

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
TUESDAY, SEPTEMBER 20, 2005**

MEMBERS PRESENT AT BRIEFING: Randall White, Chair, Ben Gabriel, regular member, Marla Beikman, regular member and Linda Wise, alternate member

MEMBERS ABSENT FROM BRIEFING: Peggy Hill, Panel Vice-Chair, Rev. H.J. Johnson, regular member

STAFF PRESENT AT BRIEFING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Danny Sipes, Development Code Specialist, Jennifer Pitner, Senior Planner, and Michael Sultan, Chief Arborist

MEMBERS PRESENT AT HEARING: Randall White, Chair, Ben Gabriel, regular member, Marla Beikman, regular member and Linda Wise, alternate member

MEMBERS ABSENT FROM HEARING: Peggy Hill, Panel Vice-Chair, Rev. H.J. Johnson, regular member

STAFF PRESENT AT HEARING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Ileana Fernandez, Asst. City Attorney, Claire Swann, Asst. City Attorney, Danny Sipes, Development Code Specialist, Jennifer Pitner, Senior Planner, and Michael Sultan, Chief Arborist

10:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's September 20, 2005 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 August 16, 2005 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: September 20, 2005

MOTION: Gabriel

I move to approve the Board of Adjustment August 16, 2005 public hearing minutes.

SECONDED: Beikman

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

A briefing will be conducted by the Assistant City Attorney to the Board of Adjustment on zoning and land use bills from the 79th Texas Legislature (see Attachment A).

***This was not an action item.**

FILE NUMBER: BDA 045-269

BUILDING OFFICIAL'S REPORT:

Application of Genesis Design Group, represented by Stacy Smith, for a special exception to the landscape regulations at 2215 Canada Drive. This property is more fully described as Lots 15-16 in City Block 19/7133 and is zoned CR which requires landscaping to be provided with new construction. The applicant proposes to construct a building and provide an alternate landscaping plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2215 Canada Drive

APPLICANT: Genesis Design Group
Represented by Stacy Smith

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing a sanctuary/office/preschool structure on a site that is developed with an existing church and private school (West Dallas Community Church).

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 has submitted a revised landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from the requirement to provide a 10'-wide residential landscape buffer strip and the required number of design standards.
- 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.
- On September 7, 2005, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment B). The memo stated the following:

- The applicant is requesting relief from the requirement to provide a 10' wide landscape buffer strip.
- The special exception request is triggered by new construction.
- Deficiencies:
 1. The applicant is required to provide a 10' wide landscape buffer strip where residential adjacency exists. (In this case, 9 plant groups are required for the 426 linear feet along the western property line. Since there is a zoning requirement to provide a 6' solid screen along the property line where residential adjacency exists, each plant group must contain either one large canopy tree or two large non-canopy trees).
The applicant is proposing to provide a 5' wide landscape buffer strip that contains 9 plant groups utilizing a combination of large canopy and non-canopy trees).
 2. The applicant is required to provide two design standards.
The applicant is proposing to provide one design standard.
- Factors for consideration:
 - The applicant is providing in excess of 60 site trees and 20 street trees.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides further details about the request and why it should be granted;
 - a revised landscape plan,
 - a revised grading plan,
 - a revised architectural site plan, and
 - photos of the site and surrounding area. (These photos will be available for review upon request at the briefing/public hearing).

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: A (A) (Agricultural)
South: PD No. 508 (Planned Development District)
East: CR (Community retail)
West: MF-2 (A) (Multifamily)

Land Use:

The subject site is developed with a church and private school (The West Dallas Community Church). The area to the north is the Trinity River; the area to the east is developed with what appears to be single family uses; the area to the south is developed as a park (Calypso Park); and the area to the west is undeveloped.

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:

June 24, 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.

July 14, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 15, 2005: 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 July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

No review comment sheets were submitted in conjunction with this request, however, the City of Dallas Chief Arborist submitted a

memo that has been detailed in the "General Facts" section of this case report (see Attachment B).

Sept. 1, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- Granting this landscape special exception request, subject to a condition that the applicant comply with the submitted revised landscape plan, will allow the site to be developed with a new sanctuary/office/preschool structure with the following "exceptions" to the landscape regulations:
 - a 5'-wide (rather than the 10'-wide) landscape buffer strip would be provided on the west side of the site, an area on the site that is adjacent to land that, according to the applicant, is owned by the Trinity River Levee District, and that is (on occasion) filled with storm water that discharges into the Trinity River; and
 - one design standard would be provided on the site (rather than the two design standards that are required).

BOARD OF ADJUSTMENT ACTION: September 20, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment **grant** application **BDA 045-269** 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 revised landscape plan is required.

SECONDED: Gabriel

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 045-293

BUILDING OFFICIAL'S REPORT:

Application of Warren S. Houser for a special exception to allow an additional dwelling unit at 9816 Redondo Drive. This property is more fully described as Lot 10 in City Block 8/5331 and is zoned R 10 (A), which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 9816 Redondo Drive

APPLICANT: Warren S. Houser

REQUEST:

A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 1-story garage/cabana structure.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

GENERAL FACTS:

1. “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
2. The subject site is 19,980 square feet in area and developed with, according to DCAD records, a single family home that is in good condition, built in 1950 with 2,504 square feet of living area.
 - The site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 21’ x 34’ or is about 714 square feet in area.
 - The floor plan shows a garage area of about 500 square feet or 23’ 10” x 21’. The cabana or “dwelling unit” area is about 214 square feet or 10’ 2” x 21’.

- The site plan indicates that the additional “dwelling unit” structure will be located 3’ from the nearest property line which in this case is the side property line on the west and will be 21’ from the rear property line.
- The submitted elevation indicates that the 1-story additional “dwelling unit” structure will be approximately 11’ in height.
- The floor plan indicates space for a 2-car garage, a cabana room, closet, kitchen, and bath.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

BACKGROUND INFORMATION:

Zoning:

Site: R-10 (Single family residential 10,000 square feet)
North: R-10 (Single family residential 10,000 square feet)
South: R-10 (Single family residential 10,000 square feet)
East: R-10 (Single family residential 10,000 square feet)
West: R-10 (Single family residential 10,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- August 1, 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.
- August 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 23, 2005: 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 September 9th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Pitner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The proposed 1-story "dwelling unit" structure appears to meet all setback, lot coverage, and height regulations.
- The proposed structure will have a garage that is accessed from the alley.
- The submitted site plan indicates there would be a distance about 21' from the garage door to the alley.
- The Accessory Structure code limits the area of accessory structures to 25% of the primary structure's area, excluding the area for parking. The proposed structure is 8.5% of the primary structure. The footprint of the proposed structure is 28.5% of the primary structure.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

- If the Board were to approve the special exception and variance request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed “dwelling unit” structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 1-story garage/cabana structure.

BOARD OF ADJUSTMENT ACTION: September 20, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment **grant** application **BDA 045-293** 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 elevations is required; and
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: Gabriel

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 045-257

BUILDING OFFICIAL'S REPORT:

Application of Carolyn E. Roberts for a special exception to allow a second dwelling unit and a variance to the side yard, rear yard, height, and floor area ratios regulations at 6535 Winton Street. This property is more fully described as Lot 7 in City Block 12/2971 and is zoned R 7.5 (A) which allows only 1 dwelling unit per lot, and requires a 5 foot side and rear yard setback, limits the height of this accessory building to 17 feet 6 inches, and limits the floor area of an accessory structure (excluding floor area used for parking) to 25% of the floor area of the main structure or 391 square feet. The applicant proposes to construct an addition as a second dwelling unit and provide a 3 foot side yard setback, a 3 foot rear yard setback, a height of 21 feet 6 inches, and a floor area of 678 square feet or 43% of the floor area of the main structure. This requires a special exception to allow a second dwelling unit, and a variance of 2 feet to the side yard setback regulations, 2 feet to the rear yard setback regulations, 4 feet to the height

regulations, and a variance of 287 square feet or 18% to the floor area ratio limitation. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 6535 Winton Street

APPLICANT: Carolyn E. Roberts

September 20, 2005 Public Hearing Notes:

- The Board Administrator identified a discovery made by staff on the morning of September 16th that precluded the Board's ability to take action on this matter at their public hearing: the address for this case on the posted agenda was incorrect. (The address on the posted agenda indicated 6335 Winton Street when the correct address for the subject site was 6535 Winton Street). The administrator informed the board that the address had been correctly conveyed in the notices sent to property owners and in the newspaper advertisement, therefore would not require renote/readvertisement.

REQUESTS:

- A number of appeals have been made in this application in conjunction with replacing an existing detached 1-story garage with a 2-story garage/fitness room/office/dwelling unit structure on a site developed with a single family home. The appeals in this application are as follows:
 1. a special exception to the single family use regulations for an additional "dwelling unit" structure;
 2. a variance to the side yard regulations of 2';
 3. a variance to the rear yard regulations of 2';
 4. a variance to the height regulations of 4'; and
 5. a variance to the floor area ratios regulations of 287 square feet (or 18%).

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The applicant has submitted a revised site plan that indicates a “Proposed 2 story garage/office” that will have the same building footprint (28’ 4” x 20’ 4”) and be in the same location as an existing “one story wood garage” shown on the same plan.
- The applicant has submitted a floor plan document that indicates the following four drawings:
 - a “Demo Plan – First Floor”
 - a “New First Floor Plan” indicating spaces allocated for a garage, a storage room, and a work room;
 - a “New Second Floor Plan” indicating spaces allocated for a storage room, a fitness room, an open room, an office, a bathroom, a closet, and a vestibule;
 - A “New Second Floor Plan” that provides other details specifically pertaining to location for a treadmill, tankless water heater, and glass block wall.
- The floor plan document establishes that the proposed structure will be 28’ x 20’ in area.
- The applicant has submitted an elevation document that indicates a north, south, east, and west elevation of the proposed structure. The elevations note the maximum height of the 2-story structure from the ground line to the top of the roof pitch to be 21’ 5”.
- The elevation document indicates that the west elevation of the structure has no windows and that the north elevation adjacent to the alley has only a small band of windows on the 2nd floor.

- The Dallas Development Code requires a 5'-side yard setback for structures accessory to a residential use above 15' in height on lots zoned R-7.5(A).
The applicant is proposing to provide a 3'-side yard setback on the western side of the site for the approximately 21.5'-high structure which would require a variance of 2' to the side yard setback regulations.
- The Dallas Development Code requires a 5'-rear yard setback for structures accessory to a residential use above 15' in height and adjacent to an alley on lots zoned R-7.5(A).
The applicant is proposing to provide a 3'-rear yard setback on the northern side of the site for the approximately 21.5'-high structure which would require a variance of 2' to the rear yard setback regulations.
- The Dallas Development Code requires that the height of an accessory structure can not exceed the height of the main building on lots zoned R-7.5(A).
According the Building Official's Report and plans submitted by the applicant, the height of the accessory structure on this site is limited to 17' 6".
The applicant is proposing to construct a 21.5'-high structure which (according to the Building Official's Report) would require a variance of 4' to the height regulations.
- The Dallas Development Code requires that the total floor area of any individual accessory structure on a lot, excluding floor area used for parking, may not exceed 25% of the floor area for the main building on lots zoned R-7.5(A).
According the Building Official's Report, the floor area of the proposed accessory structure on this site is limited to 25% of the floor area of the main structure or 391 square feet.
The applicant is proposing to construct an accessory structure with a floor area of (according the Building Official's Report) 678 square feet or 43% of the floor area of the main structure which (according to the Building Official's Report) would require a variance of 18% or 287 square feet to the floor area ratio limitation.
- The subject site is zoned R-7.5(A), flat, rectangular in shape (125' x 60'), 7,500 square feet in area, and according to DCAD records, developed with the following:
 - a single family home built in 1952 that is in "average" condition with 1,544 square feet of living area; and
 - a 560 square foot detached garage.
- The Dallas Development Code defines "family" as "individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption."
- The Dallas Development Code defines "single family" use as "one dwelling unit located on a lot."
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures.
- The Dallas Development Code had defined "dwelling unit" as "one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions." The Dallas Development Code *now* defines "dwelling unit" as "one or more rooms designed to be a single housekeeping unit to

accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”

- If this special exception request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - photos of what the applicant states are houses larger than hers with detached garages in the area (which will be shown in the staff’s power point show at the briefing);
 - petitions signed by neighbors in support of the requests;
 - an elevation that shows the height of the existing single family home on the site;
 - a table showing other properties that are one story and have detached garages with additions;
 - a letter that explained in further detail why the requests should be granted;
 - a revised site plan/survey plat for the site where the applicant has shown that the proposed 2-story garage/office will be on the same location and sized as the existing 1-story garage; and
 - a revised elevation that inverts the originally submitted “north elevation” of the proposed accessory structure.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a 1-story single family home with a 1-story detached garage. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

June 17, 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.

July 28, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 28, 2005: 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 August 5th deadline to submit additional evidence for staff to incorporate into the board's docket;
- 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 15-
Sept. 8, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

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

STAFF ANALYSIS (regarding the dwelling unit special exception request):

- The 2-story “dwelling unit” structure will additionally require variances to rear and side yard setback, floor area ratios, and height regulations.
- If the Board were to approve this request (along with the requests for variances to the rear yard, side yard, height, floor area ratios regulations), subject to imposing a condition that the applicant comply with the submitted revised elevation and revised site plan, the “dwelling unit” structure would be restricted to the specific location, size, and height shown on the submitted site/floor plan and elevation, which in this case is a 2-story structure that includes a “garage,” a “work room;” two “storage rooms,” an “open room,” an office, a “fitness room;” bathroom, closet, and vestibule.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.
- As of September 9, 2005, staff had received no letters in opposition of this request, and several petitions signed by 20 neighbors/owners in support of the second dwelling unit; by 3 neighbors/owners in support of the second dwelling unit with side, rear, height and floor area ratio variances; by 3 neighbors/owners in support of the rear and side yard variance requests; and by 3 neighbors/owners in support of the height variance and floor area ratio variance.

STAFF ANALYSIS (related to the variance requests):

- The subject site is flat, rectangular in shape (125' x 60') or 7,500 square feet in area on a parcel of land zoned R-7.5(A) – a zoning district where lots that are typically 7,500 square feet in area.
- If the Board were to grant the rear yard variance request (along with the requests for variances to the side yard, height, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the encroachment into the site’s 5’-rear yard setback for the accessory structure would be limited to an area that is 28’ long and 2’ wide (or 56 square feet), resulting in a 3’-rear yard setback.
- If the Board were to grant the side yard variance request (along with the requests for variances to the rear yard, height, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the encroachment into the site’s 5’-side yard setback for the accessory structure would be limited to an area that is 20’ long and 2’ wide (or 40 square feet), resulting in a 3’-side yard setback.

- If the Board were to grant the height variance request (along with the requests for variances to the rear yard, side yard, floor area ratios regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the height of the proposed garage/fitness room/office/dwelling unit structure could not exceed 21.5' in height, resulting in a 4' height variance (or an accessory structure 4' higher than the height of the main structure).
- If the Board were to grant the floor area ratios variance request (along with the requests for variances to the rear yard, side yard, height regulations, and the request for a special exception to the single family regulations for an additional dwelling unit), subject to the submitted revised site plan and revised elevations, the site could be retained with a 1-story single family home that has about 1,500 square feet of living area and further developed with a 2-story garage/fitness room/office/dwelling unit structure that has a building footprint of about 560 square feet. In addition, if the conditions were imposed, the floor area (excluding floor area used for parking) of the proposed garage/fitness room/office/dwelling unit structure could not exceed beyond 678 square feet, resulting in a 287 square foot floor area ratios variance (or an accessory structure that is 18% beyond the 25% of floor area limitation permitted for an accessory structure relative to the main structure).
- As of September 9, 2005, staff had received no letters in opposition of this request, and several petitions signed by 20 neighbors/owners in support of the second dwelling unit; by 3 neighbors/owners in support of the second dwelling unit with side, rear, height and floor area ratio variances; by 3 neighbors/owners in support of the rear and side yard variance requests; and by 3 neighbors/owners in support of the height variance and floor area ratio variance.

BOARD OF ADJUSTMENT ACTION: September 19, 2005

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 October 18, 2005.**

FILE NUMBER: BDA 045-297

BUILDING OFFICIAL'S REPORT:

Application of Don Peterson DBA Peterson Designs Inc. for a special exception to the fence regulations at 8787 Jourdan Way. This property is more fully described as Lot 2 in

City Block A/5618 and is zoned R-1ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot fence in the required front yard setback which would require a special exception of 6 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 8787 Jourdan Way

APPLICANT: Don Peterson DBA Peterson Designs Inc.

REQUEST:

- A special exception to the fence height regulations of 6' is requested in conjunction with constructing and maintaining the following on a site being developed with a single family home:
 1. an 8'-high solid "stucco over masonry" wall with approximately 8.5'-high stone veneer columns, and an 8'-high open wrought iron fence to be located in the Douglas Avenue platted front yard setback*; and
 2. a 10'-high green chain link tennis court fence to be located in the Douglas Avenue platted front yard setback*.

* The site plan that was submitted in conjunction with this appeal notes both a platted front yard setback/building line and a roadway right-of-way/property line along Douglas Avenue. According to the applicant, the platted front yard setback/building line was established in 1996.

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 site has a Jourdan Way address, however, according to the applicant, the appeal to the Board of Adjustment for a fence higher than 4' in a front yard setback is limited to the site's front yard setback on Douglas Avenue. The applicant states that Jourdan Way is a private street.
- According to the submitted site plans, roughly 4/5 of the proposed 460'-long wall is to be located in the Douglas Avenue public right-of-way. The board does not have jurisdiction to consider any special exception to the fence height regulations for the portion of this fence (or any fence) in public right-of-way. The section of the

fence/wall proposed to be located in the public right-of-way would be a matter for the applicant to pursue with the City of Dallas Development Services Real Estate Division. And, according to the submitted site plan, the portion of the fence/wall in the public right-of-way has been addressed by a license agreement with the City of Dallas (Vol 96175 Pg 3921), and would be subject to being removed by either the property owner/licensee or the City at the property owner/licensee's expense if Douglas Avenue were ever to be widened.

- The originally submitted site plan makes the following notations:
 - A "new fence to replace old" that is to be located partially on the site's property line, and partially in the city right-of-way.
 - The "new fence to replace old" to be approximately 130 feet long along Douglas Avenue.

The proposed tennis court fence was not noted on the originally submitted site plan.

- Two elevations were submitted in conjunction with the application. One elevation was a partial elevation of the proposed wall that indicates an 8'-high "stucco over block" wall with approximately 9.5'-high "Jerusalem stone veneer and cap" columns. The other elevation was a partial elevation indicating a 10'-high "green chain link (standard)" tennis court fence.
- Two revised elevations were submitted in conjunction with the application on August 29, 2005 (see Attachment A). One elevation was a partial elevation of the proposed wall that indicated an 8'-high "stucco over masonry" wall with approximately 8.5'-high "Jerusalem stone cap on wall and veneer on columns" with 3'-0" Nellie R. Stevens Hedge, and American Holly Tree (12-15') or Italian Cypress (12-15') adjacent to the wall. The other elevation was a Douglas Avenue gate elevation that is not a matter before the Board since it is located in the public right-of-way.
- A revised site plan was submitted on September 6, 2005 (see Attachment B). This site plan made the following notations:
 - "New 8'-0" high masonry fence Douglas Ave (stucco/cut stone) in front yard setback (8'-0" wrought iron fence approved 9-30-00 BDA 989-290)" is highlighted. (This fence/wall in the front yard setback is about 50' long).
 - "Portion of tennis court fence in front yard" is highlighted." (This fence in the front yard setback is approximately 30' long).
 - The remaining part of the fence/wall proposal is either located in the public right-of-way (with the license agreement noted on the plan) or will comply with the conditions set forth by the board on BDA 989-290: a fence height special exception that was granted with conditions that would require/allow the applicant to provide an 8'-high wrought iron fence.
- Neither a "landscape plan" nor a site plan was submitted in conjunction with the original application that detailed landscape materials to be located adjacent to the fence. However, a revised elevation was submitted that noted a 3'-high Nellie R. Stevens hedge, and American Holly Tree (12-15') or Italian Cypress (12-15') adjacent to the 8'-high "stucco over masonry" wall.
- The proposed approximately 50'-long, 8'-high masonry wall that lies outside the public right-of-way and inside the front yard setback would be located on a site where one single family home would have direct frontage. This home immediately to

the west has an approximately 7'-high solid wall that appears to be located in the front yard setback.

- The Board Administrator conducted a field visit of the site and surrounding area along Douglas Avenue and noted the following which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - a 6'-high solid brick fence with 9'-high brick columns west of the site;
 - a 7'-high open metal fence northwest of the site; and
 - a 7'-high solid entry wall with 8' high columns north of the site.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included a revised site plan and elevations that the applicant requested to substitute for the originally submitted plans. According to the revised submitted site plan, roughly 70' of the proposed 460'-long wall is located outside of the Douglas Avenue public right-of-way and inside the platted building line area. (50' of the 70' length in the front yard setback is proposed to be solid masonry, the remaining 20' is proposed to be open wrought iron). Additionally, this revised site plan shows that only about 30' of the tennis court fence is located outside of the Douglas Avenue public right-of-way and inside 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 being developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 989-290, 8787 Jourdan Way (the subject site)

On September 28, 1999, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 30', and a special exception to the fence regulations of 4'. The board imposed the following conditions with these requests: compliance with the submitted site plan, landscape plan, building, and fence elevations is required. The case report stated that the variance was requested in

conjunction with constructing and maintaining an approximately 500 square foot “orangerie”/greenhouse structure in the Jourdan Way front yard setback, and a 7'-high open wrought iron picket fence with 8'-high metal posts in the front yard setbacks along Jourdan Way and Douglas Avenue. (A copy of this case file will be available for review upon request at the September 20, 2005 public hearing).

Timeline:

- August 8, 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.
- August 18, 2005: 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.”
- August 18, 2005: 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 August 26th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - the September 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Aug. 29 and Sept. 6, 2005

The applicant submitted additional information beyond what was submitted with the original application (see Attachments A and B).

August 29, 2005:

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

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

STAFF ANALYSIS:

- A scaled revised site plan has been submitted that documents the location of the proposed fences relative to their proximity to the property line and pavement line. The revised site plan also clearly shows the heights of the fences and the length of the proposed fences relative to the lot.
- Elevations have been submitted that document the materials and height of the proposed 10'-high "green chain link" tennis court fence and "stucco over masonry" wall (8') and Jerusalem stone veneer columns (8.5').
- The revised elevation notes a 3'-high Nellie R. Stevens hedge, and American Holly Tree (12-15') or Italian Cypress (12-15') adjacent to the 8'-high "stucco over masonry" wall.
- The proposed fences as shown on the site plans and elevations are to be constructed of durable material (chain link, "stucco over masonry," and wrought iron."
- The proposed fences/wall would be located immediately across from a single family home that has a fence higher than 4' in its front yard setback.
- As of September 9th, no letters had been submitted to staff either in support or in opposition to the proposed fences.
- Granting this special exception of 6' with conditions imposed that the applicant complies with the submitted revised site plan and fence/wall elevations would assure that the proposed fences are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: September 20, 2005

APPEARING IN FAVOR: Don Peterson, 6501 Diamond Ct., Colleyville, TX
76034

APPEARING IN OPPOSITION: Peter Kavanagh, 1620 Handley Dr., Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 045-297**, on application of Don Peterson DBA Peterson Designs, Inc., **grant** the request of this applicant to construct a 10 foot high fence on the property as a special exception to the height requirements for fences contained in the Dallas Development Code, because our evaluation of the property and testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Gabriel

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 045-277

BUILDING OFFICIAL'S REPORT:

Application of John and Shirlene Harris for a variance to the side yard setback regulations at 5131 Vanderbilt Avenue. This property is more fully described as Lot 16 in City Block V/2190 and is zoned CD-9 which requires a 5 foot side yard setback on the west side and a 10 foot side yard setback on the east side. The applicant proposes to construct an addition and provide a 2 foot setback on the west side and an 8 foot setback on the east side which would require a variance of 3 feet on the west and 2 feet on the east. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 5131 Vanderbilt Avenue

APPLICANT: John and Shirlene Harris

REQUEST:

- A variance to the side yard setback regulations of 3' on the east and 2' on the west side is requested in conjunction with constructing an addition on a single-family home.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 5' side yard setback on the west and a 10' side yard setback on the east are required in the CD-9 zoning district.
- The addition to the single family structure is proposed to be located 2' from the east property line and 8' from the west, following the same setbacks as the existing structure.
- The site is slightly sloped, rectangular in shape (50' x 145'), and approximately 7,250 square feet in area.
- The typical lot size in CD 9 (R-7.5 (A)) zoning district is 7,500 square feet.
- The site plan indicates that the building footprint of the proposed single family structure is approximately 1,300 square feet or 54' x 24.8' in area.
- DCAD records indicate that the site is developed with a single family home in fair condition that was built in 1928 and has 1,066 square feet of living area.

BACKGROUND INFORMATION:

Zoning:

Site: CD 9 (Conservation District 9-M Streets-R-7.5(A))
North: CD 9 (Conservation District 9-M Streets-R-7.5(A))
South: CD 9 (Conservation District 9-M Streets-R-7.5(A))
East: CD 9 (Conservation District 9-M Streets-R-7.5(A))
West: CD 9 (Conservation District 9-M Streets-R-7.5(A))

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.

Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

September 6, 2005 The applicant submitted information beyond what was submitted with the original application, revised elevations (see Attachment A).

STAFF ANALYSIS:

- The site plan indicates that the site is 50' x 145' and approximately 7,250 square feet in area.
- This total lot size is less than the typically-sized lot in the R-7.5(A) zoning district at 7,500 square feet.
- The applicant proposes to maintain the existing setbacks of the main structure for an addition.
- The elevations have been revised since the August 16th hearing. The elevations have been approved for compliance with the Conservation District. The change in elevation has not affected the footprint of the addition that is seeking the variances.
- If the Board were to grant the variance, imposing a condition whereby the applicant must comply with the submitted site plan, the approval would allow an addition to the structure to be built to the footprint shown on the site plan.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: John Harris, 5131 Vanderbilt, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment in Appeal No. **BDA 045-277**, hold this matter under advisement until **September 20, 2005**.

SECONDED: Wise

AYES: 4 – Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

***Member Randall White was out of room and did not vote.**

BOARD OF ADJUSTMENT ACTION: September 20, 2005

APPEARING IN FAVOR: Jerry Defeo, 1806 Eastern Hills, Garland, TX
John Harris, 5131 Vanderbilt, Dallas, TX
Allison Thomas, 5141 Vanderbilt, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 045-277**, on application of John and Shirlene Harris, **grant** the three-foot variance to the west side yard setback and the two-foot variance to the east side yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Beikman**

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 045-283

BUILDING OFFICIAL'S REPORT:

Application of Zone Systems Inc. for a special exception for tree preservation to the side yard setback regulations at 12115 Fieldwood Lane. This property is more fully described as Lot 16 in City Block A/6394 and is zoned R-16 (A) which requires a 10 foot side yard setback. The applicant proposes to construct an addition and provide a 1 foot side yard setback which would require a special exception of 9 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to special exceptions.

LOCATION: 12115 Fieldwood Lane

APPLICANT: Zone Systems Inc.

September 20, 2005 Public Hearing Notes:

- The applicant's representative provided testimony requesting a delay of hearing on the matter at hand until October 18th to allow him to submit a request for a *variance* to the side yard setback regulations.

REQUEST:

- A special exception of 9' to the side yard setback regulations for tree preservation is requested in conjunction with constructing a 2-story garage/bedroom addition on a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE SIDE YARD SETBACK REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements to preserve an existing tree. In determining to grant this special exception, the board shall consider the following factors:

- 1) whether the requested special exception is compatible with the character of the neighborhood;
- 2) whether the value of surrounding properties will be adversely affected; and
- 3) whether the tree is worthy of preservation.

GENERAL FACTS:

- A 10'-side yard setback is required for structures in the R-16 (A) zoning district. The applicant proposes to locate a garage/bedroom addition 1' from the site's western side property line in order to preserve 5 mature Crape Myrtles (ranging in size from 8" – 10 ¾") and one 31 caliper inch Fruitless Mulberry tree located in the site's western and northern side yard setbacks.
- The site is approximately 16,500 square feet (or 120' x 138') in area. The site has two 35'-front yard setbacks and two 10'-side yard setbacks. A 15' alley separates the existing home and the house nearest the side yard encroachment on the west.
- The site plan indicates that the 2-story garage/bedroom addition will have a building footprint of approximately 21' in length by 34' in length (or 714 square feet).
- The applicant has stated that the home will be about 3,800 square feet in area after remodeling with the existing building footprint being maintained. The applicant has stated that the added 2nd floor will be only on a part of the structure to maintain roof lines that are compatible with other nearby homes.
- The subject site is developed with, according to DCAD records, the following:
 - a single family home that is in good condition, built in 1959 with 2,871 square feet of living area;
 - a 528 square foot attached carport; and
 - pool.
- The applicant submitted additional documentation regarding this request (see Attachment A). This information included the following:

- a letter that provides additional information about the request and why it should be granted;
 - a site plan and table indicating the total land area and net land area (after setbacks are accounted) for the site and the lots west and north of the subject site;
 - photos of the site and the alley that separates the site and the house nearest the side yard encroachment (that will be available for review at the briefing and hearing upon request); and
 - two letters of support from the property owner immediately west of the site (and nearest the encroachment) and the other from the property owner immediately southwest of the site.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). This memo stated the following:
 - The applicant is required to provide a 10'-side yard setback but is proposing a 1' side yard setback in order to preserve existing trees that the applicant claims will be compromised if they have to meet the 10' setback.
 - The crepe myrtles are in decent condition and are located directly below low overhead power lines and may become misshapen as a result of pruning for line clearance.
 - The large mulberry is showing some indication that it is in slow decline where 2 major stems have died and were cut back and where one area of the canopy is beginning to die back. This tree may live a while longer but is in a declining state.
 - The Board Administrator informed the Board of Adjustment of his discovery on August 12th that city staff had not properly notified property owners within a 200 foot radius of the subject site within 10 days from the public hearing. The administrator informed the board that the notification error was partially a result of the zoning map submitted with the application where the applicant's representative had circled the subject site to be located at the northwest corner of Nashwood Lane and Fieldwood Lane rather than the northwest corner of Myerwood Lane and Fieldwood Lane.
 - On August 29, 2005, the applicant's representative submitted a revised zoning map that correctly encircled the subject site. This map was forwarded to Development Services Notification Staff in order for them to identify property owners within 200 feet from the site. No other information was submitted in conjunction with this appeal.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- July 5, 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.
- July 15, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2005: 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 July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the August 5th 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 20, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the

Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

August 16, 2005 The Board of Adjustment held a public hearing on this matter but delayed action on this matter until September due to a notification error that was made by the City.

August 29, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorneys to the Board.

STAFF ANALYSIS:

- The Chief Arborist has provided his assessment as to whether there is a tree (or are trees) on the site worthy of preservation.
- The applicant has obtained support of the request from the property owner who is immediately west of the site and nearest the encroachment.
- If the Board were to grant the side yard special exception request, subject to the submitted site plan, the encroachment would be limited into the site's western side yard setback, a side yard on the site that is separated from the nearest property to the west by a 15'-wide alley. (No side yard encroachment would be granted into the site's northern side yard setback if the submitted site plan was imposed as a condition). Additionally if granted, subject to the submitted site plan, the area of encroachment would be limited to an area for a garage/bedroom addition with, according to the applicant's representative, the same building footprint as a carport that had been in this location since 1997, resulting in a 1' side yard setback on the west side of the site.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Wise

I move that the Board of Adjustment in Appeal No. **BDA 045-283**, hold this matter under advisement until **September 20, 2005**.

SECONDED: Gabriel

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: September 20, 2005

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley Dr., Dallas, TX
Ann Cope, 12115 Fieldwood, Dallas, TX

APPEARING IN OPOSITION: No one

MOTION#1: Gabriel

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, on application of Bradley Cope, **grant** the request to provide a one-foot side yard setback as a special exception to the minimum side yard requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that the requested special exception is compatible with the character of the neighborhood, the value of the surrounding properties will not be adversely affected, and the tree is worthy of preservation. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Wise

AYES: 3 – White, Gabriel, Wise

NAYS: 1 - Beikman,

MOTION FAILED: 3– 1

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

MOTION#2: Wise

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, on application of Bradley Cope, **deny** the special exception to the side yard requirements **without prejudice**, because our evaluation of the property and the testimony shows that the special exception is not compatible with the character of the neighborhood, the value of

the surrounding properties will be adversely affected, and the tree is not worthy of preservation.

SECONDED: **Beikman**

AYES: 0 –

NAYS: 4 - White, Gabriel, Beikman, Wise

MOTION FAILED: 4– 0

MOTION#3: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, suspend the Board’s Rules of Procedure pertaining to the time period required prior to the hearing to amend an application to allow for re-notification of this matter as a request for a variance to the side yard regulations.

SECONDED: **Wise**

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MOTION#4: **Wise**

I move that the Board of Adjustment, in Appeal No. **BDA 045-283**, hold this matter under advisement until **October 18, 2005** in order to allow the applicant to resubmit/re-file his application as a request for a variance to the side yard regulations.

SECONDED: **Gabriel**

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0(unanimously)

FILE NUMBER: BDA 045-284

BUILDING OFFICIAL'S REPORT:

BDA 045-284- Application of Blane Ladymon and Harvey McLean, represented by Blane Ladymon- Metro Townhomes, LP., for a variance to the side yard setback regulations at 4235 Holland Avenue. This property is more fully described as Lot 12 in City Block 35/1575 and is zoned P.D. 193 (MF2) which requires a 10 foot side yard setback. The applicant proposes to construct a multi-family dwelling and provide a 5 foot side yard setback which would require a variance of 5 feet. Referred to the Board of Adjustment in accordance with Section 51-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 4235 Holland Avenue

APPLICANT: Application of Blane Ladymon and Harvey McLean
Represented by Blane Ladymon- Metro Townhomes, LP.

REQUEST:

- A variance to the side yard setback regulations of 5' is requested in conjunction with constructing a 3-story multifamily structure.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 10'-side yard setback is required in the PD 193 MF-2 zoning district.
- The multifamily structure is proposed to be located 5' from the northwest property line and 10' from the southeast property line.
- The site is flat, rectangular in shape (50' x 160'), and approximately 8,000 square feet in area.
- The site plan indicates that the proposed 3 story multifamily structure has 4 condo units and provides a total 8,434 square footage of living area. The building provides a footprint of approximately 3,240 square feet (24x135).
- The area of the proposed multifamily structure located in the 10'-side yard setback is approximately 675 square feet or 5' x 135' in area.
- DCAD records indicate that the site is developed with a single family home in fair condition that was built in 1938 and has 1,233 square feet of living area. (A field visit to the site shows that this house has been demolished.)

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
North: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
South: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
East: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)
West: PD 193 and MF-2 (Oak Lawn PD and Multifamily residential)

Land Use:

The subject site is undeveloped. The area to the northeast across Holland is undeveloped. The area to the northwest, west, and southeast are developed with multifamily 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 sites.

Timeline:

- July 11, 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.
- July 12, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 21, 2005: 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 August 5th deadline to submit additional evidence for staff to factor into their analysis;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; the Chief Arborist, Senior Planner Pitner and the Assistant City Attorney to the Board.

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

August 29, 2005: The applicant submitted a letter requesting withdrawal of the application (received September 8, 2005).

STAFF ANALYSIS:

- The applicant has requested in a letter dated August 29, 2005 for this application be withdrawn because the site plan has been revised to meet the setbacks and all other requirements of the PD zoning. Since the case was held under advisement, the Board must take action on this case.
- The attached plat map indicates that the site is 8,000 square feet.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of encroachment into the side yard setback would be limited in this case to an area of less than 675 square feet.
- Granting this variance would allow an approximately 8,434 square foot multifamily building to encroach 5' into the 10' side yard setback.
- The applicant indicated that the notification of public hearing sign was not posted 10 days before the hearing date. The Board of Adjustment delayed the public hearing until September 20, 2005 in order for the sign to be posted to meet the notification requirements.

BOARD OF ADJUSTMENT ACTION: August 16, 2005

APPEARING IN FAVOR: Blane Ladymon, 6008 Monticello Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hill

I move that the Board of Adjustment in Appeal No. **BDA 045-284**, hold this matter under advisement until **September 20, 2005**.

SECONDED: **Gabriel**

AYES: 5 – White, Hill, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: September 20, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 045-284**, on application of Blane Ladymon and Harvey McLean, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of PD 193 would not result in unnecessary hardship to this applicant.

SECONDED: **Gabriel**

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MOTION: **Wise**

I move to adjourn this meeting.

SECONDED: **Gabriel**

AYES: 4 – White, Gabriel, Beikman, Wise

NAYS: 0 -

MOTION PASSED: 4 – 0 (Unanimously)

2:17 P.M. - Board Meeting adjourned for September 20, 2005.

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.