

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, MAY 20, 2008**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

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

MEMBERS ABSENT FROM HEARING: No one

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

10:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 20, 2008** docket.

11:30 A.M. Executive Session

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A April 15, 2008 public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2008

MOTION: Gabriel

I move **approval** of the Tuesday, **April 15, 2008** public hearing minutes.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

To approve the Board of Adjustment Panel A April 22, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2008

MOTION: Gabriel

I move **approval** of the Tuesday, **April 22, 2008** public hearing minutes.

SECONDED: Taft

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 3

An executive session will be conducted by an assistant city attorney to brief the board pursuant to Texas Open Meetings Act Section 551.071, on a matter regarding - BDA 078-059, Property at 3103 Colonial Avenue.

***This was not an action item**

FILE NUMBER: BDA 078-060(K)

BUILDING OFFICIAL’S REPORT:

Application of Assembly of God Dallas/Saji Maliyil, represented by Saji Maliyil for a special exception to the fence height regulations at 2381 (AKA 2383) Dunloe Drive. This property is more fully described as Lot 11A in City Block M/5374 and is zoned D(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot fence in a required front yard setback which will require a 2 foot special exception.

LOCATION: 2381 (AKA 2383) Dunloe Drive

APPLICANT: Assembly of God Dallas/Saji Maliyil
Represented by Saji Maliyil

REQUEST:

A special exception to the fence height regulations of 2’ is requested in conjunction with constructing and maintaining an iron fence in the site’s 40’ front yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The property is zoned D(A) Duplex, which requires a front yard setback of 25 feet.

- The subject site has frontage along Dunloe Street and Joaquin Drive.
- The subject site is currently developed.
- The applicant is proposing to construct and maintain a 6 foot high iron fence.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

BACKGROUND INFORMATION:

Zoning:

Site: D (A) (Duplex)
North: R-7.5 (A) (Single family district 7500 square feet)
South: SUP 1242 (Special Use Permit)
East: R-7.5 (A) (Single family district 7500 square feet)
West: R-7.5 (A) (Single family district 7500 square feet)

Land Use:

The subject site is developed with Assembly of God Church. The sites to the south are a church and a public library. The properties to the north, east, and west are developed with single family structure.

Zoning/BDA History:

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

Timeline:

- February 29, 2008 The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- April 18, 2008: The Board of Adjustment Senior Planner contacted the applicant’s representative and shared the following information via telephone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

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

May 6, 2008: 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 Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed, fence, columns, and gates relative to their proximity to the property line.
- The site plan indicates the location of two existing structures, driveways, and parking spaces on the property.
- A scaled elevation has been submitted that documents the height of the fence to be 6 feet in height and constructed of iron.
- The site plan indicates the fence will run along the perimeter of the property.
- The site plan illustrates the fence will not be located in any of the visibility triangles: two driveways along Dunloe Street and Joaquin Drive.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- If the Board chooses to grant this special exception of 4' staff recommends imposing the conditions that the applicant complies with the submitted site plan, and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment grant application **BDA 078-060** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-071

BUILDING OFFICIAL’S REPORT:

Application of Ed Simons for a variance to the front yard setback regulations at 10011 N. Central Expressway. This property is more fully described as Lot 31A in City Block 7294 and is zoned MU-3(SAH) which requires a front yard setback of 35 feet for the portion of the structure over 45 feet in height due to the urban form setback. The applicant proposes to construct a multifamily residential structure and provide an 18 foot front yard setback which will require a 17 foot variance.

LOCATION: 10011 N. Central Expressway

APPLICANT: Ed Simons

REQUEST:

- A variance to the urban form front yard setback regulations of 17’ for the portion of a proposed structure over 45’ in height is requested in conjunction with constructing and maintaining a 60’ high multifamily residential structure (Parc Fountains Apartments) on a site that is undeveloped.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the site plan and elevation is required.

Rationale:

- The site is restricted in its developable area and different from other parcels of land given a 16' wide D.P.& L. easement along its western boundary. This feature creates hardship on the lot and prohibits the applicant's ability to construct/maintain development on the site that is commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
- Granting the variance to the urban form front yard setback regulations (with the suggested conditions imposed) would not be contrary to the public interest since the portion of the proposed structure to be "varied" is:
 1. only 60' in height or 15' above/beyond the 45' height in which the additional 20' urban form front yard setback begins; and
 2. located immediately adjacent to over 300' of right-of-way for Central Expressway and its related service roads.

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:

- Development on lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height. The applicant has submitted a site plan and elevation indicating a structure that is 60' in height located as close as 18' from the site's front property line. Although the proposed structure complies with the 15' front yard setback for the portion 45' in height or less, the structure above 45' in height (its 4th level of residential use) is located 17' into the 35' urban form front yard setback.

- Staff has interpreted that the additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The subject site is flat, rectangular in shape (202.5' x 142'), and, according to the application, 0.6599 acres in area. The applicant contends that the site's 16' D.P. &L. easement along its west side creates limitations to the development of the site. The site is zoned MU-3 (SAH) (Mixed Use)(Standard Affordable Housing). There are public deed restrictions on this site that limit uses on the site and maximum structure height to 60 feet. (The applicant has informed the Board Administrator that the proposed development does not conflict with these publicly-recorded deed restrictions).
- According to calculations taken from the submitted site plan by the Board Administrator, about 1,900 square feet (115' x 17') of the proposed approximately 19,000 square foot building footprint (115' x 164') of its 4th level of residential use is proposed to be located in the additional 20' urban form front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3(SAH) (Mixed Use, Standard Affordable Housing)
North: GO (A) (General Office)
South: GO (A) (General Office)
East: GO (A) (General Office)
West: MU-3(SAH) (Mixed Use, Standard Affordable Housing)

Land Use:

The subject site is undeveloped. The area to the north is developed with a communications use (Channel 11); the area immediately east is the North Central Expressway; the area to the south is developed with a hotel; and the area to the west is developed with multifamily use.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA001-193, Property located at 10011 N. Central Expressway (the subject site) | <p>On April 26, 2001, the Board of Adjustment Panel A took the following actions: 1) denied without prejudice a request for a parking special exception of 2 spaces; 2) granted a request for a variance to the front yard (urban form) setback regulations of 9' (subject to compliance with the submitted site plan and elevations); and 3) granted a request for a</p> |
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variance to the side yard (tower spacing) setback regulations (subject to compliance with the submitted site plan and elevation). The case report stated that these requests were made in conjunction with constructing/maintaining a four-story, 60' high apartment building (Park Fountain Apartments).

Timeline:

March 28, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 17, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

April 18, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the May 5th deadline to submit additional evidence for staff to factor into their analysis;
- the May 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 6, 2008: 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 Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner,

the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This variance request is made to allow approximately 1/10 of the proposed structure's top level to be located in the site's urban form front yard setback. The proposed structure complies with all setbacks with one exception: the structure between 45' – 60' in height is proposed to be located 18' from the site's front property line (or as much as 17' into the total 35' urban form front yard setback).
- The proposed structure that is between 45' – 60' in height to be located in the additional required 20' front yard setback is only 15' beyond the height in which the urban form setback becomes a factor, and is adjacent to an unusually wide right-of-way - in this case, Central Expressway/service road right-of-way over 300' wide.
- The subject site is flat, rectangular in shape (202.5' x 142'), and, according to the application, 0.6599 acres in area. The applicant contends that the site's 16' D.P. &L. easement along its west side creates limitations to the development of the site. The site is zoned MU-3 (SAH) (Mixed Use)(Standard Affordable Housing). There are public deed restrictions on this site that limit uses on the site and maximum structure height to 60 feet. (The applicant has informed the Board Administrator that the proposed development does not conflict with these publicly-recorded deed restrictions).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the urban form front yard setback requested to construct and maintain a 60' high, 4-level multifamily residential 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 is necessary to permit development of the subject site 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 MU-3 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- 1. If the Board were to grant the urban form front yard variance request of 17', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure would be limited to what is shown on these submitted plans – a structure that complies with setbacks 45' in height and below, but a

structure above 45' in height that is located at 18' from the site's front property line (or 17' into the 35' urban form front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 20, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment grant application **BDA 078-071** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Schweitzer**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 078-042

BUILDING OFFICIAL'S REPORT:

Application of Mary M. Russell for a special exception to the fence height regulations at 7115 S. Janmar Drive. This property is more fully described as Lot 1 in City Block D/7494 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 an 8 foot fence in a front yard setback which will require a special exception of 4 feet.

LOCATION: 7115 S. Janmar Drive

APPLICANT: Mary M. Russell

May 20, 2008 Public Hearing Notes:

- The Board Administrator circulated a revised landscape plan dated May 12, 2008 to the board members at their briefing (see Attachment C).
- The applicant submitted another revised landscape plan (with revisions dated May 16, 2008) to the board members at the public hearing.

REQUEST:

- Originally a special exception to the fence height regulations of 4' had been requested in conjunction with completing and maintaining an 8' high "grey veneer, ledge-style stone" wall in the site's 35' Kenny Lane front yard setback (that according to documentation submitted by the applicant would replace an 18+-year old 6' high chain link fence) on a lot developed with a single family home. However, on May 5, 2008, the applicant submitted revised materials (see Attachment B) that lowered the special exception request to 2' in conjunction with completing/maintaining a 6' high "grey veneer, ledge-style stone" wall in the site's 35' Kenny Lane front yard setback. Although the site is located at the intersection of South Janmar Drive and Kenny Lane, with front yard setbacks along both street frontages, the request is only made to complete/maintain a fence higher than 4' in the site's Kenny Lane front yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The 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.
Originally a site plan and partial elevation had been submitted that indicated that the proposal in the site's 35' Kenny Lane front yard setback will reach a maximum height of approximately 8'. However, on May 5, 2008, staff received a revised landscape plan and revised partial elevations that indicated that the proposal in the site's Kenny Lane front yard setback would be reduced by 2' reaching a maximum height of 6'.
- The following additional information was gleaned from the originally submitted site plan:
 - A line indicates the location of the proposed stone wall in the required 35' front yard setback where the proposal over 4' in height appears to be approximately 170' in length parallel to the street (and approximately 35' in length on the east side of the site in the Kenny Lane front yard setback).

- The wall line appears to be located on the front property line (or approximately 14' from the pavement line).
- The following additional information was gleaned from the originally submitted and revised elevations:
 - Original and revised elevation plans that convey two drawings one of which is described as "Entire length of fence is to be grey veneer, ledge-style stone" and the other of which is described as "Transition to existing 4' stone wall around the side yard at the rear corner of the housed is pictured below." (Neither drawing on either elevation shows a clear representation of the full fence/wall elevation).
- There are three single family homes that would have direct/indirect frontage to the proposal, none of which have fences higher than 4' in their front yard setbacks.
- The Board Administrator noted no other fences above four (4) feet high which appeared to be located in the front yard setback in his field visit of the site and surrounding area - an area beginning at South Janmar Drive northeasterly approximately 500' from the site along Kenny Lane.
- On April 15, 2008, the Board of Adjustment conducted a public hearing on this matter where the applicant submitted additional printed documentation to the board at the public hearing: a landscape plan that denoted a 2' wide aggregate along the edge of Kenny Lane; 54 five gallon Gulf Muhly grass; 420 four inch eyony mocks winter creeper; 17 five gallon lorapetalum; and 18 five gallon crossvine (see Attachment A); where an opposing property owner submitted photos of the site, and an inspection report, and a map to the board at the public hearing (that will be available for review at the May 20th public hearing); and where the Board of Adjustment delayed action on this matter until May 20, 2008 in order to allow the applicant and the opposing citizen time in which to possibly reach a compromise on the matter at hand.
- On May 5, 2008, staff received additional information from the applicant (see Attachment B). This information included the following:
 - a cover letter explaining how the request has been lowered to 6' in height;
 - a document that provides additional details about the request;
 - a revised landscape plan that denoted a 2' wide aggregate along the edge of Kenny Lane; 54 five gallon Gulf Muhly grass; 420 four inch eyony mocks winter creeper; 6 six-seven foot high Yaupon Hollys; and 18 five gallon crossvine; and
 - copies of originally submitted and revised partial elevations.

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, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

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

March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 26, 2008: Given unsuccessful attempts to reach the applicant by phone or email, the Board Administrator wrote the applicant a letter that 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
- the April 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

- April 15, 2008: The Board of Adjustment conducted a public hearing where the board delayed action on this matter until May 20, 2008 in order to allow the applicant and the opposing citizen time in which to possibly reach a compromise on the matter at hand.
- May 5, 2008: The applicant submitted additional/revised documentation to staff (see Attachment B).
- May 6, 2008: 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 Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- This request focuses on allowing a 6' high "grey veneer, ledge-style stone" wall to be completed and maintained in the site's Kenny Lane front yard setback – a wall that would, according to the applicant, replace a 18+ year old 6' high chain link fence.
- A site plan has been submitted that indicates that the proposed fence/wall to exceed 4' in height on the site would be limited to its Kenny Lane front yard setback. The proposed fence/wall in the Kenny Lane front yard setback appears to be about 170' in length parallel to the street and about 35' in length on the east "side" of the site in the front yard setback, approximately on the front property line (or about 14' from the pavement line. Only partial elevations have been submitted. These elevations provide some notations of heights and materials but do not convey a clear full representation of the proposal.
- A revised landscape plan has been submitted that denotes a 2' wide aggregate along the edge of Kenny Lane; 54 five gallon Gulf Muhly grass; 420 four inch eyony mocks winter creeper; 6 six-seven foot high Yaupon Hollies; and 18 five gallon crossvine.
- There are three single family homes that would have direct/indirect frontage to the proposal none of which have fences above 4' in a front yard setback.
- Although the applicant submitted a list of other 6'-9' high privacy fences in the neighborhood, the board administrator noted no other fences above four (4) feet high which appeared to be located in the front yard setback in the immediate area surrounding the subject site - an area beginning at South Janmar Drive northeasterly approximately 500' from the site along Kenny Lane.

- As of May 12th, no letters had been submitted in support of the request, and one letter has been submitted in opposition. (The opposition letter was written in April prior to the applicant's reduction of the proposal by 2' whereby the applicant has submitted a document stating that the opposition "has agreed to drop his objections, and I have agreed to lower the fence height in question to 6 feet.")
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposed 6' high solid stone fence/wall in the site's Kenny Lane front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan, partial elevations, and revised landscape plan would provide fairly reasonable assurances as to what would be allowed to materialize on the site with regard to a fence over 4' in the front yard setback. If the site plan were imposed as condition to the request, the proposal would be limited to the location shown on the site plan, and to the notations on this plan: "Proposed 6' stone wall" and "8' wooden fence – currently being changed to stone." If the partial elevations were imposed as a condition to the request, the materials and heights would be restricted to the notations on these elevations: "Entire length of fence is to be grey veneer, ledge-style stone" and the "Transition to existing 4' stone wall around the side yard at the rear corner of the housed is pictured below." Imposing the revised landscape plan as a condition to the request would require the applicant to provide the landscape materials shown on this plan as long as the 6' stone veneer wall would be located in the front yard setback as shown on the submitted site plan.

BOARD OF ADJUSTMENT ACTION: APRIL 15, 2008

APPEARING IN FAVOR: Mary Russell, 7115 S Janmar, Dallas, TX

APPEARING IN OPPOSITION: Bruce Wilke, 7227 N Janmar, Dallas, TX

MOTION #1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 078-042**, on application of Mary M. Russell, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Gaspard

AYES: 2 – Harris, Gaspard

NAYS: 3 – Richmond, Gabriel, Taft

MOTION FAILED: 2– 3

MOTION #2: Taft

I move that the Board of Adjustment, in Appeal No. **BDA 078-042**, on application of Mary M. Russell, **grant** the request of this applicant to construct and maintain an eight-

foot-tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Gabriel**

AYES: 3 – Richmond, Gabriel, Taft

NAYS: 2 – Harris, Gaspard

MOTION FAILED: 3– 2

MOTION #3: **Gaspard**

I move that the Board of Adjustment in Appeal No. **BDA 078-042**, hold this matter under advisement until **May 20, 2008**.

SECONDED: **Harris**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: **May 20, 2008**

APPEARING IN FAVOR: Mary Russell, 7115 S Janmar, Dallas, TX
Mary Spector, 7134 Kenny Lane, Dallas, TX

APPEARING IN OPPOSITION: Bruce Wilke, 7227 N Janmar, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 078-042**, on application of Mary M. Russell, **grant** the request of this applicant to construct and maintain an eight-foot-tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan, partial elevations, and revised landscape plan submitted today (with revisions dated 5-16-08) is required.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Gabriel, Schweitzer, Harris

NAYS: 1 –Taft
MOTION PASSED: 4– 1

FILE NUMBER: BDA 078-056(K)

BUILDING OFFICIAL’S REPORT:

Application of Masterplan for a variance to the side yard setback regulations at 1930 Euclid Street. This property is more fully described as Lot 1 in City Block 2/1984 and is zoned MF-2(A) which requires a side yard setback of 10 feet where there is residential adjacency for new construction. The applicant proposes to construct a multifamily residential structure and provide a 0 foot side yard setback which will require a variance of 10 feet

LOCATION: 1930 Euclid Street

APPLICANT: Masterplan

REQUESTS:

The applicant proposes to construct a multifamily residential structure and provide a 0 foot side yard setback, which will require a 10 foot variance to the side yard setback regulation.

STAFF RECOMMENDATION (Variance):

Denial

Rationale:

- The parcel of land does not have a restrictive shape or size. The parcel of land is flat and rectangular in shape (150 x 50). This property is zoned MF2(A) that requires a front yard setback of 15’, side yard setback of 10’, and rear yard setback of 15’.

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 (related to the variance):

- The site is zoned MF2 (A) and requires a minimum:
 1. front yard setback of 15 feet
 2. side yard setback of 10'
 3. and rear yard setback of 15'
- The site is currently undeveloped.
- The site is flat and rectangular in-shape (50' x150') approximately 7,500 square feet.
- Due to residential adjacency, the site is encumbered with a residential proximity slope emanating from the single family zoned property across Sears Street.
- In order to comply with the residential proximity slope, the applicant chose to design the structure to be constructed on the side property line, and ask for a variance to the 10' side yard setback rather than the residential proximity slope.

BACKGROUND INFORMATION:

Zoning:

Site: MF2 (A) (Multifamily)
North: R7.5(A) (Single family 7,500 square feet)
South: MF2 (A) (Multifamily)
East: CR (Community Retail)
West: MF2 (A) (Multifamily)

Land Use:

The subject site is undeveloped. Properties to the south are currently being developed. Properties to the west and east are single family dwellings, and properties to the east are community retail.

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:

- February 29, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 19, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 20, 2008: The Board of Adjustment Senior Planner, contacted the applicant and shared the following information by phone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the March 31st deadline to submit additional evidence for staff to factor into their analysis;
 - the April 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- April 3, 2008 the applicant submitted additional information to the Senior Planner for the Board’s consideration (see attachment A)
- April 15, 2008 The Board of Adjustment voted to hold this matter under advisement until May 20, 2008.
- May 6, 2008 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 Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

May 7, 2008 **The applicant submitted additional information to the Senior Planner for the Board's consideration (see attachment B)**

STAFF ANALYSIS:

- The applicant has submitted an elevation and site plan showing the proposed location of the multifamily structure. The site plan describes a four-unit structure 125' x 35', or an approximate footprint of 4,375 square feet.
 - The property to the south is currently under development. The properties to the north and the east are developed with single family structures.
 - The properties to the north of Sears Street are single-family structures and create a residential proximity slope applicable to the site. The code states the proximity slope extends from residentially zoned property, point of origin, at a 1 to 3 ratio and the extension of this requirement is indefinite.
 - The applicant submitted a letter of explanation (see attachment) and included the following statements:
 - "The property owner obtained a building permit for a three story, four unit structure in December 2007.
 - The applicant was notified that the permit was issued in error. The error occurred in the calculation of the residential proximity slope.
 - The construction of this proposed development will maintain a minimum ten foot separation from the next building.
 - A unity agreement will allow the owner to provide windows along this property line. This agreement will be secured should approval of this setback variance request occur."
 - DCAD records indicated the property owner Kingmark LLC, owns the two adjacent properties to the south of the site.
2. If the Board were to grant the variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the side yard setback would be limited to what is shown on this plan.

BOARD OF ADJUSTMENT ACTION: **MAY 20, 2008**

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., #640, Dallas, TX
James Hughes, 1930 Euclid, Dallas, TX

APPEARING IN OPPOSITION: John Scarborough, 1931 Euclid, Dallas, TX
Bruce Richardson, 5607 Richmond Ave., Dallas, TX
Cheryl Kellis, 2007 Summit Drive, Dallas, TX

MOTION : **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 078-056**, on application of Masterplan, **deny** the variance to the side yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Taft**

AYES: 3 – Schweitzer, Taft, Harris

NAYS: 2 – Richmond, Gabriel

MOTION PASSED: 3-2

MOTION: **Schweitzer**

I move to adjourn this meeting.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

2:44 P.M. - Board Meeting adjourned for **May 20, 2008**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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