

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JANUARY 20, 2009**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Ellen Taft regular member, and Steve Harris, regular member

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Ellen Taft regular member, and Steve Harris, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

10:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 20, 2009** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A November 18, 2008 public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2009

MOTION: Taft

I move **approval** of the Tuesday, **November 18, 2008** public hearing minutes as amended.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5- 0 (unanimously)

FILE NUMBER: BDA 089-014(K)

BUILDING OFFICIAL'S REPORT:

Application of Susan Newell for a special exception to the fence height regulations at 5625 Stonegate Road. This property is more fully described as Lot 11 in City Block 3/5649 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 a 7 foot, 10 inch fence in a required front yard setback which will require a special exception of 3 feet, 10 inches.

LOCATION: 5625 Stonegate Road

APPLICANT: Susan Newell

REQUEST:

A special exception to the fence height regulations of 3 feet and 10 inches requested in conjunction with constructing and maintaining a solid fence and gate in the site's 50 foot platted front building line.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject property is developed with a single family structure.
- This property is zoned R-16(A) and has a 50 foot platted building line (front yard setback).
- The applicant is proposing to construct and maintain a solid stucco and metal fence that is 7 feet and 10 inches in height.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts. And a person shall not erect or maintain a fence in a required yard more than nine feet above grade.

BACKGROUND INFORMATION:

Zoning:

Site: 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 use. The properties to the north, south, east, and west are developed with single family uses. .

Zoning/BDA History:

There is no case history for the site.

Timeline:

- November 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.
- December 16 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- December 24 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- December 30, 2008: The City's Code Officer submitted a comment sheet recommending denial (see attachment A).
- January 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- A review comment sheet marked no comment was submitted by the City's Senior Engineer.

STAFF ANALYSIS:

- A scaled site has been submitted that documents the location of the proposed solid fence, open fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the solid stone fence to be 7 feet and 10 inches in height.
- The proposed fence will enclose two courtyards located at the front entry of the home. The eastern courtyard fence will run 31 feet-10 inches and the western courtyard fence will run 38 feet-6 inches.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the solid stucco fence that is proposed to exceed 4' in height) will not adversely affect neighboring property.
- Should the Board vote to grant the special exception to the fence height regulation, staff recommends imposing the submitted landscape plan, elevation and site plan as conditions of approval.

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 089-014** 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, landscape plan, and elevation is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-152

BUILDING OFFICIAL'S REPORT:

Application of James Hunt, represented by Floreann Morgan Hunt, for special exceptions to the fence height and visual obstruction regulations at 3720 Latimer Street. This property is more fully described as Lot 7 in City Block A/1714 and is zoned PD 595 (R-5(A)), which limits the height of a fence in the front yard to 4 feet and requires 20 foot visibility triangles at driveway approaches. The applicant proposes to maintain a 7 foot high fence in a required front yard setback and in required visibility triangles which will require a special exception of 3 feet to the fence height regulations and special exceptions to the visual obstruction regulations.

LOCATION: 3720 Latimer Street

APPLICANT: James Hunt
Represented by Floreann Morgan Hunt

January 20, 2009 Public Hearing Notes:

- The applicant provided additional written documentation (photographs of the site and surrounding neighborhood) to the board at the public hearing.

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a single family home:
 1. A special exception to the fence height regulations of 3' is requested in conjunction with maintaining a 6' high open wire fence located atop a 1' high concrete retaining wall/base and a 6' high open wire gate in the site's 20' front yard setback – a fence that according to the applicant has been on the site since 1987.
 2. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining a portion of the 6' high open wire fence located in the two 20' visibility triangles at the drive approach into the site from Latimer Street.

STAFF RECOMMENDATION (fence height special exception):

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 exception):

Denial of the requests

Rationale:

- The City's Development Services Senior Engineer recommends denial of the requests specifically stating that the gate of the fence was scaled at approximately 7 or 8 feet from the street curb, therefore any vehicle entering the site may obstruct vehicular traffic on the street.

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.

GENERAL FACTS (related to the fence height special exceptions):

- 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 has submitted a survey plat/site plan document and a revised elevation indicating that the existing fence/gate in the 20' front yard setback reaches a maximum height of 7'.
- The following additional information was gleaned from the submitted survey plat/site plan:
 - The existing fence/gate appears to be approximately 51' in length parallel to Latimer Street and approximately 20' in length perpendicular to the street on the east and west "sides" of the site in the front yard setback.
 - The existing fence/gate is located on the front property line or approximately 7' from the pavement line.
- No single family home has direct frontage to the existing fence/gate on the subject site – the house on the lot immediately across from the site on Latimer Street "fronts" northwest on Jordan Street.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a petition signed by 47 neighbors/owners in support of the application;

- a copy of a letter written to the City's Code Enforcement Division in 1996 by a property owner concerned with the conditions of certain properties in the 3700 block of Latimer Street; and
- an update letter from the applicant about the conditions in the 3700 block of Latimer Street.

GENERAL FACTS (related to the visual obstruction special exceptions):

- 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 survey plat/site plan and revised elevation have been submitted that show portions of the 6' high open wire fence located in the site's two 20' visibility triangles at the drive approach into the site from Latimer Street.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a petition signed by 47 neighbors/owners in support of the application;
 - a copy of a letter written to the City's Code Enforcement Division in 1996 by a property owner concerned with the conditions of certain properties in the 3700 block of Latimer Street; and
 - an update letter from the applicant about the conditions in the 3700 block of Latimer Street.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- North: PD No. 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- South: PD No. 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- East: PD No. 595 (R-5) (Planned Development, Single family district 5,000 square feet)
- West: PD No. 595 (R-5) (Planned Development, Single family district 5,000 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:

- | | |
|---|--|
| 1. Miscellaneous Item #3, Property located at 3720 Latimer Street | On November 18, 2008, the Board of Adjustment Panel A waived the filing fee to |
|---|--|

(the subject site)

be submitted in conjunction with a pending board of adjustment – a special exception to the visibility obstruction regulations.

Timeline:

- October 8, 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.
- Dec. 16, 2008: 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 Rules of Procedure that states, “If any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action.”
- Dec. 22, 2008: 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 5th deadline to submit additional evidence for staff to factor into their analysis; the January 9th 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 requests;
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- Jan. 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- Jan. 8, 2009 The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- Jan. 8, 2009 The Development Services Senior Engineer forwarded a review comment sheet dated 1-7-09 marked “recommends that this be denied” with the following comments:

“The gate of the fence is scaled at approximately 7 feet or 8 feet from the street curb, therefore any vehicle entering this site may obstruct vehicular traffic on Latimer Street.”

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

- This request focuses on maintaining a 6’ high open wire fence/gate located atop a 1’ high concrete retaining wall/base in the front yard setback – a fence that according to the applicant has been on the site since 1987.
- A survey plat/site plan document and a revised elevation have been submitted documenting the location of the fence relative to the front property line (on the property line) and pavement line (approximately 7’ from the pavement line), the length of the proposal relative to the entire lot (about 51’ long parallel to the street and approximately 20’ perpendicular to the street on both sides of the site in the front yard setback), and the existing height (6’ atop a 1’ retaining wall) and building materials (open wire).
- No single family home has direct frontage to the existing fence/gate – the house immediately across the street “fronts” northwest on Jordan Street.
- No other fences were noted in the general area of the subject site with a fence above four (4) feet high which appeared to be located in the front yard setback.
- As of January 12, 2009, a petition signed by 47 neighbors/owners in support of the application has been submitted and no letters in opposition have been submitted.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3’ (whereby the existing open wire fence that reaches 7’ in height) will not adversely affect neighboring property.
- Granting this special exception of 3’ with a condition imposed that the applicant complies with the submitted survey plat/site plan and revised elevation would assure that the existing fence exceeding 4’ in height would be maintained in the location and of the height and material as shown on these documents.
- Note that if the board were to grant this request and impose the submitted survey plan/site plan and revised elevation as conditions, and deny the requests for special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the fence in the triangles would not be “excepted.”

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

- These requests focus on maintaining a portion of a 6’ high open wire fence located in the two 20’ visibility triangles at the drive approach into the site from Latimer Street. About 14’ of the 6’ high open wire fence is located in the northern drive approach visibility triangle and about a 23’ of the 6’ high open wire fence is located in the southern drive approach visibility triangle – about 3’ in length parallel to Latimer Street and about 20’ in length perpendicular to Latimer Street.
- The Development Services Senior Engineer submitted a review comment sheet marked “recommends that this be denied” with the following comments: “The gate of

the fence is scaled at approximately 7 feet or 8 feet from the street curb, therefore any vehicle entering this site may obstruct vehicular traffic on Latimer Street.”

- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing the maintenance of a portion of the existing 6’ high open wire fence that has been on the site since 1987 in the two 20’ drive approach visibility triangles on the site will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted survey plat/site plan and revised elevation, the existing 6’ high open wire fence (atop the 1’ high retaining wall) would be “excepted” into these visibility triangles on the subject site.

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2009

APPEARING IN FAVOR: Floreann Morgan Hunt, 3720 Latimer, Dallas, TX
Artie M. Brown, 3717 Atlanta, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 078-152**, on application of James Hunt, represented by Floreann Morgan Hunt, **grant** the request of this applicant to maintain a seven foot fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted survey plat/site plan and revised elevation is required.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 078-152** on application of James Hunt, represented by Floreann Morgan Hunt, **grant** the requests of this applicant to maintain a fence in the northwestern and the southeastern drive approach visibility triangles as special exceptions to the visibility 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 survey plat/site plan and revised elevation is required.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-009(K)

BUILDING OFFICIAL’S REPORT:

Application of Ramsey Munir, represented by Robert Baldwin for a special exception to the fence height regulations at 5107 Kelsey Road. This property is more fully described as Lot 1 in City Block A/5517 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot, 6 inch fence in a required front yard setback which will require a special exception of 4 feet 6 inches.

LOCATION: 5107 Kelsey Road

APPLICANT: Ramsey Munir
Represented by Robert Baldwin

REQUEST:

A special exception to the fence height regulations of 4 feet 6 inches is requested in conjunction with constructing and maintaining a solid fence and gate in the site’s 50 foot platted front building line.

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 site is developed with a single family structure.
- The applicant is proposing to construct and maintain an 8 foot 6 inch fence in the property's 50 foot front yard setback.
- 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.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

BDA 067-157. On November 4, 2007, the board of adjustment panel B, denied a request for a fence height special exception at 10301 Inwood Road.

Timeline:

- November 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.
- December 16 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- December 24 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the

applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the January 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

January 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- A scaled site has been submitted that documents the location of the proposed solid fence, open fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the solid cast stone fence to be 7 feet 6 inches in height, the columns and stone caps to be 8 feet in height and 6 foot-6 inch open wrought iron fence. The fence runs approximately 165 linear feet along Kelsey Road.
- The site plan illustrates two 8 foot six inch tall gates (that adjoins the solid fence).
- During the site visit the Senior Planner did not observe any fences in the front yard in the immediate area.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Should the Board vote to grant the special exception to the fence height regulation, staff recommends imposing the submitted landscape plan, elevation and site plan as conditions of approval.

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2009

APPEARING IN FAVOR: Robert Baldwin, 401 Exposition Ave., Dallas, TX

APPEARING IN OPPOSITION: George Everback, 5111 Meaders Lane, Dallas, TX
Chris Anderson, 5207 Kelsner, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 089-009**, on application of Ramsey Munir, represented by Robert Baldwin, **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: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-001(K)

BUILDING OFFICIAL’S REPORT:

Application of Efrain Pena for a variance to the front yard setback regulations at 2010 W. Jefferson Blvd. This property is more fully described as Lot 8 in City Block 1/3320 and is zoned CR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a nonresidential structure and provide a 7 foot front yard setback which will require a variance of 8 feet.

LOCATION: 2010 W. Jefferson Blvd

APPLICANT: Efrain Pena

REQUEST:

- A variance to the front yard setback regulation.

STAFF RECOMMENDATION (variance to front yard setback):

Approval, subject to the following condition:

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

Rationale:

- The site is different from other parcels of land in the CR zoning, in that it has an irregular shape.
- The applicant is not requesting an increase in the square footage of the building. The applicant proposes to alter the façade of the current structure.

- Granting this variance does not appear to be contrary to the public interest because the building footprint is not changing, the applicant is only requesting the variance to alter the façade of the building, and the structure is in compliance with the side and rear yard setback requirements.

STANDARD FOR A VARIANCE:

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: 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; the variance is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such 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 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:

- Structures on lots zoned CR are required to provide a minimum front yard setback of 15 feet.
- The site is flat, irregular in shape and approximately 30,000 square feet in area.
- According to DCAD, the site was developed in 1948 with a non-residential structure that is 8,864 square feet.
- The applicant submitted a site plan and elevations showing the proposed construction will be 7 feet from the northern property line.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail district)
North: CR (Community Retail district)
South: R-7.5 (A) (Single family district 7,500 square feet)
East: CR (Community Retail district)
West: PD 409 (Dallas Independent School District)

Land Use:

The subject site is developed with a church. The property to the north is developed with an automotive repair use, the property to the east is developed with a non-residential

use, the property to the south is developed with a single family use, and the property to the west is developed with a public school.

Zoning/BDA History:

There is no case history for this site or other properties in the immediate area.

Timeline:

October 25 2008 The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.

December 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

December 24,2008: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by letter:

- the public hearing date and panel that will consider the application;
- the criteria or standard that the board will use in their decision to approve or deny the request;
- the January 5th deadline to submit additional evidence for staff to factor into their analysis;
- the January 9th 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 January public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

January 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January 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 Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The site is developed with church structure. According to DCAD the site was developed in 1948 and is approximately 8,800 square feet and is in good condition.

- This site is different from other properties in the CR zoning in that it has an irregular shape.
 - The site is currently developed and the applicant is requesting the variance to the front yard setback requirements so that the Iglesia del Dios Vivo Columna y Apoyo de la Verdad, la Luz del Mundo may modify the façade of the structure.
 - The variance request is for an existing structure that is not in compliance with the current Dallas City Code 15 foot front yard setback requirement.
 - The submitted elevation illustrates the structure will be 42 feet in height. The maximum allowed height in the CR zoning is 54 feet.
 - The applicant has the burden of proof in establishing the following:
 - that granting the variance to the front yard setback regulations of 15 feet to construct and maintain a church is 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;
1. Should the Board choose to grant the request for the variance to the front yard setback, staff recommends a condition of compliance with the submitted site plan.

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2009

APPEARING IN FAVOR: Efrain Pena, 2010 W. Jefferson, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-001**, on application of Efrain Peña, **grant** the eight 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 site plan and elevation is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-007(K)

BUILDING OFFICIAL’S REPORT:

Application of Richard Kottle for a special exception to the fence height regulations at 9207 Arbor Branch Drive. This property is more fully described as Lot 18 in City Block B/8155 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 9207 Arbor Branch Drive

APPLICANT: Richard Kottle

REQUEST:

A special exception to the fence height regulations of 4 feet is requested in conjunction with constructing and maintaining a solid fence and gate in the site's 25 foot front yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is developed with a single family structure.
- The property is a corner lot with two front yard setbacks one along Arbor Branch Drive and another along Club Glen Drive.
- The applicant is proposing to construct and maintain an 8 foot fence in the Club Glen Drive's 25 foot front yard setback.
- 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.

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

Zoning/BDA History:

There is no case history for the site.

Timeline:

- November 11, 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.
- December 16 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- December 24 2008: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information via letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the January 5th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the January 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

- December 15, 2008 The applicant submitted additional information for the Board's consideration.
- December 24, 2008 The applicant submitted additional information for the Board's consideration.
- December 31, 2008 The applicant submitted additional information for the Board's consideration.
- January 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- A scaled site has been submitted that documents the location of the proposed solid fence, open fence, columns, and gates relative to their proximity to the property line.
- A scaled site plan has been submitted that documents the height of the wood fence to be 8 feet in height.
- The fence runs approximately 100 linear feet along Club Glen Drive.
- During a site visit, the Senior Planner did not observe any other front yard fences in the immediate area.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence that is proposed to exceed 4' in height) will not adversely affect neighboring property.
- Should the Board vote to grant the special exception to the fence height regulation, staff recommends imposing the submitted landscape plan, elevation and site plan as conditions of approval.

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2009

APPEARING IN FAVOR: Richard Kottle, 9207 Arbor Branch, Dallas, TX
Whitney Wolf, 9207 Arbor Branch, Dallas, TX

APPEARING IN OPPOSITION: C.D. Elliott, 9227 Clubglen, Dallas, TX
Lou Bono, 9222 Arbor Branch Dr., Dallas, TX
Douglas Throckmorton, 9230 Arbor Branch, Dallas, TX
George Clark, 9206 Arbor Branch, Dallas, TX
Tracy Clark, 9206 Arbor Branch Dr, Dallas, TX
Ellen Boutin, 9202 Arbor Branch, Dallas, TX

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-007**, on application of Richard Kottle, **grant** the request of this applicant to construct and maintain an eight foot fence as a special exception to the height requirement for fences contained in the Dallas Development Code in addition to the revised landscape design plan sited on page 148 of the docket materials in section 15, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan, landscape plan, and elevation is required.

SECONDED: Taft

AYES: 2 – Taft, Harris

NAYS: 3 - Rob, Schweitzer, Gabriel

MOTION FAILED: 2-3

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 089-007**, on application of Richard Kottle, **grant** the request of this applicant to maintain an eight foot fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan showing the existing 43 foot fence, and elevation is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 089-008(K)

BUILDING OFFICIAL’S REPORT:

Application of Jack and Jeanette Murphy for a variance to the front yard setback regulations and for a variance to the off-street parking regulations at 6505 Lakeshore Drive. This property is more fully described as Lot 10 in City Block H/2794 and is zoned CD-2, which requires a front yard setback of 40 feet and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is

located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a residential accessory structure and provide a 0 foot front yard setback which will require a variance of 40 feet to the front yard setback regulations and to construct and maintain a residential accessory structure with a front yard setback of 0 feet, which will require a variance of 20 feet to the off-street parking regulations.

LOCATION: 6505 Lakeshore Drive

APPLICANT: Jack and Jeanette Murphy

REQUEST:

- A variance to the front yard setback regulations of 40 feet is requested in conjunction with constructing and maintaining a single family accessory structure in the site's Hillside Drive's 40 foot front yard setback on a site that is developed.
- A variance to the off street parking regulations of 20 feet is requested in conjunction with constructing and maintaining an enclosed parking structure on a site that is developed.

STAFF RECOMMENDATION FOR THE FRONT YARD VARIANCE:

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 that it has two 40' front yard setbacks (one along Hillside Drive and another on Lakeshore Drive). Once both front yard setbacks have been accounted for, the site has a developable area of 2,892 square feet or 15% of the total lot.
- 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 CD-2 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 40' front yard setback along Lakeshore Drive – the front yard setback of the two on the site that functions more as a typical front yard.

STAFF RECOMMENDATION FOR VARIANCE TO OFF-STREET PARKING:

Denial.

Rationale:

- The City’s Senior Engineer is recommending denial for the following reason:
 1. “Vehicles entering or exiting the garage will obstruct the existing sidewalk along Hillside Drive.”
- Although staff does not object to the variance of 40 feet for the construction of an accessory structure, staff is not in favor of using the accessory structure as a garage.

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 CD-2 Tract I are required to provide a minimum front yard setback of 40-feet. The site is located on the corner of Hillside Drive and Lakeshore Drive.
- The site is irregular in shape and is approximately 19,242 square feet.
- The subject property has two front yard setbacks due to the property immediately to the north of the subject site on Hillside Drive.

BACKGROUND INFORMATION:

Zoning:

Site: CD-2 (Lakewood Conservation District)
North: CD-2 (Lakewood Conservation District)
South: CD-2 (Lakewood Conservation District)
East: CD-2 (Lakewood Conservation District)
West: CD-2 (Lakewood Conservation District)

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:

November 11, 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.

December 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

December 24, 2008: The Board of Adjustment's Senior Planner contacted the applicant and shared the following information by 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 January 5th deadline to submit additional evidence for staff to factor into their analysis;
- the January 9th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 6, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January 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.

January 7, 2009 The City's Senior Engineer submitted a comment sheet (see attachment A).

STAFF ANALYSIS:

- The subject site is encumbered by two front yard setbacks on Hillside Drive and Lakeshore Drive. Once the front yard setbacks have been accounted for, there is 2,892 square feet of developable area, or 13% of the total 19,242 square feet of lot area.
- The site is flat and irregularly shaped and 19,242 square feet in area according to DCAD. The site is zoned CD-2 which requires a front yard setback of 40 feet for all properties located in Tract I.
- The site is different from other properties in the area in that it is encumbered by two front yard setbacks. The set back requirements for this lot create a restrictive developable area and eliminates a "rear:" yard from this lot. The typical rear yard setback in the CD-2 Tract I zoning is 5 feet.
- The applicant is requesting to maintain a two-car garage that is currently under construction. The applicant is requesting to maintain the garage in a front yard setback of Hillside Drive (what would be typically considered a rear yard). Under the CD-2 provisions "all garage and accessory structures are exempt from side and rear yard setback requirements and may extend along the entire distance of the rear lot line..."
- Staff is recommending approval for the construction and maintenance of an accessory structure that is zero feet from the Hillside Drive property line. Staff finds the restrictive area of the lot creates a substantial hardship and precludes this property from being developed in a manner commensurate with other parcels of land in the CD-2 Tract I zoning.
- Although staff recommends approval for the accessory structure, staff is recommending denial of the off-street parking variance request of 20 feet. Staff finds providing a zero foot front yard setback for the off-street parking will create a traffic hazard.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 40 feet requested in conjunction with constructing and maintaining a single family accessory structure in the site's Hillside Drive's 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, irregular in shape and 19,242 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 CD-2 tract I zoning.

- 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 CD-2 Tract I zoning.

2. If the Board were to grant the front yard variance request of 40 feet, staff recommends imposing a condition whereby the applicant must comply with the submitted site plan, and the structure in the front yard setback would be limited to that shown on this plan

If the Board were to grant the 20 foot variance to the off-street parking regulation 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—which in this case is an enclosed parking space located 0 feet from the Hillside Dr. front yard setback.

BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2009

APPEARING IN FAVOR: Jack Murphy, 6505 Lakeshore Dr., Dallas, TX
Scott Clements, 6135 Royce City, Texas

APPEARING IN OPPOSITION: No one

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-008**, on application of Jack and Jeanette Murphy, **grant** the 40 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 site plan is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-008**, on application of Jack and Jeanette Murphy, **grant** the 20 foot variance to the off-street parking 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 site plan is required.

- An automatic garage door must be installed and maintained in working order at all times
- At no time may the area in front of the garage be utilized for parking of vehicles
- All applicable permits must be obtained.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: Taft

I move to adjourn this meeting.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

3:05 P.M. - Board Meeting adjourned for **January 20, 2009.**

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.