

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, MAY 16, 2006**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jennifer Hironoto, Senior Planner, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Mike Sultan, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Peggy Hill, Panel Vice-Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Jennifer Hironoto, Senior Planner, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Mike Sultan, Chief Arborist and Trena Law, Board Secretary

**10:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 16, 2006** 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 April 18, 2006 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

**MOTION:** Hill

I move to approve the Board of Adjustment Panel A April 18, 2006 public hearing minutes.

**SECONDED:** Jefferson

**AYES:** 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 056-134

**REQUEST:** To reimburse the \$935.00 filing fee submitted in conjunction with a Board of Adjustment application for a variance to the rear yard setback regulations

**LOCATION:** 4532 Birch Street

**APPLICANT:** RGM Architects

**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 waiver/s 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 submitted a letter to the Board Administrator requesting a reimbursement of the \$935.00 filing fee submitted in conjunction an appeal to the Board of Adjustment for a variance to the rear yard setback regulations (see Attachment A). This letter contained some details on the applicant's finances.

**Timeline:**

May 8, 2006            The applicant's representative submitted a letter requesting a reimbursement of the \$935.00 filing fee submitted in conjunction with an appeal for a variance to the rear yard setback regulations.

May 8, 2006:        The Board Administrator contacted the applicant's representative's and informed him that the board would reimburse the filing fee upon his demonstration of how payment of the filing fee would result in substantial financial hardship to the applicant.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

APPEARING IN FAVOR:    Ralph Martinez, 2400 Empire Central, #H, Dallas, TX 75235

APPEARING IN OPPOSITION:    No one

MOTION:    **Hill**

I move to **reimburse** the filing fee submitted in conjunction with a variance to the rear yard setback regulations.

SECONDED:    **Gabriel**

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer,

NAYS: 1 - Jefferson

MOTION PASSED: 4– 1

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**FILE NUMBER:**        BDA 056-130(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Charles Moore for a variance to the side yard setback regulations at 6002 Mercedes Avenue. This property is more fully described as Lot 22 in City Block F/2859 and is zoned CD-11 which requires a 10 foot side yard setback on the east side of the property. The applicant proposes to construct a second story addition and provide a 5 foot 6 inch side yard setback which would require a variance of 4 feet 6 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 6002 Mercedes Avenue

**APPLICANT:** Charles Moore

**REQUEST:**

- A variance to the side yard setback regulations of 4'6" is requested in conjunction with constructing a second story addition on a single family dwelling.

**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 zoned Conservation District 11 which allows for R-7.5(A) sized lots in this area, requiring a minimum of 7,500 square feet in area.
- CD-11 zoning requires, for the main structure, a 10' side yard setback on the east and a 5' side yard setback on the west.

- The request site is developed with a single family home. The applicant proposes to add a second story and maintain the setbacks of the existing structure. The existing one story structure is non-conforming in regards to the setback on the east side.
- The site plan indicates that the single family dwelling provides a 9'5" side yard setback on the west side and a 5'6" side yard setback on the east side yard.
- A site plan has been submitted that indicates the area of the second story addition proposed to be located in the 10'-side yard setback is approximately 339 square feet (4'6" x 75'5").
- Elevations were submitted with the application that shows all sides of the addition to the single family structure.
- The elevations will be approved for compliance with the Conservation District regulations before the issuance of a building permit.
- The site is flat, rectangular in shape (50' x 145'), and approximately 7,250 square feet in area.
- DCAD records indicate that the site is developed with a 1,510 square foot single family residence in very good condition that was built in 1948.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 11 (M-Streets East Conservation District)  
North: CD No. 11 (M-Streets East Conservation District)  
South: CD No. 11 (M-Streets East Conservation District)  
East: CD No. 11 (M-Streets East Conservation District)  
West: CD No. 11 (M-Streets East Conservation District)

**Land Use:**

The subject site is being developed with a single family use. The area 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 sites.

**Timeline:**

March 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- April 21, 2006: The Board Administrator contacted the applicant via letter and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the 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 May 5<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- May 1, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

### **STAFF ANALYSIS:**

- Because the request site is located in CD 11, the elevations will be reviewed for compliance with the architectural requirements of the conservation district before the issuance of a building permit.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of additional encroachment into the side yard setback would be limited in this case to an area of approximately 399 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance of 4'6" to the side 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 side yard setback variance of 4'6" is necessary to permit development of the subject site (that is flat, (50' x 145'), and approximately 7,250 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 11 zoning classification.
- The side yard setback variance of 4'6" would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 11 zoning classification.
- Granting this variance would allow the single family dwelling to encroach 4'6" into the 10' east side yard setback.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Jefferson**

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 056-134

**BUILDING OFFICIAL'S REPORT:**

Application of RGM Architects, represented by Ralph Martinez, for a variance to the rear yard setback regulations at 4532 Birch Street. This property is more fully described as Lot 8A in City Block 1057 and is zoned PD-134 which requires a rear yard setback of 15 feet. The applicant proposes to construct an addition and provide a 5 foot rear yard

setback which would require a variance of 10 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 4532 Birch Street

**APPLICANT:** RGM Architects  
Represented by Ralph Martinez

**REQUEST:**

- A variance to the rear yard setback regulations of 10' is requested in conjunction with completing and maintaining an approximately 5,000 square foot, two-story "educational bldg." addition on a site developed with an approximately 1,700 square foot church (Iglesia Roca de la Esperanza).

**STANDARD FOR A VARIANCE:**

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

**GENERAL FACTS:**

- PD No. 134 requires a 15' rear yard setback.  
The submitted site plan denotes a 2-story addition to an existing structure where a 5' rear yard setback is provided, and where the proposed addition is 10' into the 15' rear yard setback.
- The application states that a request has been made to again appeal to the board for a variance to the rear yard setback to allow the construction of a church building to continue on the existing foundation which was granted in 2004 in conjunction with BDA 034-119. (See the Zoning/History section of this case report for further details).
- The subject site is flat, rectangular in shape (143' x 100'), and 14,000 square feet in area. The site is zoned PD No. 134.



- DCAD records indicate that the site is developed a 2,766 square foot church building built in 1970.
- The applicant's representative submitted additional information on May 8, 2006 (see Attachment A). This information included the following:
  - a letter that provides additional details about the request; and
  - copies of the site plan and elevations that the Board of Adjustment imposed as conditions in conjunction with BDA 034-119, the variance granted on the subject site in January of 2004.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 134 (Planned Development District)  
North: PD No. 134 (Planned Development District)  
South: PD No. 134 (Planned Development District)  
East: CS (Commercial Service)  
West: PD No. 134 (Planned Development District)

**Land Use:**

The subject site is developed with a church (Iglesia Roca de la Esperanza). The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with commercial uses.

**Zoning/BDA History:**

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|---|--|
| <p>1. BDA 034-119, 4532 Birch Street<br/>(the subject site)</p> | <p>On January 20, 2004, the Board of Adjustment Panel A granted a request for a variance to the rear yard setback regulations of 9' 9". The board imposed the following condition to this request: Compliance with the submitted site plan and elevation is required. The case report states the request was made in conjunction with adding a new structure for classrooms and dining area.</p> |
| <p>2. BDA 056-134, 4532 Birch Street<br/>(the subject site)</p> | <p>On May 16, 2006, the Board of Adjustment Panel A will consider reimbursing the filing fee submitted in conjunction with a request for a variance to the rear yard setback regulations.</p>  |

**Timeline:**

March 31, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 19, 2006: 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."

April 21, 2006: The Board Administrator left a message with the applicant's representative and conveyed the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the May 5<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

May 8, 2006

The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- The subject site is flat, rectangular in shape (143' x 100'), and 14,000 square feet in area. The site is zoned PD No. 134.
- According to DCAD records, the site is developed a 2,766 square foot church building built in 1970.
- According to calculations taken from the submitted site plan by the Board Administrator, about 450 square feet of the addition (that has a 2,500 square foot building footprint) would be located in the site's 15' rear yard setback.
- The rear yard variance request of 10' in this case appears to be similar to a previous rear yard variance of 9' 9" that was granted (subject to conditions) by the Board of Adjustment Panel A in January of 2004. (Both requests involved encroaching into the site's rear yard setback for an addition to an existing church).
- The applicant has the burden of proof in establishing the following related to the rear yard variance request:
  - That granting the variance to the rear yard setback regulations of 10' to construct and maintain a two-story, approximately 5,000 square foot addition to a church 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 rear yard setback regulations of 10' to construct and maintain a two-story, approximately 5,000 square foot addition to a church structure is necessary to permit development of the subject site (that is flat, rectangular in shape, and 14,000 square feet in area, and developed with a church 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 PD No. 134 zoning classification.
  - The variance to the rear yard setback regulations of 10' to construct and maintain a two-story, approximately 5,000 square foot addition to a church structure would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 134 zoning classification.
- If the Board were to grant the rear yard variance request of 10', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the addition could be located 5' from the rear property line (or 10' into the 15' rear yard setback) and would be restricted to the specific location, size, and height shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

**APPEARING IN FAVOR:**                      No one

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Jefferson**

AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 056-137

**BUILDING OFFICIAL'S REPORT:**

Application of Lois Stephens for a special exception to the fence height regulations at 7130 Forest Lane. This property is more fully described as a tract of land in City Block 7496 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in the required front yard setback which would require a special exception of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 7130 Forest Lane

APPLICANT: Lois Stephens

**REQUEST:**

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining, according to the submitted site plan, two 8' high gates and, according to the submitted "side view" elevation, an 8' high combination flagstone/cedar fence/wall (comprised of a 5' flagstone base with 3' cedar atop) in the site's 40' front yard setback along Forest Lane on a site developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4’ above grade when located in the required front yard in all residential districts except multifamily districts.  
The applicant requests a special exception to the fence regulations to construct and maintain a fence/wall that would reach a maximum height of 8 feet.
- The following additional information was gleaned from the submitted site plan/elevation:
  - The proposed fence/wall located in the Forest Lane 40’ front yard setback would be approximately 190’ in length, about 5’ from the property line (or about 16’ from the Forest Lane pavement line).
  - The proposed gates located in the Forest Lane 40’ front yard setback would be about 10’ from the property line (or about 22’ from the Forest Lane projected curb line).
  - That the “gate elevation same as fence height 8” notation on this plan is, according to the Building Inspection Development Code Specialist, the applicant’s intent for the gate height as opposed to the “10’ wooden cedar gates” notation referenced on the application.
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There are no single family homes that have direct frontage to the proposed fence/wall on Forest Lane. The homes immediately north of the subject site are located behind an approximately 8’ high masonry wall and face south on Hill Forest Drive ( a street that runs parallel to Forest Lane directly north of the subject site).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1 ac (A) (Single family district 1 acre)  
North: PD No. 381 (Planned development)  
South: R-16 (A) (Single family district 16,000 square feet)  
East: R-16 (A) (Single family district 16,000 square feet)  
West: R-1 ac (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 001-151, 11743 El Hara Circle (the lot east of the subject site)      On January 30, 2001, the applicant withdrew an application for fence height special exception to construct an 8' high fence/wall along Forest Lane. The applicant referenced in his letter of withdrawal that the City had determined that the proposed wall on this site on Forest Lane did require approval by the Board of Adjustment.

### **Timeline:**

- March 31, 2006:      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 20, 2006:      The Board Administrator contacted with the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the May 8<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 2, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the

Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- A scaled site plan/elevation has been submitted that denotes the location of the entire 190' long, proposed fence/wall relative to the property line (about 5') and pavement line (about 16'). (The site plan indicates that the entry gates are about 10' from the property line or about 22' from the Forest Lane pavement line).
- The site plan/elevation denotes a "side view" of the proposed fence/wall that the applicant has informed the Board Administrator is also the front view of the fence from Forest Lane. This elevation indicates the building materials of the fence/wall (flagstone and cedar) and maximum height of the fence/wall/gate (8'). No gate elevation has been submitted.
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There are no single family homes that have direct frontage to the proposed fence/wall on Forest Lane. The homes immediately north of the subject site are located behind an approximately 8' high masonry wall and face south on Hill Forest Drive ( a street that runs parallel to Forest Lane directly north of the subject site).
- As of May 8<sup>th</sup>, no letters have been submitted in support or in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed 8' high fence/wall and 8' high gates that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan/elevation would assure that the proposed fence/wall and gates would be constructed and maintained as shown on this document.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

**APPEARING IN FAVOR:** Penina Weiner, 11711 El Hara, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Gabriel**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation is required.
- The gates (to be located in the front yard setback) will be constructed out of cedar, wrought iron, or a combination of both.

**SECONDED:** **Jefferson**

**AYES:** 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 056-136

**BUILDING OFFICIAL'S REPORT:**

Application of James Mahler for a special exception to the parking regulations at 5527-29 Dyer Street. This property is more fully described as Lot 5 in City Block C/5187 and is zoned MU-3 which requires parking to be provided. The applicant proposes to change the use of a building to a commercial amusement inside use and provide 14 of the required 19 parking spaces which would require a special exception of 5 spaces. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5527-29 Dyer Street

**APPLICANT:** James Mahler

**REQUEST:**

- A special exception to the off-street parking regulations of 5 spaces (or 26% of the required off-street parking) is requested in conjunction with leasing roughly half of an



existing approximately 3,300 square foot structure with a “commercial amusement inside” use. The structure on the subject site is divided into two suites addressed as 5527 and 5529 Dyer Street. The suite at 5529 Dyer Street (in which the “commercial amusement inside” use is intended) is vacant, and according to the Building Inspection Development Code Specialist, the other suite at 5527 Dyer Street is now and has been an “office showroom/warehouse” use.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city’s thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.

- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

### **GENERAL FACTS:**

- The Dallas Development Code requires the following parking requirements for the proposed uses on the subject site:
  - 1 space is required for every 100 square feet of floor area for “other uses” defined as a “commercial amusement inside” use (uses that can be classified as a “commercial amusement inside” use other than bingo parlor, bowling alley, children’s amusement center, dance hall, motor track, or skating rink).
  - 1 space is required for every 1,000 square feet of floor area for the “showroom/warehouse” listed under “office showroom/warehouse” use.
 The applicant proposes to provide 14 (or 74%) of the 19 spaces required for the two uses in the two suites on the site: “commercial amusement inside” and “office showroom/warehouse” uses.
- A site plan has been submitted in conjunction with the application that denotes 5527 Dyer Street to have 1,528 square feet (which if designated as an “office showroom/warehouse” use would require 2 spaces); and 5529 Dyer Street to have 1,746 square feet (which if designated as a “commercial amusement inside” use would require 17 spaces).
- The applicant has informed the Board Administrator that no enlargements or additions to the existing structure are planned in conjunction with this request, therefore this special exception request is triggered by the applicant’s intent to reallocate the distribution of uses within the 3,274 square feet of the two suites on the subject site.
- According to DCAD records, the subject site is developed with a “free standing retail store” with 4,000 square feet built in 1953.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
  - a letter that provided additional details about the request;
  - a site plan indicating the square footages of the two suites;
  - photographs of the site and surrounding area; and
  - a response to comments made by the Development Services Senior Engineer.

### **BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-3 (Mixed use)  
North: City of University Park  
South: MU-3 (Mixed use)  
East: MU-3 (Mixed use)  
West: MU-3 (Mixed use)

**Land Use:**

The subject site is developed with a structure that is divided into two suites: one of which is vacant, the other of which is, according to the Building Inspection Development Code Specialist, developed with an “office showroom/warehouse” use. The areas to the north, east, south, and west appear to be developed primarily as office 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:**

- March 30, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 20, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - the May 5<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 24, 2006      The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

May 2, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

April 4, 2006      The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met.” The engineer made the following additional comments:  
- “The applicant needs to provide the number of parking spaces available for customers’ (overflow) parking thru parking agreement with adjacent property owners, primary/peak hours of parking demand, anticipated number of customers, etc.”

May 8, 2006      The applicant submitted a response to comments made by the Development Services Senior Engineer (see Attachment B).

**STAFF ANALYSIS:**

- 74 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing an existing 3,300 square foot center with “commercial amusement inside” and “office showroom/warehouse” uses.
- The submitted site plan indicates the provision of 14 City-recognized off-street parking spaces and 5 additional parking spaces in the front of the subject site that the City does not recognize as spaces to fulfill the off-street parking requirement since these 5 spaces are head-in parking spaces that are accessed directly off of Dyer Street.
- The Development Services Senior Engineer has commented that he has no objections to this request if certain conditions are met, specifically stating that “The applicant needs to provide the number of parking spaces available for customers’ (overflow) parking agreement with adjacent property owners, primary/peak hours of parking demand, anticipated number of customers, etc.”
- Granting this request, subject to the condition that the special exception of 5 spaces automatically and immediately terminates if and when the “commercial amusement

inside” and “office showroom/warehouse” uses on the site are changed or discontinued, would allow the approximately 3,300 square foot structure to be leased with “commercial amusement inside” and “office showroom/warehouse” uses.

- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed “commercial amusement inside” use (along with the existing “office showroom/warehouse” use) does not warrant the number of off-street parking spaces required, and
  - The special exception of 5 spaces (or 26% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

APPEARING IN FAVOR: James Mahler, 520 Melody Lane, Dallas, TX 75081

APPEARING IN OPPOSITION: Douglas Francis, 12806 Pandora Dr., Dallas, TX  
Margaret Difrancesco, 4213 Hanover, Dallas TX  
Craig Godfrey, 6633 Gold Dust Trl, Dallas, TX

**MOTION: Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-136**, on application of James Mahler, **deny** the special exception to the off-street parking regulations requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

**SECONDED: Gabriel**

**AYES:** 4 – Richmond, Hill, Gabriel, Schweitzer,

**NAYS:** 1 – Jefferson

**MOTION PASSED:** 4– 1

\*\*\*\*\*

**FILE NUMBER:** BDA 056-139

**BUILDING OFFICIAL'S REPORT:**

Application of William Ward, represented by Masterplan, for a special exception to the fence regulations at 5623 Farquhar Lane. This property is more fully described as a tract of land in City Block A/5664 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 5 foot fence in the required front yard setback which would require a special exception of 1 foot. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5623 Farquhar Lane

**APPLICANT:** William Ward  
Represented by Masterplan

**May 16, 2006 Public Hearing Notes:**

- The applicant submitted additional documentation prior to the board's briefing (documentation entitled "Attachment A").

**REQUEST:**

- A special exception to the fence height regulations of 1' is requested in conjunction with constructing and maintaining a 5' high, open horizontal steel bar fence in the site's 35' front yard setback along Farquhar Lane on a site developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.  
The applicant requests a special exception to the fence regulations to construct and maintain a fence that would reach a maximum height of 5 feet.
- The following additional information was gleaned from the submitted site plan:
  - The proposed fence located in the Farquhar Lane 35' front yard setback would be approximately 150' in length, about 2' from the property line (or about 18' from the Farquhar Lane pavement line).  
(The proposed 5' high vehicular gate that leads to the subject site at 5623 Farquhar Lane is located on the lot immediately west of the subject site at 5611 Farquhar Lane, and is part of the request for special exceptions to the fence height and visibility obstruction regulations to be considered by Board of Adjustment Panel A on May 16, 2006 (BDA056-140).
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There is one single family home that would have direct frontage to the proposed fence.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences/walls above four (4) feet high which appeared to be located in the front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16 (A) (Single family district 16,000 square feet)  
North: R-16 (A) (Single family district 16,000 square feet)  
South: R-16 (A) (Single family district 16,000 square feet)  
East: R-16 (A) (Single family district 16,000 square feet)  
West: R-16 (A) (Single family district 16,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

- |  |   |
|--|---|
| <p>1. BDA 056-140, 5611 Farquhar Lane (the lot immediately west of the subject site)</p> | <p>On May 16, 2006, the Board of Adjustment Panel A will consider a request for a special exception to the fence height regulations of 1' and a special exception to the visibility obstruction regulations to construct and maintain a 5' high fence and gate in the front yard setback.</p> |
|--|---|

**Timeline:**

- March 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 20, 2006: The Board Administrator contacted with the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the May 8<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006:

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

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

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that denotes the location of the entire proposed approximately 150' long fence relative to the property line (2') and pavement line (18').
- A scaled elevation has been submitted that denotes the building materials (open horizontal steel bar) and maximum height of fence (5').
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There is one single family home that would have direct frontage to the proposed fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of May 8<sup>th</sup>, no letters have been submitted in support or in opposition to the special exception.



- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 1' (whereby the proposed fence that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 1' with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed fence is constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

APPEARING IN FAVOR: Ed Simons, 900 Jackson, Ste 640, Dallas, TX  
Mary Ellen Cowan, 7023 Tokalon Dr., Dallas, TX

APPEARING IN OPPOSITION: Mary Bowles, 5520 Farquhar, Dallas, TX  
Nan Works, 5422 Farquhar, Dallas TX  
Jan Dauterman, 5610 Farquhar, Dallas, TX  
Bette Epstein, 5409 Farquhar, Dallas, TX  
Robert Latorre, 5400 Sunney, Dallas, TX

**MOTION#1: Jefferson**

I move that the Board of Adjustment in Appeal No. **BDA 056-139**, on application of William Ward, represented by Masterplan, **grant** the request of this applicant to construct a five-foot high 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Schweitzer**

AYES: 3 – Richmond, Schweitzer, Jefferson

NAYS: 2 – Hill, Gabriel

MOTION FAILED: 3– 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

**MOTION#2: Jefferson**

I move that the Board of Adjustment in Appeal No. **BDA 056-139**, on application of William Ward, represented by Masterplan, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Schweitzer**

AYES: 4 – Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 – Hill

MOTION PASSED: 4– 1

\*\*\*\*\*

**FILE NUMBER:** BDA 056-140

**BUILDING OFFICIAL'S REPORT:**

Application of William Ward, represented by Masterplan, for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations at 5611 Farquhar Lane. This property is more fully described as a tract of land in City Block A/5664 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at drive approaches. The applicant proposes to construct a 5 foot fence in the required front yard setback which would require a special exception of 1 foot, and to locate/maintain items in the required visibility triangles which would require a special exception to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) and 51A-4.602 (d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 5611 Farquhar Lane

**APPLICANT:** William Ward  
Represented by Masterplan

**May 16, 2006 Public Hearing Notes:**

- The applicant and his representative submitted additional documentation prior to the board's briefing (documentation entitled "Attachment A" and "Attachment B").

**REQUESTS:**

- The following appeals have been made in this application on a site developed with a single family home:
  1. A special exception to the fence height regulations of 1' is requested in conjunction with constructing and maintaining a 5' high open horizontal steel bar fence and a 5' high open horizontal steel bar entry gate (with two, 5' long, 5' high entry wing walls) in the site's 35' front yard setback along Farquhar Lane.
  2. Special exceptions to the visibility obstruction regulations are requested to locate and maintain items in as many as 4 visibility triangles at two drive approaches to the site from Farquhar Lane (items that have not been identified on either a site plan or elevation).

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:**

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

**GENERAL FACTS (related to the fence special exception):**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.  
The applicant requests a special exception to the fence regulations to construct and maintain a fence, gate, and entry gate wing walls that would reach a maximum height of 5 feet.
- The following additional information was gleaned from the submitted site plan:
  - The proposed fence located in the Farquhar Lane 35' front yard setback would be approximately 136' in length, about 1' from the property line (or about 17' from the Farquhar Lane pavement line).
  - The proposed gate located in the Farquhar Lane 35' front yard setback would be approximately 14' in length and flanked by two, 5' long, 5' high wing walls (of unspecified material), about 6' from the property line (or about 22' from the Farquhar Lane pavement line).(The proposed 5' high vehicular gate on the subject site will also serve the house located at 5623 Farquhar Lane, the lot immediately east of the subject site which is also a request for a special exception to be considered by Board of Adjustment Panel A on May 16, 2006 (BDA056-139).
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There is one single family home that would have direct frontage to the proposed fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences/walls above four (4) feet high which appeared to be located in the front yard setback.

**GENERAL FACTS (related to the visibility obstruction special exceptions):**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
  - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).The Dallas Development Code states the term "visibility triangle" means "in all zoning districts, the portion of a lot within a triangular area formed by connecting

together the point of intersection of the edge of the driveway or alley and an adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 20 feet from the intersection.”

- On May 4, 2006, the applicant’s representative amended his original application by adding a special exception to the visibility obstruction regulations. However, as of May 8, 2006, the applicant’s representative has not submitted a site plan to show what is located in as many as all 4 of the site’s visibility triangles nor submitted any correspondence to specify what is or how much of any item is located in the site’s 4 visibility triangles at the two drive approaches.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16 (A) (Single family district 16,000 square feet)  
North: R-16 (A) (Single family district 16,000 square feet)  
South: R-16 (A) (Single family district 16,000 square feet)  
East: R-16 (A) (Single family district 16,000 square feet)  
West: R-16 (A) (Single family district 16,000 square feet)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 056-139, 5623 Farquhar Lane (the lot immediately east of the subject site) On May 16, 2006, the Board of Adjustment Panel A will consider a request for a special exception to the fence height regulations of 1’ to construct and maintain a 5’ high fence in the front yard setback.

**Timeline:**

- March 29, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 20, 2006: The Board Administrator contacted with the applicant’s representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the May 8<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

May 4, 2006: The applicant's representative amended his application adding a request for a special exception to the visibility obstruction regulations.

May 4, 2006: The Board Administrator contacted with the applicant's representative to inquire what part of his proposal was to be located in a visibility triangle. The applicant's representative was encourage to submit a plan that would indicate what components of the fence, gate, entry wing walls would be located in a visibility triangle by May 8<sup>th</sup> in order to be described and incorporated into the board's docket.

May 5, 2006 The Development Services Senior Engineer submitted a review comment sheet with the following comments:

- “The site plan does not provide the dimensions of the fence/gate that falls inside the visibility triangles at driveway, 20’ x 20’.”

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

- A scaled site plan has been submitted that denotes the location of the entire proposed (approximately 136’ long) fence relative to the property line (1’) and pavement line (17’). (The proposed gate is about 6’ from the property line and about 22’ from the pavement line).
- A scaled elevation has been submitted that denotes the building materials (open horizontal steel bar) and maximum height of fence and gate (5’). The scaled elevation also denotes 5’ long, 5’ high entry gate wing walls (materials not specified).
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There is one single family home that would have direct frontage to the proposed fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4’ in height and located in a front yard setback.
- As of May 8th, no letters have been submitted in support or opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 1’ (whereby the proposed fence, gate, and entry gate wing walls that would exceed 4’ in height) will not adversely affect neighboring property.
- Granting this special exception of 1’ with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed fence, gate, and entry gate wing walls are constructed and maintained as shown on these documents.

**STAFF ANALYSIS (related to the visibility obstruction special exceptions):**

- The applicant’s representative has not submitted a site plan or elevation that denotes what items are intended to be located in the site’s 4 visibility triangles at the site’s 2 drive approaches.
- The Development Services Senior Engineer has commented that the site plan does not provide the dimensions of the fence/gate that falls inside the visibility triangle.
- The applicant has the burden of proof in establishing the following:
  - That granting the special exceptions to the visibility obstruction regulations will not constitute a traffic hazard.
- If these requests are granted, the Board of Adjustment may want to require the applicant to submit either a site plan and/or an elevation that delineates what items and how much of these items are to be located and retained in possibly all 4 of the site’s 20’ visibility triangles at the two drive approaches into the site from Farquhar Lane.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

**APPEARING IN FAVOR:** Ed Simons, 900 Jackson, Ste 640, Dallas, TX  
Mary Ellen Cowan, 7023 Tokalon Dr., Dallas, TX

**APPEARING IN OPPOSITION:** Mary Bowles, 5520 Farquhar, Dallas, TX  
Nan Works, 5422 Farquhar, Dallas TX  
Jan Dauterman, 5610 Farquhar, Dallas, TX  
Bette Epstein, 5409 Farquhar, Dallas, TX  
Robert Latorre, 5400 Sunney, Dallas, TX

**MOTION#1: Jefferson**

I move that the Board of Adjustment in Appeal No. **BDA 056-140**, on application of William Ward, represented by Masterplan, **grant** the request of this applicant to construct a five-foot high 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Schweitzer**

**AYES:** 3 – Schweitzer, Jefferson

**NAYS:** 2 – Richmond, Hill, Gabriel

**MOTION FAILED:** 3– 2

**\*Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

**MOTION#2: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 056-140**, on application of William Ward, represented by Masterplan, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Jefferson**

**AYES:** 4 – Richmond, Gabriel, Schweitzer, Jefferson

**NAYS:** 1 – Hill

**MOTION PASSED:** 4– 1

**MOTION#3: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 056-140**, on application of William Ward, represented by Masterplan, **grant** the request of this applicant to

maintain items in a visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED: Jefferson**

**AYES: 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson**

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

\*\*\*\*\*

**FILE NUMBER:** BDA 056-143

**BUILDING OFFICIAL'S REPORT:**

Application of Peter Drais for a variance to the front yard setback regulations at 3603 Springbrook Street. This property is more fully described as Lot 9 in City Block 5/2022 and is zoned PD-193 which requires a front yard setback of 38 feet (due to a front yard setback averaging requirement). The applicant proposes to construct a single family dwelling and provide a 25 foot front yard setback which would require a variance of 13 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

**LOCATION:** 3603 Springbrook Street

**APPLICANT:** Peter Drais

**May 16, 2006 Public Hearing Notes:**

- The applicant submitted additional documentation prior to the board's briefing.

**REQUEST:**

- A variance to the front yard setback regulations of 13' is requested in conjunction with constructing and maintaining a 3-story duplex (with an approximately 5,000 square foot building footprint) on a site that is currently under development.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or



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

**GENERAL FACTS:**

- PD No. 193 requires the following front yard provisions for property in a single family or duplex subdistrict:
    - Where two or more main buildings exist in a blockface, any new building must have a minimum front yard setback that is the average of the front yard setbacks of the two main buildings that are closest to the lot in the same blockface, however, in no case is a new building required to have a front yard setback greater than 40 feet.
- The Building Official’s Report states that a 38’ front yard setback is required and that the applicant proposes to construct and maintain the structure 25’ from the front property line (or 13’ into the 38’ front yard setback).
- The site is under development, is flat, generally rectangular in shape (52.5’ on the northeast, 55.4’ on the southwest, 151.3’ on the northwest, and 155’ on the southeast), and 8,000 square feet in area.
  - DCAD indicates that the site has no main or additional improvements.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (D Subdistrict) (Planned Development, Duplex Subdistrict)  
North: PD No. 193 (D Subdistrict) (Planned Development, Duplex Subdistrict)  
South: PD No. 193 (D Subdistrict) (Planned Development, Duplex Subdistrict)  
East: PD No. 193 (D Subdistrict) (Planned Development, Duplex Subdistrict)  
West: PD No. 193 (D Subdistrict) (Planned Development, Duplex Subdistrict)

**Land Use:**

The subject site is under development. The areas to the north, east, south, and west are developed with residential 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:**

- Undated, 2006      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2006:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 20, 2006:      The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the May 8<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 2, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The site is flat, generally rectangular in shape (52.5' on the northeast, 55.4' on the southwest, 151.3' on the northwest, and 155' on the southeast), and 8,000 square feet in area.
- The site is zoned PD No. 193 (D Subdistrict) where the ordinance provides that a front yard setback for any new building in this subdistrict be (where two or more main buildings exist in a blockface) the average of the front yard setbacks of the two main buildings that are closest to the lot in the same blockface, and, however, in no case where a new building is required to have a front yard setback greater than 40 feet.
- According to calculations taken from the submitted site plan by the Board Administrator, about 462 square feet of the proposed duplex's 5,000 square foot building footprint is located in the site's 38' front yard setback.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
  - That granting the variance to the front yard setback regulations of 13' to construct and maintain a 3-story duplex with an approximately 5,000 square foot building footprint in the site's 38' 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 to the front yard setback regulations of 13' to construct and maintain a 3-story duplex with an approximately 5,000 square foot building footprint in the site's 38' front yard setback is necessary to permit development of the subject site (that is undeveloped, flat, generally rectangular in shape, and 8,000 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 (D Subdistrict) zoning classification.
  - The variance to the front yard setback regulations of 13' to construct and maintain a 3-story duplex with an approximately 5,000 square foot building footprint in the site's 38' front yard setback would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (D Subdistrict) zoning classification.
- If the Board were to grant the front yard variance request of 13', imposing a condition whereby the applicant must comply with the submitted site plan, the structure would be permitted to encroach into the site's front yard setback, 25' from the site's front property line (or 13' into the 38' front yard setback).
- If the Board were to grant the front yard variance request of 13', imposing a condition whereby the applicant must comply with the submitted site plan, the front

yard encroachment would be restricted to the specific location shown on this document.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

**APPEARING IN FAVOR:** Peter Drais, 6725 Banyon, Plano, TX

**APPEARING IN OPPOSITION:** Thomas Allen, 1113 N. Dallas, Lancaster, TX  
Robert Latorre, 5400 Sumeys, Dallas, TX  
Donna Guerra, 3622 Springbrook St., Dallas, TX  
Karen Luter, 3605-07 Springbrook, Dallas, TX  
Chris Bryant, 3010 Henderson Ave., Dallas TX  
Judy Desanders, 3619-21 Springbrook, Dallas, TX  
Martha Cox, 3600 Springbrook, Dallas, TX  
Kachina Abeita, 4228 Glenwood Ave., Dallas, TX  
Mary Ann Rethke, 3614 Springbrook, Dallas, TX

**MOTION: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 056-143**, on application of Peter Drais, **deny** the variance requested by this applicant **with 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: Jefferson**

**AYES:** 5 – Richmond, Hill, Gabriel, Schweitzer, Jefferson

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 056-146

**BUILDING OFFICIAL'S REPORT:**

Application of Penny Youngblood & Susan Spalter, represented by Rob Baldwin, for a special exception to the fence height regulations at 9922 Rockbrook Drive. This property is more fully described as part of Lots 13 and 14 in City Block 5543 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 6 foot 7 inch fence in the required front yard setback which would require a special exception of 2 feet 7 inches. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 9922 Rockbrook Drive

**APPLICANT:** Penny Youngblood & Susan Spalter  
Represented by Rob Baldwin

**REQUEST:**

- A special exception to the fence height regulations of 2' 7" is requested in conjunction with constructing and maintaining an arched open metal entry gate (that reaches a maximum height of 6' 7") with 6' 1 ½" high brick/cast stone entry columns in the site's 40' front yard setback along Rockbrook Drive on a site developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.  
The applicant requests a special exception to the fence regulations to construct and maintain an entry gate flanked by entry columns that would exceed 4' in height and reach a maximum height of 6' 7".
- The following additional information was gleaned from the submitted site plan:
  - The proposed entry gate and columns located in the Rockbrook Drive 40' front yard setback would be approximately 25' in length, about 17' 4" from the property line (or about 36' from the Rockbrook Drive projected pavement line).
- The applicant's representative informed the Board Administrator that the "Final Detail" shown on the submitted document entitled "Fence and Gate Details" has been dropped, and is not part of the special exception request.
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There are no single family homes that would have direct frontage to the proposed entry gate/columns.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences/walls above four (4) feet high which appeared to be located in the front yard setback.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request and why it should be granted.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA045-265, 9863 Rockbrook Drive (the lot two lots west of the subject site)  
On August 15, 2005, the Board of Adjustment Panel C granted a request to the fence height regulations of 4'. The board imposed the following condition in conjunction with this request: revised submitted site plan/fence elevation/wall elevation is required. The case report stated that the request was made to maintain an 8' high brick wall in south corner of property with existing brick caps; and a 6' high wrought iron gate along Rockbrook Drive, and an 8' high fence along the alley on Meadowood Road.
2. BDA034-178, 9863 Rockbrook Drive (the lot two lots west of the subject site)  
On April 18, 2005, the Board of Adjustment Panel C denied a request to the fence height regulations of 4' without prejudice. The case report stated that the request was made to construct a 6'-high decorative wrought iron fence with 6'-6" high masonry columns, and 6'-high wrought iron entry gates in the required Rockbrook Drive and Meadowood Road front yard setbacks; and maintaining a portion of an existing 8' high masonry wall in the Rockbrook Drive front yard setback.
3. BDA012-139, 9908 Rockbrook Drive (the lot located at the northeast corner of Rockbrook Drive and Meadowood Road immediately south of the subject site)  
On February 26, 2002, the Board of Adjustment Panel A followed the staff recommendation and granted a request for a special exception to the fence height regulations of 2' 6" and imposed the

following conditions: Compliance with the submitted site/fence elevation plan and landscape plan is required; and the existing landscaping (hedge) shall remain in place along the entire length of the 6' high vinyl coated (black) cyclone fence along Meadowood Road, or when needed must be replaced and retained with minimum 6' height at maturity such that the entire length of the fence will not be visible from Meadowood Road. The case report states that the special exception was requested in conjunction with erecting a "6' 0" high vinyl coated (black) cyclone fence" in the Meadowood Road front yard to replace a "6' 6" high existing galvanized cyclone fence." (The request did not include any proposed fence in the Rockbrook Drive front yard setback).

4. BDA989-191, 9662 Rockbrook Drive (the lot located two lots northeast of the subject site)

On April 20, 1999, the Board of Adjustment Panel B followed the staff recommendation and denied a request for a special exception to the fence height regulations of 6 feet. The case report indicated that request was to construct an 8' high open metal fence, 8', 8" high columns, and 10' high open metal entry gates.

**Timeline:**

- March 31, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 19, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 20, 2006: The Board Administrator contacted with the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- the May 8<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

May 5, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

**STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the proposed approximately 19' long gate (with two, 3' wide columns) proposal relative to the property line (about 17 4") and pavement line (about 36'). (No fence is noted on the submitted plan that would exceed the maximum 4' height that is permitted by right).
- An elevation entitled "Fence and Gate Details" denotes the building materials (open wrought iron) of the gate and columns (brick and cast stone veneer); and well as their maximum heights (6' 7" and 6' 1 1/2", respectively).
- According to information submitted by the applicant's representative, the special exception request (where some column/gate component would exceed 4' in height and be located in the front yard setback) would account for about 25' (or about 19%) of the entire site's 132 feet of frontage.
- There are no single family homes that would have direct frontage to the proposed entry gate/columns.
- No other fences/walls above four (4) feet high which appeared to be located in the front yard setback were noted by the Board Administrator in a field visit of the site and surrounding area and noted.



- As of May 8th, no letters have been submitted either in support or in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 7" (whereby the proposed 6' 7" high gate and two, 6' 1 1/2" high entry columns that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' 7" with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed gate and entry columns would be constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

**\*3:15 P.M. Member Johnny Jefferson left the meeting and did not vote.**

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-146**, on application of Penny Youngblood and Susan Spalter, represented by Rob Baldwin, **grant** the request of this applicant to construct a six foot, seven inch high 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 site plan and elevation is required.

SECONDED: Gabriel

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 056-147

**BUILDING OFFICIAL'S REPORT:**

Application of Steve Mier, represented by Masterplan, for a special exception to the parking regulations and for a special exception to the landscape regulations at 9147 Skillman Street. This property is more fully described as a tract of land in City Block 8068 and is zoned MU-3 which requires mandatory landscaping for new paving over 2000 square feet and requires parking to be provided. The applicant proposes to maintain an existing building, re-configure the parking and provide 116 of the required

125 parking spaces which would require a special exception of 9 spaces to the off-street parking regulations. In addition, the applicant proposes to provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51A-10.110, and 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

**LOCATION:** 9147 Skillman Street

**APPLICANT:** Steve Mier  
Represented by Masterplan

**May 16, 2006 Public Hearing Notes:**

- The applicant's representative submitted additional documentation prior to the board's briefing (entitled "Attachment C").

**REQUESTS:**

- The following appeals have been made in this application:
  1. A special exception to the off-street parking regulations of 9 spaces (or 7% of the required off-street parking) is requested in conjunction with leasing an existing 25,000 square foot structure with, according to the applicant's representative, any/all 85 uses permitted in MU-3 zoning; and
  2. A special exception to the landscape regulations is requested in conjunction with increasing non-permeable coverage on the site by more than 2,000 square feet.The site is currently developed with a 25,000 square foot structure on a site that is providing 85 parking spaces.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

1. strict compliance with the requirements of this article will unreasonably burden the use of the property;
2. the special exception will not adversely affect neighboring property; and
3. the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**GENERAL FACTS (related to the parking special exception):**

- The Dallas Development Code provides the parking requirements for each use listed. There are 85 uses that are permitted in the subject site's MU-3 zoning district. Some permitted uses in MU-3 such as "restaurant without drive-in service" use require 1 space per 100 square feet of floor area while other permitted uses such as "office showroom/warehouse" use require 1 space per 1,000 square feet of floor area.  
A site plan has been submitted in conjunction with the application that denotes a 25,000 square foot structure, and the provision of 116 of the required 125 parking spaces.
- The applicant has informed the Board Administrator that no enlargements or additions to the existing structure are planned in conjunction with this request therefore this special exception request is triggered by the applicant's intent to reallocate the distribution of proposed uses within the 25,000 square foot structure.
- In 1995, the Board of Adjustment "varied" 9 required parking spaces and "special excepted" another 31 spaces with a condition to a specific use (BDA95-061). Additionally, in 1998, the Board of Adjustment granted another special exception to the parking regulations of 31 spaces merely expanding the uses to which the previous 1995 special exception was limited to include "personal service" use in addition to "general merchandise" uses. The applicant intends to expand the parking on the site whereby the off-street parking spaces to be provided on the site will be 116 spaces, hence the requests for special exceptions to the landscape and off-street parking regulations.
- According to DCAD records, the subject site is developed with a 15,644 square foot "retail strip" built in 1976 and a 9,900 square foot "free standing retail store" built in 1980.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included before-and-after photographs of the subject site.

**GENERAL FACTS (related to the landscape regulations):**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.

- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
  - The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:
    - The applicant is requesting relief from the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the site tree, street tree, design standard and residential adjacency requirements.
    - The special exception request is triggered by increasing non-permeable coverage by more than 2,000 square feet.
    - Deficiencies:
      1. The applicant is required to provide one 2” diameter site tree for every 4,000 square feet of lot area (which on this site is 20 trees).  
The applicant is proposing to provide 12 site trees.
      2. The applicant is required to provide one 3” diameter street tree for every 50’ of street frontage and trees should be located within 30’ of the projected street curb (which on this site is 17 trees)  
The applicant is proposing to provide 1 street tree.
      3. The applicant is required to provide 2 design standards.  
The applicant is proposing to provide 1 design standard: screening of off-street parking.
- Factors for consideration:
- If Audelia right-of-way (Tract II) has not been abandoned, this property has residential adjacency and should provide a 10’ wide residential landscape buffer strip, but would not be able to due to existing pavement.
  - The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included before-and-after photographs of the subject site.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: MU-3 (Mixed use)
- North: MU-3 (Mixed use)
- South: MU-3 (Mixed use)
- East: MU-3 (Mixed use)
- West: MF-1 (A) (Multifamily residential)

**Land Use:**

The subject site is developed with retail structure. The areas to the north, east, south, are developed with retail uses; and the area to the west is developed with multifamily uses.

**Zoning/BDA History:**

1. BDA 95-061, 9147 Skillman Street, (the subject site)

On August 22, 1995, the Board of Adjustment granted a request for a variance to the off-street parking regulations of 11 spaces and a request for a special exception to the off-street parking regulations of 31 spaces. (The applicant was proposing to provide 83 of the required 125 off-street parking spaces). The board imposed the following condition with the special exception: This special exception is limited to a general merchandise store greater than 3,500 square feet, as defined in Section 51A-4.210 (b)(14) of the Dallas Development Code, as amended, excluding the uses described in the definition of the term "food store" in that section. The case report stated that these requests were made in conjunction with facilitating a building use transition from a former 25,000 square foot furniture store to an existing 25,000 square foot retail shopping strip (Pier One and Block Buster/Sound Warehouse).

2. BDA 978-240, 9147 Skillman Street, (the subject site)

On September 22, 1998, the Board of Adjustment Panel A granted a request for a special exception to the off-street parking regulations of 31 spaces. The board imposed the following condition with this request: This special exception automatically and immediately terminates if and when the personal service and general merchandise uses on the site are changed or discontinued. The case report stated that this request was made in conjunction with plans to transition a portion of an approximately 25,000 square foot "general merchandise" use (Blockbuster) to a "personal service" use (Kinko's). This case report additionally detailed that the applicant made this request since they were unable to comply with the condition imposed by the Board of Adjustment in 1995 whereby the special exception was limited to just a "general merchandise greater than 3,500 square foot" use. The thrust of this request was merely to expand the uses that the

previously approved 31 space special exception was conditioned to include “personal service” use both of which had the same parking requirement of 1 space per every 200 square feet of floor area.

**Timeline:**

March 31, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 19, 2006: 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.”

April 20, 2006: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the 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 April 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the May 5<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 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the

Current Planning Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

- May 4, 2006      The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections." The engineer made the following additional comments:
- "The request for 7% reduction appears reasonable even though it was not supported by a parking study of existing usage pattern. If the need arises due to parking demand, there is the possibility of leasing tract two for additional parking spaces."
- May 8, 2006      The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- May 9, 2006      The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment B).

**STAFF ANALYSIS (related to the parking special exception):**

- 93 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing an existing 25,000 square foot structure with one, all, or any combination of 85 uses that are permitted in MU-3 zoning including uses in the following categories: agricultural; commercial and business service uses; industrial uses; institutional and community services uses; lodging uses; miscellaneous uses; office uses; recreation uses; residential uses; retail and personal services uses; transportation uses; utility and public service uses; and wholesale, distribution, and storage uses.
- Currently the site is providing 85 parking spaces. The applicant has submitted a site plan indicating that an additional 31 spaces will be provided on the site where a total of 116 spaces will be provided. (The site plan indicates that 125 parking spaces are required).
- The subject site has received special exceptions to the off-street parking regulations from the Board of Adjustment on two other occasions whereby the special exceptions were tied to one specific use in 1995 (general merchandise store greater than 3,500 square feet excluding the uses described in the definition of the term "food store" in that section) and two specific uses in 1998 (general merchandise greater than 3,500 square feet excluding the uses described in the definition of the term "food store" in that section and personal service use).
- The Development Services Senior Engineer has commented that he has no objections to this request commenting "The request for 5% appears reasonable even though it was not supported by a parking study of existing usage pattern. If the need



arises due to parking demand, there is the possibility of leasing tract two for additional parking spaces.”

- The Dallas Development Code states that in granting a special exception to the parking regulations, the board shall specify the uses to which the special exception applies. The code further states that a special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- Granting this request, subject to the condition that the special exception of 9 spaces automatically and immediately terminates if and when any/all 85 uses permitted in the MU-3 zoning district are changed or discontinued, would allow the 25,000 square foot structure to be leased with this mix of uses.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by each of the 85 uses permitted in MU-3 zoning does not warrant the number of off-street parking spaces required, and
  - The special exception of 9 spaces (or 7% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**STAFF ANALYSIS (related to the landscape special exception):**

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in meeting the site tree, street tree, design standard, and residential adjacency requirements of the landscape regulations.
- The special exception to the landscape regulations is triggered by the applicant's intent to increase paved area on the site by more than 2,000 square feet (which in this case, is the applicant's intent to increase the number of off-street parking spaces intended/required for uses to be leased in the existing 25,000 square foot structure).
- The site is developed with structures that if, according to DCAD, were constructed in 1976 and 1980 predated the creation of the Landscape Regulations in the mid 80's.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations (i.e. providing the required 12 site trees, 17 street trees, 2 design standards, and possibly the 10' wide landscape buffer strip if the Audelia right-of-way has not been abandoned) will unreasonably burden the use of the property (which in this case is a site developed with a 25,000 square foot structure)
  - The special exception (whereby 12 of the required 20 site trees, 1 of the required 17 street trees, 1 of the required two design standards, and possibly none of the required 10' wide landscape buffer strip are proposed to be provided) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be "excepted" from full compliance with the site tree, street tree, design standard, and 10' wide landscape buffer strip requirements of the landscape regulations.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2006**

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-147**, on application of Steve Mier, represented by Masterplan, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 9 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the uses listed on revised Attachment C\* are changed or discontinued.
- The following uses are not included in the list: child care facility, adult daycare facility and commercial amusement inside.

\* Uses listed on the revised Attachment C included the following: office; medical clinic; financial institution without drive through service; business school; laundry or dry cleaning store; furniture store; general merchandise greater or lesser than 3,500 square feet; personal service uses; restaurant without drive through service; office showroom warehouse; catering service; custom business service; electronics service center; and tool or equipment rental.

SECONDED: Gabriel

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MOTION#2: Hill

I move that the Board of Adjustment in Appeal No. **BDA 056-147**, on application of Steve Mier, represented by Masterplan, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

**SECONDED: Gabriel**

**AYES:** 4 – Richmond, Hill, Gabriel, Schweitzer

**NAYS:** 0 -

**MOTION PASSED:** 4– 0 (unanimously)

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**MOTION: Schweitzer**

I move to adjourn this meeting.

**SECONDED: Gabriel**

**AYES:**4– Richmond, Hill, Gabriel, Schweitzer

**NAYS:** 0 -

**MOTION PASSED:** 4– 0 (Unanimously)

**3:33 P.M.** - Board Meeting adjourned for May 16, 2006.

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
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.