

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, JANUARY 17, 2007**

MEMBERS PRESENT AT BRIEFING: Taylor Brannon, Panel Vice-Chair,
Samuel Gillespie, regular member,
Marla Beikman, regular member and
Christian Chernock, regular member

MEMBERS ABSENT FROM BRIEFING: Alice Cox, Vice-Chair

MEMBERS PRESENT AT HEARING: Taylor Brannon, Panel Vice-Chair,
Samuel Gillespie, regular member,
Marla Beikman, regular member and
Christian Chernock, regular member

MEMBERS ABSENT FROM HEARING: Alice Cox, Vice-Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey
Burgess, Asst. City Attorney, Claire
Swann, Asst. City Attorney, Danny
Sipes, Development Code Specialist,
Donnie Moore, Chief Planner, Chau
Nguyen, Traffic Engineer, Phil Erwin,
Interim Chief Arborist, and Trena Law,
Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey
Burgess, Asst. City Attorney, Claire
Swann, Asst. City Attorney, Danny
Sipes, Development Code Specialist,
Donnie Moore, Chief Planner, Chau
Nguyen, Traffic Engineer, Phil Erwin,
Arborist, and Trena Law, Board
Secretary

**11:04 AM. The Board of Adjustment staff conducted a briefing on the Board of
Adjustment's January 17, 2007 docket.**

1:13 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 B November 15, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2007

MOTION: Chernock

I move approval of the Wednesday, November 15, 2006 Board of Adjustment Public Hearing minutes.

SECONDED: Beikman

AYES: 4–Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

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

LOCATION: 2423 Tune Avenue

APPLICANT: Mary D. Bell

January 17, 2007 Public Hearing Notes:

- The applicant submitted additional information at the public hearing. This information included more details about the applicant's income and expenditures.

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to the Board Administrator requesting a waiver of the filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment (see Attachment A). This letter contained no specific details on the applicant's finances, the specific dollar amount of the fee (or fees) to be waived, or the nature of what type of application is being sought.
- The board may want to determine from the applicant the specific amount of filing fee or fees to be waived at the January 17th public hearing in order for the applicant to have the full amount of fee or fees to be waived considered at one public hearing.

Timeline:

- January 4, 2007 Building Inspection forwarded a letter written by the applicant on December 12, 2006 requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above.
- January 4, 2007: The request was randomly assigned to Board of Adjustment Panel B.
- January 4, 2007: The Board Administrator wrote the applicant a letter that conveyed the following information (see Attachment B):
- 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 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 January 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2006

APPEARING IN FAVOR: Ricky Bell, 2423 Tune, Dallas, TX 75217
Mary D. Bell, 2423 Tune Avenue, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

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

SECONDED: **Gillespie**

AYES: 4– Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

FILE NUMBER: BDA 067-013

BUILDING OFFICIAL'S REPORT:

Application of Avida Custom Homes, represented by David Samei, for a special exception to the fence height regulations at 10011 Strait Lane. This property is more fully described as Lot 4 in City Block 3/5531, and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 12 foot fence in the required front yard setback which would require a special exception of 8 feet.

LOCATION: 10011 Strait Lane

APPLICANT: Avida Custom Homes
Represented by David Samei

January 17, 2007 Public Hearing Notes:

- The Board Administrator read an email and letter from the applicant at the public hearing. The email stated that staff had told the applicants not to post the notification sign on the site (since a request for a visibility obstruction special exception had been added at a date where this request could not be advertised for the January public hearing). The letter requested a delay of the fence height special exception request until February to allow consideration of that request along with the added visibility obstruction special exception request (See Attachment C).

REQUEST:

- A special exception to the fence height regulations of 8' is requested in conjunction with constructing and maintaining the following on a site being developed with a single family home:
 1. In the site's 40' front yard setback along Strait Lane: both an 8' high "solid wall" with 9' high columns and a 6' high combination "solid wall"/open iron fence/wall with 7' high columns, and two 12' high gates (of unspecified materials) with 12' high entry columns; and
 2. In this site's 40' front yard setback along Walnut Hill Lane: an 8' high "stucco wall" with 9' high stucco columns, and a 12' high gate (of unspecified materials) with 12' high columns.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the intersection of Strait Lane and Walnut Hill Lane. The site has two front yard setbacks along both of these streets. Even though the site's longer frontage is along Walnut Hill Lane which in most cases would be deemed a side yard where a 9' high fence would be permitted by right, the site's Walnut Hill Lane frontage is deemed a front yard in order to maintain continuity of an established front yard setback created by the lot immediately west of the site that faces south to Walnut Hill Lane.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a site plan and elevations indicating a fence/wall, column, and gate proposal that would reach a maximum height of 12'.
- The applicant has only submitted a reduction of what appears to be a full scale site plan of the subject site. This site plan denotes two lines (one of which appears to have been made by hand without a straight edge) that may or may not be the proposed fence location with hand written notations and arrows pointing to "8' wall" and "6' wall." This reduced site plan does not clearly delineate the location of the proposal given that there are two lines on this plan that may or may not be the location of the proposed fence/wall. The reduced plan does not allow staff to describe the length of the proposal, the distances of the proposal from the property

lines, pavement lines, or whether or not the proposal is in compliance with the visibility obstruction regulations.

- Separate partial elevations have been submitted of the proposal on Walnut Hill Lane and Strait Lane. A gate elevation has been submitted but is not labeled as to whether or not it is a gate that is proposed along Strait Lane, Walnut Hill Lane or both.
- The Board Administrator emailed the applicant on several occasions in mid-December informing him of the standard in which the requests will be considered, informing him of a more typical site plan/elevation that he may want to consider preparing for the board's consideration, encouraging him to submit a full scale plan in order for certain characteristics to be described to the board, including but not limited to whether or not his fence proposal complies with the City's visibility obstruction regulations (see Attachment A).
- There are no single family homes that would have direct frontage to the proposed fence/wall/gate/columns to be located in the site's Strait Lane front yard setback.
- There are no single family homes that would have direct frontage to the proposed fence/wall/gate/columns to be located in the site's Walnut Hill Lane front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Strait Lane (from Walnut Hill Lane north to South Lindhurst Drive) and noted one other fence above four (4) feet high which appeared to be located in the front yard setback. This fence, located immediately north of the subject site, is an approximately 6' high open iron fence with approximately 6.5' high columns and approximately 7.5' high open iron entry gates. (The Board of Adjustment granted a fence special exception on this site in December of 1997 to construct 6' high open metal fence with 6' 4" high masonry columns and 7.5' high open metal entry gates in the site's Strait Lane and South Lindhurst Drive front yard setbacks (BDA 978-013).
- The Board Administrator conducted a field visit of the site and surrounding area along Walnut Hill Lane (approximately 500' east and west of the subject site) and noted the following fences above four (4) feet high which appeared to be located in the front yard setback (Note that the following dimensions and descriptions are *approximate* heights):
 - A 5' high solid board fence atop a 2' high retaining wall immediately west of the subject site.
 - An 8' high solid brick wall with 9' high columns behind a full hedge two lots west of the subject site. (This Board of Adjustment granted a fence special exception on this site in November of 1997 to construct/maintain a fence that was to be a combination of solid brick panels and wrought iron/brick panels along Walnut Hill Lane, and wrought iron with brick columns along Lennox Lane (BDA 87-246).
- On January 4, 2007, the applicant submitted additional information beyond what was submitted with the original application, and beyond the January 2nd staff review team meeting (see Attachment B). This information included photos of the site and surrounding area.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 978-013, 10095 Strait Lane (the lot immediately north of the subject site) On December 16, 1997, the Board of Adjustment Panel C granted a request for a fence height special exception of 3.5' and imposed the following condition: Compliance with the submitted site plan and elevation plans is required. The case report stated that the request was made to construct/maintain a 6' high open metal fence with 6' 4" high masonry columns and 7.5' high open metal entry gates in the site's Strait Lane and South Lindhurst Drive front yard setbacks.
2. BDA 87-246, 10015 Lennox Lane (two lots west of the subject site) On November 10, 1987, the Board of Adjustment granted a request for a fence height special exception of 3' and imposed the following condition: "Submit a revised site plan showing the 55 foot visibility triangle, increasing the wrought iron along Walnut Hill Lane and tapering the level of the fence on the east side of Walnut Hill Lane from the building line to the property line. The plan should be submitted for approval on the December 8, 1987 docket." The case report stated that the request was made to construct/maintain a fence that was to be a combination of solid brick panels and wrought iron/brick panels along Walnut Hill Lane, and wrought iron with brick columns along Lennox Lane.

Timeline:

Nov. 13, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (Loose photographs submitted with the

application will be available for review at the briefing/public hearing).

Dec. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

Dec. 12, 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 December 29th deadline to submit additional evidence for staff to factor into their analysis;
- the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 12, 18, 19, 2006: The Board Administrator emailed the applicant's representative with concerns related to the submitted elevations and site plan, and the lack of a submitted full scale scaled site plan that clearly delineates the fence proposal on the site (see Attachment A).

January 2, 2007: 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 Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

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

January 4, 2007: The applicants met with the Board Administrator and Board of Adjustment Chief Planner. The applicant submitted photos of the site and surrounding area (see Attachment B). The applicants

brought a full scale plan and elevation for staff's review where it could be determined that the proposed fence/wall was to be located in the visibility triangle at the intersection of Walnut Hill Lane and Strait Lane. Staff explained that the applicant had the option of relocating the proposed fence/wall out of the visibility triangle, or to make application for a special exception to the visibility obstruction regulations which (given time constraints related to statute requirements for advertising appeals) could be administered no earlier than Panel B's February 14th public hearing. The applicants informed staff that they intended to: 1) ask the board to delay action on their fence height special exception until February, 2) consider making revisions to the scaled site plan/elevation, and 3) make application for a special exception to the visibility obstruction regulations.

- January 5, 2007
- Although no application has been made for a special exception to the visibility obstruction regulations, the Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting:
- A minimum of 30' x 30' intersection visibility triangles (instead of 25' x 25' as shown)
 - Intersection sight distance (right side) is limited by the vertical curve of Walnut Hill Lane but it is not affected by the proposed wall."

STAFF ANALYSIS:

- The applicant has only submitted a reduction of a scaled site plan in conjunction with this appeal – a site plan with two lines either of which may be delineating the location of the proposed fence/wall. The following characteristics/features cannot be determined from this reduced site plan:
 - The actual location and configuration of the proposal;
 - The length of the proposal;
 - The distance of the proposal from the property line;
 - The distance of the proposal from the pavement line; and
 - Whether or not the proposal is in compliance with the City's visibility obstruction regulations (it appears that the proposal is NOT in compliance with the 45' visibility triangle at Strait Lane and Walnut Hill Lane).
- The applicant has only submitted partial elevation sketches of a Strait Lane proposal, a Walnut Hill proposal, and a gate elevation (which may or may not be the gate proposed at the two drive approaches from Strait Lane and the one drive approach from Walnut Hill Lane).
- The submitted reduced site plan combined with the submitted partial elevations does provide staff or the board a complete comprehensive account of what is being proposed or where it is to be located.
- There are no single family homes that would have direct frontage to the proposed fence/wall/gate/columns to be located in the site's Strait Lane or Walnut Hill Lane front yard setbacks.

- One other fence above four (4) feet high which appeared to be located in the front yard setback was noted in a field visit of the site and surrounding area along Strait Lane (from Walnut Hill Lane north to South Lindhurst Drive). This fence, located immediately north of the subject site, is an approximately 6' high open iron fence with approximately 6.5' high columns and approximately 7.5' high open iron entry gates. (The Board of Adjustment granted a fence special exception on this site in December of 1997 to construct 6' high open metal fence with 6' 4" high masonry columns and 7.5' high open metal entry gates in the site's Strait Lane and South Lindhurst Drive front yard setbacks (BDA 978-013).
- The following fences above four (4) feet high which appeared to be located in the front yard setback were noted in a field visit of the site and surrounding area along Walnut Hill Lane (approximately 500' east and west of the subject site). (Note that the following dimensions and descriptions are *approximate* heights):
 - A 5' high solid board fence atop a 2' high retaining wall immediately west of the subject site.
 - An 8' high solid brick wall with 9' high columns behind a full hedge two lots west of the subject site. (This Board of Adjustment granted a fence special exception on this site in November of 1997 to construct/maintain a fence that was to be a combination of solid brick panels and wrought iron/brick panels along Walnut Hill Lane, and wrought iron with brick columns along Lennox Lane (BDA 87-246).
- As of January 9th, no letters had been submitted in support or opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 8' (whereby a proposal that would reach a maximum 12' in height) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 8' with conditions imposed that the applicant complies with the submitted reduced site plan and partial elevations would provide little assurance as to what type of fence/wall would be constructed/maintained in the site's two front yard setbacks. Unlike in most fence height special exception requests where an applicant submits a definitive scaled site plan that clearly shows the location of the proposal (in compliance with visibility obstruction regulations) along with full fence/wall elevations that clearly show the heights and building materials of what is being proposed, the applicant has submitted neither in this case.
- Staff has fully informed the applicant that granting this special exception to the fence height regulations, subject to the submitted reduced site plan, would not allow any item to be located/maintained in a City required visibility triangle, and that the City would not issue a fence permit for any fence located in a visibility triangle – unless application is made and the board approves a special exception to the visibility obstruction regulations. It was staff's impression after meeting with the applicants on January 4th that they would be submitting a letter to the board prior to January 8th requesting that the board delay action on the fence height special exception request until February where they would use the month delay to make revisions to a scaled site plan/elevation (shown but not submitted to staff on January 4th), and to make application with Building Inspection staff for a special exception to the visibility obstruction regulations.

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: Paul Nagler, 5742 Berkshire Ln., Dallas, TX

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 067-013**, hold this matter under advisement until **February 14, 2007**.

SECONDED: Beikman

AYES: 4– Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

FILE NUMBER: BDA 067-016

BUILDING OFFICIAL'S REPORT:

Application of Harvey Cash, represented by Rob Baldwin Associates, for a special exception to the fence height regulations at 4506 Watauga Road. This property is more fully described as Lot 5 in City Block L/4981 and is zoned PD-455 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 which would require a special exception of 5 feet 6 inches.

LOCATION: 4506 Watauga Road

APPLICANT: Harvey Cash
Represented by Rob Baldwin Associates

January 17, 2007 Public Hearing Notes:

- The applicant’s representative submitted additional written documentation to the board at their public hearing (see Attachment C).

REQUEST:

- A special exception to the fence height regulations of 5’ 6” is requested in conjunction with constructing and maintaining a 6’ open wrought iron fence and gate (with 6’ columns), and a maximum 9’ 6” high open wrought fence/solid retaining wall in the site’s Canyon Road/Watauga Road 30’ front yard setbacks 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 subject site is located at the intersection of Canyon Road and Watauga Road. The site has front yard setbacks along both streets in order to maintain continuity of established setbacks on both streets.
- 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 document with a site plan and fence profile indicating a fence/wall proposal that would reach a maximum height of 9' 6".
- A document has been submitted that includes 4 drawings/images:
 - 1) a "proposed fence profile;"
 - 2) a "proposed fence exhibit with existing vegetation;"
 - 3) a "proposed fence exhibit with proposed landscaping," and
 - 4) a "site plan."
- The "proposed fence profile" drawing indicates the following:
 - a 6' high fence and a 6' high gate with 6' high entry columns;
 - a combination fence and retaining wall that reaches a maximum height of 9' 6" with notations that "wall height varies," "grade elevation in front of wall," and "grade elevation behind wall."The fence profile does not specify building materials.
- The "proposed fence exhibit with existing vegetation" image shows a superimposed graphic of the fence, gate, columns, and wall on a photograph of the subject site. This image does not note the sizes or species of existing landscape materials.
- The "proposed fence exhibit with proposed landscaping" image shows a superimposed graphic of the fence, gate, columns, and wall on a photograph of the subject site. This image does not note the sizes or species of existing and/or proposed landscape materials.
- The "site plan" drawing indicates the following:
 - a fence/wall that is approximately 330' long, ranging from 0' – 10' from the property line (or 22' – 33' 2" from the pavement line);
 - notations, including the location and length (about 152' long) of the "fence & wall combination," the location and length (about 176' long) of the "6' wrought iron fence," and a cloud diagram describe as "existing vegetation massings."
- Another site plan was submitted with the original application. This site plan does not provide any documentation about the location of the proposed fence/wall, or its proposed heights or building materials.

- On December 13, 2006, the Board Administrator sent an email to the applicant's representative that conveyed concerns with the lack of clarity on submitted documents pertaining to landscape materials and materials of the fence/wall (see Attachment A).
- There is one single family home that would have direct frontage to the proposal on Canyon Drive, and one single family home under development that would have direct frontage to the proposal on Watuaga Road.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500' east, west, and south of the subject site) and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.
- On January 8, 2007, the applicant's representative submitted additional information beyond what was submitted with the original application, and beyond the January 2nd staff review team meeting (see Attachment B). This information included the following:
 - A letter that provided additional details about the request;
 - Color reductions of site plans submitted with the original application; and
 - Photos of the property.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 455 (Planned Development District)
North: PD No. 455 (Planned Development District)
South: PD No. 455 (Planned Development District)
East: PD No. 455 (Planned Development District)
West: PD No. 455 (Planned Development District)

Land Use:

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

Nov. 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.

Dec. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- Dec. 12, 2006: The Board Administrator emailed the applicant's representative with 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 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 13, 2006: The Board Administrator emailed the applicant's representative with concerns related to the lack of specifics on submitted materials related to landscape materials and building materials of the proposed fence/wall (see Attachment A).
- January 2, 2007: 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 Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Jan. 8, 2007 The applicant's representative submitted information beyond what was submitted with the original application and beyond what was discussed/considered at the January 2nd staff review team meeting (see Attachment B).

STAFF ANALYSIS:

- A document has been submitted that includes a proposed fence profile, a proposed fence exhibit with existing vegetation, a proposed fence exhibit with proposed landscaping, and a site plan. This document does not specify the building materials

of the proposal nor the sizes or species of existing or proposed landscape materials. The site plan on this document does denote a fence/wall that is about 330' long (of which about 150' of it is to be fence and wall combination and about 175' of it is to be wrought iron fence). The site plan on this document additionally denotes that the fence/wall ranges from 0' – 10' from the property line (or 22' – 33' 2" from the pavement line).

- Another site plan was submitted with the original application. This site plan does not provide any documentation about the location of the proposed fence/wall, or its proposed heights or building materials.
- The applicant's representative's January 5th letter states that the "subject property is heavily landscaped" and that the "fence has been specifically designed to complement the property and to be screened by the existing and new vegetation." However, no documentation has been submitted in a plan form other than general notes such as "existing vegetation," "proposed landscaping," "existing vegetation massings."
- There is one single family home that would have direct frontage to the proposal on Canyon Drive, and one single family home under development that would have direct frontage to the proposal on Watuaga Road.
- No other fence above four (4) feet high was noted by staff in what appeared to be a front yard setback in the area about 500' east, west, and south of the subject site.
- As of January 8th, no letters had been submitted in support or opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 5' 6" (whereby the proposed fence, fence/wall, columns, gate to exceed 4' in height in the site's front yard setbacks) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 5' 6" with conditions imposed that the applicant complies with the submitted site plan and proposed fence profile/proposed fence exhibit with existing vegetation/proposed fence exhibit with proposed landscaping/site plan document would provide minimal assurance as to what kind of fence, fence/wall, gate, and columns are located in the site's 30' front yard setbacks since building materials are not referenced on the submitted documents other than notations delineating the location of the "6' wrought iron fence."
- If the board is inclined to grant the request on the notion that certain landscape materials are committed to be retained or added adjacent to the fence and/or fence/wall (which in turn will reduce the proposal's adverse impact on neighboring property), the board may want the applicant to specify the species, number and sizes of these landscape materials beyond what is merely shown in conceptual forms on the submitted documents. Otherwise, the City would have very little (if any) enforcement power to ensure that the landscape materials shown on the submitted documents (and described merely as "existing vegetation massings," "existing vegetation," and "proposed landscaping") are put in place in conjunction with the fence height special exception request and/or a fence that would exceed 4' in height in the site's front yard setbacks.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2006

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

APPEARING IN OPPOSITION: Pat White, 4714 Wildwood Rd., Dallas, TX
Nancy Kenty, 8723 Canyon Dr., Dallas, TX
Leslie McCracken, 4712n Wildwood Rd., Dallas, TX
Lois Folse, 8740 Canyon Dr., Dallas, TX

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 067-016**, on application of Harvey Cash, represented by Robert Baldwin, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Beikman

AYES: 4– Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

FILE NUMBER: BDA 067-017

BUILDING OFFICIAL'S REPORT:

Application of Ravi Bhatia, represented by Mohammad Habib, for a special exception to the landscape regulations at 11029 Harry Hines Blvd. This property is more fully described as Lot 15 in City Block B/6516 and is zoned IR which requires mandatory landscaping. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception.

LOCATION: 11029 Harry Hines Blvd

APPLICANT: Application of Ravi Bhatia
Represented by Mohammad Habib

January 17, 2007 Public Hearing Notes:

- The Interim Chief Arborist explained at the briefing that no alternate landscape plan had been submitted in conjunction with this appeal – that the landscape plan submitted in conjunction with the appeal was a plan that showed full compliance with the landscape regulations. The arborist explained how the landscape materials provided on the actual site did not match the materials shown on the plan, and how the materials on the site were deficient in meeting the landscape regulations, hence the request for a landscape special exception.
- The Board Administrator explained to the board after the case was called with the applicant not present at the hearing that the applicant had been informed of the

hearing by certified mail, and that the administrator had left a message with the applicant's representative at the beginning of the hearing reminding him of the hearing that was about to take place on the request.

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final CO (Certificate of Occupancy) and building permit on a site being developed as a wholesale/retail strip center (Ravi's Wholesale Plaza).

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant has not substantiated how strict compliance with the requirements of this article (which in this case is a request to deviate from fulfilling the site tree requirement) will unreasonably burden the use of the property or how the special exception (with 34 less site trees than what is required) will not adversely affect neighboring property.
- The City's Interim Chief Arborist recommends denial of the request.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

1. strict compliance with the requirements of this article will unreasonably burden the use of the property;
2. the special exception will not adversely affect neighboring property; and
3. the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations when non-permeable coverage on a lot is increased by more than 2,000 square feet within a 24-month period, or when an application is made for a building permit for with new construction that increases the number of stories in a building on

a lot, increases the combined floor areas of all buildings on a lot within a 24-month period more by more than 35 percent or 10,000 square feet (whichever is less).

- 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 Interim Chief Arborist, the applicant is specifically requesting relief from the site tree requirement.
- The City of Dallas Interim 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 a special exception to the landscape requirements of Article X (The Landscape Regulations), more specifically, relief from the site tree requirement.
 - The special exception request is triggered by new construction on the site.
 - Deficiency:
 1. 97 trees are required.
Staff can only accept 63 trees due to minimum caliper size and spacing requirements. 22 of the 34 trees listed as insufficient are large species that are unacceptably spaced. 7 other trees are less than the minimum 2" caliper requirements. The applicant still must plant an additional 5 trees that are not yet in place.
Factors for consideration:
 - There is an inadequate amount of landscape space to plant the amount of site trees required under Article X for this project to maintain a long-term healthy growing environment. The "alternate landscape plan" proposed by the applicant to address these insufficiencies has not been submitted to staff for review.
 - The arborist recommends denial.

BACKGROUND INFORMATION:

Zoning:

- Site: IR (Industrial Research)
- North: IR (Industrial Research)
- South: CS (Commercial Service)
- East: IR (Industrial Research)
- West: IR (Industrial Research)

Land Use:

The subject site is being developed as a wholesale/retail strip center (Ravi's Wholesale Plaza). The areas to the north, east, south, and west are developed with commercial/warehouse 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:

- Nov. 15, 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.
- Dec. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 12, 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 December 29th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 2, 2007: 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 Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- January 8, 2007 The City of Dallas Interim Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

STAFF ANALYSIS:

- An alternate landscape plan has been submitted that, according to the City of Dallas Interim Chief Arborist, is not fully complying with the site tree requirements.
- The landscape requirements on this site are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- The City’s Interim Chief Arborist has commented that there is not adequate landscape space to plant the amount of site trees for this project to maintain a long-term healthy growing environment.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that provides only 63 of the required 97 site trees) will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the final building permit and Certificate of Occupancy could be issued on the site, where the site would be “excepted” from full compliance to the site tree requirements of Article X: The Landscape Regulations by providing only 63 of the required 97 site trees.

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-017**, on application of Ravi Bhatia, represented by Mohammad Habib, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

SECONDED: **Chernock**

AYES: 4– Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

FILE NUMBER: BDA 067-018

BUILDING OFFICIAL'S REPORT:

Application of L.T. Nelson, represented by Ed Simons of Masterplan, for a variance to the front yard setback regulations at 4448 Abbott Avenue. This property is more fully described as Lot 6 in City Block A/2022 and is zoned PD-193 (D) which requires a front

yard setback of 25 feet. The applicant proposes to construct a building and provide a 5 foot front yard setback which would require a variance of 20 feet.

LOCATION: 4448 Abbott Avenue

APPLICANT: L.T. Nelson
Represented by Ed Simons of Masterplan

January 17, 2007 Public Hearing Notes:

- The applicant's representative clarified at the public hearing that the owner's intent was to develop a duplex use on the site (as opposed to the single family use that had been referenced on the application).

REQUEST:

- A variance to the front yard setback regulations of 20' is requested in conjunction with constructing and maintaining, according to the application, a single family home that would be located in the site's Armstrong Avenue 25' front yard setback.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site/plot plan

Rationale:

- The site is encumbered with a restrictive area caused by two 25' front yard setbacks. The 25' front yard setback along Armstrong Avenue limits the area for development of a single family home on the 50' wide lot to just 20' in width.
- According to a Sanborn map submitted by the applicant's representative, the existing structure on the subject site does not provide a 25' front yard setback on Armstrong Avenue. It appears from the submitted plot plan that the proposed single family home would be located a similar distance from the Armstrong Avenue front property line as the existing structure that (according to DCAD records) was constructed in 1932.

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 is located at the corner of Abbott Avenue and Armstrong Avenue, and has two 25' front yard setbacks. Given front yard setback provisions in PD No. 193, the site is deemed to have a front yard setback along Armstrong Avenue (given that this frontage of the site is the longer of the two street frontages), and the other along Abbott Avenue (given the configuration of the adjacent lots south of the subject site that front onto Abbott Avenue whose front yard setbacks must be maintained on the subject site and along the entire Abbott Avenue blockface).
- A 25' front yard setback is required on lots zoned D (Duplex) Subdistricts in PD No. 193: The Oak Lawn Special Purpose District for both single family structures and other permitted structures.
The applicant has submitted a scaled "plot plan" that indicates a dashed line forming a rectangle located inside the parcel of land that is 160' in length and 50' in width. The dashed rectangular line on the submitted site/plot plan indicates a "5' BL" along Armstrong Avenue, a "25' BL" along Abbott Avenue, a 5' side yard setback on the south side of the site, and a 10' setback on the east side of the site. The applicant has described the dashed rectangular line on the site/plot plan that is 40' wide and 126' in length as a conceptual representation of the setbacks proposed to be provided for the single family home and not a representation of a specific building footprint.
The dashed rectangular line on the site/plot plan is 5,040 square feet in area on an 8,000 square foot lot. Approximately half or 2,500 square feet of this rectangle is located in the site's Armstrong Avenue 25' front yard setback – the other half of the home is in compliance with front and side and yard setbacks. The home is proposed to be located 5' from the site's Armstrong Avenue front property line (or 20' into the 25' front yard setback).
- PD No. 193 states the following with regard to front yard provisions for residential subdistricts:
 - If a corner lot in a single family, duplex, or multiple-family, 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 in Section 51P-193.119. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by the side yard regulations in Section 51P-193.119. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site/plot plan indicates no encroachment into the site's 25' front yard setback along Abbott Avenue.
- The site is flat, rectangular in shape (160' x 50'), and 8,000 square feet in area. The site is zoned a D (Duplex) Subdistrict in PD No. 193: The Oak Lawn Special Purpose District.
- According to DCAD records, the subject site is developed with an "apartment" with 4,680 square feet built in 1932.

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that provides additional details about the request; and
 - A Sanborn map showing the location of the existing structure on the site.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (D Subdistrict) (Planned Development District, Duplex)
North: City of Highland Park
South: PD No. 193 (D Subdistrict) (Planned Development District, Duplex)
East: PD No. 193 (D Subdistrict) (Planned Development District, Duplex)
West: PD No. 193 (R-7.5 Subdistrict) (Planned Development District, Single Family)

Land Use:

The subject site is developed with a multifamily structure. The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

- | | |
|--|--|
| <p>1. BDA 84-273, 3510 Armstrong Avenue (the lot immediately east of the subject site)</p> | <p>On August 14, 1984, the Board of Adjustment granted a request for a variance to the minimum lot width regulations of 5'. The case report states the request was made to construct a duplex on a lot that was 55' in width when a 60' lot width is required.</p> |
|--|--|

Timeline:

- November 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.
- Dec. 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 12, 2006: The Board Administrator left the applicant's representative a voice message stating 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 29th deadline to submit additional evidence for staff to factor into their analysis;
- the January 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

January 2, 2007: 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 Assistant Director of the Development Services Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner; the Building Inspection Development Code Specialists, the Development Services Senior Engineers, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is flat, rectangular in shape (160' x 50'), and 8,000 square feet in area. The site is zoned a D (Duplex) Subdistrict in PD No. 193: The Oak Lawn Special Purpose District.
- The subject site has two 25' front yard setbacks: one along Abbott Avenue (that the proposed home would be in compliance with), and the other along Armstrong Avenue (that the proposed home would encroach into by 20').
- A 20' wide area for development remains on the 50' wide subject site once a 25' front yard setback is accounted for on the north side of the site along Armstrong Avenue, and a 5' side yard setback is accounted for on the south side of the site.
- According to calculations made by the Board Administrator from the submitted site/plot plan, approximately half (or 2,500 square feet) of the dashed rectangular line on this plan (which the applicant's representative described as a conceptual representation of the setbacks proposed to be provided for the single family home and not a representation of a specific building footprint) is located in the site's Armstrong Avenue 25' front yard setback – the other half of the home is in compliance with front, side and rear yard setbacks. The home is proposed to be located 5' from the site's Armstrong Avenue front property line (or 20' into the 25' front yard setback).

- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 20' requested to construct a single family home with as much as an approximately 5,000 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 (D-Duplex 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 PD No. 193 (D-Duplex Subdistrict) zoning classification.

If the Board were to grant the front yard variance request of 20', imposing a condition whereby the applicant must comply with the submitted site/plot plan, the structure would be limited to a building footprint no larger than that what is conceptually shown on this plan – a structure that could only encroach into the site's Armstrong Avenue front yard setback and be located as close as 5' from the site's Armstrong Avenue front property line (or 20' into the site's 25' Armstrong Avenue front yard setback).

BOARD OF ADJUSTMENT ACTION: JANUARY 17, 2006

APPEARING IN FAVOR: Ed Simons, 900 Jackson Street, #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 067-018**, on application of L.T. Nelson, represented by Ed Simons of Masterplan, **grant** the 20 foot variance to the front 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/plot plan is required.

SECONDED: **Chernock**

AYES: 4– Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 4 – 0 (Unanimously)

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 4 - Brannon, Gillespie, Beikman, Chernock

NAYS: 0 -

MOTION PASSED 4 - 0 (unanimously)

Deleted: 5
Deleted: Cox,
Deleted: 5

2:05 P.M. - Board Meeting adjourned for January 17, 2007.

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.