide a 6 inch setback which would require a special exception of 4 feet 6 inches. Referred to the Board of Adjustment in accordance with Section 51A-31.02(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 3302 Kinmore Street

**APPLICANT:** Donna Bigelow

**REQUEST:**

- A special exception to the side yard setback regulations of 4'6" is requested in conjunction with maintaining a carport on a site developed with a single family home.

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

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

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

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

**GENERAL FACTS:**

- A 5'-side yard setback is required in the R-7.5(A) zoning district.
- The existing carport is located 6" from the site's western side property line.
- The existing carport has the following characteristics:
  - 11'4" x 20' (or 226 square feet) in area;
  - constructed of metal materials; and

- 7' 6" in height.
- 1. The subject site is 9,238 square feet in area and developed with, according to DCAD records, a single family home that is in fair condition, built in 1936 with 940 square feet of living area.
  - The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
  - The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

- |                                       |  |
|---------------------------------------|--|
| 1. Unassigned<br>3014 Kinmore Street  | On March 14, 2005, the Board of Adjustment Panel C waived the filing fee to be submitted in conjunction with a potential board appeal. |
| 2. Unassigned<br>3255 Kinmore Street  | On March 14, 2005, the Board of Adjustment Panel C waived the filing fee to be submitted in conjunction with a potential board appeal. |
| 3. BDA 045-223<br>3014 Kinmore Street | On June 13, 2005, the Board of Adjustment Panel C granted a special exception to the side yard setback regulations for a carport.      |
| 4. BDA 045-255<br>3255 Kinmore Street | On August 15, 2005, the Board of Adjustment Panel C granted a special exception to the side yard setback                               |

regulations for a carport.

**Timeline:**

- Sept. 20, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 20, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- October 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 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.
- October 31, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

## **STAFF ANALYSIS:**

- The applicant submitted a letter providing information regarding the carport and special exception request (Attachment A).
- Elevations submitted do not note the materials of which the carport is constructed.
- The carport appears to be constructed of durable materials (metal).
- It was observed at least two other carports on the block are existing. The carport at 3255 Kinmore Street has a special exception to encroach into the side setback. The carport at 3314 Kinmore Street does not have Board history and appears to encroach into the 25' front yard setback.
- The carport provides a 6" setback. The lot to west of this request has a driveway adjacent to this carport.
- Granting this special exception would allow the carport to remain in its current location which is 6" away from the side property line (or 4' 6" into the required 5' side yard setback).
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport's location in the side yard setback; would require the carport in the side yard setback to be retained in its current design, materials, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
  1. Compliance with the submitted site plan and elevation is required.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. All applicable building permits are obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.

**FILE NUMBER:** BDA 056-023

**BUILDING OFFICIAL'S REPORT:**

Application of Amador Vazquez for a request to enlarge a non-conforming use at 801 Hillburn Drive. This property is more fully described as a tract of land in City Block A/6289 and is zoned R 7.5 (A) which currently has a non-conforming retail use on the property. The applicant purposes to expand an existing non-conforming use (retail grocery store). Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(6) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for the enlargement of a non-conforming use.

**LOCATION:** 801 Hillburn Drive

**APPLICANT:** Amador Vazquez

**REQUEST:**

- A request is made to enlarge a nonconforming retail use (grocery/food store).

**GENERAL FACTS:**

- The Dallas Development Code states that the board has the power "to hear and decide requests for the enlargement of a nonconforming use."
- The Dallas Development Code defines a nonconforming use as "a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time."
- The Dallas Development Code defines a nonconforming structure as "a structure that does not conform to the regulations (other than use regulations) of this chapter, but which was lawfully constructed under the regulations in force at the time of construction."
- The retail use on the site could only become a conforming use once it has obtained a zoning classification from City Council that makes it a conforming use.
- A retail use is a nonconforming use in R-7.5(A) zoning.
- The structure on the site is a conforming structure.
- The Board Administrator mailed the applicant a copy of the section of the Dallas Development Code pertaining to "Nonconforming Uses and Structures" which fully explains the purpose of how the purpose of this section of the code "that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code; and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance

date that is provided 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.

- The request to the board is to enlarge a nonconforming *use*. The request is not to enlarge a nonconforming *structure*. The expanded retail use would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, and parking requirements.
- A floor plan has been submitted indicating that the use will be enlarged by adding a 180 square foot kitchen addition.
- According to DCAD, 7733 Rosemont Road (the application lists 801 Hillburn Drive as the address) is developed with three buildings:
  - A converted residence with 847 square feet built in 1930 in average condition;
  - A free standing retail store with 570 square feet built in 1930 in good condition; and
  - A free standing retail store with 392 square feet built in 1949 in good condition.
- According to City maps, the request site was annexed in December 1949. Historical zoning maps dating back to 1965 show the request site as zoned R-7.5.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

The subject site is developed with commercial/retail uses. The area to the north, south, east 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 C.

- October 24, 2005: The Board Senior Planner mailed the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the November 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the 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 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 Senior Planner mailed an additional letter to the applicant providing the non-conforming code and an additional copy of the October 24<sup>th</sup> letter.

### **STAFF ANALYSIS:**

- The elevations provided show a proposed height of 13'6" for the addition and a height of 10'6" for the existing building.
- The site plan shows parking spaces on Rosemont Road but does not show the existing parking on Hillburn Drive or the dumpsters on Hillburn Drive.
- The site plan shows the existing buildings and proposed addition meets the setbacks of the R-7.5(A) regulations.
- Granting this request, subject to compliance with the submitted revised site plan, would allow the existing retail use to be expanded with a one-story, 180 square foot kitchen addition.

**FILE NUMBER:** BDA 056-025

**BUILDING OFFICIAL'S REPORT:**

Application of Perry Homes, represented Robert Baldwin, for a special exception to the landscape regulations at 4240 Bowser Avenue. This property is more fully described as a Lots 9 and 10 in City Block 35/1575 and is zoned P.D. 193 MF-2 which requires landscaping to be provided with new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 4240 Bowser Avenue

**APPLICANT:** Perry Homes  
Represented Robert Baldwin

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing eight, 3-story residential units on a site currently developed with a multifamily use.

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations of PD No. 193.
- On November 4, 2005, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:



- The applicant is requesting relief from the required number of street trees, the location of the required site trees, the location of the sidewalks, and the amount of lot area designated as landscape site area.
- The special exception request is triggered by new construction.
- Deficiencies:
  1. The applicant is required to provide one 3.5" diameter street tree for each 25' of frontage (which in this case is 11 street trees).  
The applicant is proposing to provide 10 street trees.
  2. The applicant is required to provide one 2.5" diameter site tree for every 4,000 square feet within the residential development tract (treated as one lot), and 50% of the trees must be located in the rear 50% of the residential development tract (which in this case is 4 site trees).  
The applicant is proposing 4 site trees but only one of the site trees is within the rear 50% of the residential development tract.
  3. The applicant is required to provide a 4' wide sidewalk between 5' – 10' from back of curb.  
The applicant is proposing a 4' wide sidewalk between 4' – 8' along Wycliff and a 4' wide sidewalk between 14' – 18' along Bowser.
  4. The applicant is required to identify at least 20% of the residential development tract as "landscape site area" (LSA).  
The applicant has not provided landscape site area (LSA) on the plan.
- On November 9, 2005, the applicant's representative submitted a letter requesting to have this application denied without prejudice since they are no longer wishing to move forward with this case.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The approximately 16,000 square foot subject site is developed with a multifamily residential use. The areas to the north, east, south, and west are developed with residential uses.

**Zoning/BDA History:**

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

**Timeline:**

- Sept. 30, 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 C.
- 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 were submitted in conjunction with this appeal, however, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment A).
- November 9, 2005: The applicant's representative submitted a letter requesting that this case be denied without prejudice since they are no longer wishing to move forward with the application (see Attachment B).

**STAFF ANALYSIS:**

- Granting this request, subject to imposing a condition that the applicant comply with the submitted alternate landscape plan, would allow development of the site with eight residential units that are deficient from fully complying with the landscape regulations of PD No. 193 in the following four ways:
  1. Only 10 of the required 11 street trees would be provided.
  2. Only one of the required 4 site trees would be located in the rear 50% of the lot when 50% of the trees are required to be located in the rear 50% of the residential development tract.
  3. The sidewalk along Wycliff Avenue would be located between 4' – 8' from the back of the curb, and the sidewalk along Bowser Avenue would be located between 14' – 18' from the back of the curb when these sidewalks are required to be located 5' – 10' from the back of the curb
  4. The applicant would not be required to provide any of the 3,200 square foot “landscaped site area.”

**FILE NUMBER:** BDA 056-026

**BUILDING OFFICIAL'S REPORT:**

Application of NFLRPA, represented by Mike Connelly for a variance to the front yard setback regulations at 3411 EL Benito Drive. This property is more fully described as Lot 23 in City Block F/7111 and is zoned R-5 (A) which requires a 20 foot front yard setback. The applicant proposes to construct a single family dwelling and provide a 12 foot front yard setback which would require a variance of 8 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 3411 EL Benito Drive

**APPLICANT:** NFLRPA  
Represented by Mike Connelly

**REQUEST:**

- A variance to the front yard setback regulations of 8' is requested in conjunction with constructing a 1-story, approximately 1,460 square foot single-family home.

**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 20'-front yard setback is required in the R-5(A) zoning district.
- The single family structure is proposed to be located 12' from the El Benito Street front property line.

- The site is flat, rectangular in shape (55' x 75'), and approximately 4,125 square feet in area.
- The typical lot size in R-5 (A) zoning district is 5,000 square feet.
- The floor plan indicates that the building footprint of the proposed single family structure is approximately 1,460 square feet.
- The area of the proposed single family structure located in the 20'-front yard setback is approximately 200 square feet.
- The floor plan indicates that the area in the front yard setback is portions of a carport, bedroom, and kitchen for the proposed home.
- DCAD records indicate that the site is developed with a single family home in unsound condition that was built in 1941 and has 680 square feet of living area.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-5 (A) (Single family residential 5,000 square feet)
<u>North:</u>	R-5 (A) (Single family residential 5,000 square feet)
<u>South:</u>	R-5 (A) (Single family residential 5,000 square feet)
<u>East:</u>	R-5 (A) (Single family residential 5,000 square feet)
<u>West:</u>	R-5 (A) (Single family residential 5,000 square feet)

### **Land Use:**

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

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

- |   |   |
|---|---|
| 1. Unassigned case numbers, 3406, 3420, 3424, 3428, 3434, 3438, 3502, 3520, 3524, 3530, 3425, 3429, 3507, 3513, 3517, and 3521 El Benito Street | On December 14, 2004, the Board of Adjustment Panel C denied a request to waive the filing fees to be submitted in conjunction with possible variance appeals at these locations.   |
| 2. BDA 045-147<br>3425 El Benito Street   | On February 14, 2005, the Board of Adjustment Panel C approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,200 square foot single family home on an undeveloped lot. |
| 3. BDA 045-148<br>3429 El Benito Street   | On February 14, 2005, the Board of Adjustment Panel C approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,200 square foot single family                             |

home on an undeveloped lot.

4. BDA 045-149  
3509 El Benito Street

On February 14, 2005, the Board of Adjustment Panel C approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,300 square foot single family home on an undeveloped lot.

5. BDA 045-150  
3513 El Benito Street

On February 14, 2005, the Board of Adjustment Panel C approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

6. BDA 045-151  
3519 El Benito Street

On February 14, 2005, the Board of Adjustment Panel C approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

7. BDA 045-152  
3521 El Benito Street

On February 14, 2005, the Board of Adjustment Panel C approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

8. BDA 045-204  
3507 Chicago Street

On May 17, 2005, the Board of Adjustment Panel A approved a request to waive the filing fees and approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

9. BDA 045-205  
3516 Chicago Street

On May 17, 2005, the Board of Adjustment Panel A approved a request to waive the filing fees and approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

10. BDA 045-206  
3525 Chicago Street

On May 17, 2005, the Board of Adjustment Panel A approved a request to waive the

filing fees and approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

11. BDA 045-207  
3529 Chicago Street

On May 17, 2005, the Board of Adjustment Panel A approved a request to waive the filing fees and approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

12. BDA 045-208  
3424 El Benito Street

On May 17, 2005, the Board of Adjustment Panel A approved a request to waive the filing fees and approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

13. BDA 045-209  
3520 El Benito Street

On May 17, 2005, the Board of Adjustment Panel A approved a request to waive the filing fees and approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

14. BDA 045-210  
3530 El Benito Street

On May 17, 2005, the Board of Adjustment Panel A approved a request to waive the filing fees and approved a variance to the front yard setback regulations of 8' requested in conjunction with constructing an approximately 1,170 square foot single family home on an undeveloped lot.

**Timeline:**

- Sept. 30, 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 C.

October 24, 2005: The Board Administrator conveyed the following information in a letter:

- 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 attached plat map indicates that the site is 4,125 square feet. This lot area is less than the typically-sized lot in the R-5(A) zoning district at 5,000 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the amount of encroachment into the front yard setback would be limited in this case to an area of about 200 square feet.
- Granting this variance would allow an approximately 1,460 square foot single family home to encroach 8' into the 20' front yard setback.



**FILE NUMBER:** BDA 056-032

**BUILDING OFFICIAL'S REPORT:**

Application of Moran & Murphy Architects Inc., represented by Mike Murphy, for a special exception to the landscape regulations at 2606 Fort Worth Avenue. This property is more fully described as a tract of land in City Block E/6173 and is zoned PD 714 which requires landscaping to be installed with new construction. The applicant proposes to construct a building and provide an alternate landscape plan 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:** 2606 Fort Worth Avenue

**APPLICANT:** Moran & Murphy Architects Inc.  
Represented by Mike Murphy

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 4,500 square foot office building (Citibank) on a site that is under development.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

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

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- On November 4, 2005, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
  - The applicant is requesting relief from the location and spacing of the required street trees in PD No. 714.
  - The special exception request is triggered by new construction.
  - Deficiencies:
    1. The applicant is required to provide street trees between 20' - 30' on center. The applicant is proposing to provide street trees at a distance between 15' - 18' on center.
    2. The applicant is required to locate street trees in a 16' square tree grate between approximately 8' and 12' from the back of the curb. The applicant is proposing to locate "street trees" inside the lot between approximately 15' - 37.5'.
  - Factors for consideration:
    - There are sanitary sewer, gas and water lines within 0 – 1', 10' - 20', respectively of the required street tree location. There are overhead utility lines directly above the required street tree location.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
  - an email to the Board Administrator that provided additional details about the request; and
  - copies of related survey maps that show the location of existing utility lines on the subject site and surrounding area.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 714 (Planned Development District)  
North: PD No. 714 (Planned Development District)  
South: PD No. 714 (Planned Development District)  
East: PD No. 714 (Planned Development District)  
West: PD No. 714 (Planned Development District)

**Land Use:**

The subject site is under development. The areas to the north, east, south and west are developed with retail/commercial 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. 30, 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 C.

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 were submitted in conjunction with this appeal, however, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment A).

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

**STAFF ANALYSIS:**

- An alternate landscape plan has been submitted that is deficient in meeting the required street tree location and spacing provisions set forth in PD No. 714. The applicant's representative has submitted survey maps that indicate sanitary sewer and gas and water lines on the subject site that preclude the provision of street trees in their required location and with their required spacing distances.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site could be developed with the proposed bank and would only be "excepted" from the street tree location and spacing requirements of the PD No. 714 landscape regulations.

**FILE NUMBER:** BDA 056-042

**BUILDING OFFICIAL'S REPORT:**

Application of Jennifer Byford for a variance to the side yard setback regulations at 4140/4142 Prescott Avenue. This property is more fully described as Lot 18 in City Block 12/2027 and is zoned PD 193 MF-1 which requires a 5 foot side yard setback. The applicant proposes to construct a duplex structure and provide a 2 foot side yard setback which would require a variance of 3 feet. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 4140/4142 Prescott Avenue

**APPLICANT:** Jennifer Byford

**REQUEST:**

- A variance to the side yard setback regulations of 3' is requested in conjunction with constructing a 2-story duplex.

**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 5'-side yard setback is required in the PD 193 MF-1 zoning district.
- Two fireplaces are each encroaching 2' into the side yard.
- The building permit for the duplex was issued by the City in error in regards to encroachment of the fireplaces in the side yard setback.

- The site is flat, rectangular in shape (50' x 144'), and approximately 7,200 square feet in area.
- The minimum lot size in PD 193 MF-1 zoning district is 3,000 square feet for duplex structures.
- The site plan indicates that the building footprint of the proposed duplex structure is approximately 4,340 square feet or 40' x 108' 6" in area.
- The scaled site plan shows the area of the fireplace located in the 5'-side yard setback is approximately 14 square feet or 7' x 2' in area on each side, a total area of encroachment being 28 square feet.
- DCAD records indicate that the site is developed with a duplex that was built in 2005 and has 6,582 square feet of living area.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	PD 193 MF-1 (Multiple-family residential)
<u>North:</u>	PD 193 MF-1 (Multiple-family residential)
<u>South:</u>	PD 193 MF-1 (Multiple-family residential)
<u>East:</u>	PD 193 MF-1 (Multiple-family residential)
<u>West:</u>	PD 193 MF-1 (Multiple-family residential)

#### **Land Use:**

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

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

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

#### **Timeline:**

October 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 C.

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 7,200 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan and elevations, the amount of encroachment into the side yard setback would be limited in this case to an area of about 28 square feet, two fireplaces that are each approximately 2' x 7'.
- Granting this variance would allow an approximately 6,582 square foot duplex to maintain fireplaces that encroach 2' into the 5' side yard setback on each side.

**FILE NUMBER:** BDA 045- 215

**BUILDING OFFICIAL'S REPORT:**

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

**LOCATION:** 9039 Briarwood Lane.

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

**REQUESTS:**

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

However, the applicant's representative forwarded a letter to the Board Administrator on October 20<sup>th</sup> stating that the applicant had "agreed to eliminate the requested guard house in the required front yard along Briarwood" and additionally "agreed to reduce the fence and gate height to eight feet (8') with one foot six inch (1'6") caps on supporting gate columns. (See Attachment B for a copy of the applicant's representative's letter and amended site plan and elevations).

Given the letter and revised plans mentioned above, the only appeal left for the board's consideration in this application is for a special exception to the fence height regulations of 5' 6". This special exception is requested in conjunction with



constructing the following in the 40'-Shadywood Lane and Briarwood Lane front yard setbacks on a site developed with a single family home:

- an 8'-high open wrought iron fence (reduced from 9'),
- an 8'-high stone wall (reduced from 9'), and
- two, 8'-high solid wood gates with 9.5'-high columns (reduced from 9'-high solid wood gates with 10.5' high columns).

(This applicant's representative states that the proposed fence and wall would replace a 7'-high open iron fence that exists on the site).

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

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

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

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The originally submitted site plan made the following notations:
  - The proposed fence is to be located parallel to Shadywood Lane and Briarwood Lane with two recessed vehicular entryways;
  - The proposed 9'-high open iron fence is shown to be approximately 325 feet long along Shadywood Lane and approximately 300 feet long along Briarwood Lane;
  - The proposed 9'-high solid stone wall is shown to be approximately 62' long at the intersection of Shadywood Lane and Briarwood Lane, 40' long at the Shadywood Lane entryway; and approximately 60' long at the Briarwood Lane entryway; and
  - The proposed fence and stone wall are shown to be located on the property lines and approximately 16' from the Shadywood Lane and Briarwood Lane pavement lines.
- The originally submitted elevation plan made the following notations:
  - An elevation indicating 9'-high "conceptual open iron fence section;"
  - An elevation indicating two 9'-high "solid wood gates" with 10.5'-high entry gate columns;
  - An elevation indicating a 9'-high solid wall (materials not specified).
- A "9039 Briarwood Landscape Plan" was submitted in conjunction with the application that detailed the landscape materials to be located adjacent to the proposed fence and wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following which appeared to be located in the front yard setbacks. (Note that these locations and dimensions are approximations):
  - A 6'-high open metal fence with 7' high brick columns east of the site;
  - A 6'-high open metal fence two lots southwest of the site.

- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - A letter that explained in further detail why the request should be granted; and
  - Photos of the site and surrounding area.
 In addition, the applicant has submitted two letters of support of the requests on the site which will be presented to the board at the briefing/public hearing.
- An amended site plan was submitted on October 20<sup>th</sup> (see Attachment B). This plan made the following notations:
  - The proposed fence is to be located parallel to Shadywood Lane and Briarwood Lane with two recessed vehicular entryways;
  - The proposed 8'-high open iron fence is shown to be approximately 352 feet long along Shadywood Lane and approximately 300 feet long along Briarwood Lane;
  - The proposed 8'-high solid stone wall is noted to be approximately 40' long (reduced from a notation made on the originally submitted plan at approximately 62' in length) at the intersection of Shadywood Lane and Briarwood Lane, 40' long at the Shadywood Lane entryway; and approximately 60' long at the Briarwood Lane entryway; and
  - The proposed fence and stone wall are shown to be located on the property lines and approximately 16' from the Shadywood Lane and Briarwood Lane pavement lines.
- An amended elevation plan was submitted on October 20<sup>th</sup> (see Attachment B). This plan made the following notations:
  - An elevation indicating 8'-high "conceptual open iron fence section" (reduced from 9')
  - An elevation indicating two 8'-high "solid wood gates" with 9.5'-high entry gate columns (reduced from 9' high gates with 10.5'-high columns);
  - An elevation indicating an 8'-high solid wall (materials not specified) that was reduced from 9' in height).
- A revised "9039 Briarwood Landscape Plan" was submitted on October 20<sup>th</sup> (see Attachment B). This plan only revised the heights of the proposed fence and walls on the site. The landscape materials shown to be located adjacent to the proposed fence and wall are the same as shown on the originally submitted landscape plan.

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

- A 40'-front yard setback is required in the R-1(A) zoning district.
- The site/lot has two, 40'-front yard setbacks, one along Shadywood Lane, the other along Briarwood Lane.
- A variance had been requested to construct a "guard house" to be located 3' from the site's front property line on Briarwood Lane. No structure was proposed to be located in the Shadywood Lane-front yard setback.
- However, on October 20, 2005, the applicant's representative forwarded a letter to the Board Administrator stating that the applicant has agreed to eliminate the requested guard house in the required front yard setback. (The applicant is unable to officially withdraw this variance request given this case's "holdover" status however

staff suggests that this variance request be given the closest equivalent action: denial without prejudice).

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

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

1. BDA 95-036, 9039 Briarwood Lane (the subject site)  
On March 28, 1995, the Board of Adjustment granted a request for a special exception to fence height regulations of 3' 9", subject to the following conditions: 1) Compliance with the submitted site plan, landscape plan, and elevation is required; 2) compliance with the provision that no protected trees (8 inch caliper or greater) can be removed without a permit. The case report states that the request was made in conjunction with constructing approximately 825 linear feet of a 7' 3" open metal fence with metal posts located approximately 7' on center along Briarwood Lane and Shadywood Lane; and an approximately 50 linear foot 7' 6" solid stone fence along Shadywood Lane.
2. BDA 89-047, 9039 Briarwood Lane (the subject site)  
On June 13, 1989, the Board of Adjustment Panel A denied a request to erect a 7' 9" fence without prejudice. It appears from information within the case file that the fence was to be constructed of open metal cyclone material.
3. BDA 034-162, 4618 Shadywood Lane (the lot northwest of the subject site)  
On May 18, 2004, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6', subject to the submitted site plan and elevation. The case report states that the

request was made to construct a 7.5'-high solid wood fence with 8'-high wood columns and a 8'-high wood gate with 10'-high entry columns in the Northwest Highway front yard setback.

**Timeline:**

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

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

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

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 25, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

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

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

August 15, 2005: The Board of Adjustment conducted a public hearing on this matter and held this matter until November 14<sup>th</sup> per the request of applicant's representative and opposing property owners.

October 20, 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.

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

- A revised scaled site plan and landscape plan has been submitted that documents the location of the proposed fence, wall, gates, and columns relative to their proximity to the property line and pavement line. The site plan also shows the length of the proposed fence and wall relative to the lot.
- A revised elevation has been submitted that documents the height of the proposed fence and wall (8'), entry gates (8') and entry gate columns (9.5'), and the building materials (open iron fence, solid wood gates).
- The proposed fence and wall are to be constructed of durable material (open iron and stone).
- As of November 7<sup>th</sup>, two letters have been submitted to staff in support of the proposed fence and wall, and 6 letters have been submitted in opposition.
- Granting this special exception of 5' 6" with conditions imposed that the applicant complies with the submitted revised site plan, revised landscape plan and revised elevation would assure that the proposed fence, gates, and wall are constructed and maintained as shown on these documents.

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

- A variance had been requested to construct a "guard house" to be located 3' from the site's front property line on Briarwood Lane. No structure was proposed to be located in the Shadywood Lane-front yard setback.

- However, on October 20, 2005, the applicant's representative forwarded a letter to the Board Administrator stating that the applicant has agreed to eliminate the requested guard house in the required front yard setback.
- The applicant is unable to officially withdraw this variance request given this case's "holdover" status however staff suggests that this variance request be given the closest equivalent action: denial without prejudice.

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

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

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

MOTION: **Smith**

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

SECONDED: **Wise**

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

**FILE NUMBER:** BDA 045-275

**BUILDING OFFICIAL'S REPORT:**

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

**LOCATION:** 10727-35 Camellia Drive

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

**REQUEST:**

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

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

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

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

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

### **GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no fences that appeared to be located in the front yard setback.
- The fence located on the south corner of Mums Place and Camellia Drive, south of the request site, appears to be in the side yard and it has not been determined to be in the visibility triangle.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

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

#### **Land Use:**

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

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

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

#### **Timeline:**

- June 24, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;



- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the August 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

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

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the existing wall and gate columns relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed wall relative to the lot.
- An elevation has been submitted that documents the height of the proposed wood fence (8'), stucco/block columns (8' 6"), the wrought iron fence (5' 10"), wrought iron posts (6' 6") and wrought iron gates (8' 4") and the building materials (wood, stucco, and wrought iron).
- The proposed wall is to be constructed of durable material (wrought iron and stucco) and non-durable materials (wood).
- Granting the fence height special exception of 4' 5" and the special exception to the visibility obstruction regulations with conditions imposed that the applicant complies with the submitted site plan and fence elevation would assure that the proposed wall and columns are maintained as shown on these documents.

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

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gomez**

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

SECONDED: **Smith**

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: September 19, 2005**

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 045-275**, hold this matter under advisement until **October 17, 2005**.

SECONDED: **Wise**

AYES: 3 – Madrigal, Smith, Wise

NAYS: 1– Chortek,

MOTION PASSED: 3 – 1

**BOARD OF ADJUSTMENT ACTION: October 17, 2005**

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley Dr., Dallas, TX

APPEARING IN OPPOSITION: John Pinkerton, 10743 Camellia Dr., Dallas, TX

MOTION: **Gomez**

I move that the Board of Adjustment in Appeal No. **BDA 045-275**, hold this matter under advisement until **November 14, 2005**.

SECONDED: **Wise**

AYES: 3 – Madrigal, Wise, Gomez

NAYS: 1 – Chortek,

MOTION PASSED: 3 –1