

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, MAY 18, 2005**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, regular member, Kathleen Cope, regular member, Samuel Gillespie, regular member, and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, regular member, Kathleen Cope, regular member, Samuel Gillespie, regular member, and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: T.J. Okwubanego, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Jennifer Pitner, Senior Planner and Trena Law, Board Secretary

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9:35 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's May 18, 2005 docket.

1:20 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 April 20, 2005 hearing minutes as amended.

MOTION: Cope

I move **approval** of the **Wednesday, April 20, 2005** Board of Adjustment Public Hearing minutes.

SECONDED: Jaffe

AYES: 5–Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 - None

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: N/A

REQUEST: Of the Board of Adjustment to consider amendments to Section 10 of the Board of Adjustment Working Rules of Procedure

GENERAL FACTS:

- On April 1, 2005, Panels A, B, and C of the Board of Adjustment held a special meeting where the Assistant City Attorney to the Board presented several legal points and parameters to the board members as points of information and for discussion purposes.
- The board members discussed the possibility of amending their “Working Rules of Procedure” whereby a provision would be added to Section 10. Public Hearings (see Attachment A). Members expressed what appeared to be consensual interest in considering the addition of a provision to this section that would provide specific measures and guidelines pertaining to documents that would be submitted to them at the briefing and/or public hearing (after monthly dockets had been mailed).
- The Board of Adjustment Chair directed staff to prepare language to be placed on the upcoming Panel A, B, and C’s April Miscellaneous Dockets whereby each panel could consider devising and adopting amendments to this section of the Working Rules of Procedure.

- The Board of Adjustment's Assistant City Attorney prepared a draft amendment to the rules in response to the board's request that would amend/add the "Public Hearing" section to the board's rules, an amendment specifically pertaining to "documentary evidence" (see Attachment B).
- At each of the three Board of Adjustment public hearings held in April, the panels were separately briefed that in terms of procedure, any amendment to the draft document prepared by the Assistant City Attorney would be so noted by staff at each panel meeting held in April, with an incorporation of all comments/amendments/recommendations made by each panel consolidated and presented for each panel's final consideration in May of 2005.
- Each of the three Board of Adjustment panels was presented the draft amendment in April of 2005 where comments/amendments to the draft were noted by staff.
- The Board of Adjustment's Assistant City Attorney prepared a final draft that would amend the "Public Hearing" section to the board's rules (see Attachment C). The City Attorney prepared the final draft incorporating the comments made by each panel at the April public hearings.
- The proposed amendment will be incorporated into the "Working Rules of Procedure" once (if) all three panels separately approve this final draft in May of 2005.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

MOTION: Gillespie

I move that the Board of Adjustment Panel B approve the amendments to Section 10 of the Board of Adjustment Working Rules of Procedure.

SECONDED: Brannon

AYES: 5– Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

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

LOCATION: 2624 Lolita Drive

APPLICANT: Benjamin Magana

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a waiver of a filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A).

Timeline:

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|-----------------|---|
| Undated | The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A). |
| March 29, 2005: | The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel B. |
| March 29, 2005: | The Board Administrator wrote the applicant a letter that conveyed the following information: <ul style="list-style-type: none">• the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);• the criteria/standard that the Board will use in their decision to approve or deny the request; and• 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. |

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Antonio Magana, III, 2624 Lolita, Dallas, TX
Benjamin Magana,

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment waive the filing fee to be submitted in conjunction with a potential board application.

SECONDED: Gillespie

AYES: 5– Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-201

BUILDING OFFICIAL'S REPORT:

Application of Peyman Harri for a special exception to the fence regulations at 4460 W. Northwest Hwy. This property is more fully described as Lot 1 in City Block C/5573 and is zoned R-10 (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence which would require a special exception of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4460 W. Northwest Highway

APPLICANT: Peyman Harri

REQUEST:

- A special exception to the fence height regulations of 4' 6" is requested in conjunction with constructing an 8'-high solid stone wall with 8' 6'-high solid stone columns in the 30'-front yard setback along Northwest Highway on a site being developed as a shared access development that will contain a number of single family homes.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The submitted site plan makes the following notations:
 - The proposed "8' barrier & screening wall" to be located parallel to Northwest Highway with a recessed entryway;
 - The proposed wall to be approximately 195 feet long along Northwest Highway;
 - The proposed wall to be located on the property line and approximately 12 from the Northwest Highway curb line;
 - The proposed entry gate to be located behind the 30' setback.
- The submitted section plan makes the following notations:
 - An 8'-high solid stone wall
 - 8' 6"-high columns
- There has not been a landscape plan (or a site plan with specified landscape materials) submitted in conjunction with this appeal.
- The proposed wall would be located on a site where no single family home would have direct/indirect frontage to the proposed wall.
- The proposed wall would be located on a six-lane divided thoroughfare.
- The Board Administrator conducted a field visit of the site and surrounding area along Northwest Highway (approximately 500' to the east and west of the site) and noted one fence/wall which appeared to be located in the *front* yard setback (Note that these dimensions are approximations):
 - A 6.5'-high solid wall east of the site (that was a result of Board of Adjustment action in 1996).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that provides further details about the request and why it should be granted;
 - Details about a previous nearby fence special exception that was granted by the Board of Adjustment in May of 2004; and
 - Pictures of walls of neighboring properties along Northwest Highway with corresponding map;

BACKGROUND INFORMATION:

Zoning:

Site: R-10 (A) (Single family district 10,000 square feet)
North: R-10 (A) (Single family district 10,000 square feet)
South: PD No. 455 (Planned Development District)
East: R-10 (A) (Single family district 10,000 square feet)
West: R-10 (A) (Single family district 10,000 square feet)

Land Use:

The subject site is being developed as a shared access development which will contain a number of single family homes. The areas to the north, east, and south west are developed with single family uses; and the area to the west is undeveloped.

Zoning/BDA History:

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|---|---|
| 1. BDA 990- 110, 4460 Northwest Highway (the subject site) | On October 9, 1990, the Board of Adjustment granted a request for a special exception “to maintain a fence height being limited to 4 feet above the existing grade of Northwest Highway.” |
| 2. BDA 95-132, 8935-36 Guernsey Lane (the lot east of the subject site) | On January 23, 1996, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations to maintain a 6.5’-high fence on the site. The board imposed the following condition: Compliance with the submitted site plan, elevation plan, and landscape plan is required. |

Timeline:

- April 1, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 21, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- April 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 29, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed wall and columns relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed wall relative to the lot.
- A scaled elevation has been submitted that documents the height of the proposed wall (8') and columns (8' 6"), and the building materials of the wall and columns (stone).
- The proposed wall is to be constructed of durable material.
- The proposed wall would be located on a six-lane divided thoroughfare immediately across from single family homes that "side" onto Northwest Highway and "front" Rockbrook Drive and Guernsey Lane (two north-south streets that are perpendicular to the east-west Northwest Highway).
- As of May 5th, no letters had been submitted to staff either in support or in opposition to the proposed fence.
- Granting this special exception of 4' 6" with conditions imposed that the applicant complies with the submitted site plan and wall section would assure that the proposed wall and columns are constructed and maintained as shown on these documents.

***1:44 P.M. Member Sam Gillespie recused himself and did not vote on this matter.**

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jaffe

I move that the Board of Adjustment **grant** application **BDA 045-201** 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 wall section is required.

SECONDED: Brannon

AYES: 4–Cox, Brannon, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 4 – 0

FILE NUMBER: BDA 045-212

BUILDING OFFICIAL'S REPORT:

Application of James W. Archer for a special exception to the fence regulations at 4109 W. Lawther Drive. This property is more fully described as Lot 5B in City Block 4408 and is zoned R-1 Ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 8 inch fence in the required front yard setback which would require a special exception of 2 feet 8 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4109 W. Lawther Drive.

APPLICANT: James W. Archer

May 18, 2005 Public Hearing Notes:

- The applicant submitted a gate elevation at the public hearing.

REQUEST:

- A special exception to the fence height regulations of 2' 8" is requested in conjunction with constructing 6'-high decorative ornamental iron fence with 6' 8"-high masonry columns with an entry feature that consists of 6' 8" –high columns and a 5' 6" –high gate in the 40'-Lawther Drive front yard setback on a site being developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The submitted site plan makes the following notations:
 - "2' x 2' MASONRY COLUMNS – 6'-8" MAX.HGT/30'-O.C. WITH DECORATIVE ORNAMENTAL IRON FENCING/6'-0" MAX. HGT."
 - "6'-0" HIGH METAL SERVICE GATE"
 - The proposed fence to be located parallel to Lawther Drive with recessed entryways;
 - The proposed fence to be approximately 365 feet long along Lawther Drive;
 - The proposed fence to be located about 1' from on the property line and approximately 20' from the Lawther Drive pavement line;
 - The proposed entry gate to be located about 24' from the property line and approximately 41' from the projected Lawther Drive pavement line; and
 - The proposed service gate to be located on from the property line and approximately 40' from the projected Lawther Drive pavement line.
- The submitted entry gate elevation plan makes the following notations:
 - "DECORATIVE IRON ENTRANCE GATE" (5' 6" high)
 - "FENCE, 6'-0" MAXIMUM HEIGHT"
 - 6' 8"- high columns;
- The submitted site plan makes the following notation regarding landscape materials to be located adjacent to the fence: "EXISTING EVERGREEN HEDGE / 7'-0" to 8'-0" HEIGHT"
- The proposed fence would be located on a site where no single family home would have direct/indirect frontage to the proposed fence.
- The Board Administrator conducted a field visit of the site and surrounding area along Lawther Drive (approximately 500' in either direction of the site) and noted no other fences higher than 4' located in a front yard setback.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is being developed with a single family home. The areas to the north, south, and west are developed with single family uses; and the area to the east is a lake (White Rock Lake).

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:

April 1, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 25, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from a District Manager from Code Compliance that indicated "Has no objections."

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed fence, columns, and gates relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed fence relative to the lot, the heights of the proposed fence (6' 8" max.) and columns (6' 8" max.), and fence materials (decorative ornamental iron fencing) and column materials (masonry).
- A scaled elevation has been submitted that documents the height of the proposed entry columns (6' 8") and the building materials of the columns (brick).
- The proposed fence, columns, and gates are to be constructed of durable material.
- The proposed fence would be located immediately across from White Rock Lake, and according to the submitted site plan, behind an "existing evergreen hedge" that is 7'-8' in height.
- As of April 8th, no letters had been submitted to staff either in support or in opposition to the proposed fence.
- Granting this special exception of 2' 8" with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed fence is constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Jaffe

I move that the Board of Adjustment **grant** application **BDA 045-212** 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 fence/gate elevations is required; and
- The existing hedge on the property line or in front of the fence must be kept and maintained in order.

SECONDED: Brannon

AYES: 5—Cox, Brannon, Gillespie, Cope, Jaffe,

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-187

BUILDING OFFICIAL'S REPORT:

Application of Cary and Logan Broussard for a variance to the front yard setback regulations at 1115 Valencia Street. This property is more fully described as Lot 3 in City Block 21/2221 and is zoned Conservation District 6 which requires a 35-foot front yard setback. The applicant proposes to construct an accessory building and provide a 20 foot front yard setback which would require a variance of 15 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 1115 Valencia Street

APPLICANT: Cary and Logan Broussard

REQUEST:

- A variance to the front yard setback regulations of 15' is requested in conjunction with constructing a 1.5-story garage/storage room on a lot developed with a single family home.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 35'-front yard setback is required in the CD No. 6 zoning district.
- The approximately 12,000 square foot subject site is located near the center of the 1100 block of Valencia Street and Sarasota Circle. The site/lot has two, 35'-front yard setbacks since the site is a full "block-deep" (or about 240' in depth) with its northeastern edge along Valencia Street and its southwestern edge along Sarasota Circle.
- The variance is requested to construct the proposed garage/storage room to be located 20' from the site's front property line on Sarasota Circle even though the

location of the existing single family home is not in compliance with the 35'-front yard setback on Valencia Street.

- The homes on either side of the site appear to have similar orientation features as that of the home on the subject site, where the main structures on these lots “front” northeast to Valencia Street rather than “fronting” southwest to Sarasota Circle.
- A review of archived zoning maps indicates that prior to the creation of CD (Conservation District) No. 6 in 1993, the site and surrounding area was zoned R-7.5(A) where the house on the site and other homes in the block were in compliance with this zoning district’s 25’ front yard setback.
- The subject site is developed with, according to DCAD records, the following:
 - a single family home that is in very good condition, built in 1946 with 2,162 square feet of living area; and
 - a 360 square foot “WD FR SHED.”
- The applicant has been advised of the nonconforming structure provisions of the Dallas Development Code and has chosen to seek a variance for the new structure to be located in the Sarasota Circle front yard setback given that the existing house can stay in its current location in the Valencia Street front yard setback without requiring an approved variance.
- According to the submitted site plan, the proposed garage/storage room is 35’ long and 22’ wide. The area of the garage/storage room in the Sarasota Circle front yard setback is approximately 35’ x 15’ or 525 square feet in area.
- The site is sloped, somewhat irregular in shape (60’ on the northeast, 238’ on the southeast, 46’ on the southwest, and 244’ on the northwest), and approximately 12,000 square feet in area. The site also has a 10’ drainage easement that is located across the site that is located about 43’ from the site’s Sarasota Circle front property line.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A document that provided additional information regarding the request and why it should be granted;
 - A revised site plan and elevation (that merely labeled the structure on the site requiring the variance as a “1 ½ story garage/storage” structure”); and
 - A petition signed by four neighbors who support the request.

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 6 (Conservation District 6)
North: CD No. 6 (Conservation District 6)
South: CD No. 6 (Conservation District 6)
East: CD No. 6 (Conservation District 6)
West: CD No. 6 (Conservation District 6)

Land Use:

The subject site is developed with a single family home that does not have an attached or detached garage. (According to the applicant, the area on the existing house that appeared to have been an attached garage was transitioned to living space when he purchased the house). 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:

January 6, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 21, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from a District Manager from Code Compliance that indicated "Has no objections." In addition, the following comments were emailed to the Board Administrator by the Historic Preservation Senior Planner:

- The staff recommendation for a Certificate of Appropriateness is to locate a smaller garage using the 35 foot setback or construct the garage on the other side of the drainage easement and build an automobile bridge over the site.

STAFF ANALYSIS:

- The site is sloped, somewhat irregular in shape (60' on the northeast, 238' on the southeast, 46' on the southwest, and 244' on the northwest), and approximately 12,000 square feet in area. (Prior to the creation of CD No. 6 in 1993, the site and surrounding area was zoned R-7.5(A) where the typical lot size was 7,500 square feet). The site also has a 10'-drainage easement that is located across the site that is located about 43' from the site's Sarasota Circle front property line.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a 1.5-story garage/storage structure that would have a building footprint of about 770 square feet where about 525 square feet of the structure would be located in the 35'-Sarasota Circle front yard setback resulting in a 20' front yard setback.
- The applicant has submitted a support letter from the president of the Hollywood/Santa Monica Neighborhood Association and four adjacent neighbors.
- In addition to obtaining a variance to the front yard setback regulations from the Board of Adjustment along Sarasota Circle, the applicant will be required to meet the design guidelines set forth in Conservation District No. 6.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Logan Broussard, 1115 Valencia, Dallas, TX
Santos Martinez, 1111 Cordova, Dallas, TX
Cary Broussard, 1115 Valencia, Dallas, TX

APPEARING IN OPPOSITION: Ann Davis, 1115 Sarasota Circle, Dallas, TX
Regan Williams, 1027 Sarasota Circle, Dallas, TX

MOTION: Jaffe

I move that the Board of Adjustment in Appeal **No. BDA 045-187**, on application of Cary and Logan Broussard, **deny** the variance requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship.

SECONDED: Brannon

AYES: 5—Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-191

BUILDING OFFICIAL'S REPORT:

Application of Allegro Management, Inc., represented by Robert Baldwin, for a special exception to the fence regulations at 5210 Deloache Avenue. This property is more fully described as Lot 8 in City Block 8/5581 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 9 foot fence in the required front yard setback which would require a special exception of 5 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5210 Deloache Avenue

APPLICANT: Allegro Management, Inc.,
Represented by Robert Baldwin

May 18, 2005 Public Hearing Notes:

- An opposing property owner to the request submitted a notebook of photographs at the public hearing.

REQUEST:

- A special exception to the fence height regulations of 5' is requested in conjunction with constructing a 7'-high open wrought iron fence with 8'-high cast stone columns, and a 9'-high open wrought iron entrance entry gate with 8'-high cast stone entry columns and an 8'-high open wrought iron service gate with 8'-high cast stone entry columns in the 40'-Deloache Avenue front yard setback on a site being developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The submitted site plan makes the following notations:

- The proposed fence to be located parallel to Deloache Avenue with recessed entryways;
- The proposed fence to be approximately 150 feet long along Deloache Avenue;
- The proposed fence to be located about 1' from on the property line and approximately 16' from the Deloache Avenue pavement line;
- The proposed entry gate to be located about 14' from the property line and approximately 28' from the projected Deloache Avenue pavement line; and
- The proposed service gate to be located about 7' from the property line and approximately 22' from the projected Deloache Avenue pavement line.
- The submitted elevation plan makes the following notations:
 - A 7'-high open wrought iron picket fence with 8'-high cast stone columns;
 - A 9'-high open wrought iron picket entry gate with 8'-high cast stone columns; and
 - An 8'-high open wrought iron picket service gate with 8'-high cast stone columns.
- A "landscape plan" has been submitted in conjunction with the application that details the following landscape materials to be located adjacent to the fence:
 - "groundcover;"
 - "seasonal color"
 - "azalea boxwood hedge"
- The proposed fence would be located on a site where three single family homes would have direct/indirect frontage to the proposed fence. The home immediately to the north has no fence, the home being constructed to the northwest is seeking a fence special exception from Board of Adjustment Panel A on May 17th, and the home to the northeast of the site has 5'-high open metal fence that was "excepted" by the Board of Adjustment Panel A in 2002.
- The Board Administrator conducted a field visit of the site and surrounding area along Deloache Avenue from Inwood Road to Meadowbrook Road which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - A 6'-high open metal fence with 5' high brick columns two lots northwest of the site;
 - A 4'-high open metal fence with 5' high brick columns two lots east of the site;
 - A 5-foot open metal fence with 6.5' high columns northeast of the site (see the "Zoning/BDA History" section of this case report for further details); and
 - An 8'-high open wrought iron fence with 9' 3" high masonry columns, a 12' 2" high open wrought iron entry gates with 10' 11" high masonry columns along Deloache Avenue and 9' 3" high columns along Meadowbrook Drive located 3 lots east of the site (see the "Zoning/BDA History" section of this case report for further details).
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that further details why the request should be granted; and
 - A map indicating the location of properties in the area with fences over four feet high in relation to the subject site.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 045-106, 5210 Deloache Avenue (the subject site) On November 17, 2004, the Board of Adjustment Panel B granted a request for a special exception to allow an additional dwelling unit on the site. The board imposed the following conditions: Compliance with the submitted site plan and elevation is required; and the property must be deed restricted to prohibit the additional dwelling unit from being used for rental accommodations. The case report states that the request was made in conjunction with constructing a 2-story garage/cabana/hobby room additional “dwelling unit” structure on the site.
2. BDA 012-247, 5131 Deloache Avenue (the lot northwest of the subject site) On December 10, 2002, the Board of Adjustment Panel A granted a request for a special exception to the front yard fence height regulations of 3’ 3.5”, subject to the following conditions: The request is maintain a 6’-high wrought iron fence with stone columns not to exceed 7’ 3.5” in height; and compliance with the revised site plan and elevation submitted at the public hearing is required; and denied a request for a special exception of 3’ 5” to the side yard fence height regulations. The case report states that the original request was made to construct an 8’-high open metal fence with a 2’ 3” –high masonry base, and 9’ 3.5”-high columns in the front yard setback, and a two, 9’ 3.5”-high columns to be located in the side yard setbacks. (This fence was never constructed).

3. BDA 045-192, 5131 Deloache Avenue (the lot northwest of the subject site)

On May 17, 2005, the Board of Adjustment Panel A will consider a special exception to the fence height regulations of 4' 2" to construct a 6'-high open wrought iron fence with 7' 1"-high brick columns, and 6'-high wood and steel entrance entry gates with 8' 2'-high brick entry columns in the 40'-Deloache Avenue front yard setback on a site being developed with a single family home.
4. BDA 012-145, 5231 Deloache Avenue (the lot immediately northeast of the site)

On March 26, 2002, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations "to maintain a 5 foot fence except for within 5' of the existing driveway in which case the fence can rise to a maximum of 6.5 feet. The support pillars must be at least 18 feet apart and not wider than 24 inches and not taller than 5.5 feet. Within 5 feet of the driveway, the pillars can rise to 6.5 feet. This height limitation should include the pillars and any fixtures on top of them. No part of the fence on the front of the property should have a stone wall as part of the fence. The fence should be built with vertical iron sections that are at least four inches apart." (Staff has recommended that this request be denied).
5. BDA 990-238, 5238 Deloache Avenue (two lots immediately east of the site)

On March 28, 2000, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations needed in conjunction with constructing and maintaining an HVAC and pool equipment mechanical pad, and a special exception to the fence regulations of 8' 2" with conditions, needed in conjunction with constructing and maintaining an 8' high open wrought iron fence with 9' 3" high masonry columns, a 12' 2" high open wrought iron entry gates with 10' 11" high masonry columns along DeLoache Avenue and 9' 3" columns along Meadowbrook Drive. Staff had recommended denial of the variance request and approval of the special exception request.

Timeline:

- Undated: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, Senior Planner Pitner, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed fence, columns, and gates relative to their proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed fence relative to the lot.

- A scaled elevation has been submitted that documents the height of the proposed fence (7'), columns (8'), and gates (9'), and the building materials of the fence (open wrought iron), columns (stone), and gates (open wrought iron).
- The proposed fence is to be constructed of durable material.
- The proposed fence would be located immediately across from a single family home that does not have a fence higher than 4' in its front yard setback. (The applicant has, however, submitted a map that indicates that there are four lots along Deloache Avenue between Inwood Road and Meadowbrook Drive that have fences higher than 4' in front yard setbacks).
- As of May 6th, no letters had been submitted to staff either in support or in opposition to the proposed fence.
- Granting this special exception of 5' with conditions imposed that the applicant complies with the submitted site plan/landscape plan and fence elevation would assure that the proposed fence, columns, and gates are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Robert Baldwin, 401 Exposition, Dallas, TX
 Skye Brewer, 3521 Beverly, Dallas, TX

APPEARING IN OPPOSITION: Tucker Entoven, 5215 Deloache Ave., Dallas, TX
 Richard Enthoven, 5215 Deloache Ave., Dallas, TX

MOTION: Gillespie

I move that the Board of Adjustment in Appeal **No. BDA 045-191**, hold this matter under advisement until **June 15, 2005**.

SECONDED: Brannon

AYES: 5–Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-193

BUILDING OFFICIAL'S REPORT:

Application of Kevin Kanzler for a variance to the side yard setback regulations at 4515 Bluffview Blvd. This property is more fully described as Lot 15 B in City Block N/4983 and is zoned P.D. 455 which requires a 6 foot side yard setback. The applicant proposes to construct an addition and provide a 4 foot 8 inch side yard setback which would require a variance of 1 foot 4 inches. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 4515 Bluffview Boulevard

APPLICANT: Kevin Kanzler

REQUEST:

- A variance to the side yard setback regulations of 1' 4" is requested in conjunction with completing a stone barbeque/fireplace structure on a site that is developed with a single family home.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 6'-side yard setback is required in the PD No. 455 zoning district.
- The submitted site plan indicates that the partially-completed approximately 12'-high stone barbeque/fireplace structure is located 4' 8" from the site's side property line on northeast side of the site.
- The applicant has stated that the barbeque/fireplace structure was built within the same line as the chimney on the house.
- The Dallas Development Code states the following:
 - "Required side yards must be open and unobstructed except for fences. Except as otherwise provided in this section, ordinary projections of window sills, belt courses, cornices, and other architectural features may not project more than 12 inches into the required side yard. A fireplace chimney may project up to two feet into the required side yard if its area of projection does not exceed 12 square feet. Roof eaves may project up to three feet into the required side yard. Balconies may not project into the required side yard."
- Additionally the Dallas Development Code states the following with regard to side yard setbacks for accessory structures in residential zoning districts:
 - "In a residential district, a person need not provide a side yard setback for a structure accessory to a residential use if the structure

(A) does not exceed 15 feet in height; and
(B) is located in the rear 30 percent of the lot.”

- According to the submitted site plan, about 15 square feet of the approximately 75 square foot stone barbeque/fireplace structure is located in the 6’ side yard setback.
- The site is flat, rectangular in shape (205’ on the northeast, 87.5’ on the southeast, 194’ on the southwest, and 88.4’ on the northwest), and approximately 0.4 acres or 17,600 in area. (A review of archived zoning maps indicates that prior to the creation of PD 455 in 1996, the site and surrounding area were zoned R-10(A) which also requires a 6’ side yard setback).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that provides additional details regarding the request and why it should be granted;
 - A support letter from the property owner nearest the side yard encroachment; and
 - A copy of an approved plan from the applicant’s pool company that led the applicant to assume the barbeque grill was approved as well.

BACKGROUND INFORMATION:

Zoning:

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

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:

March 31, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- April 21, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is flat, rectangular in shape (205' on the northeast, 87.5' on the southeast, 194' on the southwest, and 88.4' on the northwest), and approximately 0.4 acres (or 17,600 square feet) in area.
- This lot size is larger than the typically-sized lot in the PD No. 455 zoning district which prior to the creation of PD 455 in 1996 was zoned R-10(A) where lot sizes are typically 10,000 square feet.
- As of May 10th, one support letter had been submitted to staff from the neighboring property owner nearest the structure located in the side yard setback.
- If the Board were to grant the side yard variance request, subject to the submitted site plan, the 12'-high stone barbeque/fireplace structure could be completed on the site resulting in a 4' 8" side yard setback.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Kevin Kanzler, 4515 Bluffview, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment in Appeal **No. BDA 045-193**, on application of Kevin Kanzler, **grant** the variance to the side yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation is required; and
- The arbor beam attached to the barbecue/fireplace must be cut flush with the structure to comply with the six-foot side yard setback.

SECONDED: Brannon

AYES: 5–Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-197

BUILDING OFFICIAL'S REPORT:

Application of Peter Kavanagh, Zone Systems, Inc., for a special exception to allow an additional dwelling unit at 6909 Lakewood Blvd. This property is more fully described as part of Lots 20 and 21 in City Block D/2819 and is zoned R-7.5 (A) which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 6909 Lakewood Blvd.

APPLICANT: Peter Kavanagh, Zone Systems, Inc.,

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family

home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/guest house/pool house structure.

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:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is 14,712 square feet in area and developed with, according to DCAD records, a single family home that is in fair condition, built in 1935 with 4,837 square feet of living area.
- The site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 29’ x 33’ or is about 975 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located 5’ from the nearest property line which in this case is the side property line on the east and the rear property line on the south.
- The submitted elevation indicates that the 2-story additional “dwelling unit” structure will be approximately 28’ in height.
- Floor plans were not submitted to indicate the uses of the structure, but were verbally conveyed by the applicant describing the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:
 - a garage and bath on the 1st floor.
 - a kitchen, bath and 2 bedrooms on the 2nd floor.
- The Dallas Development Code defines “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely

somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “ family,” and “single family.”

- Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy. Any official amendment to the Dallas Development Code would be made by the City Council.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

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, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- March 29, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- April 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, Senior Planner Pitner, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The proposed 2-story "dwelling unit" structure meets all setback, lot coverage, and height regulations.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/guest house/pool house structure.
- As of May 6, 2005, no letters in opposition or support to this request had been submitted to staff.
- The Dallas Development Code states that in granting this type of 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.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX
Carolyn Coleman, 6909 Lakewood, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Cope

I move that the Board of Adjustment in Appeal **No. BDA 045-197** on application of Peter Kavanagh, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit on the site will adversely affect neighboring properties or will be used as rental accommodations.

THERE WAS NO SECOND TO THIS MOTION:

MOTION#2: Gillespie

I move that the Board of Adjustment in Appeal **No. BDA 045-197** on application of Peter Kavanagh, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit on the site will not be used as rental accommodations nor adversely affect neighboring properties. 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 property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations; and
- Removal of the electrical outlets in the attic of the floor plan as submitted.

SECONDED: Brannon

AYES: 5—Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-198

BUILDING OFFICIAL'S REPORT:

Application of Peter Kavanagh, Zone Systems, Inc., for a special exception to allow an additional dwelling unit at 6911 Lakewood Blvd. This property is more fully described as part of Lots 19 and 20 in City Block D/2819 and is zoned R-7.5 (A) which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 6911 Lakewood Blvd

APPLICANT: Peter Kavanagh, Zone Systems, Inc.,

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/play room/home office structure.

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:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is 13,418 square feet in area and developed with, according to DCAD records, a single family home that is in average condition, built in 1906 with 2,420 square feet of living area.
- The site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 29’ x 20’ or is about 580 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located 5’ from the nearest property line which in this case is the side property line on the east.
- Elevations were not submitted to determine the height of the 2-story additional “dwelling unit” structure.
- Floor plans were not submitted to indicate the spaces within the proposed detached 2-story additional “dwelling unit” structure on the site. The applicant provided a document stating the uses of the structure (see Attachment B):
 - a 2-car garage on the 1st floor, and
 - 2 rooms, a bath, and an open room with a kitchen area

- The Dallas Development Code defines “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “ family,” and “single family.”
- Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy. Any official amendment to the Dallas Development Code would be made by the City Council.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

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, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- March 29, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, Senior Planner Pitner, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- The proposed 2-story "dwelling unit" structure meets all setback, and lot coverage regulations.
- As of May 6, 2005, no letters in opposition or support to this request had been submitted to staff.

- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the proposed “dwelling unit” structure would be restricted to the specific location, and size shown on the plans, which in this case is a 2-story garage/play room/home office structure.
- The Dallas Development Code states that in granting this type of 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.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Cope

I move that the Board of Adjustment in Appeal **No. BDA 045-198** on application of Peter Kavanagh, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit on the site will not be used as rental accommodations nor adversely affect neighboring properties. 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 is required;
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

SECONDED: Jaffe

AYES: 5–Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-199

BUILDING OFFICIAL'S REPORT:

Application of Peter Kavanagh, Zone Systems, Inc., for a special exception to allow an additional dwelling unit and a side yard setback at 6913 Lakewood Blvd. This property is more fully described as part of Lots 18 and 19 in City Block D/2819 and is zoned R 7.5 (A) which limits the property to one dwelling unit per lot and requires a 5 foot side yard setback. The applicant proposes to construct an additional dwelling unit and provide a 3 foot side yard setback. This would require a special exception to allow an additional dwelling unit and a variance of 2 feet to the side yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 6913 Lakewood Blvd.

APPLICANT: Peter Kavanagh, Zone Systems, Inc.,

REQUESTS:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/home office structure.
- A variance request from the side yard setback regulation of 2 feet to construct the proposed “dwelling unit” structure and provide a 3 foot side yard setback on the east side property line where a 5 foot side yard setback is required.

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.

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 REGARDING THE SPECIAL EXCEPTION REQUEST:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a

special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:

- 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is 12,250 square feet in area developed with, according to DCAD records, a single family home that is in average condition, built in 1935 with 2,780 square feet of living area.
 - The site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 22’ x 29’ or is about 640 square feet in area.
 - The site plan indicates that the additional “dwelling unit” structure will be located 3’ from the nearest property line which in this case is the side property line on the east.
 - The applicant verbally indicated the height of the “dwelling unit” structure to be approximately 20’.
 - Floor plans indicate the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:
 - a 2-car garage on the 1st floor.
 - a bedroom, kitchen, bathroom and closet on the 2nd floor.
 - The Dallas Development Code defines “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
 - The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
 - The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
 - The Board of Adjustment has seen an increased number in special exceptions for additional dwelling units since November of 2004. This increase is most likely somewhat attributable to a memo that the Building Official wrote to city plan reviewers in September in 2004 (see Attachment A). This memo requested that plan reviewers carefully review applications for an addition or accessory structure on a lot zoned single family with regard for compliance with code-provisions related to the definitions of “dwelling unit,” “ family,” and “single family.”
 - Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy. Any official amendment to the Dallas Development Code would be made by the City Council.
 - If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.

GENERAL FACTS REGARDING THE VARIANCE REQUEST:

- The site is flat, rectangular in shape (70' x 183'), and approximately 12,250 square feet in area.
- The typical lot size in R-7.5 (A) zoning district is 7,500 square feet.
- A 5'-side yard setback is required in the R-7.5 (A) zoning district. Accessory structures over 15' in height are required to meet the setbacks of the zoning district.
- The proposed "dwelling unit" structure is proposed to be located 3' from the east side 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 developed with a single family home. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- March 23, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 21 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 2, 2005:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, Senior Planner Pitner, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The proposed 2-story "dwelling unit" structure meets all setback, lot coverage, and height regulations, except for the side yard setback in the variance request.
- Without the variance approval, the "dwelling unit" structure could still be constructed to meet the setback regulations.
- If the Board were to approve the special exception request and also approve the variance request, subject to imposing a condition that the applicant comply with the submitted elevation and site plan, the "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story garage/home office structure.
- If the Board were to approve the special exception request and also deny the variance request, subject to imposing a condition that the applicant comply with the submitted elevation and a revised site plan, the "dwelling unit" structure would be restricted to the size, and height shown on the plans, but a specific location would need to meet the side yard setbacks of the zoning regulations.
- As of May 6, 2005, no letters in opposition or support to this request had been submitted to staff.
- The Dallas Development Code states that in granting this type of 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.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Peter Kavanagh, 1620 Handley, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Cope

I move that the Board of Adjustment in Appeal **No. BDA 045-199** on application of Peter Kavanagh, **grant** the request of this applicant to maintain an additional dwelling unit on the property because our evaluation of the property and testimony shows that the additional dwelling unit on the site will not be used as rental accommodations nor adversely affect neighboring properties. 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 property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations; and

SECONDED: Brannon

MEMBER BRANNON WITHDREW HIS SECOND TO THIS MOTION AND A NEW MOTION WAS CALL FOR BY THE CHAIR.

MOTION#2: Gillespie

I move that the Board of Adjustment in Appeal **No. BDA 045-199** on application of Peter Kavanagh, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of the 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: Cope

AYES: 5—Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

MOTION#3: Gillespie

I move that the Board of Adjustment in Appeal **No. BDA 045-199** on application of Peter Kavanagh, **grant** the request of this applicant to maintain an additional dwelling unit on the property without prejudice, because our evaluation of the property and testimony shows that the additional dwelling unit on the site will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the amended site plan and elevation to be submitted to city staff is required;
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations; and

SECONDED: Brannon

AYES: 5—Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

FILE NUMBER: BDA 045-219

BUILDING OFFICIAL'S REPORT:

Application of Ronald Riseman, represented by Ronald Riseman, President, Meadowbrook Homes, Inc., for a variance to the front yard setback regulations at 11225 W. Ricks Circle. This property is more fully described as part of Lot 1 in City Block 5/7490 and is zoned R-1 AC (A) which requires a 40 foot front yard setback. The applicant proposes to construct a single family dwelling and provide a 28 foot front yard setback which would require a variance of 12 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 11225 W. Ricks Circle

APPLICANT: Ronald Riseman, represented by Ronald Riseman, President, Meadowbrook Homes, Inc.,

REQUEST:

- A variance to the front yard setback regulations of 12' is requested in conjunction with constructing a single family home on a site that is under development.

STANDARD FOR A VARIANCE:

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

reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- A 40'-front yard setback is required in the R-1(A) zoning district.
- The site has two, 40'-front yard setbacks: one on Northaven Road, the other on Ricks Circle Drive.
- The submitted site plan indicates that a "future yard storage building" of the single family home is to be located 28' from the site's front property line on Northaven Road. (The proposed location of the single family home is in compliance with the 40' front yard setback on Ricks Circle Drive).
- The Dallas Development Code states the following with regard to front yard provisions for residential district:
 - If a corner lot in a single family, duplex, or agricultural district has two street frontages of equal distance, one frontage is governed by the front yard regulations of this section, and the other frontage is governed by the side yard regulations. If the corner lot has two street frontages of unequal distance, the shorter frontage is governed by this section, and the longer frontage is governed by side yard regulations. Notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The site's longer frontage is along Northaven Road, however, this longer frontage is deemed a front yard setback in order to maintain the established setback of lots/homes along this street to the east and west.
- According to calculations taken from the submitted site plan, the building footprint of the home is about 4,800 square feet. The proposed "future yard storage room" is 12.5' wide and 16' long. The entire 200 square foot storage room would be located in the Northaven Road 40' front yard setback.
- Elevations have been submitted with the application indicating that the proposed home will be 2-storys and the storage room will be 1-story.
- The site is flat, somewhat irregular in shape (about 272' on the north, 168' on the east, 238' on the south, and 168' on the west), and approximately 1.05 acres in area.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA 034-192, 6400 Northaven Road (the lot immediately east of subject site) | On August 17, 2004, the Board of Adjustment Panel A granted a request for a variance of 20 feet requested in conjunction with constructing a 2-story home with an approximately 4,600 square foot building footprint that was to be located in the Ricks Circle Drive front yard setback. The Board imposed the following condition: Compliance with the submitted site plan and the revised wall/fence elevation is required. |
|--|--|

Timeline:

- | | |
|-----------------|---|
| April 4, 2005: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| April 21, 2005: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. |
| April 21, 2005: | The Board Administrator contacted the applicant and shared the following information: <ul style="list-style-type: none">• the public hearing date and panel that will consider the application;• the criteria/standard that the board will use in their decision to approve or deny the request;• the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;• the April 29th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;• that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and• that the board will take action on the matter at the May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties. |
| May 2, 2005: | The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is flat, somewhat irregular in shape (about 272' on the north, 168' on the east, 238' on the south, and 168' on the west), and approximately 1.05 acres in area (a parcel of land that is of a size that is typical in the R-1ac (A) zoning district).
- The site is a corner lot with two, 40' front yard setbacks.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a 2-story single family structure that (according to the site plan) will have a building footprint of about 4,800 square feet where the encroachment into the Northaven front yard setback would be an approximately 200 square foot (or 16' x 12.5') area for a "future yard storage room" resulting in a 28' front yard setback.

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Ronald Riseman, 6430 Pemberton Dr., Dallas, TX
James Dyer, 11310 Crestbrook Dr., Dallas, TX
Charles Stetler, 6307 Prestonshire Ln., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment in Appeal **No. BDA 045-219** on application of Ronald Riseman, **grant** the variance to the front yard setback regulations, because our evaluation of the property and the testimony shows that the physical character of the 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Gillespie

AYES: 3—Cox, Brannon, Gillespie

NAYS: 2 – Cope, Jaffe

MOTION FAILED - 3 – 2 (Therefore deemed denied with prejudice)

FILE NUMBER: BDA 045-172

BUILDING OFFICIAL'S REPORT:

Application of Baxter W. Banowsky for a special exception to the fence regulations at 4610 Royal Lane. This property is more fully described as Lot 1 in City Block b/5534 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 an 11 foot fence in the required front yard setback which would require a special exception of 7 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4610 Royal Lane

APPLICANT: Baxter W. Banowsky

May 18, 2005 Public Hearing Notes:

- The applicant submitted a revised site/landscape plan at the public hearing.

REQUEST:

A special exception to the fence height regulations of 7' is requested in conjunction with constructing a wall in the 40'-Royal Lane front yard setback on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The site is located at the corner of Royal Lane and Welch Road. The site has one front yard setback along Royal Lane.
- The originally submitted elevation plan made the following notations:
 - "Wall is 7' above sloped grade"
 - "12" concrete block wall with stucco finish"
 - "Landscaping between curb and wall"
- The originally submitted site plan that indicated the following:
 - the proposed wall would be approximately 195' in length; and
 - the proposed wall would be located on the site's Royal Lane front property line or about 13' from the Royal Lane pavement line.

- The originally submitted site plan indicated that the proposed wall would run parallel to Royal Lane with four recessed areas that would allow spaces for unspecified landscape materials.
- The proposed wall is located on a site where two single family homes have direct/indirect frontage.
- The Board Administrator conducted a field visit of the site and surrounding area (an area approximately 500' east and west of the site along Royal Lane) and noted one fence above four (4) feet high which appeared to be located in the front yard setback (Note that dimensions are approximations):
 - An open wrought iron fence approximately 5.5' high located two lots east of the site (see the "Zoning/BDA History" of this case report for further details).
- On March 25, 2005, the applicant submitted additional materials beyond what was submitted with the original application (see Attachment A). The information included the following:
 - A document that provides further details about the request and reasons why the request should be granted;
 - A revised elevation plan that amends the originally submitted elevation by detailing landscape materials with the following notations:
 - Landscaped/irrigated areas to include Asian Jasmine or similar groundcover, Boston Ivy or similar variety vine to cover wall, and Crape Myrtle or similar trees;
 - Six (6) Crape Myrtle – Lagerstroemia indica or similar species – 65 gallon, Landscaping between curb and wall
 - Landscaping between curb and wall
 - A revised site plan that amends the originally submitted site plan by adding the following notation: "Landscaped/irrigated areas to include Asian Jasmine or similar groundcover, Boston Ivy or similar variety vine to cover wall, and Crape Myrtle or similar trees."
 - A series of exhibits including a mockup photograph of the subject property with the proposed wall and landscape materials, photographs of other fences in the area, details of the heights of these fences, and a map that indicates where the fences are located.
- On April 20, a public hearing was conducted on this request. The board delayed action on this matter until May 18th to allow the applicant and neighbors an opportunity to reach a resolution on the matter at hand.
- On April 29th, the applicant submitted additional information regarding the application (see Attachment B). This information included the following:
 - A letter that provided additional details regarding the request;
 - A revised elevation and site plan; and
 - A copy of a support letter from the neighbor directly across from the site on Royal Lane.
- The revised elevation plan submitted on April 29th makes the following notations:
 - "Wall is 7' above sloped grade"
 - "4' high concrete block wall with stucco finish, decorative coping, and 3' wrought iron fence above"
 - "12" concrete block wall with stucco finish and decorative column capitals"
 - "Five (5) Crape Myrtle – Lagerstroemia indica or similar – 65 gallon"
 - "Landscaping between curb and wall"

- The revised site plan submitted on April 29th appears to indicate a fence in the same location and of the same length as the fence on the plan that was originally submitted. One difference has been detected between the two site plans: the April 29th plan notation of “30” high retaining wall and planting bed” at the eastern edge of the site has substituted the notation of “and planting bed” on the original plan.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 94-126, 10757 Lennox Lane (two lots immediately east of the subject site) On October 25, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations to maintain a 7’ fence on this site with the following conditions: a minimum of 10 feet from the property line; the fence must be constructed of an acceptable open metal material and the fence portion must not exceed 6’ in height; columns of metal or solid materials not exceeding 7’ in height; and a landscape plan approved by the Board (landscaping in front of the fence between the fence and the property line). (It appears that this fence was never built given that a subsequent fence height special exception request followed this application four years later in 1998).
2. BDA 978-231, 10757 Lennox Lane (two lots east of the subject site) On October 19, 1998, the Board of Adjustment Panel C denied special exception requests to the fence height regulations of 4’ and to the visibility obstruction regulations with prejudice. The case report indicated that these requests were made in conjunction with constructing and maintaining an 8’ high solid masonry wall in the Royal Lane front yard

setback and in the 45' visibility triangle at the intersection of Royal Lane and Lennox Lane. (The Board Administrator conducted a field visit in March of 2005 related to BDA 045-172 and noted that there appears to be an approximately 5.5'-high fence in the Royal Lane front yard setback on the site).

Timeline:

- February 24, 2005: 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 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 17, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the March 28th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the April public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 25, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).
- March 28, 2005: 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 Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the

Development Services Department Transportation Engineer; and the Assistant City Attorney to the Board.

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

April 20, 2005: The Board of Adjustment held a public hearing on the appeal and delayed action until May 18, 2005.

April 29, 2005 The applicant submitted additional information regarding the application (see Attachment B).

May 2, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A revised scaled site plan submitted on April 29th documents the location of the proposed wall relative to its proximity to the property line and pavement line. The site plan also clearly shows the length of the proposed wall relative to the lot.
- A revised elevation submitted on April 29th that documents the height of the proposed wall (7' above slope grade), and the building materials of the fence (4' high concrete block wall with stucco finish and 3' wrought iron fence above) and wall (12" concrete block with stucco finish).
- The proposed wall is to be constructed of durable material, and to be screened with landscape materials specified on the submitted revised site plan and elevation.
- Only one fence in a front yard setback above 4' in height was noted in the immediately adjacent area: an approximately 5.5'-high open wrought iron fence located 2 lots east of the site.
- As of May 6th, 8 letters had been submitted to staff in support of the request and one letter has been submitted in opposition to the request.
- Granting this special exception of 7' with conditions imposed that the applicant complies with the revised site plan and elevation submitted on April 29th would assure that the proposed fence/wall is constructed and maintained as shown on these submitted documents.
- Although the height of the wall would be mostly 7'-high, Building Inspection determined that a 7' fence height special exception was required given the grade change on the site where the wall would reach up to 11' in height measured from the site's unaltered grade.

BOARD OF ADJUSTMENT ACTION: April 20, 2005

APPEARING IN FAVOR: Baxter Banowsky, 4610 Royal Lane, Dallas, TX

APPEARING IN OPPOSITION: Sherrill Stone, 4625 Royal Lane, Dallas, TX

MOTION#1: Jaffe

I move that the Board of Adjustment in Appeal No. **BDA 045-172**, hold this matter under advisement until **May 18, 2005**.

SECONDED: No one

AYES: 5–Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION FAILED –

***There was no second to this motion.**

MOTION#2: Wise

I move that the Board of Adjustment in Appeal No. **BDA 045-172**, on application of Baxter W. Banowsky, **grant** the request to erect an 11 foot fence from unaltered grade, 7 foot fence from unaltered grade on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

***A second to this motion was not called. The motion was not completed and was withdrawn by Ms. Wise.**

MOTION#3: Jaffe

I move that the Board of Adjustment in Appeal No. **BDA 045-172**, hold this matter under advisement until **May 18, 2005**.

SECONDED: **Wise**

AYES: 5–Cox, Brannon, Gillespie, Jaffe, Wise

NAYS: 0 –

MOTION PASSED – (Unanimously)

BOARD OF ADJUSTMENT ACTION: May 18, 2005

APPEARING IN FAVOR: Baxter Banowsky, 4610 Royal Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 045-172**, on application of Baxter W. Banowsky, **grant** the request to maintain an 11 foot fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the newly submitted "Preliminary Concept Plan/Site plan and Elevation" dated May 18, 2005 is required.

SECONDED: **Cope**

AYES: 5—Cox, Brannon, Gillespie, Cope, Jaffe

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Gillespie**

AYES: 5 – Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 - None

MOTION PASSED: 5– 0 (Unanimously)

4:41 P.M. - Board Meeting adjourned for May 18, 2005.

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.