

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, NOVEMBER 14, 2006**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, Scott Griggs, regular member and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Ben Gabriel, regular member, Jordan Schweitzer, regular member, Scott Griggs, regular member and Johnny Jefferson, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

10:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 14, 2006** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A October 17, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

MOTION: Jefferson

I move to **approve** the Board of Adjustment Panel A October 17, 2006 public hearing minutes.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

To approve the Board of Adjustment Panel A's 2007 Public Hearing Schedule.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

MOTION: Griggs

I move **approval** of the Board of Adjustment Panel C's 2007 Public Hearing Schedule.

SECONDED: Jefferson

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-246

BUILDING OFFICIAL'S REPORT:

Application of R.A. Caldwell for a special exception to the fence height regulations at 8805 Boundbrook Avenue. This property is more fully described as Lot 29 in City Block 16/7522 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 9 foot 3 inch high fence in the required front yard setback which would require a special exception of 5 feet 3 inches to the fence height regulations.

LOCATION: 8805 Boundbrook Avenue.

APPLICANT: R.A. Caldwell

REQUEST:

- A request for a special exception to the fence height regulations of 5' 3" is requested in conjunction with the following:
 1. maintaining a cedar board-on-board fence that ranges in height from 8' – 9' 3" in the site's Royal Lane 25' front yard setback; and
 2. replacing an approximately 6' high solid wood fence with an 8' high cedar board-on-board fence in the site's Boundbrook Avenue 25 foot front yard setback on a site 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 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 revised elevation and site plan indicating a wall proposal that would reach a maximum height of 9' 3" and located in the site's two front yard setbacks along Royal Lane and Boundbrook Avenue. (The site's Ashcroft

Avenue frontage is deemed a side yard where a fence/wall can reach 9' in height by right).

- The Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, the following structures in the yard along that frontage are governed by the rear yard regulations: swimming pool, game courts, fences, garages, accessory storage buildings.”
- The site is deemed to have two front yard setbacks since the site is a full “block-deep” and since Building Inspection has interpreted that access to the site along Royal Lane is NOT prohibited by plat nor can be prohibited by the city.
- The following additional information was gleaned from the originally site plan:
 - The existing wall located in the Royal Lane 25' front yard setback is shown to be approximately 75' in length parallel to Royal Lane, approximately 14' in length at the intersection of Royal Lane and Ashcroft Avenue, and approximately 15' in length in the Royal Lane front yard setback perpendicular to Royal Lane.
 - The existing wall located in the Royal Lane front yard setback is shown to be located on the front property line or about 6.5' from what appears to be the Royal Lane curb line.
 - The replacement wall to be located in the Boundbrook Avenue 25' front yard setback is shown to be approximately 68' in length parallel to Boundbrook Avenue, and approximately 3' in length in the Boundbrook Avenue front yard setback perpendicular to Boundbrook Avenue.
 - The replacement wall to be located in the Boundbrook Avenue front yard setback is shown to be located approximately 22' from the front property line or about 30' from what appears to be the Boundbrook Avenue curb line.
 - The existing wall and the proposed replacement wall appear to be located in the 45' visibility triangle at Royal Lane and Ashcroft Avenue and in the 45' visibility triangle at Boundbrook Avenue and Ashcroft Avenue, respectively. The Board Administrator informed the applicant of these conditions and to decide whether he wanted to add a special exception to the visibility obstruction regulations to address these issues by October 27, 2006.
- No landscape materials were noted on the originally submitted site plan or elevation in conjunction with this request.
- On October 26th, the applicant submitted a letter along with a revised elevation and revised site plan (see Attachment B). The letter explained that the site plan showed landscaping to remain (conceptually shown as Cyprus trees, rock garden, and English Ivy); and that the elevation showed the Royal Lane fence to be 9' 3”.
- The revised site plan continued to show the existing wall in the 45' visibility triangle at Royal Lane and Ashcroft Avenue and the existing wall/replacement wall in the 45' visibility triangle at Boundbrook Avenue and Ashcroft Avenue. The applicant informed the Board Administrator that he did not intend to add a request for the board to consider special exceptions to the visibility obstruction regulations at the current time. The applicant was made fully aware, as a result, that the only matter

before the board on this site would be the height of the fence/wall that exceeds 4' in height, and not the location of the fence/wall in the two intersection visibility triangles.

- There are no single family homes that would have direct frontage to the existing wall on Royal Lane, and one single family home that has indirect frontage to the proposed replacement wall on Boundbrook Avenue.
- The Board Administrator conducted a field visit of the site and surrounding area along Royal Lane and noted several other fences above four (4) feet high which appeared to be located in the front yard setback. No front yard fences were noted in the immediate vicinity of the site along Boundbrook Avenue.
- The applicant submitted additional information beyond what was submitted with the original application. Attachment A includes a petition signed by 7 neighbors in support of the "construction of 8 foot front fence," a photo of the fence, and location map; and Attachment B is a revised site plan and elevation.

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 single family home. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed as a city park (Northwood Park).

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:

Sept. 26, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 19, 2006: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Oct. 20 & 26, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachments A and B).

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

October 31, 2006: The Building Inspection Development Code Specialist forwarded a revised Building Official's Report that increased the special exception request from 4 feet to 5 feet 3 inches.

October 31, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "The intersection sight distance for vehicles southbound on Ashcroft Avenue is limited due to the fence." (Note that the applicant has chosen to not make application to the board to address the existing fences/walls in the intersection visibility triangles).

STAFF ANALYSIS:

- A revised site plan and elevation have been submitted that documents the location of the existing wall and proposed replacement wall in the site's front yard setbacks (about 75' long parallel to Royal Lane and about 68' long parallel to Boundbrook Avenue), and their location relative to the front property lines (on the Royal Lane front property line and about 22' from the Boundbrook Avenue front property line) and pavement lines (about 6.5' from the Royal Lane curb line and about 30' from the Boundbrook Avenue curb line).
- A revised elevation has been submitted indicating the materials of the existing wall and proposed replacement wall (board on board cedar) and their maximum heights (9' 3" in "back yard" along Royal Lane and 8' in "front yard" along Boundbrook Avenue).
- The revised site plan denotes "Cyprus trees, rock, garden, English Ivy" located on the street side of the replacement wall along Boundbrook Avenue. (Sizes have not been specified).
- Several other fences above four (4) feet high which appeared to be located in the front yard setback were noted along Royal Lane. No front yard fences were noted in the immediate vicinity of the site along Boundbrook Avenue.
- As of November 6th, no letters had been submitted in opposition to the special exception, and a petition had been submitted with 7 neighbors/owners in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' 3" (whereby the proposed 8' high board on board replacement fence on Boundbrook Avenue and the existing 9' 3" fence on Royal Lane) will not/does not adversely affect neighboring property.
- Granting this special exception of 5' 3" with conditions imposed that the applicant complies with the submitted revised site plan and elevation would assure that the proposed replacement wall/existing wall would be constructed/is maintained as shown on these documents.
- Note that although the revised site plan indicates the location of the proposed replacement wall/existing wall in required intersection visibility triangles, granting the fence height special exception subject to this revised site plan would not provide relief or "except" the existing wall and/or replacement wall from complying with the required visibility obstruction regulations.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

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

- Compliance with the submitted revised site plan and elevation is required.
- The applicant must comply with the visibility obstruction regulations unless they obtain a special exception to allow items in the visibility triangle.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-247(J)

BUILDING OFFICIAL'S REPORT:

Application of Luis M Escobar and Maria A Gomez for a special exception to the side yard setback regulations for tree preservation at 10 Vanguard Way. This property is more fully described as Lot 32 in City Block 10/7509 and is zoned PD-717 which requires a side yard setback of 20 feet between structures. The applicant proposes to construct a single family dwelling and provide a 15 foot side yard setback which would require a special exception of 5 feet.

LOCATION: 10 Vanguard Way

APPLICANT: Luis M Escobar and Maria A Gomez

REQUEST:

- A special exception to the side yard regulations for tree preservation of 5 feet requested in conjunction with constructing a single family structure.

STAFF RECOMMENDATION:

Approval

Rationale:

- The Chief Arborist wrote a memo stating his recommendation for approval and that the Cottonwood tree is a good candidate for preservation contingent on proper protection of the tree during construction and the pier foundation of the porch.

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

The board may grant a special exception to the minimum side yard requirements in this section to preserve an existing tree.

In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

GENERAL FACTS:

- The request site is currently undeveloped.
- The property is zoned PD No. 717 which requires no side yard setback except that 20' must be provided between structures.
- The submitted site plan shows the proposed single family structure will provide a 15' side yard setback for an overhang.
- The site plan shows main portion of the structure is 30 feet in width and 102 feet in depth (creating a footprint of 3,060 square feet) with an overhang 5 feet in width and 62 feet in depth and a wooden deck 8 feet in width by 24 feet in depth.
- The site plan shows the main portion of the structure provides the 20' setback. The overhang portion of the structure is the portion proposed to encroach into the side yard building separation setback.
- The site plan shows the proposed structure provides a 32' front yard setback, a 0' north side yard setback, a 15' south side yard setback and a 15' rear yard setback. PD 717 allows enclosed parking spaces to be less than 20' from the alley if an automatic garage door is installed.
- The plat map shows that the request site is approximately 52 feet by 175 feet.
- The site appears to be flat, slightly irregular in shape (trapezoid), and approximately 9,000 square feet in area.
- The submitted elevations show all four sides of the proposed structure.
- The applicant submitted a revised site plan that only shows the proposed structure and the subject cottonwood tree. The applicant revised the plan to clarify and only show the specific tree being requested for preservation related to the special exception to the side yard regulations.

BACKGROUND INFORMATION:

Zoning:

<u>Request Site:</u>	PD 717 (Single Family Residential)
<u>North:</u>	PD 717 (Single Family Residential)
<u>South:</u>	PD 717 (Single Family Residential)
<u>East:</u>	PD 717 (Single Family Residential)
<u>West:</u>	PD 717 (Single Family Residential)

Land Use:

The request site is undeveloped. The areas to the north, south, east and west are undeveloped or under construction for single family residential uses.

Zoning/BDA History:

1. Z045-127 On February 23, 2005, the City Council approved a Planned Development District for single family uses on 13.94 acres at Oren Street and Westrock Drive.

Timeline:

- Sept. 27, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- October 31, 2006: The Board Senior Planner contacted the applicant via email 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 November 3rd 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 November public hearing after considering the information/evidence and

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

November 2, 2006 The Chief Arborist submitted a memo stating his review comments.

STAFF ANALYSIS:

- The applicant indicated on the application materials that the request is for an overhang that is an architecture feature, which is fundamental to the architectural design of the structure. The applicant also notes that the projection of the overhang into the setback allows more space for the existing tree on the north side of the lot to remain.
- The specific tree requesting preservation in this appeal appears to affect only the construction of the overhang, not the main structure.
- Most of the land within PD 717 is undeveloped with a few single family structures under construction. The character of the neighborhood is not physically established at this point; however, the all of the lots within PD 717 are subject to the side yard requirement of a 20-foot minimum building separation. There is no exception for porches in the PD ordinance or the development plan, which was approved by the City Plan Commission.
- Granting this special exception, subject to the submitted revised site plan and elevations, would allow a single family structure to encroach 5 feet into the 20 foot required side yard building separation in the amount, location, and constructed of specific materials as shown on these documents.
- The applicant has the burden of proof in establishing the following in regards to the side yard building separation special exception request:
 - Whether the requested special exception is compatible with the character of the neighborhood
 - Whether the value of surrounding properties will be adversely affected.
 - Whether the tree is worthy of preservation

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

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

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

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-253

BUILDING OFFICIAL'S REPORT:

Application of Lee A. Allen for a special exception to the off- street parking regulations at 5711- 5715 Ross Avenue. This property is more fully described as Lots 7 and 8 in City Bock H/ 1475 and is zoned MF-2(A) which requires parking to be provided for new construction. The applicant proposes to construct a multi family dwelling and provide 20 of the required 23 off-street parking spaces which would require a special exception of 3 spaces.

LOCATION: 5711- 5715 Ross Avenue

APPLICANT: Lee A. Allen

REQUEST:

- A special exception to the off-street parking regulations of 3 spaces (or 13% of the required off-street parking) is requested in conjunction with constructing and maintaining a 12,745 square foot, 9 unit townhome development on a site developed with two single family homes.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- The special exception of 3 spaces automatically and immediately terminates if and when the multifamily use on the site is changed or discontinued.

Rationale:

- The Development Services Senior Engineer supports the request.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or

one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

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

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirements for the planned multifamily use on the subject site:

- 1 space is required per 500 square feet of dwelling unit floor area within the building site.
- Not less than 1 space nor more than 2.5 spaces are required for each dwelling unit in a multifamily structure 36 feet in height or less.

The applicant has informed the Board Administrator that the 9 unit structure will be less than 36' in height, therefore 20 spaces of the required 23 spaces (2.5 spaces x 9 units) are proposed to be provided.

- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan that correctly conveyed the number of off-street parking spaces required for the proposed development.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily district)
North: MF-2(A) (Multifamily district)
South: MF-2(A) (Multifamily district)
East: MF-2(A) (Multifamily district)
West: MF-2(A) (Multifamily district)

Land Use:

The subject site is developed with two vacant residential structures. The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

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

Timeline:

- Sept. 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 19, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the October 26th deadline to submit additional evidence for staff to factor into their analysis;
- the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 25, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

October 31, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- 87 percent of the required off-street parking spaces is proposed to be provided in conjunction with constructing and maintaining a 12,745 square foot, 9 unit townhome development/ "multifamily" use on the site.
- Granting this request, subject to the condition that the special exception of 3 spaces automatically and immediately terminates if and when the proposed multifamily use on the site is changed or discontinued, would allow the site to be developed with the proposed 9 unit townhome development.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed multifamily use does not warrant the number of off-street parking spaces required, and

- The special exception of 3 spaces (or 13% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has commented that he has no objections to this request.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

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

- The special exception shall automatically and immediately terminate if and when the multi-family use on the site is changed or discontinued.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 056-206

BUILDING OFFICIAL'S REPORT:

Application of AMLI Residential, represented by Jackson Walker L.L.P/Susan Mead and Jonathan Vinson, for a special exception to the landscape regulations and for variances to the urban form front yard setback regulations at 2800 Routh Street. This property is more fully described as City Block 956 and is zoned PD No. 193 which requires mandatory landscaping for new construction, and requires a 25 foot front yard setback for all portions of a structure over 36 feet in height. The applicant proposes to construct a structure and provide an alternate landscape plan which would require a special exception to the landscape regulations. In addition, the applicant proposes to construct a building with a height in excess of 36 feet and provide a 10 foot front yard setback which would require a variance of 15 feet to the front yard setback regulations.

LOCATION: 2800 Routh Street

APPLICANT: AMLI Residential

November 14, 2006 Public Hearing Notes:

- The applicant's representative submitted additional information at the briefing. This information included a letter requesting that the board deny the variance request without prejudice.

REQUESTS:

- The following appeals were made in this application:
 1. a special exception to the landscape regulations; and
 2. variances to the urban form front yard setback regulations of 15 feet.These appeals were requested in conjunction with constructing and maintaining an approximately 60' high, 4 level multifamily structure with an approximately 86,000 square foot building footprint on a site that is developed with a mixed use development (The Quadrangle). (The proposed structure is to be located on the portion of the subject site that currently serves as part of the surface parking lot for the existing mixed use development).

Note that on September 19, 2006, the Board of Adjustment granted the request for the special exception to the landscape regulations (subject to compliance with the submitted landscape plan) and delayed action on the variances until October 17, 2006. On October 17th, the board delayed action on the variance requests until November 14, 2006.

STAFF RECOMMENDATION (Front Yard Variances):

Denial

Rationale:

- The 6.32 acre subject site is flat, generally rectangular in shape (325' on the northeast, 345' on the southwest, 783' on the northwest, and 768' on the southeast). The site encompasses a full city block that is zoned PD No. 193 (GR Subdistrict). As a result, the site has four front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- Although there may be developments in the area that do not appear to provide the additional front yard setback that is required on the subject site, different zoning districts on immediately adjacent or nearby lots may have differing development standards from that which are required on the subject site that allow a different type of building envelope by right.
- The "certain restrictive covenants" that the applicant's representative has identified as being placed on the subject site are not characteristics/features (as are the parcel of land's physical site constraints related to its restrictive area, shape or slope)

related to what the board can consider as features creating property hardship that in turn necessitates a variance to a development standard.

- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the applicable development standards including the additional 15' front yard setback provision for the portion of the structure that would exceed 36' in height) in a manner commensurate with other developments found on other similarly-zoned lots.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS (related to the variances):

- The minimum front yard setback must be provided for all building and structures in the PD No. 193 (GR Subdistrict) zoning district:
 - 10' for the first 36' in height.
 - 25' for all portions of a building above 36' in height.The applicant has submitted an elevation that indicates a 60' high, 4 level multifamily structure, and a site plan that indicates the provision of a 10' front yard setback along Howell Street, Vine Street, and Laclede Street for the portion of the proposed structure up to 36' in height but not the additional 15' setback required for the portion of the structure above 36' in height. The additional 15' setback for structures (or portions of structures) higher than 36' in height discourages a canyon effect that a structure may create once it exceeds a specific height. This front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The 6.32 acre subject site is flat, generally rectangular in shape (325' on the northeast, 345' on the southwest, 783' on the northwest, and 768' on the southeast). The site encompasses a full city block that is zoned PD No. 193 (GR Subdistrict). As a result, the site has four front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.

- On August 25th and 28th, 2006, the applicant's representative submitted the following additional information to the Board Administrator (see Attachments A and B):
 - An amended application with added a front yard setback variance request and expanded the area of the subject site from 2.5 acres to 6.32 acres;
 - An amended/expanded zoning map/plat map of the site;
 - A tax certificate and owner's affidavit from the owner of the expanded area of the subject site;
 - An elevation of the proposal; and
 - A site plan of the proposal.
- The applicant's representative submitted additional information beyond what was submitted with the original and revised applications (see Attachment C). This information included a letter that provided additional details about the requests. (The applicant's representative has also submitted a copy of restrictive covenants on the site that will be available for review at the briefing/public hearing).
- On September 8, 2006, the applicant's representative submitted additional information beyond what was submitted with the original and revised applications, and beyond the August 30th staff review team meeting (see Attachment E). This information included a letter that provided additional details about the requests, an aerial photo of the site and surrounding area, a birds-eye rendering of the site, an illustrative site/landscape plan of the site, photos of the site and surrounding area, and a colored elevation of the proposal.
- On September 19, 2006, the Board of Adjustment conducted a public hearing on the requests for a landscape special exception and variances to the front yard setback regulations. The board granted the request for the special exception to the landscape regulations (subject to compliance with the submitted landscape plan) and delayed action on the variances until October 17, 2006.
- On October 5, 2006, the applicant's representative submitted a letter to staff requesting that the action on the variance requests be delayed until November 14, 2006 in order to continue discussions with the Oak Lawn Committee (see Attachment G).
- On October 17, 2006, the Board of Adjustment conducted a public hearing on the request for variances to the front yard setback regulations. The board delayed action on the variances until November 14, 2006, per the applicant's request.
- As of November 6th, no additional information had been submitted since the October 17th public hearing.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
<u>North:</u>	PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
<u>South:</u>	PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)
<u>East:</u>	PD No. 193 (PDS 7) (Planned Development District, Planned Development Subdistrict 7)

West: PD No. 193 (GR Subdistrict) (Planned Development District, General Retail)

Land Use:

The 6.32 acre subject site is developed with a mixed use development (The Quadrangle). The areas to the north, east, south, and west are developed with a mix of office and retail uses.

Zoning/BDA History:

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

Timeline:

- July 27, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 18, 2006: The Board Administrator met with the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the September 8th 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.

- August 25 & 28, 2006: The applicant and the applicant's representative met with the Board Administrator. The applicant's representative submitted an amended application and additional materials related to the requests at hand (see Attachments A and B).
- August 29, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment C).
- August 30, 2006: 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 Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Sept. 6, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment D).
- Sept. 8, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment E). This information was submitted past the August 30th staff review team meeting therefore was not information that was factored into the staff recommendations on the landscape special exception or front yard variance requests.
- Sept. 19, 2006: The Board of Adjustment conducted a public hearing on the requests. The board granted the request for a special exception to the landscape regulations but delayed action on the variance requests until their next scheduled public hearing to be held on October 17, 2006. (The applicant's representative submitted additional information at the public hearing – a document that is included in this case report entitled "Attachment F").
- October 5, 2006 The applicant's representative submitted additional information to the Board Administrator (see Attachment G).
- October 17, 2006: The Board of Adjustment conducted a public hearing on the request. The board delayed action on the variance requests until their next scheduled public hearing to be held on November 14, 2006.

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The 6.32 acre subject site is flat, generally rectangular in shape (325' on the northeast, 345' on the southwest, 783' on the northwest, and 768' on the southeast). The site encompasses a full city block that is zoned PD No. 193 (GR Subdistrict). As a result, the site has four front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has submitted a site plan and elevation indicating that the 10' front yard setback will be provided for the portion of the proposed structure up to 36' in height. The plans do not show the provision of the additional 15' setback that is required for the portion of the building that exceeds 36' in height.
- The applicant has the burden of proof in establishing the following related to the front yard variance requests:
 - That granting the variances to the front yard setback regulations of 15' along Howell Street, Vine Street, and Laclede Street requested to construct and maintain the 60' high, 4 level multifamily structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (GR Subdistrict) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (GR Subdistrict) zoning classification.
- If the Board were to grant the front yard variance requests of 15', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure above 36' in height in the front yard setbacks would be limited to what is shown on these submitted plans – a structure that is 60' in height with an approximately 86,000 square foot building footprint that is 10' from the Howell Street, Vine Street, and Laclede Street front property lines (or 15' into the 25' front yard setback for portions of a structure that exceeds 36' in height).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 19, 2006

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX
Brian Adams, 1708 N. Griffin, Dallas, TX
Taylor Bowen, 2740 N. Dallas Pkwy, # 280, Plano, TX
Clifford Wong, 5757 Alpha Rd, # 505, Dallas, Texas

APPEARING IN OPPOSITION: Frank Stich, 4224 N. Hall, Dallas, TX

MOTION #1: **Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-206**, on application of Lee AMLI Residential, represented by Jackson Walker LLP, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-206**, hold the variance under advisement until **October 17, 2006**.

SECONDED: **Gabriel**

AYES: 3 – Richmond, Hill, Gabriel

NAYS: 2 – Schweitzer, Griggs

MOTION PASSED: 3– 2

BOARD OF ADJUSTMENT ACTION: OCTOBER 17, 2006

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., #6000, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hill**

I move that the Board of Adjustment in Appeal No. **BDA 056-206**, hold this matter under advisement until **November 14, 2006**.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Hill, Gabriel, Schweitzer

NAYS: 1 - Jefferson

MOTION PASSED: 4– 1

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: Jonathan Vinson, 901 Main St., #6000, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Griggs**

I move that the Board of Adjustment in Appeal No. **BDA 056-206**, on application of Lee AMLI Residential, represented by Jackson Walker LLP, **deny** the urban form front yard setback variance requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Schweitzer**

AYES: 4 – Gabriel, Schweitzer, Griggs, Jefferson

NAYS: 1 - Richmond

MOTION PASSED:4– 1

FILE NUMBER: BDA 056-235(J)

BUILDING OFFICIAL'S REPORT:

Application of Haverfield Custom Homes L.P. represented by Robert Baldwin for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations at 5031 Deloache Avenue. This property is more fully described as Lot 3 in City Block 10/5583 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections, and a 20 foot visibility triangle at drive approaches. The applicant proposes to construct an 8 foot 6 inch fence in the required front yard setback which would require special exception of 4 feet 6 inches to the fence regulations, and to locate a portion of the fence within a 45 foot and a 20 foot visibility triangle, which would require a special exception to the visibility obstruction regulations.

LOCATION: 5031 Deloache Avenue

APPLICANT: Haverfield Custom Homes L.P.
Represented by Robert Baldwin

REQUESTS:

- A special exception to the fence height regulations of 4'6" and a special exception to the visibility obstruction regulations are requested in conjunction with constructing and maintaining fences located in front yards.

STAFF RECOMMENDATION (fence height special exception):

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.

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial

- The City’s Development Services Senior Engineer has indicated “no objection” to the encroachment into the “45’ x 45’ intersection visibility triangle”. However, “The gates must be set 20 feet from the edge of the pavement.” Additionally, the “fence sections along Deloach Avenue may be in the 50’ Street R.O.W.” (right-of-way)

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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

- The Dallas Development Code states that a fence may not exceed 4’ above grade when located in the required front yard in all residential districts except multifamily districts.
- The submitted site plan did not demonstrate the relationship between the existing fence, proposed fence, property line, and curb line. The applicant revised the site plan to show the fences, property line and curb line. The proposed and existing fences are located approximately 0’ from the property line
- The submitted elevation shows a solid stone fence 8’ in height with 8’6” columns, a 7’4” wrought iron fence with 8’ stone columns, a wrought iron gate, and an 8’ board on board fence.
- The applicant revised the elevations to clarify the labels of the elevations shown and noted on the revised site plan the location of the different types of fences.
- The revised site plan shows the following related to the fence special exception:
 - Approximately 187’ of 8’6” tall solid stone fence located in the Inwood Road front yard setback;

- Approximately 40' of 8' tall wooden fence located in the Inwood Road front yard setback perpendicular to Inwood Road; and
- Approximately 70' of total driveway entry fence located in the Deloache Avenue front yard setback (four 4' tall stone fence with 5'8" stone columns driveway entry fences, each 7' in length parallel to Deloache and 10'6" perpendicular to Deloache).
- The driveway entry fences are located at each of the two driveways with a vehicular gate at each driveway. The site plan shows there is not a fence proposed to span the Deloache Avenue front yard between the driveway entry fences.
- No landscape materials have been noted on a plan or elevation in conjunction with this request.
- The Board Senior Planner conducted a field visit of the site and surrounding area and noted one other fence/wall above four (4) feet in height which appeared to be located in the front yard setback, located east of the request site across Inwood Road. Other fences were observed to the south and west, but it could not be determined if the fences exceeded 4' in height or were located behind the front setback line.
- The field visit of the site also showed that the fence located in the Inwood Road front yard and the driveway entry walls are already constructed.

GENERAL FACTS (related to the visibility obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant requests to construct and maintain the four 4' tall stone fences with 5'8" stone columns driveway entry fences and the 8' solid stone fence located in the 20'x20' visibility triangle at the driveways and Deloache, and the 45'x45' Deloache and Inwood intersection triangles respectively.

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:

BDA990-336 was request for:

1) a special exception to the front yard fence height reg's of 5' 3.5" (to construct an 8' high solid wall, 8' high metal gates, and 9' 3.5" high columns in the front yard setback); and

2) a special exception to the side yard fence height reg's of 3.5" (to a fence that the applicant has informed the staff was no longer needed).

The board of adjustment panel A granted both requests on October 22, 2002, and imposed the following condition: compliance with the submitted site plan and elevation is required.

Timeline:

August 25, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 24, 2006: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 27, 2006 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

November 3, 2006 The Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met”. “No objection to the 45’ x 45’ intersection or the 20’ x 20’ driveway visibility triangles.” “The gates must be set 20 feet from the pavement edge.”

November 3, 2006 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment B).

November 6, 2006 The City’s Development Services Senior Engineer has indicated “no objection” to the encroachment into the “45’ x 45’ intersection visibility triangle”. However, “The gates must be set 20 feet from the edge of the pavement.” Additionally, the “fence sections along Deloach Avenue may be in the 50’ Street R.O.W.”

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

- One other fence/wall above four (4) feet in height which appeared to be located in the front yard setback were noted in the immediate vicinity of the subject site.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’6” (whereby the proposed 8’6” high solid stone fence, 8’ high wooden fence, a 5’6” gate with 6’ columns, and 4’ high stone entry fence with 5’8” columns) will not adversely affect neighboring property.
- Granting this special exception of 4’6” with conditions imposed that the applicant complies with the revised site plan and revised elevation would require the fence to be constructed and maintained on the site as noted on these documents.

STAFF ANALYSIS (related to the visibility obstruction special exception):

- The Development Services Senior Engineer has informed the Board Administrator that although he has no objections to the fence height special exception request or the special exception to the 45' x 45' intersection visibility obstruction regulations, the gates must be set 20 feet from the edge of the pavement." Additionally, the "fence sections along Deloach Avenue may be in the 50' Street R.O.W."
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan, the driveway entry fences and the 8' solid stone wall and according to the revised site plan, will be located in the visibility triangle at the driveways and Deloache and Inwood intersection triangles respectively) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the revised site plan and elevation, the existing fences would be "excepted" into the 20'x20' driveway/street triangles and the 45'x45' Deloache Avenue and Inwood Road intersection triangle.
- If the Board of Adjustment were to grant the request for the fence height special exception (and impose the site plan as a condition to the fence height request) but deny the visibility obstruction special exception, staff would note on the fence height-approved stamped site plan that the fence/wall on the site must comply with all city-required visibility obstruction regulations.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

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

APPEARING IN OPPOSITION: No one

MOTION #1: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 056-235**, on application of Haverfield Custom Homes, L.P., represented by Robert Baldwin, **grant** the request of this applicant to construct an eight-foot, six-inch high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised elevation is required.
- Gates must be set 20 feet from the edge of the pavement.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0

MOTION #2: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 056-235**, on application of Haverfield Custom Homes, L.P., represented by Robert Baldwin, **grant** the request of this applicant to maintain items in a visibility triangle as a special exception to the visibility obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised site plan and revised elevation is required.
- Gates must be set 20 feet from the edge of the pavement.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0

FILE NUMBER: BDA 056-239

BUILDING OFFICIAL'S REPORT:

Application of Columbia Place Homeowners Association, represented by Robert Richardson, for a variance to the side yard setback regulations at 5631 Columbia Avenue. This property is more fully described as Lot 13 in City Block D/432 and is zoned MF-2(A) which requires side yard setback of 10 feet. The applicant proposes to construct a structure and provide a 4 foot side yard setback which would require a variance of 6 feet.

LOCATION: 5631 Columbia Avenue

**APPLICANT: Columbia Place Homeowners Association
Represented by Robert Richardson**

November 14, 2006 Public Hearing Notes:

- The applicant’s representative submitted additional information at the public hearing.

REQUEST:

- A variance to the side yard setback regulations of 6’ is requested in conjunction with constructing and maintaining three awnings that would cover four existing patios on a site developed with four existing attached single family town homes.

STAFF RECOMMENDATION:

Denial without prejudice

Rationale:

- At the time of the staff review team meeting on October 27th, no physical site constraint was evident to this parcel of land that warranted the side yard variance for the awnings. The subject site appears to be relatively flat and is approximately 6,400 square feet in area. Its irregular shape does not appear to justify the need to vary the side yard setback regulations for awnings to be placed over existing patios.
- At the time of the staff review team meeting on October 27th, the applicant had not substantiated how the site's restrictive area, shape and/or slope precluded the site from being developed in a way that meets the applicable development standards, including the side yard setback provisions, commensurate with other developments found on other similarly-zoned MF-2(A) lots.

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 for "other permitted structures" (other than single family or duplex structures) on MF-2(A) zoned properties.
A site plan has been submitted indicating the location of patios (in which the awnings would project over) 4' from the site's northeastern side property line or 6' into the 10' side yard setback. (The submitted site plan does not denote the location of the proposed awnings).
The applicant representative has submitted a letter stating that "The closest I can see the awning coming to the property line is 4 foot 1 inch." The elevation submitted with the original application indicated an awning to be located about 2.5' from the side property line (which would require a variance of 7.5'). The Board Administrator

made the applicant's representative aware of the discrepancy in the submitted information and encouraged him to alter his application no later than October 27th from a 6' variance if indeed the information on the elevation was correct where the awnings would be located as close as 2.5' from the side property line. The applicant's representative responded in an email stating that the proposed awning would be located 4' 1" from the property line. In addition, the applicant's representative submitted a revised elevation indicating this dimension (see Attachment A).

- A "top view" plan has been submitted that shows what appear to be three separate awnings all of which are 7' 6" at the widest point, and two of which are 16' in length, the other which is 25' in length. (This "top view" plan does not denote or distinguish these structures as awnings). Given the information on this plan along with that what is shown on the submitted site plan, the Board Administrator has calculated that about 340 square feet of the total approximately 430 square foot structures that are assumed to be the proposed awnings would be located in the site's northeastern side yard setback.
- The site appears to be relatively flat, is irregular in shape (approximately 162' on the northeast, approximately 121' on the southwest, approximately 50' on the southeast, and approximately 40' on the northwest) and approximately 6,400 square feet in area.
- DCAD records indicate that the site is developed with a condominium structure built in 1983.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised elevation indicating a 4' 1" distance from the side property line and the edge of the proposed awning;
 - a letter that provides additional details about the request;
 - minutes from a recent neighborhood association meeting that includes the townhomes on the subject site and the townhomes immediately adjacent to the northeast nearest the proposed encroachment indicating support of the variance request; and
 - photographs of the subject site and damage done from flooding due to water run-off on the site.
- After being informed of the staff's recommendation for denial of the request, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond what was discussed/considered at the October 27th staff review team meeting (see Attachment B). This information included the following:
 - a letter that describes a series of photos of conditions on the subject site, and further details about the request;
 - an email that provides additional details about the request;
 - a 2006 Tax Statement; and
 - a document detailing costs associated with removal of a/c units, patio fences, patios, sewer lines; with re-grading and re-landscaping on the site.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- Sept. 1, 2006 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 19, 2006: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 20, 2006 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

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

November 1 & 3, 2006 The applicant’s representative submitted information beyond what was submitted with the original application and beyond what was discussed/considered at the October 27th staff review team meeting where staff formed a recommendation of denial of the request (see Attachment B).

STAFF ANALYSIS:

- The site appears to be relatively flat, is irregular in shape (approximately 162’ on the northeast, approximately 121’ on the southwest, approximately 50’ on the southeast, and approximately 40’ on the northwest) and approximately 6,400 square feet in area.
- According to calculations made by the Board Administrator from the submitted “top view” plan and site plan, about 340 square feet of the total approximately 430 square foot structures (assumed to be, but not labeled, awnings) would be located in the site’s northeastern side yard setback.
- The applicant has the burden of proof in establishing the following related to the side yard variance request:
 - That granting the variance to the side yard setback regulations of 6’ requested to construct and maintain awnings over existing patios will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to side yard setback regulations of 6’ is necessary to permit development of the subject site (a site that is developed with four townhomes with patios, and a site that is relatively flat, irregular in shape, approximately 6,400 square feet in area) that differs from other parcels of land by being of such

a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2 (A) zoning classification.

- The variance to side yard setback regulations of 6' would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2 (A) zoning classification.
- If the Board were to grant the side yard variance request of 6', imposing a condition whereby the applicant must comply with the submitted site plan (a plan where awnings are not labeled or specifically designated), "top view" plan (a plan where awnings are not labeled or specifically designated), and revised elevation, the structures in the setback would be limited to that what is shown on these documents – awnings that would be located 4' (or 4' 1") from the site's side property line (or 6' or 5' 11" into the 10' side yard setback).

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: Pete Evans, 5640 Columbia Ave., Dallas, TX
Margie Ward, 5631 Columbia Ave #105, Dallas, TX
Joysanna Rutledge, 5640 Columbia, Dallas, TX
Gary R Buckner, 5632 Columbia, Dallas, TX
Robert Richardson, 5631 Columbia, #104, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 056-239**, on application of Columbia Place Homeowners Association, represented by Robert Richardson, **grant** the six foot variance to the side yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would 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, "top view" plan, and revised elevation is required.

SECONDED: **Jefferson**

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

NAYS: 0 -

MOTION PASSED: 5– 0

FILE NUMBER: BDA 056-248(J)

BUILDING OFFICIAL'S REPORT:

Application of Gary Dean Construction, LLC. for a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations at 5440 N Dentwood Drive. This property is more fully described as Lot 3A in City Block A/5600 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 10 foot 3 inch fence in the required front yard which would require a special exception of 6 feet 3 inches to the fence regulations, and to locate a portion of the fence within a visibility corner clip which would require a special exception to the visibility obstruction regulations.

LOCATION: 5440 N Dentwood Drive

APPLICANT: Gary Dean Construction, LLC

REQUESTS:

- A special exception to the fence height regulations of 6'3" and a special exception to the visibility obstruction regulations are requested in conjunction with constructing a fence.

STAFF RECOMMENDATION (fence height special exception):

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.

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer has recommended denial. The conditions identified that violate the visibility regulations include: "The fences and gates encroach approximately 7'x 7' or 8'x 8' into the 20'x 20' driveway visibility triangles and the gates must be set 20 feet from the pavement edge."

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The submitted site plan shows the following related to the fence special exception:
 - Approximately 230' in length of proposed fence located parallel to Dentwood Drive;
 - Approximately 40' of proposed vehicular gates located parallel to Dentwood Drive; and
 - Approximately 32' in length of proposed fence located perpendicular to Dentwood Drive (within the front yard setback).
- The reduced site plan notes that it is not to scale; however, the full-sized site plan is to scale.
- The site plan shows the proposed fence location varies from the front property line by 3'3" to 8', the columns vary from 1'2" to 8', and the vehicular gates are 2'7" from the front property line. The site plan also shows 12' right-of-way from the line of pavement to the property line.
- The submitted elevation shows three sections:
 - A typical side fence elevation showing 7' wrought iron fence with 9' brick columns;
 - Elevation A-A showing a fence with a brick knee wall approximately 3' in height with wrought iron approximately 4' in height (7' total) with brick columns 9' in height and the vehicular gate with a maximum height of 10' with 10'3" stone columns;
 - Elevation B-B showing a brick knee wall approximately 3' in height with wrought iron approximately 4' in height (7' total) with brick columns 9' in height and a stone knee wall approximately 3' in height with wrought iron approximately 6' in height (9' total) with 10'3" stone columns. This elevation also shows a decorative wrought iron panel on each of these types of fences.
- The elevations show the columns have decorative sphere finials at the top, which is the highest point of the proposed columns.
- Some existing landscape materials have been noted on the submitted site plan to be removed or remain.
- The Board Senior Planner conducted a field visit of the site and surrounding area and noted no other fences/walls above four (4) feet in height which appeared to be located in the front yard setback.

GENERAL FACTS (related to the visibility obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The applicant requests to construct four 10’3” tall stone columns and portions of the 9’ tall brick fence in the 20’x20’ visibility triangle at the driveways and Dentwood Drive intersections.
- The site plan shows the stone columns at the driveways are 3’ wide by 3’ in depth. These four stone columns connect to the vehicular gates at each driveway intersection with Dentwood Drive, approximately 1’2” from the front property line and 13’2” from the line of pavement.

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:

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

Timeline:

- Sept. 28, 2006: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- October 27, 2006: The Board Senior Planner 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 November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

November 3, 2006 The Development Services Senior Engineer submitted a review comment sheet recommending that this case be denied. The conditions identified that violate the visibility regulations include: "The fences and gates encroach approximately 7'x 7' or 8'x 8' into the 20'x 20' driveway visibility triangles and the gates must be set 20 feet from the pavement edge."

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

- No other fence/wall above four (4) feet in height which appeared to be located in the front yard setback were noted in the immediate vicinity of the subject site.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6'3" (whereby the proposed 7' wrought iron fence with 9' brick columns, 7' wrought iron/brick fence with 9'brick columns, the vehicular gate with a maximum height of 10' with 10'3" stone columns, and a 9' wrought iron/brick fence with 10'3" stone columns) will not adversely affect neighboring property.
- Granting this special exception of 6'3" with conditions imposed that the applicant complies with the submitted site plan and elevation would require the fence to be constructed and maintained on the site as noted on these documents.

STAFF ANALYSIS (related to the visibility obstruction special exception):

- The Development Services Senior Engineer submitted a review comment sheet recommending that this case be denied. The conditions identified that violate the visibility regulations include: “The fences and gates encroach approximately 7’x 7’ or 8’x 8’ into the 20’x 20’ driveway visibility triangles and the gates must be set 20 feet from the pavement edge.”
- The applicant has the burden of proof in establishing the following:
 - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan, the four 10’3” tall stone columns and portions of the 9’ tall brick fence in the 20’x20’ visibility triangle at the driveways and Dentwood Drive intersections) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the site plan and elevation, the existing fences would be “excepted” into the 20’x20’ driveway/street triangles.
- If the Board of Adjustment were to grant the request for the fence height special exception (and impose the site plan as a condition to the fence height request) but deny the visibility obstruction special exception, staff would note on the fence height-approved stamped site plan that the fence/wall on the site must comply with all city-required visibility obstruction regulations.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: Gary Dean, 6308 Whittier Dr., Dallas, TX

APPEARING IN OPPOSITION: Steven Wolens, 5335 S. Dentwood Dr, Dallas, TX
Ted Akin, 5232 N. Dentwood Dr, Dallas, TX
Karen Houillion, 5414 N Dentwood Dr., Dallas, TX
Ann Hubach, 5333 N. Dentwood Dr., Dallas, TX
Lanny Houillion, 5414 N Dentwood Dr., Dallas, TX
Meyling Ly, 5415 N. Dentwood Dr, Dallas, TX
James Carry, 5446 N Dentwood, Dallas, TX

MOTION #1: **Griggs**

I move that the Board of Adjustment, in Appeal No. **BDA 056-248**, on application of Gary Dean Construction, LLC, **deny** the request for a special exception to construct a ten foot , three inch fence requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Jefferson**

AYES: 3– Gabriel, Griggs, Jefferson

NAYS: 2 - Richmond, Schweitzer,

MOTION PASSED: 3–2

MOTION #2: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 056-248**, on application of Gary Dean Construction, LLC, **deny** the request for a special exception to the visibility obstruction regulations requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Jefferson

AYES: 4– Richmond, Gabriel, Griggs, Jefferson

NAYS: 1 - Schweitzer,

MOTION PASSED: 4–1

FILE NUMBER: BDA 056-251

BUILDING OFFICIAL'S REPORT:

Application of West Mt. Horeb Missionary Baptist Church, represented by Santos T. Martinez, for a variance to the off street parking regulations at 3726 Pueblo Street. This property is more fully described as Lot 6A and 6A.1 in City Block C/7152 and is zoned R-5(A) which limits remote parking for a church to 50%. The applicant proposes to construct a new sanctuary and provide 76% of the required parking by remote parking which would require a variance of 26%.

LOCATION: 3726 Pueblo Street

APPLICANT: West Mt. Horeb Missionary Baptist Church
Represented by Santos T. Martinez

REQUEST:

- A variance to the off-street parking regulations, specifically the remote and shared parking provision for a church use, is requested in conjunction with allowing a church (Mount Horeb Missionary Baptist Church) to use more than 50 percent of its off-street parking requirement through remote parking on a lot directly adjacent across Pueblo Street. The applicant is requesting the variance to the parking regulations in order for 76% of the parking required for the existing church (and a new fellowship/sanctuary addition underway) located on the south side of Pueblo Street to be provided in a city-recognized remote parking lot to be developed immediately adjacent to the site directly across Pueblo Street.

STAFF RECOMMENDATION:

Denial without prejudice

Rationale:

- The applicant has not completely addressed the standard that must be applied in considering a variance. Staff has recognized that the Development Services Senior Engineer has no objections to the request, and that the variance is not made in conjunction with seeking a reduction in the amount of required off-street parking. Staff has additionally recognized that the size of the subject site encumbers the applicant's ability to provide the required off-street parking on the subject site and through Code-required provisions for remote parking – parking that is required for the existing church on the site (with an approximately 3,500 square foot building footprint) and the new church sanctuary/fellowship building addition underway on the site (with an approximately 6,175 square foot building footprint). However, staff has concluded that this request should be denied since the hardship in this case is self-created. The off-street parking requirements of the Dallas Development Code could be met if it were not for the construction of/size of the new church sanctuary/fellowship building addition on the subject site – a site that is already developed with a church structure/use. The remote parking provisions that the applicant seeks variance from could be met in this case if the fellowship/sanctuary addition that is currently underway on the site had not been added on the subject site or had been designed with a smaller floor area.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The subject site was originally designated with the application to encompass two areas, one area of which was located on the north side of Pueblo Street recently zoned P(A) Parking District (where the remote off-street parking is proposed), the other area of which was located on the south side of Pueblo Street which is zoned R-5(A) (where the existing church and new addition that is under development are/are to be located). The applicant submitted a revised zoning map that redefined

the subject site as being just that area on the south side of Pueblo Street (see Attachment A).

- The Dallas Development Code provides that a church use may use remote and/or shared parking to satisfy up to 50 percent of its off-street parking requirement, provided that the remote and/or shared parking is on a lot that is:
 - a) dedicated to parking use by an instrument filed with the building official and approved by the city attorney's office;
 - b) located in a nonresidential zoning district, and
 - c) located within 600 feet (including streets and alleys) of the lot occupied by the church.

The applicant has submitted documents and plans that indicate that the church and new addition on the site will require 75 parking spaces of which 18 spaces will be provided on the subject site with the remaining 61 spaces proposed to be located across the street from the subject site on the north side of Pueblo Street. (Only 50% or 37 spaces are allowed to be located on this property given the Code provision stating that only up to 50% of the parking required for a church use can be provided in remote parking).

- The new addition on the subject site is referenced on the application as a "new church sanctuary." The new addition is referenced in a letter submitted by the applicant's representative as a "new sanctuary." The submitted site plan, however, notes that the new addition as a "Proposed Fellowship Bldg."
- DCAD records indicate that the southern part of the subject site located at 3726 Pueblo Street is developed with a 5,712 square foot church building built in 1978.
- The subject site is zoned R-5(A) Single Family Residential District, and is flat, rectangular in shape (200' x 144'), and 28,800 square feet in area.
- According to calculations taken from the submitted site plan by the Board Administrator, the "Proposed Fellowship Bldg." has a 6,175 square foot building footprint and the "existing sanctuary" has 3,520 square foot building footprint.
- On October 27th, immediately following the staff review team meeting, the Board Administrator received an additional letter from the applicant's representative (see Attachment B). This letter was not submitted in time to be discussed at the staff review team where the staff formed a recommendation of denial.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-5(A) (Single family 7,500 square feet)
<u>North:</u>	P(A) (Parking)
<u>South:</u>	R-5(A) (Single family 7,500 square feet)
<u>East:</u>	R-5(A) (Single family 7,500 square feet)
<u>West:</u>	R-5(A) (Single family 7,500 square feet)

Land Use:

The subject site is developed with an existing church that is currently being developed with an addition (Mount Horeb Missionary Baptist Church). The area to the north is undeveloped (and is slated to be the remote parking lot for the church use on the subject site); and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|---|--|
| 1. Z056-245, north side of Pueblo Street, east of Norwich Street (the lots north of the subject site) | On August 23, 2006, the City Council approved an application for an ordinance granting a P(A) Parking District on property zoned an R-5(A) Single Family District. |
|---|--|

Timeline:

- Sept. 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 19, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

- October 25, 2006: The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.
- October 27, 2006: The applicant's representative submitted additional information to staff that was received immediately following the staff review team meeting (see Attachment B). This information was therefore not discussed/considered at the October 27th staff review team meeting where staff formed a recommendation of denial of the request.
- October 31, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- No reduction to the number of off-street parking is being sought in conjunction with this request for a variance to the off-street parking regulations. The request is made to vary/allow the maximum percentage of remote parking allowed for a church use to be raised from 50% to 76% (or to increase the 37 spaces allowed per the code provisions in the remote lot immediately adjacent to the site to 57 spaces).
- The Development Services Senior Engineer has commented that he has no objections to this request.
- The subject site is zoned R-5(A) Single Family Residential District, and is flat, rectangular in shape (200' x 144'), and 28,800 square feet in area. The applicant is unable to fulfill the 75 off-street parking spaces triggered by the existing church and the new addition on the subject site and on lot across the street designated for remote parking while simultaneously meeting the code provision that limits the amount of off-street parking spaces that one can provide through remote parking to 50%.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations 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 off-street parking variance is necessary to permit development of the subject site (a site currently developed with a church with an approximately 3,500 square foot building footprint AND being developed with a new addition with a 6,175 square foot building footprint; and a site that is flat, rectangular in shape 28,800 square feet in area) that differs from other parcels of land by being of such a

restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-5(A) zoning classification.

- The off-street parking variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-5(A) zoning classification.
- If the Board were to grant the request, the applicant would be “varied” from the maximum amount of remote parking spaces triggered by the existing church and the new sanctuary/fellowship building from 50% allowed on the remote lot across the street from the subject site to 76% of the required parking on the remote lot (and permitted to increase the 37 spaces allowed on this remote lot to 57 spaces).

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: Santos Martinez, 900 Jackson, #640, Dallas, TX

APPEARING IN OPPOSITION:

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 056-251**, on application of West Mt. Horeb Missionary Baptist Church, represented by Santos T. Martinez, **grant** the variance to the off-street parking regulations, to allow the applicant to provide 76% of their required parking on a remote lot because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

SECONDED: **Jefferson**

AYES: 4– Richmond, Gabriel, Schweitzer, Jefferson

NAYS: 1 - Griggs,

MOTION PASSED: 4–1

FILE NUMBER: BDA 056-256

BUILDING OFFICIAL'S REPORT:

Application of Crescent Estates Custom Homes, L.P., represented by Mark A. Shekter, for a variance to the front yard setback regulations and for a special exception to the landscape regulations at 3520 Cedar Springs Road. This property is more fully described as Lot 1 in City Block 2/992 and is zoned PD-193 (O-2 Subdistrict) which requires a front yard setback of 20 feet and requires mandatory landscaping. The applicant proposes to construct a building and provide an 8 foot front yard setback

which would require a variance of 12 feet to the front yard setback regulations, and to provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 3520 Cedar Springs Road

APPLICANT: Crescent Estates Custom Homes, L.P.
Represented by Mark A. Shekter

November 14, 2006 Public Hearing Notes:

- The applicant's representative submitted additional information at the public hearing. This information included photos of the site and surrounding area, and revised site/landscape plan of the proposed development.

REQUESTS:

- The following appeals have been made in this application:
 - a. a special exception to the landscape regulations; and
 - b. a variance to the front yard setback regulations of 12 feet.These appeals are requested in conjunction with constructing and maintaining an approximately 4 level, 7 unit multifamily structure with an approximately 4,800 square foot building footprint (128' X 36') on a site that is developed with what appears to be a residential structure.

STAFF RECOMMENDATION: (Landscape Special Exception)

Denial

Rationale:

- The request is triggered by constructing a new building on the site (i.e. demolishing the existing structure on the site) affording the applicant to better if not fully meet the landscape requirement of PD No. 193.
- The alternate landscape plan submitted with the appeal does appear to compromise the spirit and intent of the landscaping requirements of PD No. 193 given the number of ways this plan is deficient in meeting the requirements that are not off-set by ways in which the plan exceeds the requirements.
- The City's Chief Arborist recommends denial of the request.

STAFF RECOMMENDATION: (Front Yard Variance)

Denial

Rationale:

- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude its development (in this case, with a structure that could meet the applicable development standards including the 20' front yard setbacks) in a manner commensurate with other developments found on other similarly-zoned lots.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is specifically requesting relief from the sidewalk width and location, the quantity and location of street tree, garage screening and landscaping, and the required minimum percentage of the lot designated as particular landscape area requirements of the PD No. 193 ordinance.

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the sidewalk width and location, quantity and location of street tree, garage screening and landscaping, and required minimum percentage of the lot designated as particular landscape area requirements.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide a 6' wide sidewalk between 5' – 12' from the back of curb.
The applicant is proposing to provide a 4' wide sidewalk between 2' and 6.5' from the back of curb.
 2. The applicant is required to provide one, 3.5" diameter street tree for every 25' feet of street frontage (less areas where visibility obstruction regulations prohibit planting trees) to be located 2.5' – 5' from the back of curb (which on this site is 2 street trees).
The applicant is proposing to provide only 1 street tree within the tree planting zone, and 5 of 7 street trees are proposed to lie within visibility triangles and must be eliminated from the landscape plan.
 3. The applicant is required to provide 2,580 square feet of landscape site area in the required front yard; 1,290 square feet of general planting area in the required front yard, and 150 square feet of special planting area in the required front yard.
The applicant is proposing to provide 1,226 square feet of landscape site area in the required front yard; 500 square feet of general planting area in the required front yard, and 80 square feet of special planting area in the required front yard.
The applicant is required to provide 1,950 square feet of landscape site area for the lot area; 960 square feet of general planting area for the lot area, and 192 square feet of special planting area for the lot area.
The applicant is proposing to exceed the landscape site area for the lot area; 700 square feet of general planting area for the lot area, and 136 square feet of special planting area for the lot area.
 4. The applicant is required to a 10' wide landscape buffer strip immediately adjacent to and along the entire façade of an above grade parking structure that faces a public street which must contain 1 tree for every 25' of frontage and evergreen shrubs at 3' on center.
The applicant is not providing a garage buffer, some landscaping adjacent to the garage façade along Cedar Springs but not enough to satisfy the requirements. There is no buffer adjacent to the garage façade along Hood Street.
- Factors for consideration:
- The one Live Oak tree proposed for the parkway along Hood Street is much too large a species to be located in a 2' – 2.5' planting strip. The arborist is unclear why the sidewalk is only 4' wide and why it is closer to the curb than

the PD would like. If the board is inclined to grant the request, no trees should be shown in the 2' wide parkway.

- Recommendation:
 - Denial.

GENERAL FACTS (related to the variance):

- The minimum front yard setback must be provided in the PD No. 193 (O-2 Subdistrict) zoning district is 10' for single family structures and 20' for other permitted structures.
The applicant has submitted a site plan (and floor plans) that indicates a 7 unit apartment structure that is providing the required 20' front yard setback along Cedar Springs Avenue but (with the exception of a 2' x 12' entry way that is 8' from the Hood Street front property line) a 10' front yard setback in the site's other front yard setback along Hood Street (or a structure that is 10' into the 20' Hood Street front yard setback).
- The Board Administrator has calculated from the submitted site plan that about 1,300 square feet of total approximately 4,800 square foot building footprint would be located in the site's Hood Street 20' front yard setback.
- The site appears to be relatively flat, is rectangular in shape (160' x 57') and approximately 9,500 square feet in area. The site is located at the corner of Cedar Springs Road and Hood Street and has two front yard setbacks which is a typical characteristic of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The subject site is 57' wide. Once one accounts for a 20' front yard setback on the northwest and a 10' side yard setback on the southeast, the developable width remains at 27 feet.
- DCAD records indicate that the site is developed with a "converted residence" structure built in 1930 with a total area of 3,040. (It has not been established whether or not the existing structure is in compliance with the site's two 20' front yard setbacks).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
North: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
South: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
East: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)
West: PD No. 193 (O-2 Subdistrict) (Planned Development District, Office)

Land Use:

The subject site is developed with what appears to be a residential structure. The areas to the north, east, south, and west appear to be developed with office uses.

Zoning/BDA History:

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

Timeline:

- Sept. 29, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 19, 2006: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the October 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, and the Assistant City Attorney to the Board.

The Development Services Senior Engineer identified that the site plan submitted in conjunction with the application showed what could be parking spaces that are out of compliance with the visibility obstruction regulations in the Hood Street drive approach visibility triangles. The engineer stated that these spaces would only be violating the visibility obstruction regulations if the parking spaces were needed to fulfill the off-street parking requirements.

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

October 27, 2006: The Board Administrator relayed the Development Service Senior Engineer's visibility obstruction concern to the applicant's representative who responded by explaining that the parking spaces were not needed to fulfill the off-street parking requirement, therefore would not require a special exception to the visibility obstruction regulations.

October 31, 2006 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

STAFF ANALYSIS (related to the landscape special exception):

- The applicant proposes to demolish the existing building on the site and construct a new multifamily structure in its place.
- An alternate landscape plan has been submitted with this request where, according to the City of Dallas Chief Arborist, there are areas that would not fully comply with sidewalk width and location, quantity and location of street tree, garage screening and landscaping, and required minimum percentage of the lot designated as particular landscape area requirements.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate plan has been submitted that, according to the Chief Arborist, is deficient in sidewalk widths, sidewalk locations, required number of street trees, required percentages of landscape site area, general planting area, and special planting area, required landscape buffer widths and related landscaping) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the proposed multifamily structure could be constructed on the site with the site would be "excepted" from full compliance to the sidewalk width and location, quantity and location of street tree, garage screening and landscaping, and required minimum percentage of the lot designated as particular landscape area requirements of the Oak Lawn PD landscape ordinance.

- Note that although Chief Arborist has mentioned that the alternate landscape plan notes certain landscape items located in required visibility triangles, granting the landscape special exception, subject to the submitted landscape plan, would not provide relief or “except” these items from the required visibility obstruction regulations.

STAFF ANALYSIS (related to the variance):

- The site appears to be relatively flat, is rectangular in shape (160’ x 57’) and approximately 9,500 square feet in area. The site is located at the corner of Cedar Springs Road and Hood Street and has two front yard setbacks which is a typical characteristic of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The subject site is 57’ wide. Once one accounts for a 20’ front yard setback on the northwest and a 10’ side yard setback on the southeast, the developable width remains at 27 feet.
- The Board Administrator has calculated from the submitted site plan that about 1,300 square feet of total approximately 4,800 square foot building footprint would be located in the site’s Hood Street 20’ front yard setback.
- The applicant has the burden of proof in establishing the following with regard to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 12’ along Hood Street requested to construct and maintain an approximately 4 level, 7 unit multifamily structure with an approximately 4,800 square foot building footprint will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (O-2 Subdistrict) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (O-2 Subdistrict) zoning classification.
- If the Board were to grant the front yard variance requests of 12’, imposing a condition whereby the applicant must comply with the submitted site plan, the structure could be built on the site as close as 8’ from the Hood Street front property line (or 12’ into the 20’ front yard setback).

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: Mark Shekter, 3615 N. Hall St., Dallas, TX

APPEARING IN OPPOSITION: Neil Emmons, 2525 Turtle Creek, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 056-256**, hold these matters under advisement until **January 16, 2007** so that the applicant may bring back a landscape plan.

SECONDED: **Jefferson**

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

NAYS: 0 -

MOTION PASSED: 5–0 (unanimously)

FILE NUMBER: BDA 056-257(J)

BUILDING OFFICIAL'S REPORT:

Application of Jack C. Irwin for a variance to the height regulations and a special exception to the visibility obstruction regulations at 1315 Skiles Street aka 3115 and 3117 Live Oak. This property is more fully described as Lots 15 and 16 in City Block 309 and is zoned PD-298 which limits the height of a building to 32 feet due to the residential proximity slope regulations and requires 45 foot visibility triangles at the intersections of streets and 20 foot visibility triangles at the intersections of driveways and streets. The applicant proposes to construct a building with a height of 46 feet 8 inches and to encroach into the visibility triangles, which would require a variance of 12 feet 8 inches to the height regulations and a special exception to the visibility obstruction regulations.

LOCATION: 1315 Skiles Street aka 3115 and 3117 Live Oak

APPLICANT: Jack C. Irwin

REQUEST:

- A variance to the height regulations (due to RPS) of 12 feet 8 inches and a special exception to the visibility obstruction regulations are requested in conjunction with constructing a multifamily structure.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- The request site appears to be flat, rectangular, and approximately 20,000 square feet. The applicant had not substantiated how the site's restrictive area, shape and/or slope precluded the site from being developed in a way that meets the applicable development standards, including height provisions, commensurate with other developments found on other similarly zoned lots.

STAFF RECOMMENDATION (visibility obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer does not support this request.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The request site is currently undeveloped.
- The property is zoned PD 298 Subarea 10. The property to the northwest is zoned PD 298 Subarea 6, which requires any development on the request site to respect a 1-to-3 residential proximity slope. In PD 298, a 1-to-3 RPS is required from property in Subarea 6 or any R(A), D(A), or TH(A) districts adjacent to PD 298 except for Subarea 7.

- Residential proximity slope requires a setback for development on properties adjacent to residential districts at a specified ratio or distance. In this case, RPS applies to any portion of a structure over 26 feet.
- Elevations have not been submitted showing the portion of the structure that would be violating the RPS. The applicant submitted with the application a graphic showing the zoning envelope related to height allowed for the subject property and the adjacent properties in Subarea 6. The graphic shows the property line of the parcels that are causing the RPS, the 1-to-3 RPS, and the proposed heights that the applicant is requesting to violate RPS.
- The zoning envelope graphic shows the applicant is requesting a maximum height of 35' in the 53' portion of the site closest to Subarea 6, a maximum height of 46'8" for the adjacent 28'4" portion of the site, and the remaining approximately 125' of the site would be of a maximum height that would respect the 1-to-3 RPS.
- PD 298 allows a maximum height of 100' in Subarea 10 and a maximum height of 36'-40' in Subarea 6. PD 298 does not require RPS for properties in Subarea 7 or for commercially compatible single family uses. Commercially compatible single family use is defined as a moderately dense single family use that is compatible with commercial development.
- The submitted site plan shows the proposed multifamily structure will have a footprint of approximately 88'11" x 183'7".
- The site appears to be flat, rectangular in shape, and approximately 20,000 square feet (100'x 200') in area.
- A structure that is 26 feet in height could be constructed without additional setbacks or a height variance.
- The applicant has indicated that the taking of land for public right-of-way remarks on the application are speaking to the portion of the subject site adjacent to Carmel Street. Carmel Street has a current width of 20' as shown on the plat map.
- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A revised site plan shows the portions of the proposed structure that are located in a visibility triangle in the following locations:
 - a 16"x16" column within the 45'x45' corner clip visibility triangles of Live Oak Street and Skiles Street and Skiles Street and Carmel Street;
 - both sides of the 20'x20' visibility triangles for the driveway on Live Oak Street and the driveway on Carmel Street.
- The applicant has indicated that the portions of the building to be located within these visibility triangles will be constructed of solid materials and will be within the 2 ½' to 8' area that the Development Code requires to be unobstructed.
- The applicant requested on his application an extension of time for the number of days a permit could be obtained if the Board of Adjustment approves his

applications. The applicant has withdrawn this request after Staff informed that request must be at a subsequent hearing.

BACKGROUND INFORMATION:

Zoning:

Request Site: PD 298 Subarea 10
North: PD 298 Subarea 7 and PD 298 Subarea 6
South: PD 298 Subarea 10
East: PD 298 Subarea 10
West: PD 298 Subarea 6

Land Use:

The request site is undeveloped. The areas to the north and west are developed with single family and multifamily residential; the areas to the south is developed with a mix of office, medical office, and parking uses; the area to the east is developed with a park. The site adjacent to the northwest is undeveloped.

Zoning/BDA History:

There have been no recent or relevant Board of Adjustment or zoning cases in the area.

Timeline:

- Undated: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 24, 2006: The Board Administrator contacted the applicant via email 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 November 3rd 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 November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 26, 2006 The applicant submitted a letter and photos regarding his request (Attachment A). (Color photos will be available at the hearing.)

October 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Chief Planner, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 31, 2006 Transportation Engineer Nguyen submitted a review comment sheet: "Cannot support the special exception to the visibility triangles, especially at Live Oak Street."

November 3, 2006 The applicant submitted an additional letter and additional photos regarding his request. (Attachment B). (Color photos will be available at the hearing.)

STAFF ANALYSIS:

- The Transportation Engineer submitted a review comment sheet stating that he cannot support the request for the special exception to the visibility obstruction regulations.
- The applicant has the burden of proof in establishing that the special exception to the visibility obstruction regulations will not constitute a traffic hazard.
- Granting the special exception subject to the site plan, would allow columns and portions of the multifamily structure to be located within the corner clip and visibility triangles in the location and materials noted on the site plan.
- The subject site appears to be flat, rectangular in shape, and approximately 20,000 feet in area. The site to the southwest of the request is developed with single family uses that appears to meet RPS.
- Granting this variance, subject to the submitted site plan, would allow a multifamily structure to encroach 12 feet 8 inches in height into the Residential Proximity Slope.
- The zoning envelope graphic shows the portion of the subject site that the applicant is requesting certain heights.

- An elevation of the proposed multifamily structure that would violate RPS and be located within corner clips and visibility triangles was not provided. Typically, for height variance and visibility obstruction special exceptions, elevations are submitted to show the amount and materials of structures that are seeking Board approval.
- The applicant has the burden of proof in establishing the following in regards to the height variance request:
 - That granting the variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site (that appears to be flat, rectangular in shape, and approximately 20,000 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 298 Subarea 10 zoning classification.
 - The variance would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 298 Subarea 10 zoning classification.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 14, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

***Due to an administrative error the board lacked jurisdiction to hear this case, therefore this matter was held over until January 16, 2007.**

MOTION: **Jefferson**

I move to adjourn this meeting.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (Unanimously)

3:05 P.M. - Board Meeting adjourned for November 14, 2006.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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