

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, MARCH 18, 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: Rob Richmond, Chair, Ben Gabriel, Panel Vice-Chair, Jordan Schweitzer, 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, Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

**10:38 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 18, 2008** docket.

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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A February 12, 2008 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2008**

**MOTION: Taft**

I move **approval** of the Tuesday, **February 12, 2008** public hearing minutes as amended.

**SECONDED: Gabriel**

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

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER:** BDA 067-085

**BUILDING OFFICIAL'S REPORT:**

Application of Kirk Tatom for a variance to the rear yard setback regulations at 3235 Homer Street. This property is more fully described as Lot 16 in City Block 21/2932 and is zoned CD-9 which requires a rear yard setback of 5 feet for accessory structures over 15 feet in height. The applicant proposes to construct and maintain a single family accessory structure and provide a 1 foot rear yard setback which will require a variance of 4 feet.

**LOCATION:** 3235 Homer Street

**APPLICANT:** Kirk Tatom

**REQUEST:**

- A variance to the rear yard setback regulations of up to 4' is requested in conjunction with replacing a one-story garage with a two-story garage/home office structure in the site's 5' rear yard setback on a site that is developed with a single family home.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is restricted in its developable area and different from other parcels of land given its irregular-shape caused by the recent/adjacent Central Expressway right of way taking/widening and mature trees. These features create hardship on the lot and prohibit the applicant's ability to replace an existing (most likely) nonconforming garage (located in the rear yard setback) with a reasonably-sized garage (with proposed home office atop) completely outside the 5' rear yard setback. (Roughly 97% of the proposed garage would be in compliance with the rear yard setback requirements). The applicant has submitted plans and documents showing how locating the garage outside the required rear yard setback results in either an inadequate ingress/egress distance between the proposed garage/office and existing home, and/or compromising as many as three pecan trees and one crape myrtle on the site. Furthermore granting this variance would not appear to be contrary to the public interest considering the very small amount of building footprint that is proposed to be located in the rear yard setback (about 16 square feet), that the proposed garage is virtually in the same location as the existing garage, and that the area impacted by the small rear yard encroachment immediately west is the North Central Expressway service road.

## **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 minimum rear yard setback for garages over 15' in height on lots zoned CD (Conservation District) No. 9 is 5'. (The minimum rear yard setback for garages 15' in height or less is 3' unless the property owner can document the original footprint, in which case the garage may be built on the original footprint).  
An elevation has been submitted of the proposed garage/home office structure with a height (as defined in CD No. 9 as the vertical distance measured from grade to the highest point of the structure) of approximately 19', and a site plan has been submitted that indicates the location of one corner of this structure as close as 1' from the rear property line.
- According to calculations taken from the site plan by the Board Administrator, the proposed garage/home office structure has an approximately 484 square foot building footprint of which an approximately 16 square foot triangular area is proposed to be located in the 5' rear yard setback.
- The site is flat, trapezoidal in shape (146' on the north, 146' on the south, 55' on the west, and 55' on the east) and approximately 8,000 square feet in area. The applicant has made mention in a document (and denoted on a plan) how the location of three pecan trees and one crape myrtle additionally constrains the location of the proposed structure out of the required rear yard setback. The site is currently zoned CD No. 9 however prior to its creation in 2002, the site and surrounding area had been zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD states that the site is developed with the following:
  - a single family home in good condition built in 1935 with 1,206 square feet of living space; and
  - a 400 square foot detached garage.
- 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;
- design scenarios showing the garage if it were to comply with the 5' rear yard setback; and
- a site plan denoting the location of mature trees on the site .

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 9 (Conservation District)  
North: CD No. 9 (Conservation District)  
South: CD No. 9 (Conservation District)  
East: CD No. 9 (Conservation District)  
West: PD No. 193 (Planned Development District)

**Land Use:**

The subject site is developed with a single family home and a detached garage. The areas to the north, south, and east are developed with single family uses; and the area immediately west is the North Central Expressway service road.

**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:**

- April 24, 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.
- May 17, 2007:            The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A. The case was determined to be incomplete and was sent back to Building Inspection until additional materials had been submitted that would establish that no additional appeals were necessary in conjunction with constructing/maintaining the two-story accessory structure on the site.
- Feb. 14, 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 March 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the March 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

The email also established that the applicant had been fully informed of the fairly recent code amendments pertaining to accessory structures (which were attached in the email), and that the applicant had established that his proposed garage/office structure would be in compliance with these provisions.

March 3, 2008      The applicant submitted additional information to the Board Administrator (see Attachment A).

March 4, 2008:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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 Chief Arborist, and the Assistant City Attorney to the Board.

The City of Dallas Historic Preservation Manager and a Code Compliance Manager submitted Review Comment Sheets marked “Has no objections.”

**STAFF ANALYSIS:**

- This variance request is made to allow approximately 3 percent of a proposed two-story garage/home office accessory structure building footprint to be located in the site’s rear yard setback.
- According to the applicant, the proposed two-story garage/home office structure would replace an existing approximately 73 year old garage in virtually the same location – a location that most likely complied with setback regulations at the time of its construction prior to Central Expressway right of way taking in the late 1990’s that created the current “slant” of the subject site. (The existing garage structure is most likely a nonconforming structure – a structure which does not conform to the regulations of the code but which was lawfully constructed under the regulations in force at the time of construction).

- According to calculations taken from the site plan by the Board Administrator, an approximately 16 square foot triangular area/corner of the approximately 484 square foot building footprint would be located in the 5' rear yard setback. The area immediately adjacent to the proposed rear yard encroachment on the site is developed as the North Central Expressway service road.
  - The site is flat, trapezoidal in shape (146' on the north, 146' on the south, 55' on the west, and 55' on the east) and approximately 8,000 square feet in area. The applicant has made mention in a document (and denoted on a plan) how the location of three pecan trees and one crape myrtle additionally constrains (beyond the size and shape of the lot) the location of the proposed structure out of the required rear yard setback. The site is currently zoned CD No. 9 however prior to its creation in 2002, the site and surrounding area had been 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 variance to the rear yard setback regulations of up to 4' requested in conjunction with constructing/maintaining an approximately 16 square foot triangular area/corner of the approximately 484 square foot building footprint in the 5' rear 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 developed with a single family home and detached one-story garage, and a site that is trapezoidal in shape, approximately 8,000 square feet with three mature pecan trees) 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 No. 9 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 CD No. 9 zoning classification.
1. If the Board were to grant the rear yard variance request of up to 4', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the rear yard setback would be limited to that shown on this plan – which in this case is a two-story garage/ home office building footprint that is located as close as 1' from the site's rear property line (or as much as 4' into the site's 5' rear yard setback).

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2008**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Taft

I move that the Board of Adjustment grant application **BDA 067-085** 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:** Gabriel

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

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 078-039

**BUILDING OFFICIAL’S REPORT:**

Application of 3922 Hall Street Condo Association, represented by Phillip Groves, for a variance to the side yard setback regulations at 3922 N. Hall Street. This property is more fully described as Lot 4 in City Block H/1320 and is zoned PD-193 (MF-2) which requires a 10 foot side yard setback. The applicant proposes to construct and maintain a structure and provide a 0 foot side yard setback which will require a variance of 10 feet.

**LOCATION:** 3922 N. Hall Street

**APPLICANT:** 3922 Hall Street Condo Association  
Represented by Phillip Groves

**REQUEST:**

- Variances to the side yard setback regulations of 10’ are requested in conjunction with constructing and maintaining a six-vehicle, three-bay garage on a site developed with a six-unit condominium structure.

**STAFF RECOMMENDATION:**



Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The variances would merely allow the applicant to construct/maintain a structure that would provide one-vehicle garage space for each of the six condominium units in the existing 1980's structure.
- The side yard variances are requested to construct/maintain the same proposed garage structure that Board of Adjustment "varied" to the rear yard setback regulations in September of 2007.

### **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 minimum side yard setback for "other permitted structures" (which would include a garage) on lots zoned PD No. 193 (MF-2 Subdistrict) is 10'. The PD No. 193 ordinance additionally states that in an MF-2 subdistrict, a side yard setback of either 0' or 5' may be provided for a side or rear building wall if:
  - a) the building is 36 feet in height or less;
  - b) the wall faces a lot line of the same building site that is perpendicularly contiguous to or perpendicularly across an adjoining alley from a nonresidential subdistrict;
  - c) the wall has no openings; and
  - d) the requirements of the building and fire codes and all other applicable ordinances and laws are met.

A plot/site plan has been submitted that shows "6 parking spaces/proposed covered parking" that appear to be located on the site's two side property lines (or 10' into the 10' side yard setbacks). The garage structure proposed to be located on the side

property lines meets 3 of the 4 provisions mentioned above, but variances are necessary to locate the garage structure on the side property lines since the adjacent subdistricts on either side of the site are MF-2 residential subdistricts.

In addition, the plot/site plan shows “6 parking spaces/proposed covered parking” that appear to be located on the site’s rear property line (or 10’ into the 10’ rear yard setback). However, the portion of the garage structure located in the rear yard setback was “varied” by the Board of Adjustment Panel A on September 18, 2007 (BDA067-132).

- According to calculations taken from the submitted plot/site plan by the Board Administrator, 600 square feet (or 60’ x 10’) of the proposed garage’s 1,320 square foot (or 60’ x 22’) building footprint would be located in the site’s 10’ rear yard setback, and 220 square feet (or 22’ x 10’) of the proposed garage’s 1,320 square foot building footprint would be located in the site’s 10’ side yard setbacks on the northwest and southeast sides of the site. The plot/site plan denotes that the structure comprised of 6 condominiums has an approximately 3,700 square foot building footprint (or 124’ x 30’ in area).
- The site is flat, rectangular in shape (190’ x 60’), and 11,400 square feet in area. The site is zoned PD No. 193 (MF-2).
- DCAD records indicate that the site is developed with a condominium structure in good condition built in 1980.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD No. 193 (MF-2) (Planned Development Multifamily)
<u>North:</u>	PD No. 193 (MF-2) (Planned Development Multifamily)
<u>South:</u>	PD No. 193 (MF-2) (Planned Development Multifamily)
<u>East:</u>	PD No. 193 (MF-2) (Planned Development Multifamily)
<u>West:</u>	PD No. 193 (MF-2) (Planned Development Multifamily)

### **Land Use:**

The subject site is developed with a condominium structure. The areas to the north, east, south, and west are developed with residential uses.

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

1. BDA 067-132, Property at 3922 Hall Street, the subject site On September 18, 2007, the Board of Adjustment Panel A granted a request for variance to the rear yard setback regulations of 10’. The board imposed the following condition with this request: compliance with the submitted plot/site plan is required. The case report stated that the request was

made to construct and maintain a six-vehicle, three-bay garage/”secured carport structure” on a site developed with a six-unit condominium structure.

**Timeline:**

- Feb. 5, 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.
- Feb. 14, 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 Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- Feb. 14, 2008:        The Board Administrator contacted the applicant’s representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the March 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the March 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 4, 2008:        The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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 Chief Arborist, and the Assistant City Attorney to the Board.

A Code Compliance Manager submitted a Review Comment Sheet marked "Has no objections."

**STAFF ANALYSIS:**

- The side yard variance requests are made to allow the construction and maintenance of a garage structure that would provide a covered/enclosed parking space for each of the 6 condominium units in the existing 1980's structure – a structure that was "varied" to the rear yard setback regulations by Board of Adjustment Panel A in September in 2007.
- Neither the applicant nor city staff was aware that the proposed garage structure (as shown on the site plan submitted and imposed as a condition with the granted rear yard variance in September of 2007) was not in compliance with the side yard setback regulations until the applicant's contractor made application for a building permit for the garage in January of 2008..
- It appears that about 1/2 of the proposed garage structure has been "varied" in the site's rear yard setback, and that about 1/3 of the proposed garage structure is requested to be "varied" in the site's two side yard setbacks.
- The site is flat, rectangular in shape (190' x 60'), and 11,400 square feet in area. The site is zoned PD No. 193 (MF-2). The site is developed with a condominium structure built in 1980.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the side yard setback regulations requested in conjunction with constructing and maintaining a garage structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variances are necessary to permit development of the subject site (a site that is developed with a condominium structure, and is flat, rectangular in shape, and 11,400 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 PD No. 193 (MF-2) zoning classification.
  - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 193 (MF-2) zoning classification.
- If the Board were to grant the side yard variance requests, imposing a condition whereby the applicant must comply with the submitted plot/site plan, the structure in the side yard setbacks would be limited to what is shown on this plan – which in this case is a garage structure located on the site's two side property lines (or 10' into the site's two 10' side yard setbacks).

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2008**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Taft**

I move that the Board of Adjustment grant application **BDA 078-039** 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: Gabriel**

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

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**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 SPECIAL EXCEPTION:**

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 25<sup>th</sup> 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 March 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 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 Chief Arborist, and the Assistant City Attorney to the Board.

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

February 12, 2008 The Board of Adjustment voted to hold this application under advisement until the March 18, 2008 meeting.

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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.

March 10, 2008: Applicant submitted revised site plan (see attachment).

### **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 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 submitted site plan does not appear to accurately reflect what was observed by the Senior Planner during the site visit.
  - The applicant has the burden of proof in establishing the following:
    - That granting the special exception to the side yard setback regulations of 5' 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 sided property line (or 4' into the required 5' front yard setback).
2. 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)

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2008**

APPEARING IN FAVOR: Gabriel Cruz, 2646 Sharon, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 078-012** on application of Gabriel Cruz, represented by Construction Concepts, Inc., **grant** the request of this applicant to maintain a carport as a special exception to the minimum side yard requirements contained in the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will not have a detrimental impact on surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted revised site plan, elevation, and section document is required.
2. The carport structure must remain open at all times.
3. Lot-to-lot drainage is not permitted in conjunction with this proposal.
4. All applicable building permits must be obtained.
5. No item (other than a motor vehicle) may be stored in the carport.

**SECONDED: Harris**

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

**NAYS: 0 -**

**MOTION PASSED: 5- 0 (unanimously)**

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**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 6’3” 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<br>(the subject site) | On October 15, 2007, the Board of Adjustment Panel C took the following actions:<br>1. Granted a request to the floor area ratio regulations of 7,641.5 square feet. |
|--------------------------------------|--|

**Timeline:**

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|------------------|--|
| 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:

- 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 25<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the February 1<sup>st</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the 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).

February 12, 2008: The Board of Adjustment voted to hold this matter under advisement until March 18, 2008.

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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.

### **STAFF ANALYSIS:**

- A scaled site has been submitted that document 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 line:
    - 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)

**BOARD OF ADJUSTMENT ACTION: MARCH 18, 2008**

APPEARING IN FAVOR: No one

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

MOTION: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 078-027**, on application Mark Molthan Construction, Inc., represented by Mark Molthan, **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)

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MOTION: **Schweitzer**

I move to adjourn this meeting.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

**1:33 P.M.** - Board Meeting adjourned for **March 18, 2008**.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.