

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, AUGUST 17, 2010**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Steve Harris, Johnnie Goins, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: Scott Housel, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Jerry Svec, Project Engineer and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Steve Harris, Johnnie Goins, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: Scott Housel, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 15, 2010** docket.

1:03 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 **June 15, 2010** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2010

MOTION: Schweitzer

I move **approval** of the Tuesday, **June 15, 2010** public hearing minutes.

SECONDED: Harris

AYES: 5 – Richmond, Schweitzer, Harris, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

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

LOCATION: 7905 Spring Valley Road (AKA 7879 Spring Valley Road)

APPLICANT: Brad Schweig of Sunnyland Furniture

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:

- The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
- If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
- In making this determination, the board may require the production of financial documents.
- On July 13, 2010, the applicant submitted a letter related to the request of the board to waive the \$4,200.00 filing fee to be submitted with a potential board of adjustment application (see Attachment A).

Note: The original request, eliminating 33 parking spaces from the property located at 7879 Spring Valley, was in response to the donation of land to accommodate the extension of the Preston Ridge hike and bike trail. Although the City has relocated the trail to the east side of Coit Road, it has been determined that the property effected in the original application, on the west side, would continue to be utilized to improve and beautify the area, and the land donation would still need to be required.

Timeline:

June 24, 2003 The Board of Adjustment Panel A granted an application made by RANDCO for a special exception to the parking regulations of 33 spaces on property located at 7879 Spring Valley: BDA023-092. The board imposed the following condition with the request: The special exception of 33 spaces automatically and immediately terminates if and when the hike and bike trail on the site is changed or discontinued. The case report stated that the request was made in conjunction with eliminating 33 parking spaces from the property located at 7879 Spring Valley owned by Sunnyland Home Center; that eliminating these spaces on the site which is part of the existing Spring Valley Crossing Shopping Center will allow the Preston Ridge hike and bike trail to be extended along Coit Road; and that if the hike and bike trail is located on the site, part of the existing retail center in which the site is located would be providing 386 of 419 required spaces on the site. (Note that on March 25, 2003, the Board of Adjustment Panel A waived the filing fee to be submitted in conjunction with this application).

July 13, 2010 The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).

July 15, 2010: 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."

July 15, 2010: The Board Administrator emailed the applicant the following information:

1. the provision from the Dallas Development Code that provides the standard as to how the board is able to waive the filing fee for a board of adjustment application (51A-1.105(b)(6)) where in some cases, the applicant may want to submit financial documents as in but not limited to copies of 1040's, W-4's, bank statements, etc. - all with account numbers redacted that substantiates how payment of the fee results in substantial financial hardship to them, the applicant);
2. a document that provided his public hearing date and other deadlines for submittal of additional information to staff/the board; with notice that he would not receive a written mailed notice on this hearing – that his attendance (or someone who can speak on your behalf) at the August 17th public hearing to be held at 1:00 p.m. in the City Council Chambers of Dallas City Hall was strongly encouraged;
3. the board's rule pertaining to documentary evidence; and
4. a brochure that explains the board of adjustment

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2010

APPEARING IN FAVOR: David Schweig, 7905 Valley Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

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

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Harris, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-078

BUILDING OFFICIAL'S REPORT:

Application of Adiena Bednarz for a special exception to the fence height regulations at 5221 Walnut Hill Lane. This property is more fully described as Lot 2 in City Block 5517 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 and maintain a 19 foot 6 inch fence which will require a special exception of 15 foot 6 inches.

LOCATION: 5221 Walnut Hill Lane

APPLICANT: Adiena Bednarz

REQUEST:

- A special exception to the fence height regulations of 15' 6" is requested in conjunction with relocating and maintaining an open perforated steel fence ranging from 5' - 10' 4" in height, part of which is proposed to be located atop an existing retaining wall that reaches a maximum height of 9' 6" on the far eastern side of the subject site in the site's 40' front yard setback on a site developed with a single family home.

Note that this request appears to be the same as that which was granted on this site by Board of Adjustment Panel A in March of 2010 (BDA090-029) with the only exception being to account for an existing retaining wall in the front yard setback that was not accounted for in this original application - an existing retaining wall that is virtually not visible to those passing by the site along Walnut Hill Lane.

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.
The applicant has submitted a site plan and an elevation document indicating a proposal that would be located in the site's front yard setback and would reach a maximum height of 19' 6" - in this case an open perforated steel fence ranging from 5' - 10' 4" high to be located atop an existing retaining wall that reaches a maximum height of 9' 6". (The existing retaining wall in the site's front yard setback is shown to encompass approximately 30' in length parallel to the street and approximately 12' in length perpendicular to the street on the far eastern side of the subject site).
- The submitted site plan indicates that the proposal runs approximately 200' in length across the site at distances of 0' – 36' from the property line (or 18' – 55' from the pavement line). Approximately 12' of the proposed open perforated steel fence will be located perpendicular to the street and be located atop the existing 9' 6" high retaining wall.
- A note on the submitted elevation states the following:
 - "The perforated steel fence panels with 0.75" perforations staggered 60 degrees on 1" centers offers 51% open area. The owner intends to allow the steel to age naturally, which is to say, unfinished, where it is expected to become brown in color, blending with the natural landscape."
- The proposal is located on the site where one single family home has direct frontage. This lot has an approximately 6.5' high open wrought iron fence which appears to be a result of an approved fence height special exception by the Board of Adjustment in August of 1999 – BDA089-262.
- The Board Administrator conducted a field visit of the site and surrounding area along Walnut Hill Lane (generally from Gaywood Road to Meadowbrook Drive) and noted no other visible fences beyond what has been described above four feet high which appeared to be located in the front yard setback.

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, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 090-029, Property at 5221 Walnut Hill Lane (the subject site)

On March 16, 2010, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations to allow a 6' 6" and imposed the following condition: submitted revised site plan/elevation document is required. The case report stated that the request was made in conjunction with relocating and maintaining (according to a revised Building Official's Report) a 10' 6" high "fence" or (according to the revised site plan/elevation submitted on March 1st) a perforated steel fence ranging from 5' – 10' 4" in height in the site's 40' front yard setback on a site developed with a single family home. The case report noted that the revised Building Official's Report conveyed a 6' 6" special exception request, however, nothing on the submitted revised plan/elevation denoted any part of the proposal to be higher than 10' 4" in height.

On May 18, 2010, the Board of Adjustment Panel A waived the two year limitation on this request in order for the applicant to submit a new application for a special exception to the fence height regulations at a greater height to account for an existing retaining wall on the site that had not been included as part of the originally submitted application.

2. BDA 989-262, Property at 5222 Walnut Hill Lane (the lot immediately south of the subject site)

On August 24, 1999, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations to allow a 3' 6" and imposed the following condition: compliance with the submitted site/landscape plan, and fence and gate elevations is required. The case report stated that the request was made to construct and maintain an approximately 6' 4" high open wrought iron fence and gate, approximately 6' 8" high metal posts, and an approximately 7.5' high gate on the site.

Timeline:

- April 28, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2010: 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."
- July 15, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- August 4, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "No objection to fence height. Recommend conditions that fence must comply with all visibility and floodplain requirements."

STAFF ANALYSIS:

- The request focuses on relocating and maintaining an open perforated steel fence ranging from 5' - 10' 4" in height, part of which is proposed to be located atop an existing retaining wall that reaches a maximum height of 9' 6" on the far eastern side of the subject site in the site's 40' front yard setback on a site developed with a single family home.
- Note that this request appears to be the same as that what was granted on this site by Board of Adjustment Panel A in March of 2010 (BDA090-029) with the only

exception being to account for an existing retaining wall in the front yard setback that was not accounted for in this original application - an existing retaining wall that is virtually not visible to those passing by the site along Walnut Hill Lane.

- The submitted site plan indicates that the proposal runs approximately 200' in length across the site at distances of 0' – 36' from the property line (or 18' – 55' from the pavement line). Approximately 12' of the proposed open perforated steel fence will be located perpendicular to the street and be located atop the existing 9' 6" high retaining wall.
- The submitted elevation denotes that the proposed fence is to be made of "perforated steel."
- The submitted revised site plan/elevation document does not denote any existing or proposed landscape materials to be located adjacent to the proposal.
- The proposal is located on the site where one single family home has direct frontage. This lot has an approximately 6.5' high open wrought iron fence which appears to be a result of an approved fence height special exception by the Board of Adjustment in August of 1999 – BDA089-262.
- No other visible fences beyond what has been described above four feet high which appeared to be located in the front yard setback were noted in a staff field visit of the site and immediate area – along Walnut Hill from Gaywood Road to Meadowbrook Drive.
- As of August 9, 2010, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal would reach 19' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 15' 6" with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal would be relocated and maintained in the location and of the heights and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 090-078** 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: Jackson

AYES: 5 – Richmond, Schweitzer, Harris, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-081

BUILDING OFFICIAL’S REPORT:

Application of Ralph and Barbara Babb for a special exception to the fence height regulations at 9054 Briarwood Lane. This property is more fully described as Lots 10 and 11 in City Block 5/ 5578 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 9 foot 6 inch fence which will require a special exception of 5 feet 6 inches.

LOCATION: 9054 Briarwood Lane

APPLICANT: Ralph and Barbara Babb

REQUEST:

- A special exception to the fence height regulations of 5’ 6” is requested in conjunction with maintaining 9’ 6” high existing brick columns, and replacing an existing open wrought iron fence with (according to the applicant) a slightly higher 8’ 3” high board on board cedar fence/wall in one of the site’s two 40’ front yard setbacks: Northwest Highway. The site is currently developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the east corner of Northwest Highway and Briarwood Lane. Regardless of how the Northwest Highway side of the site functions as the

site's front yard and the Briarwood Lane side functions more as a side yard, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Northwest Highway given that this frontage is the shorter of the two street frontages, and a front yard setback along Briarwood Lane in order to maintain the continuity of the established front yard setback along this street given a lot immediately southeast of the subject site that fronts/faces Briarwood Lane.

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 has submitted a site plan and a revised elevation indicating a fence/wall/column proposal that is to be located/limited to the site's front yard setback along Northwest Highway, and would reach a maximum height of 9' 6". (No part of the application is made to construct/maintain a fence higher than 4' in height located in the site's Briarwood Lane front yard setback).

- The following additional information was gleaned from the submitted site plan:
 - The proposal is shown to be approximately 340' in length parallel to Northwest Highway.
 - The proposal is shown to be located approximately on the property line and approximately 13' from the pavement line.
- The proposal would be located on the site where one single family home across the six lane divided street would have direct frontage – a home/lot with a solid approximately 12' high solid brick fence/wall in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Northwest Highway (generally 500 feet east and west of the site) and noted one other visible fence above four feet high which appeared to be located in the front yard setback beyond the fence/wall mentioned above. This fence is located immediately west of the subject site and is an approximately 7.5' high solid wood fence with 8' high wood columns and a 8' high wood gate with 10' high entry columns – a request that appears to be a result of an approved fence height special exception granted by Board of Adjustment Panel A in May of 2004: BDA034-162.
- On July 19 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included two amended elevations to the originally submitted materials that reflected a revision of the height of the fence from 8' to 8' 3" and denotes that the existing height of the brick columns to be 9' 6", and additionally denotes that the fence will be board on board cedar panels.

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, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 045-215, 9039 Briarwood Lane (the lot immediately west of the subject site)

On December 12, 2005, the Board of Adjustment Panel C granted a request for a special exception to fence height regulations of 7', subject to the following condition: compliance with the submitted revised site plan, revised landscape plan and revised fence elevation is required. The case report states that the request was made in conjunction with constructing the following in the 40'-Shadywood Lane and Briarwood Lane front yard setbacks on a site developed with a single family home: a 9'-high open wrought iron fence, a 9'-high stone wall, and two, 9'-high solid wood gates with 10.5'-high columns – a fence that would replace a 7'-high open iron fence that existed on the site.

2. BDA 95-036, 9039 Briarwood Lane (the lot immediately west of the subject site)

On March 28, 1995, the Board of Adjustment granted a request for a special exception to fence height regulations of 3' 9", subject to the following conditions: 1) Compliance with the submitted site plan, landscape plan, and elevation is required; 2) compliance with the provision that no protected trees (8 inch caliper or greater) can be removed without a permit. The case report states that the request was made in conjunction with constructing approximately 825 linear feet of a 7' 3" open metal fence with metal posts located approximately 7' on center along Briarwood Lane and Shadywood Lane; and an approximately 50 linear foot 7' 6" solid stone fence along Shadywood Lane.

2. BDA 89-047, 9039 Briarwood Lane (the lot immediately west of

On June 13, 1989, the Board of Adjustment Panel A denied a request to erect a 7' 9"

the subject site)

3. BDA 034-162, 4618 Shadywood Lane (two lots west of the subject site)

fence without prejudice. It appears from information within the case file that the fence was to be constructed of open metal cyclone material.

On May 18, 2004, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6', subject to the submitted site plan and elevation. The case report states that the request was made to construct a 7.5'-high solid wood fence with 8'-high wood columns and a 8'-high wood gate with 10'-high entry columns in the Northwest Highway front yard setback.

Timeline:

- June 18, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 19, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment A).
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

August 4, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "No objection to fence height. Recommend conditions that fence must comply with all visibility and floodplain requirements."

STAFF ANALYSIS:

- The request focuses on maintaining 9' 6" high existing brick columns, and replacing an existing open wrought iron fence with (according to the applicant) a slightly higher 8' 3" high board on board cedar fence/wall in one of the site's two 40' front yard setbacks: Northwest Highway.
- A site plan and a revised elevation have been submitted indicating a fence/wall/column proposal that reaches a maximum height of 9' 6", and is limited to the site's front yard setback along Northwest Highway. The site plan indicates that the proposal is about 340' in length parallel to Northwest Highway, is approximately on the property line or about 13' from the pavement line.
- The proposal would be located on the site where one single family home across the six lane divided street would have direct frontage – a home/lot with a solid approximately 12' high solid brick fence/wall in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Northwest Highway (generally 500 feet east and west of the site) and noted one other visible fence above four feet high which appeared to be located in the front yard setback beyond the fence/wall mentioned above. This fence is located immediately west of the subject site and is an approximately 7.5' high solid wood fence with 8' high wood columns and a 8' high wood gate with 10' high entry columns – a request that appears to be a result of an approved fence height special exception granted by Board of Adjustment Panel A in May of 2004: BDA034-162.
- As of August 9, 2010, five letters had been submitted to staff in support of the proposal, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 9' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 5' 6" with a condition imposed that the applicant complies with the submitted site plan and revised elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2010

APPEARING IN FAVOR: Ralph Babb, 9054 Briarwood Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-081**, on application of Ralph and Barbara Babb, **grant** the request of this applicant to construct and maintain a 9-foot, 6-inch high fence in the front yard 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 revised elevation is required

SECONDED: Jackson

AYES: 4 – Richmond, Schweitzer, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

***Member Steve Harris recused himself and did not hear or vote on this matter.**

FILE NUMBER: BDA 090-084

BUILDING OFFICIAL’S REPORT:

Application of Dallas Cothrum, represented by Masterplan, for a special exception to the parking regulations at 5130 Belmont Avenue. This property is more fully described as Lots 3B-3H, 3J, 4A-4H, and 4-8 in City Block C/1993 and is zoned MF-2(A) which requires parking to be provided. The applicant proposes to construct and maintain structures for multifamily use and provide 172 of the required 207 parking spaces which will require a special exception of 35 spaces.

LOCATION: 5130 Belmont Avenue

APPLICANT: Dallas Cothrum
Represented by Masterplan

August 17, 2010 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment B). This information was an August 13th email written by the applicant stating his agreement with a condition that was suggested by staff with regard to the maintenance and signage as well as enforcement of parking along the alley right of way being the responsibility of the property owner.

REQUEST:

- A special exception to the off-street parking regulations of 35 parking spaces (or a 17 percent reduction of the required off-street parking) is requested in conjunction

with constructing and maintaining a 106 unit/143 bedroom multifamily development on a site that is currently undeveloped. The applicant proposes to provide 172 of the required 207 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. The special exception of 35 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued.
2. The installation and maintenance of signage, enforcement of any parking requirements, and keeping the alley ROW clear of parked vehicles is the responsibility of the property owner, not the City of Dallas.

Rationale:

- The Sustainable Development Department Project Engineer supports the request based on the submitted professional engineer's comparative traffic study that indicates that the number of spaces proposed will be adequate.
- The applicant has substantiated how the parking demand generated by the multifamily 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.

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 off-street parking requirement:
 - Multifamily: 1 space per 500 square feet of dwelling unit floor area within a building site.
 The application materials and Building Official's Report state that 172 (or 83 percent) of the required 207 spaces are proposed to be provided.
- On August 6, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that provides additional details about the request; and
 - an updated parking study, site plan, and various elevations of the project.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2 (A) (Multifamily)
North: PD No. 462 (Planned Development)

South: MF-2 (A) (Multifamily)
East: MF-2 (A) (Multifamily)
West: MF-2 (A) (Multifamily)

Land Use:

The subject site is undeveloped. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial and residential uses.

Zoning/BDA History:

1. BDA078-097, Property at 5130 Belmont Avenue (the subject site)

On August 12, 2008, the Board of Adjustment Panel A granted a request for a special exception to the tree preservation regulations, and imposed the following conditions:

1. A preliminary landscape plan and a tree mitigation plan must be submitted to the chief arborist by December 10, 2008. (A building permit must be issued by February 8, 2009.);
2. A letter of credit or performance bond must be submitted to the chief arborist by October 11, 2008 for the cost of purchasing and planting 363 caliper inches of trees with an expiration date that is no sooner than 3 months after the board approved date for completing tree mitigation.

The case report stated that the applicant's representative provided the following information to the Board of Adjustment's Senior Planner: The property was original developed as apartments; a few years ago, Perry Homes purchased the property and demolished the apartments and trees to accommodate a shared access development; Perry Homes constructed the first phase of the shared access townhouse development and then decided to stop working in the Dallas market; the new owner plans on developing the property with a multi-family project, similar to what is being constructed across Belmont Avenue; and the applicant requests an additional 24 months to complete the remainder of tree mitigation

as they continue to design the project. This would be approximately 4 years from the date of the tree removal permit.

2. BDA056-115, Property at 5130 Belmont Avenue (the subject site)

On April 18, 2006, the Board of Adjustment Panel A granted a request for a special exception to the landscape regulations, and imposed the following conditions:

1. Thirty-one 2-inch diameter site trees must be located anywhere within the development;
2. Sixteen 3-inch diameter street trees must be located between 2 1/2 and 10 feet from back of curb; and
3. Twenty percent of the shared access development must be designated as landscape site area (any permeable area or concrete for pedestrian use only).

The case report stated that the request was made in conjunction with the construction of a shared access development.

Timeline:

- June 23, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 15, 2010: 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.”
- July 15, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

August 6, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 6, 2010: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Applicant submitted a comparative traffic study prepared by a professional engineer indicating the number of spaces proposed will be adequate. Since the parking off the alley is on private property, I recommend a condition be added to the board’s decision to reiterate: “The installation and maintenance of signage, enforcement of any parking requirements, and keeping the alley ROW clear of parked vehicles is the responsibility of the property owner, not the City of Dallas.”

STAFF ANALYSIS:

- This request focuses on the applicant’s proposal to construct and maintain a 106 unit/143 bedroom multifamily development on the subject site that is currently undeveloped, and provide 172 of the required 207 off-street parking spaces.
- The Sustainable Development Department Project Engineer supports the request based on the information submitted by the applicant with the condition that the Board impose a condition stating that the installation and maintenance of signage, enforcement of any parking requirements, and keeping the alley ROW clear of parked vehicles is the responsibility of the property owner, not the City of Dallas.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the multifamily use does not warrant the number of off-street parking spaces required, and
 - The special exception of 35 spaces (or 17 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 35 spaces automatically and immediately terminates if and when the multifamily use is changed or discontinued, the applicant would be allowed to

develop/maintain the site with this specific use and with providing 172 of the 207 off-street parking spaces required by the code.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2010

APPEARING IN FAVOR: Dallas Cothrum, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: Rob Vineyard, 2505 Madera, Dallas, TX
Bruce Richardson, 5607 Richmond Ave., Dallas, TX

MOTION: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 090-084**, on application of Dallas Cothrum, 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 35 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use 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 of 35 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued.
- The installation and maintenance of signage, enforcement of any parking requirements, and keeping the alley right-of-way clear of parked vehicles is the responsibility of the property owner.

SECONDED: Goins

AYES: 5 – Richmond, Schweitzer, Harris, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-062

BUILDING OFFICIAL’S REPORT:

Application of Jerry C. Moreno to appeal the nonconforming use compliance date set by the City Council on April 27, 2005 at 1623 N. Hall Street. This property is more fully described as Lot 11 in City Block 3/0506 and is zoned PD-298 (Subarea 1) which requires that those uses that became nonconforming as a result of city council action on April 27, 2005, must be brought to conformance no later than April 26, 2010. The applicant requests a later conformance date for the nonconforming vehicle or engine repair or maintenance use.

LOCATION: 1623 N. Hall Street

APPLICANT: Jerry C. Moreno

August 17, 2010 Public Hearing Notes:

- The Board Administrator informed the board members at their briefing and the public at the public hearing of staff's discovery the week prior to the public hearing of the fact that this application was not properly noticed/advertised, and as a result, action on this application must be delayed until the next regularly scheduled public hearing in order for staff to re-notice/re-advertise this application.

REQUEST:

- An application is made for the Board of Adjustment to appeal a City Council ordinance-imposed compliance date of April 26, 2010 for a nonconforming vehicle or engine repair or maintenance use (DBA A-Auto Upholstery Paint and Body/Downtown Auto Upholstery) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES:

Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate that a Certificate of Occupancy (CO # 9105031058) was issued on May 3, 1991, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The owner of use on the site could transition the use to any use that is permitted by right in the site's PD 298 (Subarea 1) zoning classification.
- On June 7, 2010, a subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- As of August 9, 2010, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Subarea 1) (Planned Development)
North: PD No. 298 (Subarea 1) (Planned Development)
South: PD No. 298 (Subarea 1) (Planned Development)
East: PD No. 298 (Subarea 7) (Planned Development)
West: PD No. 298 (Subarea 1) (Planned Development)

Land Use:

The site is currently developed with nonconforming vehicle or engine repair or maintenance use (A-Auto Upholstery Paint and Body/Downtown Auto Upholstery). The

area to the north appears to be undeveloped; the area to the east appears to be developed with commercial uses; the area to the south appears to be developed with office uses; and the area to the west appears to be 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:

- April 14, 2010: 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 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 7, 2010: A subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- June 7, 2010: A subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The vehicle or engine repair or maintenance use on the subject site is a nonconforming use. City records indicate that a Certificate of Occupancy (CO # 9105031058) was issued on May 3, 1991, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of

the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The Dallas Development Code states the following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recover his investment in the use (up to the date of nonconformance) by the conformance date set by this subsection of the ordinance which in this case is April 26, 2010.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- As is the case with any nonconforming use, the owner of the use could transition the nonconforming vehicle or engine repair or maintenance use on the site to any use that is permitted by right in the site's PD No. 298 (Subarea 1) zoning classification.

As of August 9, 2010, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-062**, hold this matter under advisement until **September 14, 2010** and order staff to re-notice and re-advertise this case.

SECONDED: **Jackson**

AYES: 5 – Richmond, Schweitzer, Harris, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Harris**

I move to adjourn this meeting.

SECOND: **Goins**

AYES: 5– Richmond, Schweitzer, Harris, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:59 P.M. - Board Meeting adjourned for **August 17, 2010**.

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.