

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, CONFERENCE ROOM A
THURSDAY, FEBRUARY 17, 2011**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: Robert Moore, Panel Vice-Chair

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: Robert Moore, Panel Vice-Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 17, 2011** docket.

1:03 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C December 13, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2011

MOTION: Richard

I move **approval** of the Monday, **December 13, 2010** public hearing minutes.

SECONDED: Maten

AYES: 5–Boyd, Maten, Coulter, Richard, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-018

BUILDING OFFICIAL’S REPORT:

Application of Allen Whitt to restore a nonconforming use at 233 S. St. Augustine Road. This property is more fully described as Lot 1.4 in City Block 7879 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming single family use which will require a special exception.

LOCATION: 233 S. St. Augustine Road

APPLICANT: Allen Whitt

REQUEST:

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a building permit for a “single family” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code specifies that the Board may grant a special exception to operate a

nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

GENERAL FACTS:

- The Dallas Development Code defines “nonconforming use” as “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 nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code 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 nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

- The subject site is zoned CR (Community Retail) – a zoning district that permits does not permit single family or any residential use other than “college dormitory, fraternity, or sorority house.”
- According to information from Dallas Central Appraisal District (DCAD), the property at 233 S. St. Augustine Road is developed with a structure with 1,319 square feet of living area that was constructed in 1955.
- The nonconforming “single family” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- Given provisions set forth in the Dallas Development Code, the single family use can obtain “conforming use” status upon attaining a change from the current zoning district from the City Council.
- The owner of the site could develop the site to any use that is permitted by right in the site’s existing CR (Community Retail) zoning classification.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.

BACKGROUND INFORMATION:

Zoning:

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

East: R-7.5(A) (Single family 7,500 square feet)
West: CR (Community Retail)

Land Use:

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

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:

December 17, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 19, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 20, 2011: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This special exception request is made to restore nonconforming use rights for a nonconforming “single family” use that has been discontinued for six months or more.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “single family” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “single family” use was vacant for a period of six (6) months or more. Granting this request would restore the “single family” use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make a “single family” use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Jackson**

I move that the Board of Adjustment grant application **BDA 101-018** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD.

SECONDED: **Maten**

AYES: 5–Boyd, Maten, Coulter, Richard, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-019

BUILDING OFFICIAL’S REPORT:

Application of Tommy Mann and Barry Knight of Winstead for a variance to the front yard setback regulations at 8000 Park Lane. This property is more fully described as Lot 1C in City Block A/5456 and is zoned MU-3, which requires a front yard setback of

35 feet for the portions of a structure over 45 feet in height. The applicant proposes to construct and maintain a structure over 45 feet in height and provide a 24.25 foot front yard setback along Central Expressway for the portion of the structure over 45 feet in height which will require a variance of 10.75 feet to the front yard setback regulation, and provide a 27.79 foot front yard setback along Blackwell Street for the portion of the structure over 45 feet in height which will require a variance of 7.21 feet.

LOCATION: 8000 Park Lane

APPLICANT: Tommy Mann and Barry Knight of Winstead

REQUEST:

- Variances to the urban form front yard setback regulations of up to 10.75' are requested in conjunction with constructing and maintaining an approximately 400 square foot 68' high sign "structure" that would not comply with the required 35' front yard setback for the portion of it above 45' in height along Blackwell Street and the I-75/North Central Expressway service road. The site is developed as a mixed use development (Park Lane).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the site plan is required.

Rationale:

- The site is restricted in its developable area given its multiple front yards.
- Granting the variances to the urban form front yard setback regulations (with the suggested condition imposed) would not be contrary to the public interest since the portion of the proposed structure to be "varied" is:
 - A maximum 68' in height or only 23' above/beyond the 45' height in which the additional 20' urban form front yard setback begins; and
 - Approximately 400 square feet in area to be located atop an existing mixed use structure with an approximately 150,000 square foot building footprint.

STANDARD FOR A VARIANCE:

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

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- Development on lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height.
- The applicant has submitted a site plan and "proposed design" photo exhibit (see Attachment A) indicating a proposed structure that "23' above the urban form setback" (or 68' in height) located as close as 24.25' from the site's front property line along the I-75/North Central Expressway service road (or and as close as 27.29' from the site's front property line along Blackwell Street (Although the existing structure complies with the 15' front yard setbacks along these two streets for the portion 45' in height or less, the proposed sign "structure" that would rise above 45' in height to 68' in height and require an additional 20' front yard setback is located as much as 10.75' into the 35' I-75/North Central Expressway service road urban form front yard setback and as much as 7.21' into the 35' Blackwell Street urban form front yard setback. The site plan denotes that notes pertaining to "future southwest tower" with the "the average grade is 579'; the top of the current parapet is 617'; proposed max. parapet of 647'."
- Staff has interpreted that the additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The subject site is somewhat sloped, slightly irregular in shape, and, according to the application, 33.32 acres in area. The site is zoned MU-3(SAH). The site encompasses an entire block whereby given this and its zoning, the site has 4 front yard setbacks.
- According to a submitted "detail plan," it appears that slightly more than half of the sign "structure" is located in the 35' I-75/North Central Expressway service road urban form front yard setback, and that approximately 1/3 of the sign "structure" is located in the 35' Blackwell Street urban form front yard setback.

BACKGROUND INFORMATION:

Site: MU-3(SAH) (Deed restricted)* (Mixed Use, Standard Affordable Housing)
North: RR (Regional Retail)
South: GO(A) (General Office)
East: MU-3 (Mixed Use)
West: RR (Regional Retail)

- * Note that the applicant acknowledged in an email to the Board Administrator on January 31, 2011 of the deed restrictions on the property. The applicant stated that these deed restrictions (if not terminated) would not affect this application to the board.

Land Use:

The subject site is currently developed as a mixed use development (Park Lane). The areas to the north, south, east and west are development with mostly retail and office uses.

Zoning/BDA History:

1. BDA 089-125, Property at 8070 Park Lane (the subject site)

On December 14, 2009, the Board of Adjustment Panel C granted a request for a special exception to the tree preservation regulations requested in conjunction with not fully mitigating protected trees removed on a site that is currently being developed with a mixed use office/residential/dining/shopping project (Park Lane). The board imposed the following condition: All protected trees, as defined by Article X that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, must be subject to replacement.

2. BDA067-052, Property at 8070 Park Lane (the subject site)

On May 14, 2007, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 374 spaces (or 5.67% of the required off-street parking) and imposed the following conditions: The special exception shall automatically and immediately terminate if and when the office uses on the site are changed or discontinued to have less than 125,000 square feet of office use; and the applicant or property owner must submit a parking analysis of the site to the Department of Development Services engineer no later than December 31, 2011. Should the parking analysis show any parking deficiency, the applicant or property

owner must immediately mitigate that deficiency as may be agreed between the applicant or property owner and the Department of Development Services. The case report stated that the request was made in conjunction with developing a 33-acre site with mixed-uses.

Timeline:

December 17, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 19, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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.”

January 20, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- These variance requests focus on constructing and maintaining an approximately 400 square foot 68’ high sign “structure” that does not comply with the required 35’ front yard setback (or additional 20’ setback to the required 15’ front yard setback)

for the portion of it above 45' in height along Blackwell Street and the I-75/North Central Expressway service road. The site is developed as a mixed use development (Park Lane).

- It appears from the submitted site plan that slightly more than half of the 68' foot high sign "structure" with an approximately 400 square foot building footprint is located in the 35' I-75/North Central Expressway service road urban form front yard setback, and that approximately 1/3 of the 68' high sign "structure" is located in the 35' Blackwell Street urban form front yard setback.
- The proposed structure that is between 45' – 68' in height to be located in the additional required 20' front yard setbacks is only 23' beyond the height in which the urban form setback becomes a factor.
- The subject site is somewhat sloped, slightly irregular in shape, and, according to the application, 33.32 acres in area. The site is zoned MU-3(SAH). The site encompasses an entire block whereby given this and its zoning, the site has 4 front yard setbacks.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the urban form front yard setback requested to construct and maintain an approximately 68' high, sign structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant the urban form front yard variance requests of up to 10.75', imposing a condition whereby the applicant must comply with the submitted site plan, the structure would be limited to what is shown on this submitted plan – a structure that complies with setbacks 45' in height and below, but where 23' of the structure proposed to exceed 45' in height would be allowed to be located in the additional 20' setbacks along Blackwell Street and the I-75/North Central Expressway service road.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jackson

I move that the Board of Adjustment grant application **BDA 101-019** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Maten

AYES: 5–Boyd, Maten, Coulter, Richard, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-008

BUILDING OFFICIAL’S REPORT:

Application of Zahra Darwish, represented by Gilbert Flores, for special exceptions to the fence height and visual obstruction regulations at 5126 Columbia Avenue. This property is more fully described as Lot 5 in City Block D/1422 and is zoned D(A) which limits the height of a fence in the front yard to 4 feet and requires 20 foot visibility triangles at drive approaches and 45 foot visibility triangles at street intersections. The applicant proposes to construct and/or maintain an 8 foot high fence which will require a special exception of 4 feet to the fence height regulations, and to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

LOCATION: 5126 Columbia Avenue

APPLICANT: Zahra Darwish
Represented by Gilbert Flores

UPDATED REQUESTS (February 2011):

- The following appeals had been made in this application on a site that is currently developed with a single family home:
 1. Special exceptions to the fence height regulations of 4’ are requested in conjunction with:
 - completing and maintaining a 6’ high fence (2’ high brick base retaining wall with 4’ high iron pickets atop) with 6’ high metal posts (that have replaced originally submitted brick columns) in the site’s 25’ Columbia Avenue front yard setback; and
 - maintaining an 8’ high solid wood fence and vehicular gate in the site’s 25’ St. Mary Avenue front yard setback; and

2. Special exceptions to the visual obstruction regulations are requested in conjunction with:
 - completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high metal posts (that have replaced originally submitted brick columns) in the 45' visibility triangle at the intersection of Columbia Avenue and St. Mary Avenue; and
 - maintaining an 8' high solid wood fence located in the 20' visibility triangles located on both sides of two driveways into the site from St. Mary Avenue. (The originally requested visual obstruction special exception to maintain this wall in the 20' visibility triangle at the intersection of the alley and St. Mary Avenue has been eliminated by relocating this wall at a diagonal).

ORIGINAL REQUESTS (December 2010):

- The following appeals had been made in this application on a site that is currently developed with a single family home:
 - 1 Special exceptions to the fence height regulations of 4' were requested in conjunction with:
 - completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high brick columns most of which is proposed to be completed/located in the site's 25' Columbia Avenue front yard setback; and
 - maintaining an 8' high solid wood fence and vehicular gate in the site's 25' St. Mary Avenue front yard setback; and
 2. Special exceptions to the visual obstruction regulations were requested in conjunction with:
 - completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high brick columns located in the 45' visibility triangle at the intersection of Columbia Avenue and St. Mary Avenue; and
 - maintaining an 8' high solid wood fence located in the 20' visibility triangles located on both sides of two driveways into the site from St. Mary Avenue, and located in the 20' visibility triangle at the intersection of the alley and St. Mary Avenue.

STAFF RECOMMENDATION (fence height special exceptions):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

- Compliance with the submitted revised site plan and revised partial elevations is required.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections if certain conditions are met – that being the board imposing the submitted revised site plan and revised partial elevations.
- The applicant has substantiated how the location of the existing/proposed items in the visibility triangles does not constitute a traffic hazard.

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 VISUAL OBSTRUCTION REGULATIONS:

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

UPDATED GENERAL FACTS (fence height special exceptions) (February 2011):

- The Board of Adjustment Panel C conducted a public hearing on this application on December 13, 2010, and delayed action until February 17, 2011 to allow the applicant an opportunity to reconsider/redesign the fence/column proposal in the site's Columbia Avenue front yard setback and in the 45 foot Columbia Avenue/St. Mary Avenue visibility triangle.
- The applicant had submitted a revised site plan and two revised partial elevations (see Attachment A). The revised plans indicate that the revised proposal in the 25' Columbia Avenue front yard setback reached a maximum height of 6' and the revised proposal in the 25' St. Mary Avenue front yard setback reached a maximum height of 8'.
- The following additional information was gleaned from the submitted revised site plan regarding the fence proposal along Columbia Avenue:
 - The proposal is approximately 30' in length parallel to the street, approximately 20' diagonal to this street, and approximately 25' in length *perpendicular* to Columbia Avenue on the southwest side of the site in this front yard setback.
 - The proposal is shown to be located as close as approximately 3' from the Columbia Avenue front property line or as close as about 12' from the curb line.
- No single family home "fronts" to the proposed Columbia Avenue fence on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along Columbia Avenue and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.

- The following additional information was gleaned from the submitted site plan regarding the fence proposal along St. Mary Avenue:
 - The proposal is approximately 180' in length parallel/diagonal to the street and approximately 25' in length *perpendicular* to St. Mary Avenue on the southeast side of the site in this front yard setback. (Approximately 15' of the proposal along this frontage is the 6' high open iron/brick base fence to be completed and maintained, and the remaining 165' of the proposal along this frontage is the 8' high solid wood fence to be maintained).
 - The proposal is shown to be located approximately on the St. Mary Avenue front property line or about 7' from the curb line.

UPDATED GENERAL FACTS (visual obstruction special exceptions) (February 2011):

- A revised site plan and revised partial elevations have been submitted (see Attachment A). The revised plans show a portion of the 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high metal posts located in the 45' visibility triangle at the intersection of Columbia Avenue and St. Mary Avenue, and portions of the 8' high solid wood fence located in the 20' visibility triangles located on the both sides of two driveways into the site from St. Mary Avenue., (Note that the originally proposed brick columns have been replaced by metal posts, and the originally requested visual obstruction special exception for a solid fence located in the 20' visibility triangle at the intersection of the alley and St. Mary Avenue has been eliminated with the provision of a diagonal fence in this location that complies with the visual obstruction regulations).

ORIGINAL GENERAL FACTS (fence height special exceptions) (December 2010):

- The subject site is located at the south corner of Columbia Avenue and St. Mary Avenue. Even though the Columbia Avenue frontage of the subject site functions as its front yard and the St. Mary Avenue frontage functions as its side yard, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Columbia Avenue (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family or duplex zoning district), and a 25' front yard setback along St. Mary Avenue (the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's St. Mary Avenue frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the one lot southeast of the site between Columbia Avenue and East Side Avenue that fronts/is oriented northeastward onto St. Mary Avenue.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

The applicant had submitted a site plan and two partial elevations indicating that the proposal in the 25' Columbia Avenue front yard setback reached a maximum height of 6' and the proposal in the 25' St. Mary Avenue front yard setback reached a maximum height of 8'.

- The following additional information was gleaned from the submitted site plan regarding the fence proposal along Columbia Avenue:
 - The proposal is approximately 50' in length parallel to the street and approximately 25' in length *perpendicular* to Columbia Avenue on the southwest and northeast sides of the site in this front yard setback.
 - The proposal is shown to be located approximately 3' from the Columbia Avenue front property line or about 12' from the curb line.
- No single family home "fronts" to the proposed Columbia Avenue fence on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along Columbia Avenue and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The following additional information was gleaned from the submitted site plan regarding the fence proposal along St. Mary Avenue:
 - The proposal is approximately 180' in length parallel to the street and approximately 25' in length *perpendicular* to St. Mary Avenue on the northwest and southeast sides of the site in this front yard setback. (Approximately 15' of the proposal along this frontage is the 6' high open iron/brick base fence to be completed and maintained, and the remaining 165' of the proposal along this frontage is the 8' high solid wood fence to be maintained).
 - The proposal is shown to be located approximately on the St. Mary Avenue front property line or about 7' from the curb line.
- One single family home "fronts" to the St. Mary Avenue proposal on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along St. Mary Avenue and noted one fence above four (4) feet high which appeared to be located in a front yard setback – a solid board fence approximately 7' high immediately northeast of the subject site with no recorded Board of Adjustment history.

ORIGINAL GENERAL FACTS (visual obstruction special exceptions) (December 2010):

- 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).A site plan and partial elevations had been submitted that showed a portion of the 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high brick columns located in the 45' visibility triangle at the intersection of Columbia

Avenue and St. Mary Avenue, and portions of the 8' high solid wood fence located in the 20' visibility triangles located on the both sides of two driveways into the site from St. Mary Avenue, and located in the 20' visibility triangle at the intersection of the alley and St. Mary Avenue.

BACKGROUND INFORMATION:

Zoning:

Site: D(A) (Duplex)
North: MF-2(A) (Multifamily district)
South: D(A) (Duplex)
East: D(A) (Duplex)
West: D(A) (Duplex)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, and west are developed with multifamily uses, and the area to the south is developed with what appears to be single family use.

Zoning/BDA History:

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

Timeline:

October 28, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 11, 2010: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 29th deadline to submit additional evidence for staff to factor into their analysis; and the December 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

- November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- December 2, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Must comply with all C.O.D. visibility requirements, except existing porch facing Columbia may remain. Alley is paved and used, and traffic volumes are too high to approve any visibility triangle reductions."
- December 13, 2010: The Board of Adjustment Panel C conducted a public hearing on this request and delayed action until their February 17th public hearing.
- December 20, 2010: The Board Administrator sent a letter to the applicant informing him of the public hearing date and the January 28th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- February 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.
- February 3, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "1) Alley 20' x 20' has been provided per applicants; 2) Will provide 30' x 30' at street to street (reduction from 45' x 45') and replace columns with poles, no concrete above 30" over street curbs; and 3) Driveway 20' x 20' waived by BDA."

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

- These requests focus on completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high metal most of which is proposed to be completed/located in the site's 25' Columbia Avenue front yard setback; and maintaining an 8' high solid wood fence and vehicular gate in the site's 25' St. Mary Avenue front yard setback on a site developed with a single family home.
- The proposals that are the issues of these requests are located on a site with two front yard setbacks – one front yard setback on Columbia Avenue, and another front

yard setback on St. Mary Avenue (where the proposed fence and existing fence that are the issues of these requests reach 8' at their highest point).

- Regardless of the way the subject site's St. Mary Avenue frontage functions as the site's side/rear yard, this St. Mary Avenue frontage is technically deemed a front yard setback in order to maintain the continuity of the established front yard setback established by the one lot southeast of the site between Columbia Avenue and East Side Avenue that fronts/is oriented northeastward onto St. Mary Avenue.
- The submitted revised site plan and revised partial elevations document the location, height, and materials of the fence over 4' in height in both required front yard setbacks. The revised site plan shows the fence to be completed and maintained along Columbia Avenue to be approximately 30' in length parallel to the street and approximately 25' in length *perpendicular* to the street on the southwest side of the site in this front yard setback; approximately 3' from the front property line or about 12' from the curb line. The revised site plan shows the fence to be maintained along St. Mary Avenue to be approximately 180' in length parallel to the street and approximately 25' in length *perpendicular* to the street on the southeast side of the site in this front yard setback; approximately on the front property line or about 7' from the curb line. The revised partial elevations show that the materials and heights of the proposed fence in the Columbia Avenue front yard setback, and the materials and height of the existing fence in the St. Mary Avenue front yard setback.
- No single family home "fronts" to the proposed Columbia Avenue fence on the subject site, and one single family home "fronts" to the St. Mary Avenue proposal on the subject site.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted in a field visit of the site and surrounding area by the Board Administrator along Columbia Avenue; and one fence above four (4) feet high which appeared to be located in a front yard setback (a solid board fence approximately 7' high immediately northeast of the subject site) was noted along St. Mary Avenue with no recorded Board of Adjustment history.
- As of February 7, 2011, 2 letters had been submitted to staff in support of the application, and one letter had been submitted in opposition – a letter with eight listed names but with no signatures.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting these special exceptions of 4' with a condition imposed that the applicant complies with the submitted revised site plan and revised partial elevations would provide assurance that the proposal exceeding 4' in height would be completed and/or remain located and maintained in the location and of the heights and materials as shown on these documents.
- Note that if the board were to grant these requests and impose the submitted revised site plan and revised partial elevations as a condition, but deny any or all of the requests for the special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the items in any such visibility triangle would not be "excepted."

STAFF ANALYSIS (related to the visual obstruction special exceptions):

- These requests focus on completing and maintaining a 6' high fence (2' high brick base retaining wall with 4' high iron pickets atop) with 6' high metal posts located in the 45' visibility triangle at the intersection of Columbia Avenue and St. Mary Avenue; and maintaining an 8' high solid wood fence located in the 20' visibility triangles located on the both sides of two driveways into the site from St. Mary Avenue.
- Although the Sustainable Development and Construction Department Project Engineer had recommended denial of these requests as originally submitted/proposed, he has submitted an updated review comment sheet marked "Has no objections if certain conditions are met" commenting "1) Alley 20' x 20' has been provided per applicants; 2) Will provide 30' x 30' at street to street (reduction from 45' x 45') and replace columns with poles, no concrete above 30" over street curbs; and 3) Driveway 20' x 20' waived by BDA."
- The applicant has the burden of proof in establishing that granting the requests for special exceptions to the visual obstruction regulations to the 45' visibility triangle at the Columbia Avenue/St. Mary Avenue intersection and to the 20' visibility triangles located on both sides of the two driveways will not constitute a traffic hazard.
- If the Board chooses to grant any/all of these requests, subject to compliance with the submitted revised site plan and revised partial elevations, the items shown on these documents would be "excepted" into the applicable visibility triangles.
- Note that if the board were to grant any/all of these requests and impose the submitted revised site plan and revised partial elevations as a condition, but deny one or both of the requests for special exceptions to the fence height regulations, notations would be made of such action on the submitted documents whereby the height of one or both such fence higher than 4' in the front yard setback would not be "excepted."

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: Zahra Darwish, 5126 Columbia Ave., Dallas, TX

APPEARING IN OPPOSITION: Jose Nieto, 5213 Eastside, Dallas, TX

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 101-008**, on application of Zahra Darwish, **grant** the request of this applicant to maintain fences in the visibility triangles at the intersection of St. Marys and the rear alley, the intersection of St. Marys and Columbia, and at the driveway approaches as special exceptions to the visual obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The brick columns and the fence be moved back three feet on a site plan to be submitted to the city.
- Compliance with the submitted site plan and partial elevations is required.

SECONDED: No one
***Motion Failed for Lack of a Second**

MOTION #2: Maten

I move that the Board of Adjustment in Appeal No. **BDA 101-008**, hold this matter under advisement until **February 17, 2011**.

SECONDED: Coulter

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1: Richard

I move that the Board of Adjustment, in Appeal No. **BDA 101-008**, on application of Zahra Darwish, **grant** the request of this applicant to maintain a fence in the visibility triangles at the intersection of St. Marys and Columbia at the driveway approaches as a special exception to the visual obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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 partial elevations is required.

SECONDED: Maten

AYES: 5–Boyd, Maten, Coulter, Richard, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Richard

I move that the Board of Adjustment, in Appeal No. **BDA 101-008**, on application of Zahra Darwish, **grant** the request of this applicant to construct and maintain an 8-foot high fence in the St. Marys front yard setback and a 6-foot high fence in the Columbia front yard setback as special exceptions to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that these special exceptions 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 partial elevations is required.

SECONDED: Maten

AYES: 5–Boyd, Maten, Coulter, Richard, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-014

BUILDING OFFICIAL’S REPORT:

Application of James E. Gardner III for a variance to the front yard setback regulations at 4611 Stanford Avenue. This property is more fully described as Lot 12 in City Block E/5683 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 5 foot front yard setback which will require a variance of 20 feet.

LOCATION: 4611 Stanford Avenue

APPLICANT: James E. Gardner III

REQUEST:

- A variance to the front yard setback regulations of 20’ is requested in conjunction with constructing and maintaining swimming pool and “pool equipment” structures on a site developed with a single family home, part of which will be located in one of the site’s two 25’ front yard setbacks on a site developed with a single family home: Elsby Avenue. (No part of the request is made in this application to construct/maintain any portion of a structure in the site’s Stanford Avenue front yard setback).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

1. The subject site is unique and different from most lots zoned R-7.5(A) in that it is: 1) a corner lot with a restrictive area due to two front yard setbacks; and 2) triangular in shape. These two physical site characteristics appear to preclude the applicant from developing it in a manner commensurate with development found on other similarly zoned R-7.5(A) lots that are typically with one front yard setback and rectangular in shape - in this case, development on the property with what appears to be a reasonably-sized existing single family home with what appears to be a reasonably-sized proposed swimming pool.

2. The structures that are proposed to encroach into one of the site's two front yard setbacks (Elsby Avenue) would be in compliance with the R-7.5(A) 5' side yard setback requirement.

STANDARD FOR A VARIANCE:

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

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

GENERAL FACTS:

- Single family structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
The subject site is located at the northeast corner of Stanford Avenue and Elsby Avenue. Regardless of how the existing single family structure on the site is oriented to "front" Stanford Avenue (and to "side" to Elsby Avenue), the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Stanford Avenue (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25' front yard setback along Elsby Avenue, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5' side yard setback is required. However, the site's Elsby Avenue frontage is deemed a front yard setback in order to maintain the continuity of the established front yard setback established by one lot to the north of the site that fronts/is oriented westward onto Elsby Avenue. A scaled site plan has been submitted denoting a portion of swimming pool and "pool equipment" structures as close as 9' from the Elsby Avenue front property line or as much as 16' into the Elsby Avenue 25' front yard setback. (Note that the applicant is aware of the fact that his application requests variance of 20' but his submitted site plan appears to show a variance need of only 16'). (No encroachment is proposed in the site's Stanford Avenue 25' front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, all of the approximately 18 square foot "pool equipment" structure and approximately 1/2 of the approximately 480 square foot swimming pool structure is located in the Elsby Avenue front yard setback.

- According to DCAD records, the site is developed with the following:
 - a structure built in 2000 in “average” condition with 3,944 square feet of living area; and
 - a 580 square foot attached garage.
- The subject site is flat, triangular in shape (150’ on the east, 162.6’ on the south, and 214.7’ on the northwest) and (according to the application) is 0.28 acres (or approximately 12,000 square feet) in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25’ front yard setbacks; and one 5’ side yard setback; most residentially-zoned lots are rectangular in area, have one front yard setback, two side yard setbacks, and one rear yard setback.

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, 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:

- December 16, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 19, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 20, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 31st deadline to submit additional evidence for staff to factor into their analysis;

- and the February 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

February 3, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D visibility requirements."

STAFF ANALYSIS:

- This request focuses on constructing and maintaining swimming pool and "pool equipment" structures on a site developed with a single family home, part of which would be located in one of the site's two 25' front yard setbacks (Elsby Avenue).
- The structures that are the issue of this request is to be located on a site that has two front yard setbacks – a site with one front yard setback on Stanford Avenue (where no structure is proposed to be located in); the other front yard setback on Elsby Avenue (where the proposed structures that are the issues of this request are requested on the application to be 5' from the Elsby Avenue front property line or 20' into the 25' setback, and are shown on the submitted site plan to be as close 9' from this property line or 16' into the 25' front yard setback).
- Regardless of how the existing single family structure on the site is oriented to "front" Stanford Avenue and "side" to Elsby Avenue, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Stanford Avenue (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25' front yard setback along Elsby Avenue, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5' side yard setback is required. The site's Elsby Avenue frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by one lot to the north of the site that fronts/is oriented westward onto Elsby Avenue.
- According to calculations taken by the Board Administrator from the submitted site plan, all of the approximately 18 square foot "pool equipment" structure and approximately ½ of the approximately 480 square foot swimming pool structure is located in the Elsby Avenue front yard setback.
- According to DCAD records, the site is developed with the following:
 - a structure built in 2000 in "average" condition with 3,944 square feet of living area; and

- a 580 square foot attached garage.
- The subject site is flat, triangular in shape (150' on the east, 162.6' on the south, and 214.7' on the northwest) and (according to the application) is 0.28 acres (or approximately 12,000 square feet) in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25' front yard setbacks; and one 5' side yard setback; most residentially-zoned lots are rectangular in area, have one front yard setback, two side yard setbacks, and one rear yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Elsby Avenue front yard setback regulations 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structures in the front yard setback would be limited to what is shown on this document– which in this case are swimming pool and “pool equipment” structures shown to be located as close as 9' from the Elsby Avenue front property line (or as much as 16' into this 25' front yard setback).
- Note that the applicant is aware of the fact that granting his request for variance to the front yard setback regulations will not provide any relief to any existing/proposed condition on the site that would be in noncompliance with the Code's fence height regulations.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2011

APPEARING IN FAVOR: James E. Gardner III, 4016 W. Plano Pkwy., Plano TX

APPEARING IN OPPOSITION: Preston Martinkus, 4567 Elsby, Dallas, TX

MOTION: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 101-014**, on application of James E Gardner III, **grant** the 20-foot variance to the minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revise site plan is required.
- The existing hedges must be maintained.

SECONDED: Richard

AYES: 5–Boyd, Maten, Coulter, Richard, Jackson

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-002

BUILDING OFFICIAL’S REPORT:

Application of Albert Monjaras for a special exception to the side yard setback regulations at 1257 Sleepy Hollow Drive. This property is more fully described as Lot 61 in City Block 5629 and is zoned PD-465 (Area 3) which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a carport and provide a 1 foot setback which will require a special exception of 4 feet.

LOCATION: 1257 Sleepy Hollow Drive

APPLICANT: Albert Monjaras

UPDATED REQUEST (February 2011):

- A special exception to the side yard setback regulations of 2.8’ is requested in conjunction with what appears to be maintaining an existing carport attached to a single family home, part of which is in the western 5’ side yard setback.

ORIGINAL REQUEST (December 2010):

- The submitted application stated that a request was made for a “special exception of 1’ to the side yard setback for a carport” but the site is currently developed with a single family home with an attached carport that appears to be closer than 4’ from the side property line. Given that the Board Administrator was unable to contact the applicant on the phone number submitted on his application prior to the December hearing, it could not be determined whether the applicant’s request was to maintain the carport in its current location (with the information on the submitted application and on the submitted site plan being in error), or if the applicant’s request was to modify the existing carport by relocating it in a location that actually provides the setback as stated on the application and as shown on the submitted site plan, floor plan/foundation plan, and elevation plan.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, the carport will not have a detrimental impact on surrounding properties.

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).

UPDATED GENERAL FACTS (February 2011):

- The Board of Adjustment Panel C conducted a public hearing on this application on December 13, 2010, and delayed action until February 17, 2011 to allow the applicant an opportunity to confirm whether the existing carport was indeed at the distance shown on his submitted plans.
- The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a new set of plans that had been submitted to Building Inspection by the applicant (see Attachment A). The plans included what appeared to be a revised site plan, and duplicate copies of “floor plan/foundation plan,” “elevation plan,” and “roof plan” that were submitted with the original application.
- The revised site plan shows what appears to be a representation of the carport structure on the site located 2.2’ from the western side property line or 2.8’ into the required 5’ side yard setback. The revised site plan denotes what appears to be a representation of the carport on the site that is attached to an “existing one story stucco 1,216 sq ft” structure/single family home.
- The following information was gleaned from the revised submitted site plan:
 - The area of what appears to be the location of the carport is represented to be 62’ in depth and approximately 12’ in width at the side of the single family home. The submitted floor plan/foundation plan represents what appears to be the carport or “proposed covered porch” to be “1,494 square feet.” The area of what appears to be the carport as represented on the site plan in the 5’ side yard setback is 2.8’ wide and about 62’ in length or 174 square feet in area.

ORIGINAL GENERAL FACTS (December 2010):

- A 5' side yard setback is required in the PD No. 465 (Area 3) zoning district. The applicant has submitted a site plan, floor plan/foundation plan, and elevation plan representing what appears to be a roof line of a "proposed covered porch" (denoted as 1,494 square feet in area) or carport 4' from the site's western side property line or 1' into the 5' side yard setback. The site plan denotes the carport attached to an "existing one story stucco 1,216 sq ft" structure/single family home.
- The following information was gleaned from the submitted site plan and submitted floor plan/foundation plan:
 - The area of what appears to be the location of the carport is represented to be 62' in depth and approximately 12' in width at the side of the single family home. The submitted floor plan/foundation plan represents what appears to be the carport or "proposed covered porch" to be "1,494 square feet." The area of what appears to be the carport as represented on the site plan as being in the 5' side yard setback is 1' wide and 62' in length or 62 square feet in area.
- The following information was gleaned from the submitted elevation plan:
 - Represented to be from 9' – 15' 4 ³/₄" in height.
- The following information was gleaned from the submitted roof plan:
 - Represented to be of "conventural roof" with 6" x 6" sq. post."
- The subject site is 147' x 50' (or 7,350 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a structure in "very good" condition built in 1952 with 1,216 square feet of living area,
 - a 100 square foot storage building;
 - a 574 square foot attached carport; and
 - a 0 square foot outbuilding.
- 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: PD No. 465 (Planned Development)
North: PD No. 465 (Planned Development)
South: PD No. 465 (Planned Development)
East: PD No. 465 (Planned Development)

West: PD No. 465 (Planned Development)

Land Use:

The subject site is developed with a single family home with an attached carport. The areas to the north, east, and west are developed with single family uses, and the area to the south is developed as a public park.

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 14, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 11, 2010: The Board Administrator wrote the applicant a letter that conveyed the following information given that the Board Administrator could not reach the applicant on the phone number printed on his application:

- the panel, public hearing date and location of his public hearing on his application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the November 5th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- a general description of the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

(Note that this letter referenced a staff person who can provide assistance in Spanish).

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, 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.

- December 13, 2010: The Board of Adjustment Panel C conducted a public hearing on this request and delayed action until their February 17th public hearing.
- December 20, 2010: The Board Administrator sent a letter to the applicant informing him of the public hearing date and the January 28th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- January 26, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a new set of plans that had been submitted to Building Inspection by the applicant (see Attachment A). The plans included what appeared to be a revised site plan, and duplicate copies of "floor plan/foundation plan," "elevation plan," and "roof plan" that were submitted with the original application.
- February 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The focus of this request could not be determined prior to the December 2010 public hearing given:
 - 1) a discrepancy between what was noted on the application and on submitted plans as a carport that is 4' away from the western side property line from what was observed in the Board Administrator's November 4th field trip where the actual existing carport on the subject site appeared to be about 1' away from the western side property line; and
 - 2) the Board Administrator's inability to reach the applicant by phone on November 10th, 12th, 16th, and December 1st.As a result, the board delayed action on the application at their December public hearing to allow the applicant to meet with Building Inspection, and submit plans that clearly represented what was actually being requested.
- A revised site plan has been submitted showing what appears to be a representation of the carport structure on the site located 2.2' from the western side property line or 2.8' into the required 5' side yard setback. The revised site plan denotes what appears to be a representation of the carport on the site that is attached to an "existing one story stucco 1,216 sq ft" structure/single family home.
- Although it appears that the representation shown on the revised site plan is documentation of the existing carport, the board may want to fully establish with the applicant at the February public hearing as to whether his request is made to: a) maintain the carport as it is in its current location (at a distance from the side property line as represented on his revised site plan and his submitted "floor

plan/foundation plan,” “elevation plan,” and “roof plan”; or b) if his request is to modify and maintain the carport as shown on these submitted plans.

- The applicant has the burden of proof in establishing the following:
 - That granting this special exception to the side yard setback regulations of 2.8’ (the dimension shown on the applicant’s submitted revised site plan) will not have a detrimental impact on surrounding properties.
- As of February 7, 2011, no letters had been submitted in support or in opposition to the request.
- 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 in the side yard setback; would require the carport in the side yard setback to comply with a specific 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 to the west:
 2. Compliance with the submitted revised site plan, floor plan/foundation plan and elevation plan is required.
 3. The carport structure must remain open at all times.
 4. There is no lot-to-lot drainage in conjunction with this proposal.
 5. All applicable building permits are obtained.
 6. No item (other than a motor vehicle) may be stored in the carport.
- If the Board chooses to grant this side yard special exception request, and impose the submitted revised site plan, floor plan/foundation plan, and elevation plan as a condition, the applicant would only be provided exception for what has been applied for, in this case, exception for the carport structure in the required side yard setback as represented/shown on the applicant’s submitted plans – a location that the board may want to determine from the applicant as to whether this would result in the applicant being required either: 1) to modify/relocate the existing carport from how it appeared on the site on November 4, 2010, or 2) to simply maintain the existing carport in its current location, dimensions, and materials.

BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010

APPEARING IN FAVOR: Alberto Monjaras, 1257 Sleepy Hollow Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING AS TRANSLATOR: Claudia Ibarra, 1500 Marilla, 7DN, Dallas, TX

MOTION: **Coulter**

I move that the Board of Adjustment in Appeal No. **BDA 101-002**, hold this matter under advisement until **February 17, 2011**.

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2011

APPEARING IN FAVOR: Alberto Monjaras, 1257 Sleepy Hollow Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING AS TRANSLATOR: Claudia Ibarra, 1500 Marilla, 7DN, Dallas, TX

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 101-002** on application of Alberto Monjaras, **grant** the request of this applicant to maintain a carport as a special exception to the minimum side yard requirements contained in the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will not have a detrimental impact on surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan, floor plan/foundation plan and elevation plan is required.
- The carport structure must remain open at all times.
- There is no lot-to-lot drainage in conjunction with this proposal.
- All applicable building permits are obtained.
- No item (other than a motor vehicle) may be stored in the carport.

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Coulter

AYES: 5—Boyd, Maten, Coulter, Richard, Jackson

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

1:46 P. M. - Board Meeting adjourned for **February 17, 2011.**

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.