

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
WEDNESDAY, FEBRUARY 19, 2014**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member and Paula Leone, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member David Wilson, regular member and Paula Leone, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Neva Dean, Interim Asst. Director, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Neva Dean, Interim Asst. Director, and Trena Law, Board Secretary

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 19, 2014 docket.**

1:10 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 January 22, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2014

MOTION: Wilson

I move approval of the **Wednesday, January 22, 2014** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-009

BUILDING OFFICIAL'S REPORT: Application of Michael Spero for special exceptions to the fence height and visual obstruction regulations at 4202 Bretton Bay Lane. This property is more fully described as Lot 1, Block C/8705, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at drive approaches. The applicant proposes to construct and/or maintain a 7 foot 6 inch high fence which will require a special exception of 3 feet 6 inches to the fence height regulations, and to locate/maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 4202 Bretton Bay Lane

APPLICANT: Michael Spero

REQUESTS:

The following appeals have been made on a site that is currently developed with a single family home/use:

1. A request for a special exception to the fence height regulations of 3' 6" is made in conjunction with maintaining a 6' high open iron picket fence with 6' 4" high posts and a 6' high open iron picket gate with one 89" high (or 7' 4" high) gate post in one of the site's two 25' front yard setbacks - Voss Road.
2. Requests for special exceptions to the visual obstruction regulations are made in conjunction with maintaining portions of the open iron picket fence/gate and metal posts in the 20' visibility triangles on either side of the driveway into the site from Voss 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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (fence height):

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

STAFF RECOMMENDATION (visual obstruction):

Approval, subject to the following condition:

- Compliance with the submitted site plan and partial elevation is required.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to these requests.
- The applicant has substantiated how the location of portions of the existing open iron picket fence and gate located in the 20' visibility triangles on either side of the driveway into the site from Voss Road does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

December 18, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 15, 2014: The Board Administrator emailed the following information to the applicant:

- an attachment that provided the public hearing date and panel that will consider the application; the January 29th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

February 6, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant’s request for a special exception to the visual obstruction regulations marked “Has no objections.”

GENERAL FACTS/STAFF ANALYSIS (fence height):

- This request focuses on maintaining a 6’ high open iron picket fence with 6’ 4” high posts and a 6’ high open iron picket gate with one 89” high (or 7’ 4” high) gate post in one of the site’s two 25’ front yard setbacks - Voss Road.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.

- The site is located at the southeast corner of Bretton Bay Lane and Voss Road. The site has a 25' front yard setback along Bretton Bay Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 25' front yard setback along Voss Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 5' setback is required. But the site's Voss Road frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lots developed with single family homes south of the site that front/are oriented westward towards Voss Road. Regardless of how the existing home is oriented to front onto Bretton Bay Lane (and to "side" to Voss Road), the site has two 25' front yard setbacks where the focus of the applicant's request in this application is only to maintain a fence higher than 4' in the site's front yard setback on Voss Road. No part of the application is made to address any fence in the site's Bretton Bay Lane front yard setback.
- The applicant has submitted a site plan and a partial elevation of the proposal in the front yard setback that reaches a maximum height of 89" or 7' 4".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 90' in length parallel to the Voss Road and approximately 21' in length perpendicular to Voss Road on the north and south sides of the site in the Voss Road front yard setback.
 - The proposal is represented as being located approximately 4' from the property line or about 16' from the Voss Road pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high which appeared to be located in a front yard setback.
- Two homes front the proposal neither of which have fences in their front yards.
- As of February 10, 2014, 8 letters have been submitted in support of the application and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction):

- These requests focus on maintaining portions 6' high open iron picket fence with 6' 4" high posts and a 6' high open iron picket gate with one 89" high (or 7' 4" high) gate post in the 20' visibility triangles on either side of the driveway into the site from Voss Road.

- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan and partial elevation has been submitted indicating portions of 6' high open iron picket fence with 6' 4" high posts and a 6' high open iron picket gate with one 89" high (or 7' 4" high) gate post in the 20' visibility triangles on either side of the driveway into the site from Voss Road.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of 6' high open iron picket fence with 6' 4" high posts and a 6' high open iron picket gate with one 89" high (or 7' 4" high) gate post in the two 20' visibility triangles on either side of the driveway into the site from Voss Road does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require the items (a 6' high open iron picket fence with 6' 4" high posts and a 6' high open iron picket gate with one 89" high gate post in the 20' visibility triangles on either side of the driveway into the site from Voss Road) to be limited to and maintained in the locations, height and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2014

APPEARING IN FAVOR: Michael Spero, 4202 Bretton Way Lane, Dallas, TX
Bethany Ardizzoni, 17708 Voss Rd., Dallas, TX

APPEARING IN OPPOSITION: Brian Williamson, 4206 Briargrove Lane, Dallas, TX
Phil Dettle, 4120 Rainsong Dr., Dallas, TX

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 134-009**, on application of Michael Spero, **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: Reynolds

AYES: 2 – Reynolds, Gillespie

NAYS: 3 – Chernock, Wilson, Leone

MOTION FAILED 2 – 3

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 134-009**, on application of Michael Spero, **grant** the request to construct and maintain a 7-foot- 6-inch-high fence in the property’s front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and partial elevation is required.

SECONDED: Chernock

AYES: 3 – Chernock, Wilson, Leone

NAYS: 2 – Reynolds, Gillespie

MOTION FAILED 3 – 2

MOTION #3: Leone

I move that the Board of Adjustment in Appeal No. **BDA 134-009**, hold this matter under advisement until **April 23, 2014**.

SECONDED: Wilson

AYES: 4 – Reynolds, Chernock, Wilson, Leone

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

FILE NUMBER: BDA 134-016

BUILDING OFFICIAL’S REPORT: Application of Philip Charles Piccola for a special exception to the side yard setback regulations for a carport at 6520 Kenwood Avenue. This property is more fully described as Lot 5 and part of Lot 4 & 6, Block F/4815, and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct/maintain a carport structure and provide a 3 foot side yard setback, which will require a 2 foot special exception to the side yard setback regulations.

LOCATION: 6520 Kenwood Avenue

APPLICANT: Philip Charles Piccola

REQUEST:

A special exception to the side yard setback regulations of 2’ is requested in conjunction with constructing and maintaining an approximately 310 square foot carport that would attach to a single-family home, part of which is proposed to be located in the site’s eastern 5’ side yard setback.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- December 23, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 15, 2014: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the January 29th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- January 27, 2014: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 310 square foot carport that would attach to a single-family home, part of which is located in the site's eastern 5' side yard setback.
- A 5' side yard setback is required in the R-7.5(A) zoning district.
- The applicant has submitted a site plan and an elevation indicating the location of the carport about 3' 1" away from the site's eastern side property line.
- The following information was gleaned from the submitted site plan:
 - The carport is represented to be 22' 9" in length and 13.5' in width (approximately 310 square feet in total area) of which approximately 46 square feet (or approximately 15 percent) would be located in the eastern side yard setback.

- The following information was gleaned from the submitted elevation:
 - The carport is represented to be approximately 13’ in height with Austin stone columns and “comp. roofing.”
- The subject site is approximately 142’ x 70’ (or 9,900 square feet) in area.
- The Board Administrator conducted a field visit of the area approximately 500 feet east and west of the subject site and noted no other carports that appeared to be located in a side yard setback.
- As of February 10, 2014, one petition had been submitted signed by four neighbors/owners in support of the request and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing the following:
 - that granting this special exception to the side yard setback regulations of 2’ will not have a detrimental impact on surrounding properties.
- Granting this request and imposing the following conditions would require that the carport be constructed/maintained in the location and of the heights and materials as shown on these documents:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
 4. All applicable building permits must be obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment grant application **BDA 134-016** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- The carport structure must remain open at all times.
- No lot-to-lot drainage is permitted in conjunction with this carport special exception.
- All applicable building permits must be obtained.
- No item other than a motor vehicle may be stored in the carport.

SECONDED: **Gillespie**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –
MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-019

BUILDING OFFICIAL’S REPORT: Application of Lou Olerio, represented by Steven Wood, for a special exception to the fence height regulations and a variance to the front yard setback regulations at 6965 Abbey Court. This property is more fully described as Lot 21, Block A/2994, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a front yard setback of 25 feet. The applicant proposes to construct/maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations, and to construct/maintain a structure and provide a 3 foot front yard setback, which will require a 22 foot variance to the front yard setback regulations.

LOCATION: 6965 Abbey Court

APPLICANT: Lou Olerio
Represented by Steven Wood

February 19, 2014 Public Hearing Notes:

- The applicant’s representative submitted additional written documentation to the Board at the public hearing.

REQUESTS:

The following appeals have been made on a site that is currently undeveloped:

1. A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining an 8’ high solid cedar wood fence in the one of the site two 25’ front yard setbacks (Mockingbird Lane).
2. A variance to the front yard setback regulations of 22’ is requested in conjunction with constructing and maintaining a two-story single family structure with a total under roof area of 4,926 square feet, part of which is proposed to be located in one of the site’s two 25’ front yard setbacks (Mockingbird Lane).

(No request has been made in this application to construct/maintain any fence or structure in the site’s Abbey Court 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.

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 for structures accessory to single family uses, height, minimum sidewalks, off-

street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not 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;
- (B) necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) not 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 with the same zoning.

STAFF RECOMMENDATION (fence special exception):

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

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- While staff concluded that the subject site is unique and different from most lots zoned R-7.5(A) in that it is somewhat sloped, slightly irregular in shape, and is somewhat restrictive in area due to having two front yard setbacks, the applicant had not substantiated how any or all of these features preclude him from developing the subject site (with a 4,926 “under roof square footage” single family home) in a manner commensurate with development on other similarly zoned R-7.5(A) properties.
- The site at approximately 8,600 square feet is approximately 1,100 square feet larger than most lots zoned R-7.5(A).
- While the applicant has provided two lists with addresses of lots in R-7.5(A) zoning (a “lot square footage” list and “under roof square footage” list), the information shown on the two lists are unrelated to each other, and does not show how the proposed home with approximately 4,900 under roof square footage on the approximately 8,600 square foot site is commensurate with the development/the size of houses/“under roof square footages” found on other lots in the same R-7.5(A) zoning where lots are typically 7,500 square feet in area. (The lot square footage areas of certain listed addresses in the “lot square footage” list are all larger than 7,500 square feet, and the under roof square footage areas of other certain addresses listed in the “under roof square footage” list are mostly larger than that what is proposed on the subject site).
- The proposed home on the subject site is of a size/building footprint/location that would not meet the 5’ rear yard setback requirement if its Mockingbird Lane frontage were deemed a rear yard setback since the home is proposed to be only 3’ from the Mockingbird Lane property line.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

December 23, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 15, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 15, 2014: The Board Administrator contacted the applicant's representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the January 29th deadline to submit additional evidence for staff to factor into their analysis; and the February 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

January 29, 2014: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

February 4, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Assistant Building

Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS (fence special exception):

- This request focuses on constructing and maintaining an 8' high solid cedar wood fence in the one of the site two 25' front yard setbacks (Mockingbird Lane) on a site that is undeveloped.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is located on the west side of Santa Barbara Drive between Mockingbird Lane and Abbey Court. The subject site is a lot that runs from one street to another (Mockingbird Lane on the north, Abbey Court on the south). Regardless of how the proposed single-family structure appears to be oriented southward towards Abbey Court, the site has front yard setbacks on both streets since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The site has two 25' front yard setbacks where the focus of the applicant's request in this application is only to construct and maintain a fence higher than 4' in the site's front yard setback on Mockingbird Lane. No part of the application is made to address any fence in the site's Abbey Court front yard setback or in the site's Santa Barbara Drive side yard setback.
- The applicant has submitted a site plan and an elevation of the proposal in the Mockingbird Lane front yard setback with notations indicating that the fence reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - The proposed fence in the Mockingbird Lane front yard setback is represented as being approximately 72' in length parallel to the street; and approximately 6' in length perpendicular to the street on the lot's east side.
 - The proposal is represented as being located approximately 2' from the front property line. (No pavement line is shown on the site plan along Mockingbird Lane).
- The proposal is located on the south side of Mockingbird Lane where no house would appear to front the proposal given the topography of the site and the property immediately north.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences on the north side of Mockingbird Lane but noted two fences higher than 4' in height immediately west of the subject site.
- As of February 10, 2014, no letters have been submitted in support of or in opposition to the request.

- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses constructing and maintaining a two-story single family structure with a total under roof area of 4,926 square feet, part of which is proposed to be located in one of the site's two 25' front yard setbacks (Mockingbird Lane) on a site that is under development. (No request has been made in this application to construct/maintain any structure in the site's Abbey Court front yard setback or in the site's Santa Barbara Lane side yard setback).
- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is a lot that runs from one street to another (Mockingbird Avenue on the north, Abbey Court on the south). Regardless of how the proposed single-family structure appears to be oriented towards Abbey Court, the site has front yard setbacks on both streets since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The submitted site plan denotes that the proposed single family home is located as close as 3' from the site's Mockingbird Avenue front property line or 22' into this 25' front yard setback.
- According to calculations taken from the site plan, about 800 square feet (or approximately 30 percent) of the proposed approximately 2,700 square foot lower floor building footprint is to be located in the site's Mockingbird Avenue 25' front yard setback.
- The subject site is somewhat sloped, somewhat irregular in shape, and according to the applicant's representative, is 8,632 square feet in area. The site is zoned R-7.5(A) where lots typically are 7,500 square feet in area.
- The site has two front 25' front yard setbacks; and two 5' side yard setbacks; most R-7.5(A) residentially-zoned lots have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback. (Note that even if this were a typical R-7.5(A) zoned lot with one front yard, two side yards, and one rear yard, the applicant would still be required to seek a variance to the rear yard setback with the size home and location he is proposing on the site since he proposes to provide a 3' setback from the Mockingbird Lane property line and a 5' rear yard setback would be required if Mockingbird Lane were deemed a rear yard on this property).
- According to DCAD records, there are "no main improvements" at 6965 Abbey Court.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Mockingbird Lane front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary

hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The 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 R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure to be located as close as 3’ from the site’s Mockingbird Lane front property line (or 22’ into this 25’ front yard setback).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2014

APPEARING IN FAVOR: Danny Sipes, P.O. Box 3293, Forney, TX 75126

APPEARING IN OPPOSITION: No one

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 134-019**, on application of Lou Olerio, **grant** the request to construct and maintain an 8-foot-high fence in the property’s front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.

SECONDED: Leone

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 134-019**, on application of Lou Olerio, **grant** a 22-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 plan is required.

SECONDED: Leone

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Leone

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

2:20 P.M. Board Meeting adjourned for **February 19, 2014**

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.