

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, FEBRUARY 12, 2008**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Jordan Schweitzer, 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, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

MEMBERS 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, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

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, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

10:12 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 12, 2008** 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 January 15, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

MOTION: Taft

I move **approval** of the Tuesday, **January 15, 2008** public hearing minutes as amended.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 4200 Northcrest Road

APPLICANT: Donna Parker

February 12, 2008 Public Hearing Notes:

- The applicant submitted additional printed documentation to the board at the public hearing.

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant has submitted a letter and copies of photos to the Board Administrator (see Attachment A). The letter requested a waiver of the \$600.00 filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment, and provided some details as to why the applicant felt that the fee should be waived.

Timeline:

- January 18, 2008 The applicant submitted a letter requesting a waiver of the \$600.00 filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above.
- January 22, 2008: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.
- January 22, 2008: The Board Administrator contacted the applicant and shared the following information pertaining to her request:
 - the public hearing date, time, and location; and
 - the criteria/standard that the board will use in their decision to approve or deny the request, specifically making the applicant aware of the portion of the code provision which states that the board may require the production of financial documents (i.e. tax return forms, checking/savings accounts balances, etc).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

APPEARING IN FAVOR: Donna Parker, 4200 Northcrest Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move to waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal.

SECONDED: Gabriel

AYES: 4 – Richmond, Gabriel, Schweitzer, Taft

NAYS: 1 - Harris

MOTION PASSED: 4– 1

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA078-024

REQUEST: To reimburse the filing fee submitted in conjunction with a request for a special exception to the fence height regulations.

LOCATION: 7045 Greentree Lane

APPLICANT: Rob and Susan Drechsler

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

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

Timeline:

- Nov. 27, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" which included a request for and information related to a reimbursement of the filing fee submitted in conjunction with a request for a special exception to the fence height regulations (see Attachment A).
- Jan. 17, 2008: The Board of Adjustment Secretary randomly assigned this request/case to Board of Adjustment Panel A.
- Jan. 22, 2008: The Board Administrator contacted the applicant 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 1st 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 25, 2008: The applicant submitted additional information to the Board Administrator regarding the fee reimbursement request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

APPEARING IN FAVOR: Susan Drechsler, 7045 Greentree Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move to reimburse the filing fee to be submitted in conjunction for a request for a special exception to the fence height regulations.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Schweitzer, Taft

NAYS: 1 - Harris

MOTION PASSED: 4– 1

FILE NUMBER: BDA 078-011(K)

BUILDING OFFICIAL’S REPORT:

Application of Santos Martinez represented by Masterplan for a variance to the front yard setback regulations at 7126 La Vista Drive. This property is more fully described as Lot 9 in City Block D/2732 and is zoned R-7.5(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single family residential structure and provide a 5 foot front yard setback which will require a variance of 20 feet.

LOCATION: 7126 La Vista Drive

APPLICANT: Santos Martinez
Represented by Masterplan

REQUEST:

- A variance to the front yard setback regulations of 20’ is requested in conjunction with constructing and maintaining a single family home in the site’s Corona Street 25’ front yard setback.

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 that it has two 25’ front yard setbacks (one along La Vista Drive, another along Corona Street). The two front yard setbacks leave only 20’ of developable space on the 50’ wide site once a 25’ front yard setback is accounted for on the north side of the site, and a 5’ side yard setback is accounted for on the west side of the site.
- 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 classification .
- Granting this variance does not appear to be contrary to the public interest for the following reasons:
 - a. The development of the site will not be contrary to character of surrounding properties.
 - b. The development of the site will be aligned with other structures along the La Vista Drive.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The site is currently developed with a single family structure. According to DCAD the site was developed in 1940 with a structure that is 1,277 square feet and is in good condition.
- The applicant proposes to maintain the current structure and build an addition onto the southern side of the structure.
- The existing structure encroaches 20’ into the Corona Street 25’ setback requirement.
- The two front yard setbacks are created by structures with frontage along Corona Street (the longer of the two frontages 150’) that are south of the subject site.
- The lot is rectangular in shape (50’ x 150’) and is zoned R-7.5 (A) where lots are typically 7,500 square feet in area.
- The subject site does not encroach upon the La Vista Drive front yard setback of 25’.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

December 12 2007 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

January 18, 2008: The Board 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 January 25th deadline to submit additional evidence for staff to factor into their analysis;
- the February 1, 2008 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 21, 2008 The applicant submitted additional documentation.

January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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.

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

STAFF ANALYSIS:

- The submitted site plan indicates that about half of the proposed single family structure's 1,277 square foot building footprint is located in the site's Corona Street 25' front yard setback.
- The site is flat and rectangular in shape (150' x 50'). The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two 25' front yard setbacks. (No encroachment is shown or requested to be located in the site's La Vista Drive 25' front yard setback).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 20' requested in conjunction with constructing and maintaining a single family home in the site's Corona Street 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 and rectangular in shape (150' x 50'), 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.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment grant application **BDA 078-011** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-012(K)

BUILDING OFFICIAL’S REPORT:

Application of Gabriel Cruz represented by Construction Concepts, Inc. for a special exception to the side yard setback regulations at 2646 Sharon Street. This property is more fully described as Lot 12 in City Block 22/3815 and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct a carport for a single family residential structure and provide a 1 foot side yard setback which will require a special exception of 4 feet.

LOCATION: 2646 Sharon Street

APPLICANT: Gabriel Cruz
Represented by Construction Concepts, Inc.

REQUEST:

- A special exception to the side yard setback regulations of 4 feet is requested to construct and maintain a carport in the site’s Superior Avenue 5’ side yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A VARIANCE:

The board may grant a special exception to the side yard requirements in this section for a carport for a single family or duplex use when, in the opinion of the board the carport will not have a detrimental impact on surrounding properties.

In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.

- (B) Whether the value of the surrounding properties will be adversely affected.
- (C) The suitability of the size and location of the carport.
- (D) The materials to be used in construction of the carport.

The storage of items other than motor vehicles is prohibited in a carport for which a special exception has been granted under this subsection.

GENERAL FACTS:

- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'. The site is located on the 2600 block of Sharon St. A scaled site plan has been submitted that shows that the existing carport is 1' from the property line.
- The site is flat, rectangular in shape (50'x141) and 6,906 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD, the site was developed in 1944 with a single family home that is in "good" condition with 1,366 square feet of living space. DCAD states that there are additional improvements on the subject site:
 - Detached garage 528 square feet
 - Attached carport 620 square feet
- A 5' side yard setback is required in the R-7.5(A) zoning district. The applicant submitted a site plan indicating a "new carport" on the site that is located 1' from the side yard property line (or 4' into the 5' front yard setback).
- There is a carport to the west of the subject site.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for carports in the side yard setback with a specific basis for this type of appeal.

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 dwelling. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

Timeline:

Dec. 12, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

January 18, 2008: The Board Senior Planner contacted the applicant and shared the following information by phone:

- the public hearing date and panel that will consider the application;
- the criteria and standards that the board will use in their decision to approve or deny the request;
- the January 25th deadline to submit additional evidence for staff to factor into their analysis;
- the February 1, 2008 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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.

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

February 1, 2008 The applicant submitted revised site plan.

STAFF ANALYSIS:

- The submitted site plan indicates that about twenty percent (or 120 square feet) of the proposed carport structure's 600 square foot footprint is to be located in the site's 5' side yard setback. The site plan does not include dimension or location of solid fence on the property.
- The site is flat, rectangular in shape (50' x 141') and 6,906 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the special exception to the side yard setback regulations of 4' is requested to maintain an approximately 600 square foot carport attached to a detached garage that is 1' from the side yard property line (or 4' into the 5' front yard setback) will not have a detrimental impact on surrounding properties.
- Granting this special exception would allow the carport to remain in its current location 1' away from the site's side property line (or 4' into the required 5' front yard setback).
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; require the carport in the side yard setback to be retained in its current design, material, and configuration; and would require the applicant to mitigate any water drainage related issues that the carport may cause on the lot immediately adjacent:
 1. Compliance with the submitted site plan, elevation, and sectional view document.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

APPEARING IN FAVOR: Michael Rodriguez, 2646 Sharon Street, Dallas, TX
Joan Osborne, 2630 Sharon Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Harris

I move that the Board of Adjustment in Appeal No. **BDA 078-012**, hold this matter under advisement until **March 18, 2008** so that the applicant may revise the site plan.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-015

BUILDING OFFICIAL’S REPORT:

Application of Zone Systems, Inc. for a variance to the height regulations at 5220 Spring Valley Road. This property is more fully described as Lot 2 in City Block 7006 and is zoned CR which limits the maximum building height to 54 feet. The applicant proposes to construct and maintain a structure with a building height of 108 feet which will require a variance of 54 feet.

LOCATION: 5220 Spring Valley Road

APPLICANT: Zone Systems, Inc.

February 12, 2008 Public Hearing Notes:

- The applicant’s representative submitted additional printed documentation to the board at the public hearing.

REQUEST:

- An application has been made for a variance to the height regulations of 54’ requested in conjunction with constructing and maintaining as many as three, 8’ high antennas that would be located atop an existing 104’ nonconforming six-story office tower with penthouse structure (Spring Valley Center) and would reach a maximum height of 108’.

STAFF RECOMMENDATION:

Denial

Rationale:

- The subject site has no physical site constraint that precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification. The site is flat, virtually rectangular in shape (about 210’ on the north, about 210’ on the south, about 468’ on the east, and about 487’ on the west), and according to the application, 2.296 acres in area. And although the site is developed with an office structure built in the early 1980’s that exceeds the 54’ maximum height regulations of CR zoning, the existing 104’ high structure can remain as a nonconforming structure (in this case maintained as it was built prior to rezoning in the late 80’s *without* added antennas) until it is intentionally destroyed by the owner or the owner’s agent when at that time the existing/future owner of the site must adhere to all CR zoning development

standards when redeveloping the site including but not limited to a 54' maximum height.

- The applicant has not substantiated how the site's restrictive area, shape and/or slope precludes it from being developed in a manner commensurate with other developments found on other similarly-zoned CR lots.
- The applicant could seek to make application to City Council for rezoning of the site to a district that allows a height that would allow the proposed antennas on the existing structure and remedy its status as a nonconforming structure.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The maximum height for a structure in the CR (Community Retail) zoning district is 54 feet.
The applicant has submitted north and south elevations indicating three antennas atop an existing office tower that, according to the application and Building Official's Report, reach a maximum height of 108'. (The elevations show that the existing tower height is 104' and that the antennas reach a height of 108').
- The Dallas Development Code defines "height" as "the vertical distance measured from grade to:
A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure;
B) for a structure with a dome roof, the midpoint of the vertical dimension of the dome; and
C) for any other structure, the highest point of the structure.
- According to the submitted north and south elevations, the height of the existing office structure is 104'- a height that exceeds the 54' maximum height by 50'. The elevations show three approximately 8' high antennas that will extend 4' higher than the existing 104' tower height. The elevations do not distinguish the proposed

antennas to be added to the tower from existing antennas that the applicant's representative has written are already on it.

- The application has only been made to add antennas atop a nonconforming office structure. Neither the application nor a subsequent letter written by the applicant's representative has requested that the board consider a variance to remedy the existing nonconforming structure (a structure that does not conform to the current setback regulations but was lawfully constructed under the regulations in force at the time of construction) which in this case is a 104' high structure built in 1984 in SC zoning that allowed 240' in height.
- The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The site is flat, virtually rectangular in shape (about 210' on the north, about 210' on the south, about 468' on the east, and about 487' on the west), and according to the application, 2.296 acres in area.
- DCAD records indicate that the site is developed with a 118,772 square foot office building built in 1983.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter to the board that provided additional details about the request;
 - photos of the structure on the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: MC-2 & CR (Multiple Commercial -3 and Community Retail)
South: MU-3 (SAH) (Mixed Use, Standard Affordable Housing)
East: MU-2 (Mixed Use)
West: PD No. 289 (Planned Development)

Land Use:

The subject site is developed as a six-story office (Spring Valley Center). The areas to the north, east, south, and west are developed with a mix of nonresidential 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:

- Dec. 19, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 18, 2008: The Board Administrator contacted the applicant 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 1st 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 25, 2008: The applicant's representative submitted additional information to the Board Administrator (see Attachment A).
- January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The variance request is made merely to add an unspecified number of 8' high antennas on an existing 104' nonconforming office structure.
- The site is zoned CR (Community Retail). According to archive zoning maps in the City's Development Services Department, the site was zoned SC (Shopping Center) in 1986 (prior to the city-wide zoning transition in the late 80's) where the maximum height allowed in this zoning district was 240 feet.
- The subject site is flat, virtually rectangular in shape (about 210' on the north, about 210' on the south, about 468' on the east, and about 487' on the west), and according to the application, 2.296 acres in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations of 54' requested to construct and maintain approximately 8' high antennas atop a 104' high nonconforming structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the height regulations is necessary to permit development of the subject site (a site that is flat, virtually rectangular in shape, and according to the application, 2.296 acres in area, and a site developed with a 104' high nonconforming structure) 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 CR zoning classification.
 - The variance to the height regulations to add antennas atop a 104' high nonconforming structure 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 not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.
- If the Board were to grant the variance to the height regulations of 54', imposing a condition whereby the applicant must comply with the submitted elevations, the amount of structure that would be permitted to encroach above the 54' maximum height would be limited to that what is shown on these documents which, in this case, is what appears to be as many three antennas. (The existing nonconforming office structure higher than 54' in height would not be "varied" given that the applicant's request was only for the board to consider a height variance for the added antennas).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

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

APPEARING IN OPPOSITION: No one

MOTION #1: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 078-015** on application of Zone Systems, Inc., **deny** the variance to the height regulations requested by this applicant **without prejudice**, because our evaluation of the property and the 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 NOT result in unnecessary hardship to this applicant.

SECONDED: Taft

AYES: 2 –Schweitzer, Taft

NAYS: 3 - Richmond, Gabriel, Harris

MOTION FAILED: 3– 2

MOTION #2: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-015**, on application of Zone Systems, Inc., **grant** the 54-foot variance to the height regulations 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 elevations is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-024

BUILDING OFFICIAL’S REPORT:

Application of Rob and Susan Drechsler for a special exception to the fence height regulations at 7045 Greentree Lane. This property is more fully described as Lot 6 in City Block F/4404 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 9 foot fence in the required front yard setback which will require a special exception of 5 feet.

LOCATION: 7045 Greentree Lane

APPLICANT: Rob and Susan Drechsler

REQUEST:

- A special exception to the fence height regulations of 5' is requested in conjunction with constructing and maintaining two 9' high solid wood fences on both sides of the site in the 35' front yard setback on a lot 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 fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
Although the originally submitted site plan did not denote the location of the proposal on the site, a revised site plan and elevation was submitted that indicates that the location of the proposal in the site's 35 front yard setback that will reach a maximum height of 9' (see Attachment A).
- The following additional information was gleaned from the submitted revised site plan:
 - Notes of lines indicating the fence location in the required 35' front yard setback one of which is 29' in length perpendicular to Greentree Lane along the north side of the site (about 2' south from the side property line, and about 6' from the front property line or about 18' from the pavement line), and the other of which is 35' in length perpendicular to Greentree Lane along the south side of the site (about 5' from the side property line, and on the property line or about 12' from the pavement line);
 - No fence is indicated on the site plan in the required 35' front yard setback parallel to Greentree Lane.

- The submitted revised site plan indicates that the fence proposed to be located on the northern side of the site is located within a 15' utility easement. Since the Dallas Development Code states that a fence may not be located within an easement without having the prior written approval by the agencies having interest in the easement, the applicant/owner would be required to have the written approval from these agencies before the City could issue a fence permit in the location shown on this revised site plan.
- The following additional information was gleaned from the revised elevation:
 - Notes of a 9' wood fence comprised of 4" x 9' cedar slats (3' base with 6' top).
- The applicant has submitted a document that states among other things intentions of installing/planting 18 one gallon on 24" centers of evergreen vine materials (10' at maturity in three years), and that techniques will be used "to establish the living evergreen vine cover of at least seventy percent on both sides of the fence." (See Attachment A).
- There is no single family home that would have direct frontage to the proposal since the homes directly east of the site face either south on Greenbrook Lane or north on Brookcove Lane.
- 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 information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that provided additional details about the request*;
 - a revised site plan; and
 - a revised elevation.

* Note that although the submitted document referenced above notes photographs supporting need for variance and a neighborhood petition of support, these documents were not included as part of the submittal to the board administrator.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-16(A) (Single family district 16,000 square feet)
<u>North:</u>	R-16(A) (Single family district 16,000 square feet)
<u>South:</u>	R-16(A) (Single family district 16,000 square feet)
<u>East:</u>	R-16(A) (Single family district 16,000 square feet)
<u>West:</u>	R-1ac (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

1. Miscellaneous Item #3, 7045
Greentree Lane (the subject site)
- On February 12, 2008, the Board of Adjustment Panel A will consider reimbursing the filing fee submitted in conjunction with the application on the subject site.

Timeline:

- Nov. 27, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 17, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 22, 2008: The Board Administrator contacted the applicant 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 January 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the February 1st 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 25, 2008: The applicant submitted additional information to the Board Administrator (see Attachment A).
- January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A revised scaled site plan and elevation has been submitted that documents the location of the two proposed 9' high open solid wood fences in the site's 35' front yard setback. One of the 9' high solid wood fences along the north side of the site is 29' in length perpendicular to Greentree Lane about 2' south from the side property line, and about 6' from the front property line or about 18' from the pavement line. The other 9' high solid wood fence along the south side of the site is 35' in length perpendicular to Greentree Lane about 5' from the side property line, and on the property line or about 12' from the pavement line.
- A document has been submitted that states among other things intentions of installing/planting 18 one gallon on 24" centers of evergreen vine materials (10' at maturity in three years, and that techniques will be used "to establish the living evergreen vine cover of at least seventy percent on both sides of the fence."
- There is no single family home that would have direct frontage to the proposal since the homes directly east of the site face either south on Greenbrook Lane or north on Brookcove Lane.
- No other fences above four (4) feet high which appeared to be located in the front yard setback were noted in the immediate area surrounding the subject site.
- As of February 4th, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' (whereby the proposed two 9' high solid wood fences on either side of the site in the front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 5' with a condition imposed that the applicant complies with the submitted revised site plan and elevation would assure that the proposal would be constructed of/maintained as/limited to the materials, heights, and locations shown on these documents.
- If the Board determines that the proposed 9' high wood fences in the site's 35' front yard setback will not adversely affect neighboring property based partly/solely on the landscape materials mentioned by the applicant in a submitted document, the board may want to impose the following condition along with compliance with the submitted revised site plan and elevation:
 - 18 one gallon evergreen vine materials on 24" centers (10' at maturity in three years) must be installed/maintained on the both sides of both fences located in the front yard setback.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

APPEARING IN FAVOR: Susan Drechsler, 7045 Greentree, Dallas, TX
APPEARING IN OPPOSITION: Roberta Brady, 7111 Greentree Ln, Dallas, TX

Gerald Brady, 7111 Greentree Ln., Dallas, TX
Felicia Harper, 7011 Greentree Ln., Dallas, TX
David Sacha, 7035 Greentree, Dallas, TX
Bruce Fowler, 7035 Greentree, Dallas, TX

MOTION: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-024**, on application of Rob and Susan Drechsler, **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, Gabriel, Schweitzer, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-016(K)

BUILDING OFFICIAL’S REPORT:

Application of Robert Wilson represented by Zone Systems, Inc. for a variance to the front yard setback regulations and for a special exception to the fence height regulations at 7106 La Vista Drive. This property is more fully described as Lot 14A in City Block D/2732 and is zoned R-7.5(A), which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a single family residential structure and provide a 5 foot front yard setback, which will require a 20 foot variance and to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 7106 La Vista Drive

APPLICANT: Robert Wilson
Represented by Zone Systems, Inc.

REQUEST:

A variance to the front yard setback regulations of 20’ is requested in conjunction with constructing and maintaining a single family home in the site’s Loving Avenue 25’ front yard setback.

A special exception to the fence height regulation is requested in conjunction with the constructing and maintaining an 8 foot high fence in the site’s Loving Avenue front yard setback.

STAFF RECOMMENDATION:

Variance to the front yard setback

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 25' front yard setbacks (one along La Vista Drive, another along Loving Avenue).
- The restrictive area of the subject site caused by its two front yard setbacks and irregular shape 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 classification .
- Granting this variance does not appear to be contrary to the public interest for the following reasons:
 - a. The development of the site will not be contrary to character of surrounding properties.
 - b. The development of the site will be aligned with other structures along the La Vista Drive.

Special exception to fence height regulations

NONE

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 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.

STANDARD FOR FENCE SPECIAL EXCEPTION

The Dallas Development Codes specifies that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The site is currently undeveloped.
- The applicant proposes to construct a single family structure.
- According to the site plan's review by the Senior planner, the proposed structure will encroach upon the Loving Avenue front yard setback.
- The proposed 8' fence will encroach upon the property's Loving Avenue front yard setback.
- The proposed fence will be constructed of solid wood and will run parallel to Loving Avenue and parallel to the rear property line.
- The two front yard setbacks are created by structures with frontage along Loving Avenue (the longer of the two frontages 150') that are south of the subject site.
- The lot has an irregular shape (25' width along the south property line, 86' along the north property line 150' length along the east and west property lines) and is zoned R-7.5 (A) where lots are typically 7,500 square feet in area.
- The proposed site does not encroach upon the La Vista Drive front yard setback of 25'.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

Dec 14, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

January 18, 2008: The Board 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/standard that the board will use in their decision to approve or deny the request;
- the January 25th deadline to submit additional evidence for staff to factor into their analysis;
- the February 1st 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 December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January 25, 2008: The applicant submitted a revised site plan.

January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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.

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

STAFF ANALYSIS:

- The submitted site plan indicates that about half of the proposed single family structure's foot building footprint is located in the site's Loving Avenue 25 ' front yard setback.
- The site is flat, irregular in shape and 10,358 square feet in area (according to DCAD). The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The site has two 25' front yard setbacks. (No encroachment is shown or requested to be located in the site's La Vista Drive 25' front yard setback).
- The submitted site plan and elevation indicate the following for the proposed fence:
 - The fence will begin at the southwestern edge of the proposed structure (facing Loving Avenue).
 - The fence height will be 8 ' high at grade
 - The fence will be composed of solid wood
 - The fence will have a length of 45' and will be parallel with Loving Avenue and will be a length of 25' along the rear property line.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 20' requested in conjunction with constructing and maintaining a single family home in the site's Corona Street 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 10,358 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 20', 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 – which in this case is a single family structure located 5' from the site's Loving Avenue front property line (or 20' into one of the site's two 25' front yard setbacks).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

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

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. BDA 078-016, on application of Robert Wilson, represented by Peter Kavanagh/Zone Systems, Inc., **grant** the 20-foot variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that 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 plot plan is required.

SECONDED: Harris

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 078-016**, on application of Robert Wilson, represented by Peter Kavanagh/Zone Systems, Inc., **grant** the request of this applicant to construct and maintain an eight-foot-tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted plot plan is required.

SECONDED: Harris

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-027(K)

BUILDING OFFICIAL’S REPORT:

Application of Mark Molthan Construction, Inc. represented by Mark Molthan for a special exception to the fence height regulations at 4954 W. Northwest Highway. This property is more fully described as Lot 5 in City Block 5/5578 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot 3 inch fence in the required front yard setback which will require a special exception of 6 feet 3 inches.

LOCATION: 4954 W. Northwest Highway

APPLICANT: Mark Molthan Construction, Inc.
Represented by Mark Molthan

REQUEST:

- A special exception to the fence height regulations of 10'3" is requested in conjunction with constructing and maintaining a solid fence in the site's 40' 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 located on Northwest Highway. The site has two front yard setbacks one along Northwest Highway and another on Southbrook Drive. The front yard along Southbrook Drive is at the end of a cul-de-sac.
- The applicant is proposing to construct and maintain a 10'3" solid fence along Northwest Highway frontage and the west property line (including Southbrook Drive).
- 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 being developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|--------------------------------------|--|
| 1. BDA 067-144
(the subject site) | On October 15, 2007, the Board of Adjustment Panel C took the following actions: <ol style="list-style-type: none">1. Granted a variance to the floor area ratio regulations of 7,641.5 square feet. |
|--------------------------------------|--|

Timeline:

- | | |
|------------------|---|
| Dec. 20 2007 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| January 17 2008: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. |
| January 18 2008: | The Board's Senior Planner contacted the applicant's representative and shared the following information via telephone and letter: <ul style="list-style-type: none">• the public hearing date and panel that will consider the application;• the criteria/standard that the board will use in their decision to approve or deny the request;• the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;• the January 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;• the February 1st 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 February public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties. |

January 29 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

January 31 2008: The Board's Senior Planner received an email from the Program manager for Floodplain Management regarding the proposed construction of a solid fence along Northwest Highway (see attachment A).

STAFF ANALYSIS:

- A scaled site has been submitted that documents the location of the proposed wall, fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the stucco wall to be 10' in height, the columns and stone caps to be 10'3" in height, and three operable gates 9'6" in height.
- Two homes on Southbrook Drive have direct frontage to the proposed wall and gate in the Southbrook Drive cul-de-sac. There are other solid fences existing on neighboring properties on Northwest highway.
- The scaled site plan details the following information regarding the placement and dimensions of the fence.
 - The fence along the Northwest Highway front yard;
 - 10' tall stucco wall with stone cap. (623 linear feet), wall will have 28 columns (24"x30") spaced on 20' centers.
 - Decorative iron gate (9'6' in height) with 4 square columns to be 10' tall with stone caps.
 - The fence along the eastern property live:
 - 10' tall stucco wall with stone caps (124 linear feet), wall will have 6 columns (18"x30") spaced on 27' centers
 - The fence along the Southbrook Drive front yard:
 - 9'6" tall decorative iron fence and gate with 10" columns
 - The side yard fence runs perpendicular to Southbrook Drive on the east property line:
 - 10'tall stucco wall with stone cap to step up with existing grade (484 linear feet), wall will have 28 columns (24"x30") spaced on 20' centers

- The Program Manager for Floodplain Management submitted an email to the Board's Senior Planner noting the following (see attachment A):
 - The location of the site is on Slaughters Branch, a tributary of Bachman Branch.
 - "I would not permit construction of a solid fence at this location unless the owner submits an engineering report (floodplain alteration request) showing that the fence would meet all applicable floodplain regulation criteria."
- 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.
- Granting this special exception of 6'3" with conditions imposed that the applicant complies with the submitted site plan, and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2008

APPEARING IN FAVOR: Mark Molthan, 8100 Lomo Alto, Dallas, TX

APPEARING IN OPPOSITION: Nancy Canty, 8723 Canyon Dr., Dallas, TX
 Pat White, 4714 Wildwood Rd., Dallas, TX
 Janet Stone, 4922 W. NW Highway, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 078-027**, hold this matter under advisement until **March 18, 2008**.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Gabriel**

I move to adjourn this meeting.

SECONDED: **Harris**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

3:23 P.M. - Board Meeting adjourned for **February 12, 2008**.

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.