

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, MARCH 15, 2006

Briefing: 10:00 A.M. 5ES
Public Hearing: 1:00 P.M. COUNCIL CHAMBERS

Purpose: To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

*** All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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3-15-2006

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, MARCH 15, 2006
AGENDA

BRIEFING/BUS TOUR PUBLIC HEARING	5ES COUNCIL CHAMBERS	10:00A.M. 1:00 P.M.
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Donnie Moore, Chief Planner
Steve Long, Board Administrator
Jennifer Hiromoto, Senior Planner

MISCELLANEOUS ITEMS

	Approval of the Wednesday, February 15, 2006 Board of Adjustment Public Meeting Minutes	M1
BDA 056-013	3636 McKinney Avenue REQUEST: Application of Jonathan Vinson of Jackson Walker L.L.P., to extend the time period in which to apply for a building permit or certificate of occupancy on variances to the front yard setback regulations, a variance to the height regulations, and a special exception to the landscape regulations granted by the Board of Adjustment Panel B in October of 2005.	M2

UNCONTESTED CASES

BDA 056-089	4619 aka 4615 and 4703 East Grand Avenue REQUEST: Application of Miguel Sales for a special exception to the fence height regulations	1
BDA 056-092	1130 Beachview Street REQUEST: Application of Keith Koop, represented by Ryan Bibb, for a special exception to the parking regulations	2
BDA 056-097	5150 Miller Avenue REQUEST: Application of Tornillo Invstmt Co., represented by Zone System, Inc. for a variance to front yard setback regulations and a special exception to the fence regulations	3

BDA 056-098	6106 Royalton Drive REQUEST: Application of Thomas S. Adams, represented by Dean W. Smith for variances to the front yard setback regulations	4
BDA 056-108	6304 Llano Avenue REQUEST: Application of James Beach for a variance to the side yard setback regulations	5

HOLDOVER CASE

BDA 056-048	4820 Northaven Road REQUEST: Application of Kelly J. Warren, represented by Roger Albright, for a special exception to the fence height regulations	6
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HOLDOVER COMPLIANCE CASE

BDA 056-C02	4538 Scyene Road REQUEST: Application of True Lee Missionary Baptist Church and the Bertrand Neighborhood Association requesting a compliance date and discontinuance of a nonconforming motel use	7
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EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B February 15, 2006 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 056-013

REQUEST: To extend the time period in which to apply for a building permit or certificate of occupancy for an additional 3 months from the Board of Adjustment's favorable action on variances to the front yard setback regulations of 5', a variance to the height regulations of 25', and a special exception to the landscape regulations that were granted on October 19, 2005.

LOCATION: 3636 McKinney Avenue

APPLICANT: Jonathan Vinson of Jackson Walker

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

The Board of Adjustment Working Rules of Procedure states that a panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no, event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

GENERAL FACTS:

- On October 19, 2005, the Board of Adjustment granted variances to the front yard setback regulations of 5', a variance to the height regulations of 25', and a special exception to the landscape regulations. (The board imposed the submitted site plan, revised elevations, and revised landscape plan as conditions to these appeals). The case report stated that these requests were made in conjunction with constructing and maintaining a 19-story retail/office/residential tower, a 12-story retail/residential tower, a 7-story retail/office/residential tower, a 2.5-story parking tower, and a restaurant.
- The Dallas Development Code states the following with regard to board action:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.

- On March 2, 2006, the applicant's representative submitted a letter to staff requesting that time period in which to apply for a building permit or certificate of occupancy be extended an additional 3 months beyond the 180 day time period the applicant had in which to do so pertaining to variances and a special exception that were approved in conjunction with BDA 056-013 on October 19, 2005 (see Attachment A).
- On March 3, 2006, the applicant's representative submitted another letter to the Board Administrator (see Attachment B). This letter states the following:
 - "There are no substantially changed conditions or circumstances affecting the property;"
 - The "property itself remains exactly as it was in terms of property conditions, and the proposed development project, as approved by the Board, is exactly the same in terms of site plan and exterior elevations;"
 - "The only reason for the extension request is to ask for a short period of additional time within which to complete the interior layout planning and submit for Building Permits."

Timeline:

- Oct. 19, 2005 The Board of Adjustment granted requests for variances to the front yard setback and height regulations and a special exception to the landscape regulations on the subject site. The board imposed conditions to these requests: compliance with the submitted site plan, revised elevations, and revised landscape plan is required. The applicant was informed in a "decision letter" drafted on October 24, 2005, a contact with Building Inspection should be made to file an application for a building permit or certificate of occupancy with 180 days from the date of the favorable action of the board.
- March 3, 2006 The applicant's representative submitted a letter to the Board Administrator requesting a 3-month extension to make application for a building permit beyond the 180 days the applicant had from the favorable action of the board on October 19, 2005 (which in this case, if the extension would be granted, would expire on July 15, 2006).
- March 6, 2006: The Board Administrator wrote the applicant's representative an email that conveyed the following information:
 - the public hearing date and panel that will consider the request;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the noon, March 6th 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 6, 2006

The applicant's representative submitted additional information to staff beyond what was submitted with the original request (see Attachment B).

FILE NUMBER: BDA 056-089

BUILDING OFFICIAL'S REPORT:

Application of Miguel Sales for a special exception to the fence height regulations at 4619, aka 4615 and 4703 East Grand Avenue. This property is more fully described as Lot 5A in City Block 33/1235 and is zoned CS which limits the height of a fence to 9 feet. The applicant proposes to construct a 12 foot 6 inch fence in the front and rear yard which would require a special exception of 3 feet 6 inches to the fence regulations. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4619, aka 4615 and 4703 East Grand Avenue

APPLICANT: Miguel Sales

REQUEST:

- A special exception to the fence height regulations of 1' is requested in conjunction with constructing and maintaining a 10' high solid steel fence in the site's 20' rear yard setback. The subject site is undeveloped.

(Special exceptions to the fence height regulations of 3' 6" were advertised / noticed to reflect what had been requested with the original application. Originally, the applicant had planned to construct and maintain a 12' 6" high fence/wall in the site's 15' Grand Avenue front yard setback as well as the site's 20' rear yard setback. The applicant submitted revised plan on March 3, 2006 that eliminated the request to maintain a fence higher than 9' in the site's required front yard setback.)

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 9' above grade in zoning districts other than residential.
- The site is located in a CS (Community Service) zoning district where the minimum front yard requirement is 15 where adjacent to an expressway or thoroughfare; and where the minimum side and rear yard setback is 20 feet where adjacent to or directly across the alley from an R, D, TH, CH, or MF district.

- Required yards that dictate where a fence is limited to 9' in height on the subject site are as follows:
 - a 15' front yard setback is required since the subject site is located on a thoroughfare);
 - a 0' side yard setback is required since the areas adjacent to the site are CS-zoned (and not residentially zoned); and
 - a 20' rear yard setback is required since the area across the alley from the subject site is zoned D (Duplex).
- Two plan documents had been originally submitted with this appeal.
 - One plan was a document that included a "site plan," a "side elevation," and a "front elevation." The site plan denoted the "Proposal," "Gate-Fence H= 12.5'," and "Fence-Steel H =10.0'" notations. This site plan did not clearly distinguish the location of the proposal or materials, however, it appeared a line on this plan may have portrayed a fence and gate on the property line and in the 20' visibility triangles at the drive approach. The "side elevation" plan portrayed a fence section denoting a "3'-0" wall-stone" with a 7' high "fence 4" x 4" steel" notation atop. The "front elevation" denoted a 10' fence/wall comprised of a 3' stone wall with a 7' steel fence atop. This plan additionally denoted an arched steel gate that reaches 12' 6" in height.
 - The other submitted document was a plan that denoted the "proposed fence area" that was roughly delineated with a pink highlighter/marker. This plan indicated that the fence is approximately 60' long on Grand Avenue, 140' long on the southwest side of the site, approximately 150' long on the alley/rear side of the site, and approximately 280' long on the northeast side of the site. This plan indicated that the proposal along Grand Avenue was located at a range of 12' – 15' from the property line or about 22' – 25' from the Grand Avenue curb line and outside of the visibility triangles at the drive approach. This plan indicated landscape materials (unspecified species and sizes) along Grand Avenue and the alley/rear of the site.
- On March 3, 2006, the applicant submitted a revised site plan/elevation to the Board Administrator (see Attachment A). The applicant requested to have this revised site plan/elevation substitute/replace the previously submitted documents that have been described above.
- The notations on the revised site plan/elevation convey a fence to exceed 9' in height only in the site's 20' rear yard setback. (The applicant informed the Board Administrator that he no longer wished to pursue a fence height special exception to construct a fence higher than 9' in height in the site's 15' front yard setback). The revised site plan/elevation denotes a 10' high solid steel fence that will be 150' in length parallel to the alley (20' on each side perpendicular to the alley), and located on the site's rear property line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence/wall immediately south of the subject site that may exceed 9' in height. This fence is solid metal topped with razor wire.

BACKGROUND INFORMATION:

Zoning:

Site: CS (Community Service)
North: CS (Community Service)
South: CS (Community Service)
East: CS (Community Service)
West: D (A) (Duplex)

Land Use:

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

- Jan. 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.
- Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Feb. 16, 2006: The Board Administrator wrote the applicant a letter that conveyed the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

One review comment sheet was submitted in conjunction with this application. A staff person from Code Compliance submitted a review comment sheet marked "Has no objections."

Feb. 28, 2006: The Building Inspection Development Code Specialist submitted a revised Building Official's Report. The amended report deleted a request to the fence height regulations to erect a fence in the required side yard since it was determined that this was no longer a need before the board.

March 3, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- A revised scaled site plan/elevation has been submitted that documents the location of the proposed fence/wall to exceed 9' in height and located in a required yard. The revised site plan/elevation indicates that the only "required yard" where a fence will exceed the maximum 9' in height that is permitted in CS zoning is in the site's 20' rear yard setback. The revised site plan/elevation denotes location of the proposed fence/wall relative to the rear property line (on the property line), and clearly shows the length of the proposed fence/wall relative to the entire lot (150' long parallel to the alley, and 20' in length on both sides of the site perpendicular to the alley).
- The site plan/fence elevation clearly documents the height of the proposal (10' in height) and materials (solid steel).
- As of March 6, 2006, no letters had been submitted to staff either in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the solid steel fence/wall that is proposed to be located in the rear yard setback and exceed 9' in height by 1') will not adversely affect neighboring property.
- Granting this special exception of 1' with conditions imposed that the applicant complies with the submitted revised site plan/fence elevation would assure that the proposed fence/wall is constructed and maintained as shown on this document.

FILE NUMBER: BDA 056-092

BUILDING OFFICIAL'S REPORT:

Application of Keith Koop, represented by Ryan Bibb for a special exception to the parking regulations at 1130 Beachview Street. This property is more fully described as Lot 1 in City Block C/4414 and is zoned LO-1 and MF-2(A), which requires parking to be provided for a medical clinic use. The applicant proposes to convert a structure to a medical clinic use and provide 81 of the required 100 parking spaces which would require a special exception of 19 spaces. Referred to the Board of Adjustment in accordance with Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 1130 Beachview Street

APPLICANT: Keith Koop
Represented by Ryan Bibb

REQUEST:

- A special exception to the off-street parking regulations of 19 spaces (or 19% of the required off-street parking) is requested in conjunction with leasing an existing 20,000 square foot structure with "medical clinic" use.

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 proposed use on the subject site:
 - 1 space is required for every 200 square feet of floor area for “medical clinic or ambulatory surgical center” use.
 The applicant proposes to provide 81 (or 81%) of the total required 100 off-street parking spaces on the site.
- No enlargements or additions to the existing structure are planned in conjunction with this request. The applicant's representative has stated that the building contains 20,000 square feet of gross floor area; that the building was originally occupied as a switching facility for a local telephone company; and that the structure is currently 50% leased, all for medical offices.
- The Dallas Development Code requires “office” use to provide 1 space per 333 square feet of floor area. If the 20,000 square foot building were 100% leased with “office” use, the applicant would be exceeding the parking requirement if 81 spaces were provided since only 60 spaces would be required.
- According to DCAD records, the subject site is developed with an “office building” with 21,218 square feet built in 1957.

- On February 17 and 21, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A parking analysis of the subject site including parking counts, site conditions, and results; and
 - A summary and conclusion of findings.

BACKGROUND INFORMATION:

Zoning:

Site: LO-1 (Limited Office) & MF-2(A) (Multifamily)
North: LO-1 (Limited Office) & MF-2(A) (Multifamily)
South: LO-1 (Limited Office) & MF-2(A) (Multifamily)
East: LO-1 (Limited Office)
West: MF-2(A) (Multifamily)

Land Use:

The subject site is developed with an office building. The areas to the north, east, and south are developed with office uses; and the area to the west is developed with multifamily 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:

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|----------------|---|
| Jan. 11, 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. |
| Feb. 15, 2006: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. |
| Feb. 16, 2006: | <p>The Board Administrator contacted the applicant's representative and shared the following information:</p> <ul style="list-style-type: none"> • the public hearing date and panel that will consider the application; • the criteria/standard that the board will use in their decision to approve or deny the request; • the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board; |

- the March 6th 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb 17 and 21, 2006

The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A).

Feb. 27, 2006:

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

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

March 3, 2006

The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:

- "Cannot make recommendation. The parking analysis looked impressive but does not provide info such as number of staff and (assigned and occupied parking spaces), number of visitors and length of visit etc. The application provides vague info such as "considerable amount of med. Equipment..." "a portion of the second floor...for storage of medical records..."

STAFF ANALYSIS:

- 81 percent of the required off-street parking spaces are proposed to be provided in conjunction with leasing an existing 20,000 square foot structure with "medical clinic" use.
- Granting this request, subject to the condition that the special exception of 19 spaces automatically and immediately terminates if and when the medical clinic use on the site is changed or discontinued, would allow the 20,000 square foot structure to be fully leased with medical clinic use.
- The submitted site plan indicates that as many as 4 parking spaces are located in two, 20' visibility triangles at the drive approach to the structure on the site, however, granting the special exception request to the parking regulations will not provide any relief for the applicant to fully comply with the visibility obstruction regulations. (The applicant's representative was informed of this discovery made by staff on March 3rd,

and has indicated that he plans to revise his plans in order to meet the visibility obstruction regulations).

- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed medical clinic use does not warrant the number of off-street parking spaces required, and
 - The special exception of 19 spaces (or 19% 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 made the following comments on this request:
 - “Cannot make recommendation. The parking analysis looked impressive but does not provide info such as number of staff and (assigned and occupied parking spaces), number of visitors and length of visit etc. The application provides vague info such as “considerable amount of med. Equipment...,” “a portion of the second floor...for storage of medical records...”

FILE NUMBER: BDA 056-097(J)

BUILDING OFFICIAL'S REPORT:

Application of Tornillo Invstmt Co., represented by Zone System, Inc. for a variance to front yard setback regulations and a special exception to the fence regulations at 5150 Miller Avenue. This property is more fully described as Lot 13 in City Block 4/1971 and is zoned TH-3(A) which requires a front yard setback of 15 feet (due to a double front yard requirement) and limits the height of a fence in the front yard to 4-feet. The applicant proposes to construct a duplex structure and provide a 1-foot 6-inch front yard setback, which would require a variance of 13-feet 6-inchs to the front yard setback regulations, and construct a 6-foot high fence in the required front yard which would require a special exception of 2-feet to the fence regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances and Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5150 Miller Avenue

APPLICANT: Tornillo Invstmt Co.
Represented by Zone System, Inc.

REQUEST:

- A variance to the front yard setback regulations of 13'6" is requested in conjunction with constructing a duplex.
- A special exception to the fence height regulations of 2' is requested in conjunction with constructing a fence in the front yard.

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 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 (FRONT YARD SETBACK VARIANCE):

- The site is flat, rectangular in shape (50' x 160'), and approximately 8,000 square feet in area.
- The TH-3(A) zoning requires a minimum lot area of 6,000 square feet for a duplex structure and 2,000 square foot for a single family structure.
- A 0'-front yard setback is required in the TH-3(A) zoning district.
- The Dallas Development Code states in the front yard provisions for residential districts:
 - If a TH or TH(A) district abuts another residential district in the same block and fronts on the same side of the street, the residential district with the greater front yard requirement determines the minimum front yard. The minimum front yard for the residential district with the greater front yard requirement must extend at least 150 feet into the TH or TH(A) district.
- The Dallas Development Code also states in the Townhouse zoning regulations:
 - If a townhouse district abuts a district that requires a greater side yard, the side yard requirements of the more restrictive district apply to the abutting side yard in the townhouse district.
- The request site is adjacent to an MF-2(A) multifamily zoning to the south on the same block. The MF-2(A) zoning requires a 15' front yard setback.
- The four air conditioning units and a portion of the duplex structure encroach into the Homer Street front yard setback.
- The site plan indicates that the duplex will provide a 5' front yard setback adjacent to Homer Street.
- The site plan shows that the air conditioning units are to be located in the Homer Street front yard. The closest air conditioning unit is shown as approximately 1'6" from the nearest property line.
- A site plan has been submitted that indicates the area of the duplex proposed to be located in the 15'-front yard setback is approximately 1,175 square feet (10' x 117'6"). The footprint of the duplex is indicated as approximately 3,350 square feet.
- DCAD records indicate that the site is undeveloped.

GENERAL FACTS (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 revised site plans indicated a request of a 6' cedar fence to be located in the Homer Street front yard with 3' wide gates.
- The revised site plans show the fence is proposed to be located approximately 1'6" from the sidewalk adjacent to Homer Street and 5' from the curb.
- Senior Planner Hiromoto conducted a field visit of the site and surrounding area and noted no fences that appeared to be located in the front yard setback.
- The fence located on the southeast corner of the request site adjacent to the alley has been revised to not obstruct the alley-street visibility triangle.
- The northeast portion of fence is proposed to be setback 30' from the north property line which is adjacent to Miller Avenue and appears to be outside of the street-street visibility triangle at Miller Avenue and Homer Street.

BACKGROUND INFORMATION:

Zoning:

Site: TH-3(A) (Townhouse)
North: TH-3(A) (Townhouse)
South: MF-2(A) (Multifamily)
East: R-7.5(A) (Single Family Residential 7,500 square feet)
West: TH-3(A) (Townhouse)

Land Use:

The subject site is undeveloped. The area to the north is undeveloped; the area to the east is developed with single family uses; the area to the south is developed with a multifamily use; the area to the west is developed with a duplex.

Zoning/BDA History:

1. Z045-289 An authorized hearing to consider a Conservation District for the area generally bounded by Goodwin, Greenville, and Richard, also known as Vickery Place, is tentatively scheduled for City Plan Commission on April 6, 2006.

Timeline:

- January 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.
- February 16, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- February 16, 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 March 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 24, 2006 The applicant submitted revised site plans and applied for a Special Exception to the fence height regulations.

February 28, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received.

STAFF ANALYSIS (FENCE HEIGHT SPECIAL EXCEPTION):

- A scaled site plan has been submitted that documents the location of the proposed fence relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed wall relative to the lot.
- The building materials (wood) of the proposed fence are noted on the revised site plan.
- Granting the fence height special exception of 2' with conditions imposed that the applicant complies with the submitted site plan would assure that the proposed fence is constructed as shown on this document.

STAFF ANALYSIS (FRONT YARD VARIANCE):

- A revised site plan has been submitted subsequent that indicates that the duplex structure provides a 5' front yard setback. The air conditioning units provide a 1'6" front yard setback.
- Approximately 1,175 square feet (10' x 117'6") encroaches in to the front yard setback. The footprint of the duplex is indicated as approximately 3,350 square feet.
- The plat map indicates the request site is approximately 8,000 square feet.
- Elevations were submitted with the application. However, due to the expected revisions to the northeast portion of the duplex structure that must comply with the visibility triangle regulations, the elevations may also need to be revised.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of additional encroachment into the front yard setback would be limited in this case to an area of approximately 1175 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 13'6" to the front yard setback 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 front yard setback variance of 13'6" is necessary to permit development of the subject site (that is flat, (50' x 160'), and approximately 8,000 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 TH-3(A) zoning classification.
 - The front yard setback variance of 13'6" 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 TH-3(A) zoning classification.
- Granting this variance would allow approximately 1,175 square feet of duplex and four air conditioning units to encroach into the 15' front yard setback.

FILE NUMBER: BDA 056-098

BUILDING OFFICIAL'S REPORT:

Application of Thomas S. Adams, represented by Dean W. Smith for variances to the front yard setback regulations at 6106 Royalton Drive. This property is more fully described as Lot 1 in City Block 3/5500 and is zoned R-16(A) which requires a front yard setback of 35 feet. The applicant proposes to maintain a structure and to construct an addition, and provide a 15 foot 2 inch front yard setback which would require variances of 19 feet 10 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 6106 Royalton Drive

APPLICANT: Thomas S. Adams
Represented by Dean W. Smith

REQUESTS:

- Variances to the front yard setback regulations of up to 19' 10" are requested in conjunction with the following:
 1. Maintaining a nonconforming single family structure in the site's Camellia Drive 35' front yard setback; and
 2. Constructing and maintaining a 2-story attached garage/master bedroom addition to the single family structure that is located in the site's Camellia Drive 35' front yard setback. (The proposed addition would replace an existing detached garage that is located in the Camellia Drive front yard setback).The applicant has submitted a document stating that the existing house on the subject site currently has 2,170 square feet of living space, and will have 3,605 square feet with the proposed addition.

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 site has two 35' front yard setbacks: one 25' on Royalton Drive, the other on Camellia Drive.
- The existing single family home and the proposed addition would be located as close as 15' 2" from the Camellia Drive front property line.
- The existing house and addition are in/would be in compliance with the site's 35' front yard setback on Royalton Drive.
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site's longer frontage is along Camellia Drive, however, this longer frontage is deemed a front yard setback in order to maintain the established setback of a lot/home along this street to the southeast that "fronts" Camellia Drive.
- The existing structure does not comply with the current R-16(A) 35'-front yard setback since a portion of the existing structure is located as close as 15' 2" from the site's southwestern front property line along along Camellia Drive. (One of the two variance requests made in this application is only to remedy an existing *nonconforming structure*).
- The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The subject site is flat, rectangular in shape (161' x 100'), and approximately 16,000 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area. However, the subject site has two 35' front yard setbacks.
- DCAD records indicate that the site is developed with the following:
 - A single family structure in "good" condition built in 1954 with 2,170 square feet of living space; and
 - A 442 square foot detached garage.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:

- A letter that requested a variance to remedy the current nonconforming structure status of the existing single family home, some of which is located in one of the site's two front yard setbacks;
- A diagram showing the restricted use of the subject site relative to adjacent properties in R-16 (A) zoning; and
- A spreadsheet that shows the proposed square footage of living space with the addition (at 3,605 square feet) relative to 14 other homes in the neighborhood (where the average is 5,456 square feet).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 023-087, 6107 Royalton Drive (the lot immediately northwest of the subject site)

On June 24, 2003, the Board of Adjustment Panel A granted request for variances to the front yard setback regulations of 15.1 feet and a variance to the side yard setback regulations of 4.8 feet. The board imposed the following condition: compliance with the submitted site plan is required. The case report states the requests were made to maintain an approximately 2,000 single family home built in the 50's, to construct and maintain an approximately 1,200 square foot garage/family room/bedroom addition that would replace an existing detached garage.

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.
- Feb. 15, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

Feb. 16, 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 March 6th 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 24, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The subject site is flat, rectangular in shape (161' x 100'), and approximately 16,000 square feet in area.
- The site is zoned R-16(A) where lots are typically 16,000 square feet in area. However, the subject site has two 35' front yard setbacks.
- According to calculations made by the Board Administrator from the submitted site plan, the approximate amount of the existing single family home that is located in the Camellia Drive front yard setback is 488 square feet, and the approximate amount of the proposed attached garage/bedroom is 833 square feet. (The existing detached garage footprint is not shown on the submitted site plan, therefore, staff is unable to determine how much of the existing garage is located in the front yard setback). The

site plan indicates that once a 35' front yard setback is accounted for along Camellia Drive and a 10' side yard setback is accounted for on the northeast side of the site, the 100' wide subject site has 55' of developable space remaining. A review of the lots immediately northeast of the subject site indicate that although they are 100' in width as well, the two lots immediately north would have 80' width of developable space remaining once one would account for 2, 10' side yard setbacks on these lots, as opposed to one 35' front yard and one 10' side yard as is the case on the subject site at the corner of Royalton Drive and Camellia Drive.

- A diagram has been submitted that establishes that the proposed addition will not encroach any further into the Camellia Drive front yard setback than the existing house on the subject site which according to DCAD was constructed in 1954.
- The applicant's representative has submitted information establishing that the total square feet of living space for the expanded home on the site is 3,605 square feet, a figure that is well below the average living area for 14 other homes in the area at 5,456 square feet.
- 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 19' 10" to retain a home and to construct an addition 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 to the front yard setback regulations of 19' 10" to retain a home and to construct an addition 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 R-16 (A) zoning classification.
 - The variances to the front yard setback regulations of 19' 10" to retain a home and to construct an addition 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 R-16(A) zoning classification.
- If the Board were to grant the variances to front yard setback regulations of 19' 10", imposing a condition whereby the applicant must comply with the submitted site plan, the result would be a 15' 2" front yard setback where a single family home (of which about 488 square feet is in the Camellia Drive front yard setback) and an expanded/lengthened garage/bedroom addition (of which about 833 square feet would be in the Camellia Drive front yard setback) would be located 19' 10" into the 35' Camellia Drive front yard setback.

FILE NUMBER: BDA 056-108(J)

BUILDING OFFICIAL'S REPORT:

Application of James Beach for a variance to the side yard setback regulations at 6304 Llano Avenue. This property is more fully described as Lot 23 in City Block 16/2083 and is zoned R-7.5(A) which requires a 5 foot side yard setback. The applicant proposes to maintain an addition and provide a 3.3 foot side yard setback which would require a variance of 1.7 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 6304 Llano Avenue

APPLICANT: James Beach

REQUEST:

- A variance to the side yard setback regulations of 1.7' is requested in conjunction with maintaining an addition on a single family dwelling.

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.

In circumstances where it is alleged that error of an administrative official caused the applicant's hardship, the board MUST consider the following factors:

- (1) whether the applicant acted in good faith;
- (2) whether the permit was issued in error;

- (3) whether reliance on the administrative official's error was reasonable and caused the alleged hardship;
- (4) whether construction has reached a point that the project, as designed, cannot be completed without a variance (creating a "unique oppressive condition");
- (5) whether compliance would cause the applicant a substantial and unnecessary hardship; and
- (6) whether a variance would present health or safety issues.

GENERAL FACTS:

- The site is flat, rectangular in shape (50' x 150'), and approximately 7,500 square feet in area.
- The R-7.5(A) zoning requires a minimum lot area of 7,500 square feet.
- A 5'-side yard setback is required in the R-7.5(A) zoning district.
- The request site is developed with a single family home that is under construction to add the second story and add a rear addition. Both addition projects were issued a building permit by the City.
- The rear addition to the structure does provide a 5' side yard setback on the west side. The second story addition does not provide the required 5' side yard setback.
- The single family home, before the renovation, provided a 3.3' side yard setback on the west side of the property. The renovation did not alter the location of the first floor and is allowed to continue to remain in a location that does not meet the 5' side yard setback. If the entire structure were demolished it would have to meet the 5' side yard setback.
- The renovation is 85% or more complete according to material submitted by the applicant's representative (Attachment A).
- The applicant indicates in Attachment A that the structure's use prior to the additions was a duplex and that the owner is converting the structure into a single family use.
- The site plan indicates that the single family dwelling provides a 5' side yard setback on the west side at the portion of the rear addition; a 3.3' setback for the existing structure and second story renovation.
- A site plan has been submitted that indicates the area of the second story of the single family dwelling proposed to be located in the 5'-side yard setback is approximately 136.68 square feet (1.7' x 80.4').
- Elevations were submitted with the application that shows all sides of the conversion of a duplex to a single family structure.
- The front, rear, and right elevations show the elevation of the 1.7' wide portion of the structure that encroaches into the west side yard setback.
- DCAD records indicate that the site is developed with a 4,876 square foot single family residence that was built in 1939 with a 540 square foot detached garage.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

February 21, 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.

February 24, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 24, 2006: The Board Administrator contacted the applicant via phone and letter and provided the following information:

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

February 28, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Hironoto, Development Services Department Code Specialist, Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets were received.

March 6, 2006 The applicant's representative submitted additional information regarding the variance request.

STAFF ANALYSIS:

- A site plan has been submitted subsequent that indicates that the single family dwelling structure provides a 1.7' side yard setback for the west side of a second story addition. The first floor also provides a 1.7' side yard setback but is allowed to remain because it was not intentionally destroyed. The rear addition provides a 5' side yard setback.
- Approximately 136.68 square feet (1.7' x 80.4') of the second story addition on the single family dwelling structure encroaches in to the side yard setback.
- The plat map indicates the request site is approximately 7,500 square feet.
- Elevations were submitted with the application that shows all sides of the conversion of a duplex to a single family structure. The front, rear, and right elevations show the elevation of the 1.7' wide portion of the structure that encroaches into the west side yard setback.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the amount of additional encroachment into the side yard setback would be limited in this case to an area of approximately 136.68 square feet.
- The applicant has the burden of proof in establishing the following:
 - whether the applicant acted in good faith;
 - whether the permit was issued in error;
 - whether reliance on the administrative official's error was reasonable and caused the alleged hardship;
 - whether construction has reached a point that the project, as designed, cannot be completed without a variance (creating a "unique oppressive condition");
 - whether compliance would cause the applicant a substantial and unnecessary hardship; and
 - whether a variance would present health or safety issues.
- Granting this variance would allow approximately 136.68 square feet of the second story of the single family dwelling to encroach 1.7' into the 5' side yard setback.

FILE NUMBER: BDA 056-048

BUILDING OFFICIAL'S REPORT:

Application of Kelly J. Warren, represented by Roger Albright, for a special exception to the fence height regulations at 4820 Northaven Road. This property is more fully described as Lot 7 in City Block 1/ 6391 and is zoned R-1/2ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot 6 inch fence in the required front yard setback which would require a special exception of 5 feet 6 inches. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4820 Northaven Road

APPLICANT: Kelly J. Warren
Represented by Roger Albright

REQUEST:

- A special exception to the fence height regulations of 5' is requested in conjunction with constructing and maintaining a 7' high fence (4' stone and/or masonry base, 3' wrought iron atop) with 8' high columns, and two, 9' high wrought iron gates parallel and perpendicular to Northaven Road on a site that was developed with a single family home.

Prior to new material that was submitted on February 24, 2006, a special exception to the fence height regulations of 5' 6" had been requested in conjunction with constructing and maintaining the following:

- a 7' high fence (4' masonry base, 3' wrought iron atop) with 8' high columns and two, 9' 6" high wrought iron gates parallel to Northaven Road; and
- a 6' high wrought iron fence perpendicular to Northaven Road.

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 following additional information was gleaned from the originally submitted site plan/fence elevation:
 - The fence/wall is to be approximately 210' in length on the property line and approximately 3' from the Northaven Road pavement line.
 - The gates are to be recessed from Northaven Road approximately 17' from the Northaven Road property line and about 20' from the Northaven Road projected pavement line.
- The following additional information was gleaned from the *revised* submitted site plan/fence elevation:
 - The fence/wall (including recessed wing walls and gates) parallel to Northaven Road is to be approximately 255' in length on the property line and approximately 3' from the Northaven Road pavement line.
 - The gates are to be recessed from Northaven Road approximately 20' from the Northaven Road property line and about 23' from the Northaven Road projected pavement line.
- No landscape materials have been identified on any plan in conjunction with this appeal.
- Three single family homes would have direct/indirect frontage to the proposed fence/wall. One of these three homes has an open wrought iron fence in the front yard setback located behind a high hedge that is about 6' high (a fence that appears to be the result of a previous board of adjustment appeal: BDA 001-123).
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence that appeared to be above 4' in height and located in a 40' front yard setback in this block of Northaven Road:
 - an open wrought iron fence that is approximately 6' high with 7' high columns and 8' high entry gates immediately north of the site (that appears to be the result of board action made in conjunction with BDA 001-123).
- Prior to the January 18, 2006 public hearing, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details pertaining to the request and copies of police reports regarding incidents on the property.
- On January 18, 2006, the Board of Adjustment conducted a public hearing on this matter and granted the applicant's representative request to delay action on this matter for 60 days in order for his client to contemplate his fence proposal given that the house on the subject site had been recently destroyed by fire.
- The applicant's representative submitted additional information to staff (see Attachment B). This information included a letter that provided details about the request and a revised site plan and site plan/elevation.

BACKGROUND INFORMATION:

Zoning:

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

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

Land Use:

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

Zoning/BDA History:

1. BDA 001-123, 4821 Northaven Road (the lot immediately north of the subject site) On December 12, 2000, the Board of Adjustment Panel A granted a request to the fence height special regulations of 4'. The board imposed the following conditions with the request: compliance with the elevation and a revised site plan that shows the location of the fence behind the shrub is required; and the retention of the approximately 8 foot high Japanese Ligustrum shrubs now existing on the property, (or its replacement with similar species) between the street curb and the proposed fence. The case report states the request was made to construct and maintain a 6' high open wrought iron fence, a 6' chain link fence, 7' high stone columns, and two 8' high wrought iron entry gates.
2. BDA 85-145, 4719 Northaven Road (two lots northwest of the subject site) On May 14, 1985, the Board of Adjustment denied a request for a "front yard variance" of 2' 6" without prejudice. The case report states the request was made to construct a masonry fence with wrought iron gates 6' 6" in height.

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.
- Dec. 13, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the January 6th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 15, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

Dec. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January 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 Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

Jan. 18, 2006: The Board of Adjustment conducted a public hearing on this matter and delayed action until March 15, 2006.

Feb. 24, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B).

Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A revised scaled site plan/fence elevation has been submitted that documents the locations of the proposed fence/wall (parallel to Northaven Road) and fence (perpendicular to Northaven Road), columns, and gates relative to the property line and pavement line. (The proposed fence/wall is located on the property line or about 3' from the pavement line). The site plan/fence elevation also clearly shows the length of the proposed fence/wall relative to the entire lot (about 255' long).
- A revised scaled site plan/fence elevation has been submitted that documents the height of the proposal parallel and perpendicular to Northaven Road: fence that is 7' in height, columns that are 8' in height, and gates that are 9' in height. The revised site plan/elevation also documents the building materials of the proposal parallel and perpendicular to Northaven Road: fence/wall ("8' mas. wall" and wrought iron) and entry gates (open wrought iron). (The applicant has submitted a letter describing the base of the proposed fence/wall to be "stone," however, the submitted revised elevation notes the 4' high base as "8" mas fence").
- The applicant's representative has described in a letter (Attachment B) that the "The two wrought iron gates parallel to Northaven but setback to comply with the visibility triangle regulations will be 9 feet high."
- Three single family homes would have direct/indirect frontage to the proposed fence/wall. One of these three homes has an open wrought iron fence in the front yard setback located behind a high hedge that is about 6' high (and what appears to be the result of a previous Board of Adjustment appeal: BDA 001-123).
- As of March 6th, no letters had been submitted to staff either in support of the request, and a petition signed by 12 neighbors/owners has been submitted in opposition to the request in addition to 2 individual letters in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence/wall, columns, and gates that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 5' with conditions imposed that the applicant complies with the submitted revised site plan/fence elevation would assure that the proposed fence/wall, columns, and gates are constructed and maintained as shown on this document.

BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006

APPEARING IN FAVOR: Roget Albright, 3301 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 056-048**, hold this matter under advisement until **March 15, 2006**.

SECONDED: **Beikman**

AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056-C02

BUILDING OFFICIAL'S REPORT:

Application of True Lee Missionary Baptist Church and the Bertrand Neighborhood Association requesting a compliance date and discontinuance of a nonconforming motel use located at 4538 Scyene Road. This property is more fully described as Lots 7-9 in City Block A/4475 and is zoned PD-595 (CC Subdistrict) which requires a motel to have a specific use permit. Referred to the Board of Adjustment in accordance with Section 51A-4.704 of the Dallas Development Code, as amended, which states the power of the Board to bring about the discontinuance of a nonconforming use.

LOCATION: 4538 Scyene Road

APPLICANT: True Lee Missionary Baptist Church and the Bertrand Neighborhood Association

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The American Inn) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
 - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
 - (iii) The manner in which the use is being conducted.
 - (iv) The hours of operation of the use.
 - (v) The extent to which continued operation of the use may threaten public health or safety.
 - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
 - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

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

GENERAL FACTS:

- City records indicate that the motel use on the subject site became nonconforming on September 25, 2001 (Ordinance No. 24726).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 595 (CC Community Commercial Subdistrict) that permits a "hotel or motel" use with an SUP (Specific Use Permit).
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
 - "Hotel or motel."
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
 - (B) Districts permitted:
 - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
 - (ii) By SUP only in the CR district.
 - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
 - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- The Board of Adjustment conducted a public hearing on this appeal on January 18, 2006 public hearing. The applicant was present at the hearing but the owner of the subject site was not. The board determined based on the evidence and testimony presented to them at the public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date of March 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.
- Prior to the January 18, 2006 public hearing on this appeal, the applicant had submitted information beyond what was submitted with the original application which was entitled as "Attachment A". The Board of Adjustment conducted a public hearing

on this matter on January 18, 2006, where the applicant submitted additional evidence and letters regarding the appeal. (This and all other information submitted prior to or at the January 18th public hearing has been retained in the case file and is available for review upon request).

- On January 26, 2006, the Board Administrator and the Board of Adjustment Chief Planner hand-delivered a copy of the January 23rd “decision letter” that conveyed the Board’s January 18th action (written by the Board Administrator and sent to the applicant and copied to the owner of the site) to a woman in the office of the motel on the subject site (Rama Mistry). The woman in the motel office signed a prepared certification form stating that she would “agree to immediately notify the owner of 4538 Scyene Road of my receipt of these documents and also deliver the documents to the owner.”

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>North:</u>	PD No. 595 (R-5 Subdistrict) (Planned Development District, Single family)
<u>South:</u>	PD No. 595 (CC & R-5 Sub.) (Planned Development Dist, Community comm. and Single Family)
<u>East:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>West:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)

Land Use:

The site is currently developed with a motel use. The areas to the north and south are developed with single family uses; and the areas to the east and west appear to be undeveloped tracts of land.

Zoning/BDA History:

1. BDA 92T-021, 4538 Scyene Road (the subject site) On April 28, 1992, the Board of Adjustment provided a termination date of December 31, 1998 for the nonconforming motel being operated on the site. Records show that this decision was appealed to District Court. The City Attorney’s Office informed the Board Administrator in March of 2005 that the board’s order on this case (and a series of others for nonconforming motel uses made in the early 90’s “should be treated an unenforceable.”

Timeline:

- Jan. 18, 2006: The Board of Adjustment conducted a public hearing on this appeal and determined that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and

set a hearing date of March 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.

Jan. 30, 2006: A subpoena duces tecum and interrogatories was sent to the owner of the subject site and his attorney.

Feb. 27, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The motel use on the subject site is a nonconforming use where city records indicate that the motel use on the subject site became nonconforming on September 25, 2001 (Ordinance No. 24726).
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- On January 18, 2006, the Board of Adjustment determined at their public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby property, and set a hearing date of March 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's March 15th public hearing shall be to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use).
- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.

- Any return on investment since inception of the use, including net income and depreciation.
- The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- As of March 6, 2006, no additional documentation or information (including responses/answers to the City of Dallas' Subpoena Duces Tecum and Interrogatories) had been submitted to the Board Administrator.

BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2006

APPEARING IN FAVOR:

Dwaine Caraway, 1934 Argyle, Dallas, TX
 Michael Davis, 4347 McKinney, Dallas, TX
 Donald Parish, 302 Glen Oaks Blvd., Dallas, TX
 Willie Mae Coleman, 3802 York St., Dallas, TX
 Marilyn Mayse, 4306 York St., Dallas, TX
 Devin Felder, 8404 Capriola, Dallas, TX

APPEARING IN OPPOSITION:

No one

MOTION: Brannon

I move that the Board of Adjustment in Appeal No. **BDA 056-C02**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use **will** have an adverse effect on nearby properties, and set a hearing date of **March 15, 2006** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: Beikman

AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)