

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JUNE 20, 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, 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, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Danny Sipes, Development Code Specialist, Mike Sultan, Chief Arborist and Trena Law, Board Secretary

10:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 20, 2006** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A May 16, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2006

MOTION: Jefferson

I move to approve the Board of Adjustment Panel A May 16, 2006 public hearing minutes.

SECONDED: Hill

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-152

BUILDING OFFICIAL'S REPORT:

Application of Howard English for a special exception to the fence height regulations at 2331 Riverway Drive. This property is more fully described as Lot 8 in City Block A/6189 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain 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: 2331 Riverway Drive

APPLICANT: Howard English

June 20, 2006 Public Hearing Notes:

- The applicant submitted a revised elevation prior to the board's briefing. This revised elevation noted the following: "The fence and post may reach 6 feet 7 inches due to ground changes."

REQUEST:

- A special exception to the fence height regulations of 2' 7" is requested in conjunction with maintaining an existing open wrought iron picket fence that, according to the Building Official's Report and the applicant, reaches 6' 7" in height in the site's Riverway Drive 25' front yard setback 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 maintain a fence that, according to the applicant, reaches a maximum height of 6' 7".
- The applicant has not submitted an elevation that denotes any part of the fence that exceeds 5' 6 1/2" in height (which is the pedestrian entry gate posts). However, the applicant has submitted a revised elevation with the following notation: "The fence and post may reach 6.7 feet due to ground changes."
- The following additional information was gleaned from the submitted survey plat/site plan:
 - The fence is noted to be 66' in length running parallel to the street and 25' on both sides of the site in the 25' front yard setback perpendicular to the street.
 - A notation stating "6' 6" at highest point, iron fence."
 - The fence location appears to be located on the site's front property line. (Its distance to the Riverway Drive pavement line cannot be derived given that the survey plat/site plan is a reduced scaled document).
- The following additional information was gleaned from both the originally submitted fence elevation and the revised submitted fence elevation:
 - The open wrought iron picket fence is comprised of 7' wide panels where the highest component of each panel is 5' 4 1/2".
- The following additional information was gleaned from the submitted "entry gate elevation":
 - The open wrought iron picket gate is 4' 6" wide with posts denoted at 5' 6 1/2" in height. (The highest component of the gate is an arched iron picket that appears to be slightly higher than the 5' 6 1/2" entry gate posts).
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.

- There are 3 single family homes that would have direct/indirect frontage to the existing 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 a front yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following information:
 - a revised elevation with a note stating “The fence and post may reach 6.7 feet due to ground changes;”
 - a map indicating the location of owners/neighbors who have indicated support of request;
 - a petition signed by 20 neighbors/owners who support the request;
 - a letter signed by a owner/neighbor who supports the request;
 - photos of the fence on the subject site; and
 - a revised elevation with a note stating “The fence and post may reach 6.7 inches due to ground changes.”

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: R-7.5 (A) (Single family district 7,500 square feet)
South: CR & SUP 1324 (Community Retail, Specific Use Permit)
East: R-7.5 (A) (Single family district 7,500 square feet)
West: R-7.5 (A) (Single family district 7,500 square feet)

Land Use:

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

April 25, 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. (Loose photographs submitted by the

applicant will be available for review at the June 20th briefing/hearing).

May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 19, 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 June 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the June 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, 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.

June 6 & 19, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachments A and B).

STAFF ANALYSIS:

- A survey plat/site plan has been submitted that denotes the location of the approximately 66' long fence relative to the property line (on the property line). The distance of the fence from the pavement line cannot be determined since the survey plat/site plan is a reduction of a scaled document.
- Elevations have been submitted in conjunction with the request. A revised fence elevation has been submitted that denotes a fence that appears to be open iron pickets. Although the actual highest dimension shown on this elevation is 5' 4 ½", the following note is on this plan: "The fence and post may reach 6.7 inches due to ground changes." An "entry gate elevation" has been submitted that indicates posts at the pedestrian gate that reach 5' 6 ½".
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There are three single family homes that have direct/indirect frontage to the existing 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 June 12th, no letters have been submitted in opposition to the special exception, and one petition (signed by 20 owners/neighbors) and one letter have been submitted in support of 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 existing fence that exceeds 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 survey plat/site plan, entry gate elevation, and revised fence elevation would assure that the existing fence is maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

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 survey plat/site plan, entry gate elevation, and revised fence elevation dated June 20, 2006 is required.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-157

BUILDING OFFICIAL'S REPORT:

Application of Brian Sauer for a special exception to the fence height regulations at 14306 Skyfrost Drive. This property is more fully described as a tract of land in City Block 8818 and is zoned R-1/2ac(A) which limits the height of a fence in the side yard to 9 feet. The applicant proposes to construct an 18 foot fence in the side yard setback which would require a special exception of 9 feet to the fence height regulations. 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: 14306 Skyfrost Drive

APPLICANT: Brian Sauer

REQUEST:

- A special exception to the fence height regulations of up to 9' is requested in conjunction with constructing and maintaining "concrete wall with stone veneer face" that ranges in height from 9' – 18' to be located in the site's 10' southern side yard setback on a site developed with a single family home.

(Note that upon submission of a revised site plan/elevation on June 5, 2006, the applicant deleted a request for a special exception to the fence height regulations of 4' that had been made in conjunction with original plans to construct and maintain an 8' high wall in the site's Skyfrost Drive 40' front yard setback).

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 person shall not erect or maintain a fence in a required side or rear yard more than 9' above grade.
The applicant requests a special exception to the fence regulations to construct and maintain, according to the revised site plan/elevation, an 18' high wall in the site's 10 side yard setback.
- On June 5, 2006, the applicant submitted a revised document regarding the proposal (see Attachment A). This document included four drawings: a "site overview," a "side yard offset detail," a "foundation detail," and an elevation.
The following additional information was gleaned from the "side yard offset detail":
 - A notation that indicates "69.75' @ 18' tall" where the wall is located on the "Property Line at S.E. Sideyard" at a "scale is @ 1" = 34.5". " (The plan indicates that the total length of the wall above 9' in the side yard is about 380' in length).
The following additional information was gleaned from the "site overview":
 - A notation on the site plan (with no scale) that indicates a "proposed concrete wall" in the "area of adjustment." (If the area of adjustment is about 380' long it appears that the wall over 9' in height in the side yard setback begins about 380' from the Skyfrost Drive front property line).
- The following additional information was gleaned from the elevation drawing:
 - A "concrete wall w/stone veneer face" that is about 375' long beginning at 9' in height, rising to 18' in height for 69.75' in length, and then decreasing to 9' in height.
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There is one single family home that the proposed wall in the side yard setback would abut. As of June 12, 2006, this homeowner (nor any other) has indicated support or opposition to the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2 ac (A) (Single family district ½ acre)
North: R-1/2 ac (A) (Single family district ½ acre)
South: R-1/2 ac (A) (Single family district ½ acre)
East: R-1/2 ac (A) (Single family district ½ acre)
West: R-1/2 ac (A) (Single family district ½ acre)

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 sites.

Timeline:

April 27, 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.

May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 19, 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 June 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the June 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 5, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, 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 revised site plan/elevation document has been submitted that denotes the location of the wall to exceed 9' in height in the site's southeastern side yard setback (on the site's southeastern side property line). This wall is noted to be approximately 380' long that gradually inclines towards the center of this length from both ends whereby 69.75' of its length will be 18' high. The revised site plan elevation document notes the fence to be a "concrete wall w/ stone veneer face."
- No landscape plan or site plan with landscape materials has been submitted in conjunction with this appeal.
- There is one single family home that the proposed wall in the side yard setback would abut. As of June 12, 2006, this homeowner (nor any other) has indicated support or opposition to the request.
- The proposed wall in the site's side yard setback would be about 380' from the site's Skyfrost Drive front property line.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 9' (whereby the proposed wall that would exceed 9' in height and be located in the side yard setback) will not adversely affect neighboring property.
- Granting this special exception of 9' with conditions imposed that the applicant complies with the submitted revised site plan/elevation would assure that the proposed wall is constructed and maintained as shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

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 revised site plan/elevation is required.

SECONDED: Gabriel

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

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

FILE NUMBER: BDA 056-159

BUILDING OFFICIAL'S REPORT:

Application of Zad Roumaya, represented by Will Pinkerton, for a special exception to the visibility obstruction regulations at 1111 S. Akard Street. This property is more fully described as Lot 1A in City Block A/441 and is zoned PD-317 which requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct a multi-family dwelling and locate a part of the structure within the required visibility triangle which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 1111 S. Akard Street

APPLICANT: Zad Roumaya
Represented by Will Pinkerton

June 20, 2006 Public Hearing Notes:

- The Board Administrator informed the board of a discovery made by the applicant on the morning of June 20th that precluded the Board's ability to take action on this matter at the June public hearing: the address for this case on the posted agenda was incorrect. (The address on the posted agenda indicated 111 S. Akard Street when the correct address for the subject site was 1111 S. Akard Street). This error would delay action on this appeal until the board's next public hearing scheduled for August 15, 2006.

REQUEST:

- A special exception to the visibility obstruction regulations is requested to complete and maintain a portion of the condominium structure in the 45'-visibility triangle at the signalized intersection of one-way westbound W. Griffin Street and S. Akard Street.

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:

- 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 applicant requests to complete and maintain a portion of a condominium structure (a balcony) in the 45'-visibility triangle at the intersection of W. Griffin Street (which is one-way westbound) and S. Akard Street on the north corner of the subject site.
- The applicant states that part of the 45' visibility triangle is being provided but due to the slope of the property, the top 2'-3' of the required triangle (an area between 2.5 – 8 feet) is obstructed by the balcony of the building.
- The applicant states that the Dallas Development Code states that a 30' visibility triangle is required at street intersections in CA (Central Area) zoning districts, and that the site's Subdistrict 3 of PD 317 is effectively a CA zoning district because of its setbacks, height restrictions, FAR, and uses that are all very similar.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 317(Planned Development District)
- North: PD No. 317(Planned Development District)
- South: PD No. 317(Planned Development District)
- East: PD No. 317(Planned Development District)
- West: PD No. 317(Planned Development District)

Land Use:

The subject site is being developed as a 49-unit condominium structure. The areas to the north, east, south, and west are developed with a mix of uses including hotel, office, and residential.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 056-008, 1111 S. Akard Street (the subject site) | <p>On October 19, 2005, the Board of Adjustment Panel B granted a request for a special exception to the parking regulations of 23 spaces. The board imposed the following condition with this request: the special exception shall automatically and immediately terminate if and when the</p> |
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1. BDA 056-046, 1111 S. Akard Street (the subject site)

multifamily use on the site is changed or discontinued. The case report states that the request was made in conjunction with constructing and maintaining a 49-unit condominium.

On December 13, 2005, the Board of Adjustment Panel A granted a request for a special exception to the sign regulations, subject to the following conditions: compliance with the submitted site plan and elevation is required; a sign-face is limited to the south side of the relocated billboard; and the poles that support the existing billboard on the site should be utilized to mount the relocated billboard. The case report states that the special exception was requested to remove one face of an existing billboard and to relocate the remaining poles and board approximately 18' to the south and 6' to the west of the existing billboard's current location.

Timeline:

- Sept. 2, 2005 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 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 16, 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 March 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the April 10th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, 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.

June 7, 2006 The Development Services Senior Engineer submitted a review comment sheet marked “No objections.” The engineer added the following comments:

- “Traffic signal at S. Akard St. and Griffin St. West.
- Griffin Street West is one-way westbound.”

STAFF ANALYSIS:

- The Development Services Senior Engineer has submitted a review comment sheet indicating that he has no objections to the request for a special exception to the visibility obstruction regulations commenting that the item in the intersection visibility triangle (a balcony) is located at a signalized intersection and at an intersection where one of the streets is a one-way street.
- The balcony located in the intersection triangle is not an issue for eastbound traffic on Griffin Street (West) since this street is a one-way westbound street.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan and elevation, a balcony on the condominium located in the top 2-3’ of the visibility triangle at the W. Griffin Street/S. Akard Street intersection triangle) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and elevation, a balcony on the condominium structure would be “excepted” into the 45’ W. Griffin Street/S. Akard Street intersection visibility triangle.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

* Due to an administrative error, the board lacked jurisdiction to hear this case and it was therefore held over to August 15, 2006.

FILE NUMBER: BDA 056-167

BUILDING OFFICIAL'S REPORT:

Application of Greenberg Farrow, represented by Jonathan Vinson of Jackson Walker, for a special exception to the landscape regulations at 11700 Preston Road. This property is more fully described as a tract of land in City Block 6378 and is zoned CR which requires mandatory landscaping. The applicant proposes to construct a building and 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 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 11700 Preston Road

APPLICANT: Greenberg Farrow
Represented by Jonathan Vinson of Jackson Walker

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a retail structure (Whole Foods Market) with a gross floor area of 60,186 square feet on a site that is developed with a shopping center (Preston Forest Shopping Center).

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:

- 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 applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the perimeter residential landscape buffer strip and the design standard requirements of the landscape regulations.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included a copy of the Chief Arborist's memo, an aerial photograph of the site, a colored landscape plan of the site, photos of the site, and letters providing additional details about the request, some of which are as follows:
 - This request is triggered since there is an increase in square footage of over 10,000 square feet from the previously existing structure. (The former structure on the site had a building footprint of 42,500 square feet; the proposed structure will have a building footprint of 60,500 square feet).
 - The shopping center in which the new grocery store is to be located has existed in basically the same configuration since the early 1960's, and was fully developed prior to the imposition of the requirements in Article X: The Landscape Regulations.
 - The applicant has asked for designation of its portion of the shopping center as an "artificial lot" pursuant to provisions in the Dallas Development Code, and the Building Official has approved the creation of this artificial lot under those regulations.
- The Dallas Development Code provides the following definition for "Artificial Lot" in Chapter X: The Landscape and Tree Preservation Regulations: "Artificial Lot means an area within the building site that is delineated by the building official or the director or park and recreation for the sole purpose of satisfying the requirements of this article."
- 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 C). 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 perimeter landscape buffer strip and the two design standard requirements of the landscape regulations.

- The special exception request is triggered by an addition of more than 10,000 square feet.
 - Deficiencies:
 1. The applicant is required to provide a 10' wide perimeter landscape buffer strip along a portion of the property where there is residential adjacency and provide therein one plant group for each 50 linear feet. (A total of 9 plant groups would be required for this site).
The applicant is proposing to provide no buffer due to existing pavement in addition to several existing utility easements.
 2. The applicant is required to provide 2 design standards from a list of 9.
The applicant is proposing to provide 0 design standards with the understanding that screening of off-street parking exists except the shrubs are not on the property.
- Factors for consideration:
- There is existing pavement (fire lane) and at least one underground utility where the applicant should be providing a 10' wide residential landscape buffer strip. As for design standards, the applicant is essentially providing screening of off-street parking; however, it is located in the right-of-way just outside the property and technically does not qualify. The only other design standard options are enhance paving or permeable paving, either of which would have to comprise at least 25% of the pavement for vehicular use. The parking lot exists already and is being re-stripped only.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed as a shopping center (The Preston Forest Shopping Center). The areas to the north and west are developed with retail and commercial uses, and the areas to the east and south are developed with single family uses.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDD 056-005, 11700 Preston Road (the subject site) | <p>On November 15, 2005, the Board of Adjustment Panel A granted a special exception to the parking regulations of 211 spaces. The board imposed the following</p> |
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conditions: The special exception shall automatically and immediately terminate if and when the retail, restaurant, and office uses on the site are changed or discontinued; that there will be a reassessment in 3 years to determine whether the special exception is still warranted; between 2 years 9 months and 2 years 11 months, the owner shall commission at the owner's expense, a parking impact study and a traffic impact study; at 2 years 11 months, the owner shall submit at the owner's expense the parking impact study and the traffic impact study to the Engineering Division of Development Services for review; at 3 years the Engineering Division of Development Services shall recommend to the applicant (owner) whether reassessment is necessary. If reassessment is recommended, the owner shall immediately at the owner's expense, submit this matter for reassessment to the Board of Adjustment. The case report stated that the request was made to request is made to: 1) accommodate the move of the Whole Foods Market location from the west side of Preston Road to the former Minyard's location in the subject site: the Preston Forest Shopping Center at the southeast corner of Preston Road and Forest Lane; and 2) to allow the existing approximately 42,500 square foot vacant grocery store space to be expanded by approximately 8,300 square feet. (With the proposed supermarket, the center would provide about 227,000 square feet of retail, restaurant, and office uses).

Timeline:

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

- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 19, 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 June 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the June 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- June 2 & 9, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B).
- June 5, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, 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.
- The District Manager in Code Compliance submitted a Review Comment Sheets marked "Has no objections."
- June 5, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment C).

STAFF ANALYSIS:

- Although the subject site is approximately 12 acres in area, the special exception is focused on an approximately 4 acre “artificial lot” inside the subject site.
- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is deficient in meeting the 10’ wide perimeter residential landscape buffer strip and the design standard requirements of the landscape regulations.
- 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 10’ wide landscape buffer strip with 9 plant groups and 2 design standards) will unreasonably burden the use of the property (in this case, if approved, with new 60,000 square foot retail structure).
 - The special exception (whereby none of the required 10’ wide landscape buffer strip with none of the required 9 plant groups, and 0 of 2 design standards 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 could be developed with the proposed 60,000 square foot retail structure, and would be “excepted” from complying with the 10’ wide landscape buffer strip and design standard requirements of the landscape regulations.

BOARD OF ADJUSTMENT ACTION: JUNE 20, 2006

APPEARING IN FAVOR: Jonathan Vinson, 900 Jackson St., #6000, Dallas, TX
Greenberg Farrow, 15443 Knoll Trail, #230, Dallas, TX

APPEARING IN OPPOSITION: Susan Boucher, 6025 Preston Haven, Dallas, TX
Colby Annett, 6017 Preston Haven, Dallas, TX
Mike Courtney, 6057 Preston Haven, Dallas, TX

MOTION: Jefferson

I move that the Board of Adjustment in Appeal No. **BDA 056-167**, on application of Greenberg Farrow, represented by Jackson Walker, **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 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: Hill

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Hill

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

1:55 P.M. - Board Meeting adjourned for June 20, 2006.

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.