

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, OCTOBER 14, 2008

Briefing: 10:30 A.M.
Public Hearing: 1:00 P.M.

5/E/S
COUNCIL CHAMBERS

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 which 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**

tl
10-14-2008

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, OCTOBER 14, 2008
AGENDA

BRIEFING	5/E/S	10:30 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Kyra Blackston, Senior Planner

MISCELLANEOUS ITEMS

Approval of the Tuesday, September 16, 2008 Board of Adjustment Public Hearing Minutes	M1
Consideration and adoption of Panel A's 2009 Public Hearing Schedule	M2

UNCONTESTED CASES

BDA 078-124	6474 Norway Road REQUEST: Application of Stephen Timon, represented by Paula Alford, for special exceptions to the fence height regulations	1
BDA 078-127(K)	3232 W. Illinois Avenue REQUEST: Application of Johnny An represented by Mitch Hanzik for a special exception to the parking regulations	2
BDA 078-134(K)	1200 Woodlawn Avenue REQUEST: Application of Effie Booker represented by James Davis for a variance to the front yard setback regulations	3

HOLDOVER CASE

BDA 078-116 4421 Walnut Hill Lane 4
REQUEST: Application of James B. Daniels,
represented by Santiago Pena, for a special
exception to the fence height regulations

REGULAR CASE

BDA 078-129 3223 Lemmon Avenue 5
REQUEST: Application of John Allums, represented
by Brett Lord, for a variance to the landscape
regulations

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 A September 16, 2008 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

To consider and adopt Board of Adjustment Panel A's 2009 public hearing schedule.

FILE NUMBER: BDA 078-124

BUILDING OFFICIAL'S REPORT:

Application of Stephen Timon, represented by Paula Alford, for special exceptions to the fence height regulations at 6474 Norway Road. This property is more fully described as Lot 9 in City Block P/5496 and is zoned R-16(A) which limits the height of a fence in a required side or rear yard to 9 feet. The applicant proposes to maintain a 12 foot 5 inch high fence in the required side and rear yard setbacks which will require special exceptions of 3 feet 5 inches.

LOCATION: 6474 Norway Road

APPLICANT: Stephen Timon
Represented by Paula Alford

REQUESTS:

- Special exceptions to the fence height regulations of 3' 5" are requested in conjunction with maintaining 2' – 4' 5" of wood latticing located atop an existing 8' high solid board-on-board fence/wall that ranges in total height from 10' – 12' 5", and is located in the site's 10' rear yard and western side yard setbacks. (The site is developed with a single family home).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
A scaled site plan and an elevation have been submitted indicating a fence/wall that is located in the site's required 10' rear yard and the western side yard setbacks,

and that reaches a maximum height of 12' 5" (or 3' 5" higher than the 9' height permitted by right).

- The submitted scaled site plan and elevation indicates that the existing fence/wall that exceeds 9' in height located in the site's 10' rear yard setback has the following additional characteristics:
 - approximately 76' in length parallel to the alley, and on the site's rear property line;
 - of the approximately 76' length of the fence/wall that exceeds 9' in height in the rear yard setback, about 35' is 10' high (8' board-on-board with 2' of wood laticing atop), about 16' is 11' high (8' board-on-board with 3' of wood laticing atop), and about 25' is 12' 5" high (8' board-on-board with 4' 5" of wood laticing atop).
- The submitted scaled site plan and elevation indicates that the proposal that exceeds 9' in height located in the site's western 10' side yard setback has the following additional characteristics:
 - approximately 56' in length perpendicular to the alley, and on the site's western side property line;
 - of the approximately 56' length of the fence/wall that exceeds 9' in height in the western side yard setback, about 17' is 10' high (8' board-on-board with 2' of wood laticing atop), about 16' is 11' high (8' board-on-board with 3' of wood laticing atop), and about 22' is 12' 5" high (8' board-on-board with 4' 5" of wood laticing atop).
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above nine (9) feet high located in a side or rear yard setback.

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: R-16 (A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

July 25, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Sept. 18, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Sept. 18, 2008: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:

- 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 September 29th deadline to submit additional evidence for staff to factor into their analysis;
- the October 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

Although no review comment sheets with comments were submitted in conjunction with this application, a concern was raised at the staff review team meeting with regard to whether the existing fence was in compliance with the city's visual obstruction regulations - specifically whether the fence was in compliance with the 20' visibility triangles at the alley and Edgemere Road, and at the drive approach into the site from Edgemere Road. (Staff was unable to make this determination from the submitted site plan since the plan did not show the pavement lines of the alley or Edgemere Road). The Board Administrator shared this concern with the applicant's representative, and the applicant's representative responded shortly afterward stating that she and the owner had determined from their own field study that they felt that the existing fence was in compliance with the visual obstruction regulations and

that no additional appeal to the board was necessary (i.e. special exceptions to the visual obstruction regulations) .

STAFF ANALYSIS:

- The requests are made to maintain 2' – 4' 5" of wood latticing located atop a solid 8' high board-on-board fence/wall located in the site's 10' rear and western side yard setbacks. The existing fence/wall ranges in total height from 10' – 12' 5".
- A scaled site plan and elevation has been submitted indicating that the location and length of the existing fence/wall that exceeds the 9' height permitted by right in the rear and side yard setbacks (located on the rear and western side property lines, and about 76' long and 56' long, respectively), the height of the existing fence/wall above the 9' permitted by right in the rear and side yard setbacks (ranging from 10' – 12' 5"), and the materials of the existing fence/wall over the 9' permitted by right in the side and rear yard setbacks (wood latticing).
- No other fences were noted above nine (9) feet high which appeared to be located in a side or rear yard setback in the immediate area adjacent to the subject site.
- As of October 6, 2008, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the side and rear yard fence height regulations of 3' 5" (whereby the existing maximum 12' 5" high fence/wall in the site's rear and western side yard setbacks) does not adversely affect neighboring property.
- Granting these special exceptions to the rear and side yard fence height regulations of 3' 5" with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the existing fence would be maintained in the location and of the height/material shown on these documents.
- Granting these requests for special exceptions to the fence height regulations does not provide any relief to address possible violations to the Dallas Development Code's Visual Obstruction Regulations.

FILE NUMBER: BDA 078-127(K)

BUILDING OFFICIAL'S REPORT:

Application of Johnny An represented by Mitch Hanzik for a special exception to the parking regulations at 3232 W. Illinois Avenue. This property is more fully described as Lot 2 in City Block 6116 and is zoned CR which requires parking to be provided. The applicant proposes to construct a nonresidential structure for a restaurant with drive-in or drive-through service use and provide 22 of the required 27 parking spaces, which will require a special exception of 5 spaces (18.5% reduction).

LOCATION: 3232 W. Illinois Avenue

APPLICANT: Johnny An
Represented by Mitch Hanzik

REQUEST:

- A special exception to the off-street parking regulations of 5 parking spaces (or 18.5% of the required off-street parking) is requested in conjunction with constructing and maintaining a 2,300 square foot restaurant.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The special exception shall automatically and immediately terminate if and when the "restaurant with drive-in or drive-through service" use is changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and

nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code 51A-4.203(b)(1)(C) gives the following off-street parking requirement for restaurant with drive-in or drive-through service:
 - Required off-street parking: One space per 100 square feet of floor area.

The application and Building Official's Report state that 22 (or 81.5 percent) of the required 27 spaces will be provided in conjunction with the proposed 3107 square foot restaurant and retail use.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: TH-3(A) (Townhouse) with SUP 146
South: CR (Community Retail)
East: CR (Community Retail)
West: LI (Light industrial)

Land Use:

The subject site is developed with a vacant structure. The property to the north is developed with a permitted special use. The properties to the east and south are developed with commercial uses. The property to the west is developed with a light industrial 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:

- August 20, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- September 18, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- September 24, 2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the September 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the October 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

September 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 3, 2008 The Development Services Senior Engineer submitted a review comment sheet (see attachment).

STAFF ANALYSIS:

- The applicant proposes to provide 22 of the 27 required parking spaces for a proposed 3107 square foot restaurant with drive-in or drive-through service and retail use.
- The Dallas Development Code 51A-4.203(b)(1)(C) gives the following off-street parking requirement:
 - Required off-street parking: One space per 100 square feet of floor area for a restaurant use.
 - Required off-street parking: One space per 200 square feet of floor area for retail.
- Granting this request, subject to the condition that the special exception of 5 spaces automatically and immediately terminates if and when the retail and restaurant with drive-in or drive-through service use is changed or discontinued, would allow the continuation of the proposed approximately 3,107 square foot structure to be leased with this specific use.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the retail and restaurant with drive-in or drive-through service use does not warrant the number of off-street parking spaces required, and
 - The special exception of 5 spaces (or 18.5 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request.

FILE NUMBER: BDA 078-134(K)

BUILDING OFFICIAL'S REPORT:

Application of Effie Booker represented by James Davis for a variance to the front yard setback regulations at 1200 Woodlawn Avenue. This property is more fully described as Lot 5 in City Block 2/4636 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct a single family residential structure and provide a 15 foot front yard setback, which will require a variance of 10 feet.

LOCATION: 1200 Woodlawn Avenue

APPLICANT: Effie Booker
Represented by James Davis

REQUEST:

- A variance to the front yard setback regulations of 15 feet is requested in conjunction with constructing and maintaining a single family home in the site's Colorado Blvd 25' front yard setback on a site that is vacant.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in the R-7.5(A) zoning designation in that it has two 25' front yard setbacks (one along Woodlawn Ave. and another on Colorado Blvd). Once both front yard setbacks have been accounted for, the site has a developable area of 3,882.5 square feet or 51% of the total lot.
- The lot's Colorado front yard setback leaves only about 21' of developable space on the approximately 46' wide site once a 25' front yard setback is accounted for.
- The restrictive area of the subject site caused by its two front yard setbacks precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning for single family use.
- Granting this variance does not appear to be contrary to the public interest for the following reason:
 - The building footprint on the submitted site plan shows compliance with the site's 25' front yard setback along Woodlawn Ave – the front yard setback of the two on the site that functions more as a typical front yard.

–

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:

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 20 feet. The site has frontage along Woodlawn Avenue and Colorado Blvd.
- The Dallas Development Code requires lots to maintain continuity of established setbacks. In this case the irregularly shaped property adjacent to the subject site has a front yard setback that must be maintained along the subject site's southern property line (that would be typically considered a side yard).
- The site is flat and rectangular being 53' x 143' in dimension or 7,579 square feet.
- The proposed development will not encroach into the site's Woodlawn Ave 25 foot front yard setback.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, east and west, are developed with single family structures.

Zoning/BDA History:

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

Timeline:

August 29, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 18, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

September 24 , 2008: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the September 29th deadline to submit additional evidence for staff to factor into their analysis;
- the October 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

September 26 2008 The City's Code Inspector submitted a comment sheet marked, no objections (see attachment).

September 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The Dallas Development Code defines a front yard as “that portion of a lot which abuts a street and extends across the width of the lot between the street and the setback line.”
- 51A-4.401 (b) provides the following explanation of governance of front yard setback requirements:
 - “(1) If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulation in Section 51A-4.402. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations in Section 51A-4.402. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.”
- The subject site has frontage on both Woodlawn Ave and Colorado Blvd.
- The site is encumbered by two front yard setbacks due to the established setback continuity provision of the development code. Once all setback requirements have been accounted for, there is a remaining 3,882.5 square feet of developable area, or 51 % of the total lot area 7,759 square feet.
- The site is a vacant, flat and rectangular (53 x143) and 7,579 square feet according to DCAD.
- The applicant is proposing to a construct a two level single family structure that will encroach a maximum of 9 feet into the site’s Colorado Blvd required setback. The submitted site plan demonstrates the proposed development meets the 25 foot front yard setback requirement on Woodlawn Ave.
- The site is different from other parcels of land in the area in that it is encumbered by two front yard setbacks. The setback requirements for single family structures in the R-7.5(A) zoning district is 25 feet.
- The applicant proposes to construct and maintain a single family structure with a drive approach from Colorado Blvd.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 10’ requested in conjunction with constructing and maintaining a single family home in the site’s Colorado Blvd. front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (a site that is flat, rectangular in shape (53’ x 143’) and 7,579 square feet in area) 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 R-7.5(A) zoning classification.

- If the Board were to grant the front yard variance request of 10', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to that shown on this plan.

FILE NUMBER: BDA 078-116

BUILDING OFFICIAL'S REPORT:

Application of James B. Daniels, represented by Santiago Pena, for a special exception to the fence height regulations at 4421 Walnut Hill Lane. This property is more fully described as Lot 8 and the western 10 feet of Lot 7 in City Block 2/5538 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot fence in a required front yard setback which will require a special exception of 5 feet.

LOCATION: 4421 Walnut Hill Lane

APPLICANT: James B. Daniels
Represented by Santiago Pena

REVISED REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with completing and maintaining an 8' high solid cedar board-on-board fence/wall with two 7' 6" high open wrought iron gates in the site's 35' front yard setback on a site developed with a single family home. (Note that the applicant has reduced his request by 1' from what he had requested at the September public hearing - a 5' special exception to complete/maintain a 9' high fence).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant submitted a revised site plan and a partial site/landscape plan/elevation document (see Attachment C) indicating that the proposal will reach a maximum height of 8 feet.

- The following additional information was gleaned from the submitted revised scaled site plan:
 - The plan denotes a fence line described as “erect 8’ fence.”
 - The proposal appears to be approximately 110’ in length parallel to the street and approximately 22’ in length perpendicular to the street on both sides of the site in the front yard setback.
 - The proposal appears to be located about 12’ from the easement line or approximately 20’ from the pavement line. (Note that in this case, the setback line is measured from the easement line since the property line on the subject site is located *outside* the pavement line and in the public right-of-way).
 - The proposal appears to be in compliance with the City’s visual obstruction regulations from what is shown on the submitted site plan, however, the Board Administrator has forwarded a copy of these regulations to the applicant for him to make a determination as to whether the proposal is indeed in compliance with these regulations based upon what the Board Administrator observed on the site from his field visit.
 - The locations of the gates that are to exceed 4’ in height are noted on the submitted partial site/landscape plan/elevation.
- The following additional information was gleaned from the submitted partial site/landscape plan/elevation:
 - An 8’ high cedar board-on-board (stained dark mahogany) fence (with cedar wood caps and runners) with two 7’ 6” high open wrought iron gates.
 - Landscape notations including the two “existing crate (sic) myrtles,” four additional “crate (sic) myrtles,” and 14 Scotch pines to be located on the street side of the fence/wall.
- The applicant’s representative had submitted additional documentation regarding his request prior to the September hearing (see Attachment A). This additional documentation described among other things how “the fence height that we are trying to achieve is a total height of 9’.” This document also described the following:
 - “Two each beautiful wrought iron gates for front entry @ Walnut Hill Lane.” (No heights mentioned).
 - “Four, beautifully hand, made steel and wrought iron entry scones at each entry/exit point of fence.”
 - “Board on board overlap fence construction, with top and bottom full board runners.” (No heights mentioned or denoted on either of the two submitted elevations).
 - “Dark Mahogany stain on interior and exterior of the complete fence structure.” (Not denoted on either of the two submitted elevations).
 - “Landscaping to match the existing interior at front and sides of house.” (Not denoted on the either of the two submitted elevations or the submitted site plan).The document had described the landscaping as follows:
 - “Installation of (4) 10 gal Crate Myrtles along front curved area of fence, between the circle drive entries.
 - Installation of (14) 5 gal 48” high Scotch pine Trees, in between the Crate Myrtles, alongside the curved area of the fence.

- Installation of Mulch and Filler Dirt along fence to accept the new plantings stated above.
- Installation of Bluebonnets and Lilly's and a variety of Colorful Plant life to be used as filler between the larger plantings.
- Installation of new Sod as needed in front of newly constructed fence areas at both outer areas of the circular driveway. These areas will have the same forms of plant life (as above) installed to accommodate the two side areas of the front yard.
- The completed landscaping will have a strict maintenance regimen and shall be changed according to seasonal conditions."

(Note that none of these materials had been denoted on either of the originally submitted elevations or the submitted site plan).

- There is one single family home (with an approximately 6' high solid stone fence/wall in its front yard setback) that would have direct frontage to the proposal on the subject site. (This fence/wall immediately south of the site has no recorded board of adjustment case history).
- The Board Administrator conducted a field visit of the site and surrounding area and other than the fence/wall mentioned above on the lot directly south of the subject site, noted no other visible fences/walls above four (4) feet high which appeared to be located in the front yard setback.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document providing additional details about the request.
- Prior to the September public hearing, the Board Administrator had emailed the applicant's representative his concern of the fence height discrepancies on the two submitted elevations and on the submitted site plan, and encouraged the applicant's representative to consider submitting revised documents with consistent information in order for the board to adequately access what the actual proposal is, and in turn, begin to access whether the proposal adversely affects neighboring property (see Attachment B).
- On September 16, 2008, the Board of Adjustment conducted a public hearing where the applicant and his representative designated one of the two submitted elevations as the one to be considered by the board at the public hearing, and where the applicant/his representative and opposition to the request submitted photographs to the board at the public hearing. (These photographs will be available for review at the 10-14 briefing/public hearing).
- The Board of Adjustment delayed action on this request until October 14th encouraging the applicant to: 1) meet with staff to get a better understanding of the type of materials that needed to be submitted in conjunction with this type of request, and 2) meet with the two opposing property owners (one who testified at the hearing, the other who had written a letter) in an attempt to form a mutually agreed upon proposal (perhaps one of a lesser height and/or different materials).
- On September 29, 2008, the applicant submitted a revised site plan and a partial site/landscape plan/elevation (see Attachment C).

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-1ac (A) (Single family district 1 acre)
East: R-16 (A) (Single family district 16,000 square feet)
West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

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

- July 7, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 14, 2008: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- 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 August 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September

public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

- Sept. 1, 2008 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- Sept. 15, 2008: The Board of Adjustment conducted a public hearing where the board delayed action on this matter until October 14, 2008.
- Sept. 29, 2008: The applicant submitted additional documentation to staff (see Attachment C).
- Sept. 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on completing/maintaining an 8' high solid cedar board-on-board fence/wall with two 7' 6" high open wrought iron gates in the site's required 35' front yard setback.
- A revised scaled site plan and a partial site/landscape plan/elevation document have been submitted that clearly show the length of the fence in relation to the entire site (approximately 110' in length parallel to the street and approximately 22' in length perpendicular to the street on the sides of the site in the front yard setback), the distance of the fence from the easement line (approximately 12') and pavement line (approximately 20'), the heights and materials of the components of the proposal (8' high solid board-on-board mahogany-stained cedar fence and 7' 6" high open wrought iron gates). The revised plans also note two "existing crate (sic) myrtles," four additional "crate (sic) myrtles," and 14 Scotch pines to be located on the street side of the fence/wall.
- There is one single family home (with an approximately 6' high solid stone fence/wall in its front yard setback) that would have direct frontage to the proposal on the

subject site. (This fence/wall immediately south of the site has no recorded board of adjustment case history).

- No other visible fences/walls other than the one mentioned above were noted in the immediate area above four (4) feet high which appeared to be located in the front yard setback.
- As of October 6, 2008, one letter had been submitted to staff in opposition to the request and no letters had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the existing fence/wall could be completed and maintained at a maximum height of 8') will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4', with a condition imposed that the applicant complies with the submitted revised site plan and a partial site/landscape plan/elevation document, would assure that the proposal would be completed and maintained in the location and of the heights and materials as shown on these documents.
- Granting this request for a special exception to the fence height regulations does not provide any relief that the applicant may determine is needed on the subject site to address existing/future violations to the Dallas Development Code's Visual Obstruction Regulations.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 16, 2008

APPEARING IN FAVOR: James Daniels, 4421 Walnut Hill Ln, Dallas, TX
Santiago Pena, 4421 Walnut Hill, Dallas, TX

APPEARING IN OPPOSITION: Ana Saldana, 4431 Walnut Hill, Dallas, TX

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-116**, on application of James B. Daniels, represented by Santiago Peña, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Taft

***Member Steve Harris withdrew this motion after discussion and therefore no vote was called on this matter.**

MOTION #2: Harris

I move that the Board of Adjustment in Appeal No. **BDA 078-116** hold this matter under advisement until **October 14, 2008**.

SECONDED: Taft

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-129

BUILDING OFFICIAL'S REPORT:

Application of John Allums, represented by Brett Lord, for a variance to the landscape regulations at 3223 Lemmon Avenue. This property is more fully described as Lot 3A in City Block 1/973 and is zoned PD-174 which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a variance to the landscape regulations.

LOCATION: 3223 Lemmon Avenue

APPLICANT: John Allums
Represented by Brett Lord

REQUEST:

- A variance to the landscape regulations is requested in conjunction with constructing and maintaining a mixed use development on an undeveloped subject site (Cityville Carlisle).

STAFF RECOMMENDATION:

Denial

Rationale:

- The City's Chief Arborist recommends denial of the request since the self-imposed parking lot reduction instituted the demand to comply with recently amended PD landscape provisions that were created to be specific and unique to the property/subject site.
- Neither the site's slope nor irregular shape preclude the applicant from developing the subject site in compliance with the landscape regulations of PD No. 174 – landscape regulations written specifically for a planned development district that was in turn written specifically for the subject site and one other lot immediately west.
- The applicant has not substantiated the following: how a literal enforcement of the code provisions would result in unnecessary hardship; how the variance is necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of the PD No. 174 zoning district; nor how the variance is not needed to relieve a self-created or personal hardship, nor for financial reasons only.

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:

- PD No. 174 states that landscaping must be provided in accordance with the requirements of PD No. 193, and that this district should be considered to be a GR subdistrict for landscape requirements, except that if off-street parking is reduced pursuant to the off-street parking standards of PD No. 174, landscaping must be provided in accordance with the special landscape and open space provisions in the landscaping provisions of PD No. 174.

On October 2, 2008, staff discovered that the applicant had submitted a development plan with reduced off-street parking and as a result, the request that was originally submitted as a landscape special exception request to the board could only be submitted as a landscape *variance* request to the board. (In light of this discovery, the applicant requested that Board Administrator amend his application from a special exception to a variance to the landscape regulations as opposed to withdrawing his board application whereby he would either fully comply with the landscaping requirements of the PD district, or make application to amend PD No. 174 through the City Plan Commission/City Council rezoning hearing process).

The applicant has submitted a landscape plan of the subject site whereby, according to the City of Dallas Chief Arborist, relief is sought from specific landscape requirements of PD No. 174 including sidewalk widths, pedestrian amenities, and special landscape and open space provisions.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment A). The memo stated the following:
 - The special exception request is triggered by the new construction within PD No. 174.
 - Deficiencies:
 - The plan is deficient in that “short sections of sidewalk” on the site do not meet the required minimum width of 8’ and the minimum unobstructed width of 6’.
 - The plan is deficient to the pedestrian amenity provisions of PD No. 174 in the following ways:

- Bicycle parking is not stationed at the required one 5-bicycle unit per 100' of frontage. (The applicant proposes to provide 23 2-bicylce units when 9 5-bicycle units are required).
- Nine of 10 required benches are provided.
- Nine of 12 required trash receptacles are provided.
- A public art or water feature is provided however not described enough to fully determine whether it meets the ordinance requirement of "public art or water features costing no less than \$2,500, at one per lot."
- One "water fountain" is provided however not described enough to fully determine whether it meets the ordinance requirement of "drinking fountains at one per lot."
- The plan is deficient in the following ways pertaining to special landscape and open space provisions of PD No. 174:
 - It cannot be determined whether the plan is providing the off-street loading space 6' high screening requirement.
 - It cannot be determined whether the site is providing a garbage storage area and if it is, whether it is in compliance with PD regulations related to required screening.
 - One large tree is being provided for every 50' of frontage when a small tree is required for every 50' of frontage on the site.
 - The site does not comply with the required provision related to permeable surface area stating that "a minimum of 10 percent of the property area must be open space in the form of permeable surfaces."
- Factors:
 - In April of 1984, PD No. 174 stated the Property must be landscaped in accordance with the city plan commission approved landscape plan.
 - In November of 1996, PD No. 174 was amended to base landscaping "in accordance with the requirements of the ordinance that governs PD 193, the Oak Lawn Special Purpose District."
 - In March of 2006, PD No. 174 was amended to base landscaping on Section 51P-174.110 that stated "landscaping must be provided in accordance with Section 51P-193.126 (GR Standards) except that if off-street parking is reduced pursuant to Section 51P-174.108(b), landscaping must be provided in accordance with the special landscape and open spaces provisions in Subsection (g).
 - In September of 2008, a development plan was approved for the Property that reduced the parking requirements per Section 51P-174.108(b). The alternate standard set forward in the PD amendment became the basis for landscaping.
 - The adjacent property area identified on the plan with "Mews Street" should not be considered as part of the proposed landscape plan.
- Recommendation:
 - Denial: The self-imposed parking lot reductions instituted the demand to comply with recently amended PD landscape provisions that were created to be specific and unique to the Property.
- The site is sloped, is somewhat irregular in shape (approximately 416' on the north, approximately 294' on the south, approximately 245' on the east, and approximately

294' on the west) and approximately 2.3 acres in area. The subject site and the lot immediately west are the only two lots zoned PD No. 174.

- On October 6, 2008, the applicant's representative submitted additional information to staff regarding the request (see Attachment C). This information included the following:
 - a document that provided additional details about the request; and
 - a color copy of the alternative landscape plan.(Note that this information was not factored into the staff recommendation since it was submitted after the Chief Arborist's memo written on October 3, 2008).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 174 (Planned Development District)
North: PD No. 193 (O-2 Subdistrict)
South: PD No. 193 (MF-2 Subdistricts)
East: PD No. 153 (Planned Development District)
West: PD No. 174 (Planned Development District)

Land Use:

The subject site is undeveloped. The areas to the north and south are developed with multifamily uses; the area to the east is developed with retail and office uses; and the area immediately west 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:

- August 27, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 18, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Sept. 19, 2008: 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 September 29th deadline to submit additional evidence for staff to factor into their analysis;

- the October 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

October 2, 2008 Staff discovered that given the combination of specific provisions related to the landscaping provisions in PD No. 174 along with the applicant’s proposed development of the site that included off-street parking reductions, that the request to the board to allow any deviation to the PD No. 174 landscaping provisions must be considered as a *variance* to the landscape regulations as opposed to what was originally determined/submitted as a special exception to the landscape regulations. The Board Administrator explained this to the applicant whereby the applicant instructed the Board Administrator via email to amend his application accordingly whereby he would be requesting a variance to the landscape regulations from the board as opposed to withdrawing the board application and either fully complying with the landscaping requirements of the PD, or making application to amend the PD through the City Plan Commission/City Council rezoning hearing process.

October 3, 2008 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

October 6, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment B).

October 6, 2008 The applicant’s representative submitted additional information regarding the request (see Attachment C).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a mixed use development on an undeveloped subject site (Cityville Carlisle) that is one of two lots that comprises PD No. 174.
- The applicant is seeking leniency to certain landscape requirements of PD No. 174, and given specific provisions of these landscape provisions, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations as opposed to the more typical *special exception* to the landscape regulations.
- The City's Chief Arborist has been able to determine that the submitted alternate landscape plan is deficient to the PD No. 174 landscape regulations with regard to sidewalk widths, bicycle parking, benches, trash receptacles, and permeable surface area. However, given the lack of specification on the submitted landscape plan, the City could not detect whether the alternate landscape plan complies with the ordinance requirements with regard to public art or water feature, drinking fountains, loading space screening, and garbage storage area screening.
- The City of Dallas Chief Arborist recommends that the variance request be denied.
- The site is sloped, is somewhat irregular in shape (approximately 416' on the north, approximately 294' on the south, approximately 245' on the east, and approximately 294' on the west) and approximately 2.3 acres in area. The subject site and the lot immediately west are the only two lots zoned PD No. 174.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the landscape regulations requested in conjunction with constructing/maintaining a mixed use development on an undeveloped tract of land that would be deficient at minimum to the sidewalk widths, bicycle parking, benches, trash receptacles, and permeable surface area requirements of the landscape 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 (an undeveloped tract of land that is that sloped, somewhat irregular in shape, and about 2.3 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 174 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 174 zoning classification.
- 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 would be "varied" from full compliance to the landscape regulations of the PD No. 174 (including but not necessarily limited to its sidewalk width, bicycle parking, bench, trash receptacle, and permeable surface area provisions).