

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, APRIL 16, 2008**

MEMBERS PRESENT AT BRIEFING: Samuel Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, H.B. Sorrells, regular member and Darlene Reynolds, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Samuel Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member, H.B. Sorrells, regular member and Darlene Reynolds, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

10:15 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 16, 2008 docket.**

1:07 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 March 19, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

MOTION: Beikman

I move approval of the Wednesday, **March 19, 2008** Board of Adjustment Public Hearing minutes.

SECONDED: Reynolds

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 067-078

REQUEST: To waive the two year limitation on a request for a special exception to the landscape regulations that was granted with conditions by Board of Adjustment Panel B on August 15, 2007

LOCATION: 2701 Harry Hines Boulevard

APPLICANT: Felix Limited, represented by Masterplan

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.

- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On March 27, 2008, the Board Administrator sent the applicant's representative for BDA078-044 an email regarding whether or not his pending request for a landscape special exception on the subject site tentatively scheduled for April 16th would first require waivers of the two year limitation on landscape and visual obstruction special exceptions that were granted on the subject site in August of 2007 (BDA067-078)(see Attachment A).
- The August 2007 case report regarding BDA067-078 stated that a special exception to the landscape regulations and a special exception to the visual obstruction regulations were made in conjunction with obtaining a final Certificate of Occupancy on a lot developed with a surface parking lot, and locating a parked vehicle in one of the site's two 20' visibility triangles at the drive approach into the site from Harry Hines Boulevard, and locating a parked vehicle in the 45' visibility triangle at the intersection of Harry Hines Boulevard and Payne Street.
- On March 27, 2008, the applicant's representative submitted a letter in response to the Board Administrator's inquiry (see Attachment B) requesting a waiver of the two year time limitation on a special exception to the landscape regulations that was granted (subject to the revised landscape/site plan dated 8-14-07 and that all plantings must be kept in a healthy, live condition as conditions to the request) by Board of Adjustment Panel B on August 15, 2007. (The applicant's representative stated that a two-year waiver request was not needed in conjunction with the visual obstruction special exception granted in August of 2007 since, according to the applicant, "that approval remains valid.")
- The applicant's representative verbally informed the Board Administrator on March 27, 2008 that he wished to proceed with the two-year waiver request regarding the landscape special exception request of BDA067-078 simultaneously with the new landscape special exception request (BDA078-044) for April 16th with the risk that BDA078-044 would only be called if the board were to waive the two year limitation in conjunction with BDA067-044 at the beginning of the April 16th public hearing.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

APPEARING IN FAVOR: Santos Martinez, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move to **waive** the two year limitation on a request for a special exception to the landscape regulations that was granted with conditions by Board of Adjustment Panel B on August 15, 2007.

SECONDED: **Reynolds**

AYES: 5– Gillespie, Beikman, Sorrells, Chernock, Reynolds

NAYS: 0 –

MOTION FAILED 5 – 0(Unanimously)

FILE NUMBER: BDA 078-048(K)

BUILDING OFFICIAL'S REPORT:

Application of Bruce and Katherine Winson represented by Robert Baldwin for a special exception to the single family regulations at 9326 W. Lake Highlands Drive. This property is more fully described as Lot 5A in City Block 4/4894 and is zoned R-7.5(A), which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which will require a special exception.

LOCATION: 9326 W. Lake Highlands Drive.

APPLICANT: Bruce and Katherine Winson
Represented by Robert Baldwin

REQUEST:

Special exception to the single family use regulations to authorize an additional dwelling unit in a single family zoning district.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

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

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

GENERAL FACTS:

- This property is zoned R-1ac(A), which restricts development to one dwelling unit.
- The applicant proposes to construct and maintain a single family structure and an additional dwelling unit.
- The additional dwelling unit complies with all development standards except the single family use regulations

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500square feet)
North: R-7.5(A) (Single family district 7,500square feet)
South: R-7.5(A) (Single family district 7,500square feet)
East: R-1ac(A) (Single family district 1 acre)
West: R-7.5(A) (Single family district 7,500square feet)

Land Use:

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

Zoning/BDA History:

There is no zoning or Board of Adjustment history on properties in the immediate area.

Timeline:

- February 26, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 19, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 20, 2008: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 31st deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the April 4th 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 28, 2008 The applicant's representative submitted a letter of explanation to the Board of Adjustment's Senior Planner for the Board's consideration.

April 1, 2008 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

April 8, 2008 The applicant's representative submitted additional information to the Board of Adjustment's Senior Planner regarding the proposed development's square footage.

STAFF ANALYSIS:

- The property is zoned R-7.5(A) which restricts development to one single family structure. The applicant proposes to develop the property with a single family structure and an additional dwelling unit.
- The applicant submitted a site plan indicating the location of the proposed single family structure and additional dwelling unit.

- A review of the site plan by the Board of Adjustment’s Senior Planner reveals the following:
 - The proposed development includes a “main house”, “pool house”, and “pool”
 - The pool house is 19 feet high and includes an enclosed parking space
 - The site plan does not indicate the square footage or the height on the “main house.” (The development of the property must comply with the floor area ratios as stated in the code.)
- The applicant’s representative submitted a letter of explanation dated March 28, 2008 with the following information (see attachment):
 - “The Winson’s are seeking permission to construct an accessory structure behind the main house that needs approval by the Board of Adjustment.”
 - “The separate structure will include a carport, storage, and a garage apartment on the top floor (approx 960 sq. ft.)...This room will only be used for guest and will not ever be rented out.”
 - “The property will be deed restricted against renting of the secondary structure, so the rental of the unit will not be allowed.”
- The applicant’s representative submitted additional information regarding the proposed development.
 - The total area of the “main house is 4,365 square feet:
 - 3,570 square feet of air conditioned space
 - 500 square feet storage area
 - 245 square feet screened porch
 - The height of the main structure appears to be 30 feet.
- A site visit by the Senior Planner and review of DCAD indicate more than ten properties on West Lake Highland Drive either have a detached garage or storage unit larger than 500 square feet on the site.
- The applicant has the burden of proof to establish how the special exception to single family zoning use will not adversely affect neighboring property.
- If the Board chooses to grant this special exception to the single family zoning use regulations, staff recommends imposing the following condition—that the applicant comply with the submitted site plan and elevation and that the property be deed restricted to prevent the additional dwelling unit from being used as rental accommodations.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Reynolds

I move that the Board of Adjustment grant application **BDA 078-048** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.
- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: Beikman

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-057

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves for a special exception to the fence height regulation at 10210 Strait Lane. This property is more fully described as Tract 7 in City Block 5529 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 7 foot fence in a required front yard setback which will require a special exception of 3 feet.

LOCATION: 10210 Strait Lane

APPLICANT: Robert Reeves

REQUESTS:

- Special exceptions to the fence height regulations of up to 3’ are requested in conjunction with constructing and maintaining:
 1. a 5’ 6” (as stated in submitted document) or 5’ (as shown on site plan) high steel bar fence and gates/6’ high welded wire fence in the site’s 40’ Strait Lane front yard setback, and
 2. a 6’ high metal wire fence with 7’ high wood gate in the site’s 40’ Inwood Road front yard setback.
 (The site is developed with a single family home).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
A site plan and elevations have been submitted that indicate that the proposals in the site's two 40' front yard setbacks (Strait Lane and Inwood Road) will reach a maximum height of 7'.
- The following additional information was gleaned from the submitted revised site plan and elevation for the proposal along *Strait Lane*:
 - A line indicates the fence/gate location in the required 40' front yard setback where the proposal over 4' in height is approximately 300' in length parallel to the street (and approximately 13.5' in length on either side of the site in the front yard setback) will be located about 26.5' from the front property line (or approximately 42' from the pavement line).
 - The submitted full fence/gate elevation is "not to scale" therefore dimensions of the proposal can only be gleaned from the dimensions noted on the submitted site plan.
 - The submitted site plan indicates a notation of "5' high metal picket fence behind hedge" (an "Existing 18' high holly hedge to remain" along Strait Lane and a "6' high welded wire fence with cherry laurel hedge" on either side of the site in the front yard setback).
- The following additional information was gleaned from the submitted revised site plan and elevation for the proposal along *Inwood Road*:
 - A line indicates the fence/gate location in the required 40' front yard setback where the proposal over 4' in height is approximately 220' in length parallel to the street (and approximately 31' in length on either side of the site in the front yard setback) will be located about 9' from the front property line (or approximately 13' from the pavement line).
 - The submitted full fence/gate elevation is "not to scale" therefore dimensions of the proposal can only be gleaned from the dimensions noted on the submitted site plan.
 - The submitted site plan indicates a notation of "6' high Euroscape fence with Abelia hedge" along Inwood Road and a "6' high chain link fence" on either side of the site in the front yard setback.
- A notation is on the submitted revised site plan stating "For the purposes of this Board of Adjustment request, only the landscaping along the base of the fence, which is located in the required front yard applies."
- There are two single family homes that would have direct frontage to the proposal on Strait Lane. One of these two homes has a fence in its front yard that appears to have been "excepted" by the Board of Adjustment in 1997: BDA967-213. (The Board of Adjustment Panel C granted a special exception to the fence height regulations in conjunction with constructing and maintaining a 6' high fence with 6' 4" high columns and a 7' 4" high gate along Strait Lane and N. Lindhurst Avenue).
- Other than the fence/column/gate mentioned above, the Board Administrator noted no other fences above four (4) feet high which appeared to be located in the front yard setback in his field visit of the site and surrounding area approximately 500' north and south of the subject site along Strait Lane.

- There is one single family home that would have direct frontage to the proposal on Inwood Road. This home does not appear to have a fence above 4' in height in its front yard setback.
- The Board Administrator noted no other fences above four (4) feet high which appear to be located in the front yard setback in his field visit of the site and surrounding area approximately 500' north and south of the subject site along Inwood Road.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a color site plan; and
 - elevations of the proposal.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 967-213, Property at 10235 Strait Lane (a lot immediately west of the subject site)

On April 21, 1997, the Board of Adjustment Panel CA granted a visual obstruction special exception and a fence height special exception request of 3' 4" and imposed the following conditions: compliance with the submitted site plan, elevation plans, and landscape plan except for the portion of the proposed fence and columns in the North Lindhurst drive approach visibility triangle is required. The board denied a visual obstruction special exception request for a fence/column to be located in the North Lindhurst Avenue drive approach visibility triangle. The case report stated that the requests were made in conjunction with constructing/maintaining a 6' high open wrought iron fence with 6' 4" high columns, a 7' 4" high open wrought iron gate in the front yard setbacks along Strait Lane and North

Lindhurst Avenue, and in the drive approach and intersection visibility triangles.

Timeline:

Feb. 22, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 24, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:

- 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
- the April 4th 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 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

April 3, 2008: The applicant submitted additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS (regarding Strait Lane proposal):

- A revised site plan and elevation have been submitted that document the location of the maximum 5’ 6” high steel bar fence and gates and 6’ high welded wire fence in

the site's 40' Strait Lane front yard setback. The site plan shows the proposal to be about 300' in length parallel to the street (and about 13.5' in length on either "side" of the site in the front yard setback) about 26.5' from the property line or about 42' from the pavement line.

- The submitted revised site plan indicates a notation of "5' high metal picket fence behind hedge" (an "Existing 18' high holly hedge to remain" along Strait Lane and a "6' high welded wire fence with cherry laurel hedge" on either side of the site in the front yard setback).
- There are two single family homes that would have direct frontage to the proposal on Strait Lane. One of these two homes has a fence in its front yard that appears to have been "excepted" by the Board of Adjustment in 1997: BDA967-213. (The Board of Adjustment Panel C granted a special exception to the fence height regulations in conjunction with constructing and maintaining a 6' high fence with 6' 4" high columns and a 7' 4" high gate along Strait Lane and N. Lindhurst Avenue).
- Other than the fence/column/gate mentioned above, no other fences were noted above four (4) feet high which appeared to be located in the front yard setback in his field visit of the site and surrounding area approximately 500' north and south of the subject site along Strait Lane.
- As of April 7th, no letters had been submitted in support or in opposition to the request on Strait Lane.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposal at 6' in the Strait Lane front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted revised site/landscape plan and elevation would assure that the proposal would be constructed of/maintained as/limited to the materials, heights, and locations shown on these documents.

STAFF ANALYSIS (regarding Inwood Road proposal):

- A revised site plan and elevation have been submitted that document the location of the maximum 6' high metal wire fence with 7' high wood gate in the site's 40' Inwood Road front yard setback. The site plan shows the proposal to be about 220' in length parallel to the street (and about 31' in length on either "side" of the site in the front yard setback) about 9' from the property line or about 13' from the pavement line.
- The submitted revised site plan indicates a notation of "6' high Euroscape fence with Abelia hedge" along Inwood Road and a "6' high chain link fence" on either side of the site in the front yard setback.
- There is one single family home that would have direct frontage to the proposal on Inwood Road. This home does not appear to have a fence above 4' in height in its front yard setback.
- No other fences were noted above four (4) feet high which appeared to be located in the front yard setback in his field visit of the site and surrounding area approximately 500' north and south of the subject site along Inwood Road.
- As of April 7th, no letters had been submitted in support or in opposition to the request on Inwood Road.

- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' (whereby the proposal at 7' in the Inwood Road front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted revised site/landscape plan and elevation would assure that the proposal would be constructed of/maintained as/limited to the materials, heights, and locations shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Reynolds

I move that the Board of Adjustment grant application **BDA 078-057** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Beikman

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-058

BUILDING OFFICIAL'S REPORT:

Application of R. Steve Folsom, represented by Tommy Mann of Winstead PC, for a special exception to the fence height regulations at 5327 Edlen Drive. This property is more fully described as Lot 7 in City Block 1/5602 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 7 foot 6 inch fence in a required front yard setback which will require a special exception of 3 feet 6 inches

LOCATION: 5327 Edlen Drive

APPLICANT: R. Steve Folsom
Represented by Tommy Mann of Winstead PC

April 16, 2008 Public Hearing Notes:

- The applicant submitted additional printed documentation to the board at the public hearing: letters in support of the request and related map showing where these citizens/owners were located in relation to the subject site.

REQUEST:

- A special exception to the fence height regulations of 3' 6" is requested in conjunction with constructing and maintaining a 6' 10' high open wrought iron fence/gates with 7' 6" high columns in the 40' front yard setback on a lot being developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
A site plan and elevation has been submitted that indicates that the proposal in the site's 40 front yard setback that will reach a maximum height of 7' 6".
- The following additional information was gleaned from the submitted site plan:
 - A line indicates that the fence/column/gate location in the required 40' front yard setback is approximately 220' in length parallel to the street (and approximately 32' in length on either side of the site in the front yard setback), and will be located about 8' from the front property line (or about 20' from the pavement line).
 - Although the Board Administrator has made the applicant's representative aware that there appears to be a small portion of one of the entry columns located in a drive approach visibility triangle, the applicant has only made an appeal to the board for a special exception to the fence height regulations).
- A landscape plan has been submitted that denotes certain landscape materials that are shown to be located on the inside of the proposed open wrought iron fence.
- There is one single family home that would have direct frontage to the proposal. This home appears to have no fence in its front yard setback that exceeds 4' in height.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500' east and west of the subject site) and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 ac(A) (Single family district 1 acre)
North: R-1 ac(A) (Single family district 1 acre)
South: R-1 ac(A) (Single family district 1 acre)
East: R-1 ac(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 023-007, Property at 5431 Edlen Drive (three lots east of the subject site)
On November 12, 2002, the Board of Adjustment Panel B took the following actions: 1) granted a fence height special exception request to maintain a 6' 6" high fence with 7' columns (8.5' high entry columns) and an 8' high gate and imposed the following condition: Compliance with a revised site plan/landscape plan/elevation (to be submitted to the Board Administrator) is required showing no elements of the fence (or any other element) in the visibility triangle; and 2) denied a visual obstruction special exception without prejudice. The case report stated that the requests were made in conjunction with constructing/maintaining a 6.5' high open wrought iron fence with 7' high columns, and two 8' high gates in the front yard setback and in the Edlen Drive/Hollow Way Road intersection visibility triangle.

Timeline:

- Feb. 29, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 21, 2008: The Board Administrator emailed the following information to the applicant's representative:

- 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
- the April 4th 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 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 April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A site plan and elevation have been submitted that document the location of the 6' 10" high open wrought iron fence/gates with 7' 6" high columns in the 40' front yard setback. The site plan shows the proposal to be about 220' in length parallel to the street (and about 32' in length on either "side" of the site in the front yard setback) about 8' from the property line or about 20' from the pavement line.
- A landscape plan has been submitted that denotes certain landscape materials that are shown to be located on the inside of the proposed open wrought iron fence.
- There is one single family home that would have direct frontage to the proposal. This home appears to have no fence in its front yard setback that exceeds 4' in height.
- No other fences were noted above four (4) feet high which appeared to be located in the front yard setback in the surrounding area of the subject site (approximately 500' east and west of the subject site).
- As of April 7th, no letters had been submitted in support 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 3' 6" (whereby the proposal at 7' 6" in the front yard setback) 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 elevation would assure that the proposal

would be constructed of/maintained as/limited to the materials, heights, and locations shown on these documents.

- Granting this fence height special exception request would not provide the applicant any relief to the Dallas Development Code regulations pertaining to visual obstruction regulations.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Reynolds

I move that the Board of Adjustment grant application **BDA 078-058** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Beikman

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-063

BUILDING OFFICIAL'S REPORT:

Application of Steven H. Chen for variances to the front yard setback regulations at 909 S. Tyler Street. This property is more fully described as Lots 8, 9, & 10 in City Block 1/3519 and is zoned NS(A) which requires a front yard setback of 25 feet due to an adjacent R-7.5(A) zoning district within the same block and a 15 foot front yard setback on a corner lot. The applicant proposes to construct and maintain a structure and provide a 13 foot front yard setback and a 6 foot front yard setback which will require a variance of 12 feet and a variance of 9 feet respectively.

LOCATION: 909 S. Tyler Street

APPLICANT: Steven H. Chen

REQUESTS:

- Variances to the front yard setback regulations of up to 12' are requested in conjunction with replacing and maintaining a canopy structure in the site's 25' front yard setback along Tyler Street and in the site's 15' front yard setback along Burlington Boulevard. The site is currently developed with a vacant 1960's commercial structure that the applicant intends to renovate/divide into several suites/leased spaces within the existing structure (Tyler Plaza).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The variances would allow the development of the site in a manner commensurate with the development upon other parcels of land in districts with the same NS(A) zoning classification. The variances in this specific case are requested merely to replace a canopy that, according to the applicant, had been attached to the existing structure on the site since it was built in 1965 – a canopy structure that was located in the site’s two front yard setbacks before the applicant recently removed the old canopy given that it had fallen into disrepair.

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:

- Given the subject site’s non-residential zoning and the fact that it is a corner lot, the site has two front yard setbacks. Generally structures on lots zoned NS(A) are required to provide a minimum front yard setback of 15’. Although a 15’ front yard setback is required to be provided for the site’s Burlington Boulevard frontage, a 25’ front yard setback is required to be provided for the site’s S. Tyler Street frontage since the Dallas Development Code includes a general provision in its minimum front yard regulations stating that the front yard for the entire block must comply with the requirements of the district with the greatest yard requirement, and since there is property in the same block to the north of the site zoned R-7.5(A) – a zoning district that requires a 25’ front yard setback.

A scaled site plan has been submitted that shows the entire proposed canopy (92’ x 8’) to be located in the site’s 25’ Tyler Street front yard setback (13’ from the Tyler Street front property line or 12’ into the 25’ front yard setback) and roughly 1/10 of the proposed canopy’s entire length in the site’s 15’ Burlington Boulevard front yard setback (6’ from the Burlington Boulevard front yard setback or 9’ into the 15’ front yard setback).

- The application has only been made to replace a canopy onto a nonconforming commercial structure. The Board Administrator has fully informed the applicant of

the code's provisions pertaining to nonconforming structures, and the applicant has specifically informed the Board Administrator that he does not wish to include as part of his variance request any remediation of the existing nonconforming structure (a structure that does not conform to the current setback regulations but was lawfully constructed under the regulations in force at the time of construction).

- According to DCAD, the 6,110 square foot supermarket structure was built in 1965.
- The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The site is relatively flat, "L"- shaped, and approximately 16,000 square feet in area. The site is zoned NS(A). The site has two front yard setbacks (one 25' front yard setback along Tyler Street since the most restrictive setback in the block must be provided which in this case is R-7.5(A) to the north of the subject site, and one 15' front yard setback along Burlington Boulevard since the lot is zoned NS(A) and has street frontage).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a partial elevation of what the applicant has verbally described as an elevation showing the original awning that was attached to the existing structure; and
 - a copy of a site plan that the applicant has verbally described as a site plan that showed the original location of the awning that was attached to the existing structure.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a vacant commercial structure. The areas to the north and south appear to be developed with residential uses; the area to the east and south is developed with commercial use; and the area to the west is developed with a retail use and residential uses.

Zoning/BDA History:

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

Timeline:

February 29, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 21, 2008: 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
- the April 4th 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 Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and in not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

April 7, 2008 The applicant submitted additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- The variance requests are made to allow the replacement of an awning that had been attached to the existing structure on the site – an awning that, according to the applicant, he recently removed and failed to obtain a permit for since it was discovered that the replacement awning would be located in the site’s front yard setbacks along Tyler Street and Burlington Boulevard.

- The applicant verbally informed the Board Administrator that this application materialized from a Code Compliance officer who had issued a notice of violation on the dilapidated awning that had been attached to the structure. The applicant removed the substandard awning and discovered upon applying for a building permit could not be issued for the replacement awning since it would be located in setbacks. The applicant verbally informed the Board Administrator that the new awning would not be located any closer to the Tyler Street front property line than the awning he removed per Code Compliance – an awning that he speculates had been on the structure since it was built in 1965.
- A scaled site plan has been submitted that shows the entire proposed canopy (92' x 8') to be located in the site's 25' Tyler Street front yard setback and roughly 1/10 of the proposed canopy's entire length in the site's 15' Burlington Boulevard front yard setback.
- The site is relatively flat, "L"- shaped and approximately 16,000 square feet in area. The site is zoned NS(A). The site has two front yard setbacks (one 25' front yard setback along Tyler Street since the most restrictive setback in the block must be provided which in this case is R-7.5(A) to the north of the subject site, and one 15' front yard setback along Burlington Boulevard since the lot is zoned NS(A) and has street frontage).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations of up to 12' requested in conjunction with replacing and maintaining a canopy structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site (a site that is developed with a commercial structure built in 1965, and relatively flat, "L"-shaped and approximately 16,000 square feet in area, zoned NS(A) with two front yard setbacks) 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 NS(A) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the NS(A) zoning classification.
- If the Board were to grant the front yard variance requests of up to 12', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setbacks would be limited to that shown on this plan – which in this case is an approximately 700 square foot canopy that would be located 13' from the Tyler Street front property line (or 12' into the 25' front yard setback) and 6' from the Burlington Boulevard front property line (or 9' into the 15' front yard setback).

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Reynolds**

I move that the Board of Adjustment grant application **BDA 078-063** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Beikman**

AYES: 5—Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-046(K)

BUILDING OFFICIAL'S REPORT:

Application of John Colonna for a variance to the building height regulations at 1656 Cedar Hill Avenue. This property is more fully described as Lot 11 in City Block 1/4702 and is zoned R-7.5(A) which limits the maximum building height to 30 feet. The applicant proposes to construct a single family residential structure with a building height of 42 feet which will require a variance of 12 feet.

LOCATION: 1656 Cedar Hill Avenue.

APPLICANT: John Colonna

REQUESTS:

Variance of 12' to the building height regulation.

STAFF RECOMMENDATION (Variance):

Approval

Rationale:

- Staff concluded the proposed development will not be contrary to public interest.
- The parcel of land has a restrictive slope leaving most of the property undevelopable.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS (related to the variance):

- The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The site is currently undeveloped.
- The site has a topography ranging from 421 feet to 494 feet.
- The site is surrounded by existing single-family dwellings.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is undeveloped. Properties to the north, south, east and west are single family structures.

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:

February 26, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 19, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 20, 2008: The Board of Adjustment Senior Planner, contacted the applicant and shared the following information by phone and letter:

- 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
- the April 4th 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The applicant has submitted a site plan showing the location of the proposed structure and a topography survey of the property. The topography on the lot ranges from 421 feet to 492 feet.
- A site visit was conducted by the Board of Adjustment Senior Planner reveals the site to have a very restrictive topography due to the slope of the property.
- The Code states structures in a residential district are permitted to have a maximum height of 30 feet, the applicant proposes construct a single family structure with a maximum building height of 42 feet. This request will require a variance of 12 feet.
- The applicant has submitted a letter of explanation (see attachment) stating the height variance is necessary to construct and maintain "an enclosed staircase to

allow entry to the roof for elevator maintenance and green roof requirements.” Roof access is necessary to access “a recycled water system, on a weekly basis.”

- The applicant has the burden of proof to establish the variance is necessary due to restrictive lot size, slope, or shape and that this variance is necessary 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 the code.
- If the Board were to grant the variance request, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure could be constructed consistent with those documents.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

APPEARING IN FAVOR: Robert Rowland, 3918 Fairfax Avenue, Dallas, TX
David Branigan, 807 Brazos, Southlake, TX
John Colonna, 11349 S FM 372, Valley View, TX
Lee de la houssayi, 1502 Cedar Hill Ave., Dallas, TX

APPEARING IN OPPOSITION: Annemarie Bristow, 802 Hines, Dallas, TX
Patricia Melly, 957 Kessler Pkwy, Dallas, TX
Harrison Price, 1052 Kessler Pkwy, Dallas, TX
John McCall, 1656 Oak Knoll, Dallas, TX
Gilda Burleson, 1643 Cedar Hill Ave., Dallas, TX

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-046**, on application of John Colonna, **deny** the variance to the height regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Beikman

AYES: 5—Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-047(K)

BUILDING OFFICIAL'S REPORT:

Application of Jim Knox Munnerlyn for a variance to the front yard setback regulations and for a variance to the off-street parking regulations at 3868 Shorecrest Drive. This property is more fully described as Lot 16R in City Block 5068 and is zoned R-10(A) which requires a front yard setback of 30 feet and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a single family residential structure and provide a 15 foot front yard setback which will require a variance of 15 feet and to

construct a single family residential structure with a front yard setback of 17 feet, which will require a variance of 3 feet to the off-street parking regulations.

LOCATION: 3868 Shorecrest Drive

APPLICANT: Jim Knox Munnerlyn

REQUESTS:

Variance to the front yard setback requirements of 15 feet for a single family structure and a variance to the off-street parking regulation of 3 feet to accommodate an enclosed parking space.

STAFF RECOMMENDATION (Variance to single family structure)

Approval

Rationale:

- The property is different from other properties in the R-10(A) district in that it is encumbered by two front yard setbacks of 30 feet along Wingate and Shorecrest.
- Staff has concluded the development of this site will not be contrary to public interest and the variance request is not due to a self created or personal hardship.

STAFF RECOMMENDATION (Variance to off-street parking regulation)

Denial

Rationale

- The City's Senior Engineer has submitted a comment sheet indicating a recommendation of denial for the following reason:
 - "the garage layout may be re-designed."

STANDARD FOR A VARIANCE:

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

GENERAL FACTS (related to the variance):

- The site is zoned R-10 and requires a minimum:
 1. Front yard setback of 30 feet
 2. side yard setback of 6 feet
 3. and rear yard setback of 6 feet
- The site is currently developed with a single family structure and detached garage..
- The site is flat and rectangular in-shape (101' x139') approximately 17,500 square feet.
- The zoning maps indicate the property is located in a flood plain.
- The Code states a parking space must be 20 feet from the right-of-way line adjacent to a street or alley.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family structure and detached garage. The property to the north is a public park. The properties to the east, south, and west are single family structures.

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:

February 26, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 19, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 20, 2008: The Board of Adjustment Senior Planner, contacted the applicant and shared the following information by phone and letter:

- 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
- the April 4th 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 28, 2008 The applicant submitted additional information to the Board of Adjustment's Senior Planner for the Board's consideration (see attachment A).

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

April 3, 2008 the City's Senior Engineer submitted a comment sheet regarding this case (see attachment B)

STAFF ANALYSIS:

- The applicant submitted a site plan indicating a proposed footprint for a single family structure and garage.
- The submitted site plans show the proposed structure will comply with the front yard setback requirements along Shorecrest Drive. The site plan also indicates the applicant will provide a 15 foot setback for the Wingate front yard, which will require a variance of 15 feet to the front yard setback.
- This property differs from other properties in the R-10(A) zoning in that it is encumbered by two front yard setbacks along Wingate and Shorecrest. The structures with frontage on Wingate create a double front yard setback for this site.
- The applicant proposes to construct and maintain covered off-street parking 3 feet into the site's Wingate front yard setback. The Code states a parking space must be 20 feet from the right-of-way line adjacent to a street or alley.

- The property is approximately 17,500 square feet. Once the two front yard setbacks are accounted for there will be an approximate area of 65' x 103' or 6,695 square feet of developable area or 38% of the lots total area).
- If the Board were to grant the variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the front yard setback would be limited to what is shown on this plan.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

APPEARING IN FAVOR: Jim Munneryn, 5746 Greenbrier Dr., Dallas, TX
Fred Hartnett, 8715 Lakemont, Dallas, TX

APPEARING IN OPPOSITION: Rondi Davis, 4130 Shorecrest, Dallas, TX
Kevin McFall, 8715 Wingate, Dallas, TX
Dean Weaver, 8611 Wingate, Dallas, TX

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 078-047** on application of Jim Knox Munneryn, **deny** the variance to the front yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Sorrells
AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds
NAYS: 0 –
MOTION PASSED 5 – 0 (Unanimously)

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 078-047**, on application of Jim Knox Munneryn, **deny** the variance to the off street parking regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Reynolds
AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds
NAYS: 0 –
MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-050

BUILDING OFFICIAL'S REPORT:

Application of Masterplan for a variance to the front yard setback regulations at 2811 McKinney Avenue. This property is more fully described as Lots 1, 2, & 3 in City Block 955 and Lot 1 in City Block 1/955 and is zoned PD-193 (LC) which requires a front yard setback of 10 feet. The applicant proposes to construct and maintain a structure and provide a 2 foot front yard setback which will require a variance of 8 feet.

LOCATION: 2811 McKinney Avenue

APPLICANT: Masterplan

April 16, 2008 Public Hearing Notes:

- The applicant's representative stated at the hearing that he had determined that it was necessary for him to add a request for a special exception to the landscape regulations in conjunction with the canopy addition given that the site does not comply with these regulations. As a result, the applicant requested a delay of action on the variance request until the board's May hearing for him to add the landscape special exception request and to continue substantiating his original front yard setback variance request.

REQUEST:

- A variance to the front yard setback regulations of 8' is requested in conjunction with constructing and maintaining, according to the application, an "open awning" (or according to the submitted site plan, a "covered patio") that would attach to an existing retail use (Christi's Restaurant) in the site's 10' McKinney Avenue front yard setback. The site is developed with a mixed use structure that was constructed in the mid 80's.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case requested to construct and maintain a canopy to cover an existing patio on one of the approximately five ground level suites for an existing restaurant use located within an existing relatively new (mid 80's) large mixed use structure on the site. Even though this site is somewhat irregular in shape, this characteristic (nor its size or slope) does not create hardship or preclude its development in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. The physical characteristics of the subject site do not warrant a canopy in the front yard setback for one or any of the ground level suites in the existing building on the subject site.
- The applicant had not substantiated how the physical features of the flat, somewhat irregularly-shaped, 1.38 acre site constrain it from being developed in a manner

commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification while simultaneously complying with code standards including front yard setback regulations.

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 minimum front yard setback for “other permitted structures” (which would include an awning) on lots zoned PD No. 193 (LC Subdistrict) is 10’.
A revised site plan has been submitted that a “covered patio” structure that is as close as 2’ from the site’s McKinney Avenue front property line (or as much as 8’ into the 10’ setback) (see Attachment A).
- According to calculations taken from the submitted revised site plan by the Board Administrator, the “covered patio” structure is 50’ long and ranges from 13’ – 16’ in width. It appears that roughly half of the canopy is proposed to be located in the 10’ front yard setback.
- The site is flat, irregular in shape, and according to the application, 1.38 acres in area. The site is zoned PD No. 193 (LC). The site has three, 10’ front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the site is developed with the following:
 - an office building with 79,393 square feet built in 1984;
 - a parking garage with 94,533 square feet built in 1984;
 - a retail strip with 16,561 square feet built in 1984; and
 - a restaurant with 6,439 square feet built in 1984.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site plan, elevation, and section;
 - a document that provided additional details about the request; and
 - photos of the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC) (Planned Development Light Commercial)
North: PD No. 193 (LC) (Planned Development Light Commercial)
South: PD No. 193 (LC) (Planned Development Light Commercial)
East: PD No. 193 (LC) (Planned Development Light Commercial)
West: PD No. 193 (GR) (Planned Development General Retail)

Land Use:

The subject site is developed with a mixed use structure. The areas to the north, east, south, and west are developed with a mix of residential, retail, and office uses.

Zoning/BDA History:

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

Timeline:

- February 28, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 20, 2008: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- 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 March 31st deadline to submit additional evidence for staff to factor into their analysis;
 - the April 4th 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 Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 21 & 31, 2008: The applicant submitted additional information to the Board Administrator (see Attachment A).

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant has made a front yard variance request to allow the construction and maintenance of a covered patio structure in the site's 10' McKinney Avenue front yard setback for an existing restaurant that is one of approximately five ground level suites in the site's multi-story mixed use structure. Although photos of the site submitted by the applicant show what could possibly be a patio "structure" in the front yard setback as well, no application has been made to "vary" any structure other than a canopy over the existing patio.
- The applicant has stated that the suite/storefront that is the focus of this variance request (Christi's Restaurant) was issued a permit in 1991 for an awning that already exists on the site – an existing canopy that is different in form and function that what is proposed on the site but similar in that it appears to be located in a front yard setback, too. (The existing canopy on the site that the applicant states obtained a permit in 1991 is perpendicularly-oriented to McKinney Avenue that appears to function as a covered walkway between the street and the entrance door to the restaurant while the proposed canopy is horizontally-oriented to McKinney Avenue that would appear to function as a covered-dining space).
- It appears that about 1/2 of the proposed "covered patio"/canopy structure would be located in the site's 10' front yard setback on McKinney Avenue.
- The site is flat, irregular in shape, and according to the application, 1.38 acres in area. The site is zoned PD No. 193 (LC). The site has three, 10' front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. The site is, according to DCAD, developed with an approximately 80,000 square foot office building, an approximately 95,000 square foot parking garage, an approximately 16,500 square foot retail strip, and an approximately 6,500 square foot restaurant all built in 1984.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations requested in conjunction with constructing and maintaining a canopy structure over an existing patio 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 (a site that is developed with a mixed use structure built in 1984, that is flat, irregular in shape,

and 1.4 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) 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 (LC) zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is a structure labeled “covered patio” located as close as 2’ from the site’s McKinney Avenue front property line (or as much as 8’ into the 10’ front yard setback).
- Granting this variance request would not provide the applicant any relief to any Dallas Development Code regulation (including but not limited to landscape regulations) other than to front yard setbacks in this case along McKinney Avenue.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2008

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

APPEARING IN OPPOSITION: Leslie Brosi, 3030 McKinney Avenue, Dallas, TX

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 078-050**, hold this matter under advisement until **May 21, 2008**.

SECONDED: Reynolds

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 5–Gillespie, Beikman, Chernock, Sorrells, Reynolds

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

3:45 P.M. - Board Meeting adjourned for **April 16, 2008**.

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.