

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, JUNE 15, 2005**

MEMBERS PRESENT AT BRIEFING: Taylor Brannon, regular member,  
Kathleen Cope, regular member,  
Samuel Gillespie, regular member,  
Dave Neumann, alternate member and  
Linda Wise, alternate member

MEMBERS ABSENT FROM BRIEFING: Alice Cox, Vice-Chair

MEMBERS PRESENT AT HEARING: Taylor Brannon, regular member,  
Kathleen Cope, regular member,  
Samuel Gillespie, regular member,  
Dave Neumann, alternate member and  
Linda Wise, alternate member

MEMBERS ABSENT FROM HEARING: Alice Cox, Vice-Chair

STAFF PRESENT AT BRIEFING: Ileana Fernandez, Asst. City Attorney,  
Donnie Moore, Chief Planner, Steve  
Long, Board Administrator, Danny  
Sipes, Development Code Specialist,  
Jennifer Pitner, Senior Planner, Chau  
Nguyen, Traffic Engineer and Trena  
Law, Board Secretary

STAFF PRESENT AT HEARING: Ileana Fernandez, 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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**10:10 AM. The Board of Adjustment staff conducted a briefing on the Board of  
Adjustment's June 15, 2005 docket.**  
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**1:05 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.  
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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B May 18, 2005 hearing minutes as amended.

**MOTION:** Wise

I move approval of the Wednesday, May 18, 2005 Board of Adjustment Public Hearing minutes.

**SECONDED:** Neumann

**AYES:** 5--Brannon, Cope, Gillespie, Neumann, Wise

**NAYS:** 0 - None

**MOTION PASSED** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 045-227

**BUILDING OFFICIAL'S REPORT:**

Application of Rick and Sandy Illes, represented by Jack C. Irwin for a special exception to allow an additional dwelling unit at 3609 Overbrook Drive. This property is more fully described as Lot 13 and part of Lot 14 in City Block 2/2022 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 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:** 3609 Overbrook Drive

**APPLICANT:** Rick and Sandy Illes  
Represented by Jack C. Irwin

**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 1-story home office/recreation 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 11,450 square feet (0.26 acres) in area and developed with, according to DCAD records, a single family home that is in average condition, built in 1925 with 2,441 square feet of living area.
- The site plan indicates that the additional “dwelling unit” structure is L-shaped and has a building footprint of approximately 44’ x 48’ or is about 1,573 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located 3’ from side and rear property lines and will replace an existing structure.
- The applicant verbally indicated that the 1-story additional “dwelling unit” structure will be approximately 12’8” in height. No elevations were submitted.
- Floor plans indicate the following spaces within the proposed detached 1-story additional “dwelling unit” structure on the site:
  - a media room, storage rooms, a kitchenette/bedroom, exercise room and bath.
- 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.”
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures. This ordinance does not impact any special exceptions filed with the City of Dallas prior to May 11, 2005.
- At the time the application was submitted, the Dallas Development Code defined “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.”
- 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) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)  
North: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)  
South: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)  
East: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)  
West: R-7.5(A) & PD No. 193 (Single family district 7,500 square feet & Planned Development 193)

**Land Use:**

The subject site is developed with a single family home. 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 85-151 Property located at 3609 Overbrook Avenue (same as the subject site) On May 28, 1985, the Board of Adjustment granted a request for a variance of 10 inches to the side yard setback regulations. The minutes stated that these requests were made in conjunction with an addition for a kitchen.

**Timeline:**

- April 27, 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.
- May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 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 June 1<sup>st</sup> 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer; 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 1-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 proposed "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 1-story home office / recreation structure.
- As of June 6, 2005, no letters in support or opposition 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: June 15, 2005**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Wise

I move that the Board of Adjustment in Appeal No. **BDA 045-227** on application of Sandy Illes, **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; and
- A copy of the deed restrictions recorded in Dallas County must be submitted to the City Attorney's office.

**SECONDED: Gillespie**

**AYES: 5**—Brannon, Cope, Gillespie, Neumann, Wise

**NAYS: 0** –

**MOTION PASSED - 5 – 0 (Unanimously)**

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**FILE NUMBER:** BDA 045-252

**BUILDING OFFICIAL'S REPORT:**

Application of Gregory W. and Martha A. Clay for a special exception to allow an additional dwelling unit and a variance to the off street parking regulations at 6668 Avalon Avenue. This property is more fully described as part of Lots 8 and 9 in City Block L/2797 and is zoned CD-2 which limits the property to one dwelling unit per lot and requires that an enclosed parking space be located 20 feet from the right-of-way line. The applicant proposes to construct an additional dwelling unit which would require a special exception and provide a 9 foot 7 inch setback for an enclosed parking space which would require a variance of 10 feet 3 inches to the off street parking 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:** 6668 Avalon Avenue

**APPLICANT:** Gregory W. and Martha A. Clay

**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 structure.
- A variance to the off-street parking regulations of 10' 3" is requested to enclose parking spaces on site developed with a single family home.

**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:**

- "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 14,550 square feet in area and developed with, according to DCAD records, a single family home that is in very good condition, built in 1924 with 4,025 square feet of living area and located in CD 2, the Lakewood Conservation District.
- The site plan indicates that the additional "dwelling unit" structure has a building footprint of approximately 35' x 29' or is about 1,015 square feet in area.
- The site plan indicates that the additional "dwelling unit" structure will be located 8" from the nearest property line which in this case is the side property line on the east and 4'5" from the rear property line. The garage opening is 9'7" from the rear property line. The CD-2 ordinance allows for garage structures to be exempt from rear and side setbacks when the structure is not closer than half of the distance

between the rear of the house and the rear property line. The proposed garage structure is meets this distance and is exempt from the rear and side setbacks.

- The submitted elevation indicates that the 2-story additional "dwelling unit" structure will be approximately 18' in height.
- Floor plans indicate the following spaces within the proposed detached 2-story additional "dwelling unit" structure on the site:
  - a 2-car garage and storage on 1<sup>st</sup> floor; and
  - a bedroom, bath, kitchen and closet on the 2<sup>nd</sup> floor.
- 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."
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures. This ordinance does not impact any special exceptions filed with the City of Dallas prior to May 11, 2005.
- At the time the application was submitted, the Dallas Development Code defined "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."
- 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.
- The applicant submitted a petition signed by 5 people who support the request (see Attachment B).

#### **GENERAL FACTS REGARDING THE VARIANCE:**

- The site is flat, rectangular in shape (75' x 191'), and approximately 14,544 square feet in area.
- The Dallas Development Code states the following:
  - "A parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. This provision controls over any building line platted to a lesser setback and any other provision of this article."



- The submitted site plan indicates that enclosed parking spaces (in an attached garage structure) are to be located 10' 3" from the alley right of way line on the south.
- The CD-2 ordinance allows for garage structures to be exempt from rear and side setbacks when the structure is not closer than half of the distance between the rear of the house and the rear property line. The proposed garage structure is meets this distance and is exempt from the rear and side setbacks.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	CD No. 2 (Lakewood Conservation District)
<u>North:</u>	CD No. 2 (Lakewood Conservation District)
<u>South:</u>	CD No. 2 (Lakewood Conservation District)
<u>East:</u>	CD No. 2 (Lakewood Conservation District)
<u>West:</u>	CD No. 2 (Lakewood Conservation District)

#### **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:**

- May 11, 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.
- May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 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 June 1<sup>st</sup> 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 June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Department Transportation Engineer, Senior Planner Pitner; and the Assistant City Attorney to the Board.

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

June 1, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment B).

**STAFF ANALYSIS:**

- The Development Services Transportation Engineer provided comments on June 6, 2005 (Attachment C).
- The proposed 2-story "dwelling unit" structure meets all setback, lot coverage, and height regulations, except for the enclosed parking setback.
- If the Board were to approve the special exception and variance 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, size, and height shown on the plans, which in this case is a 2-story garage/guest house structure.
- If the Board were to approve the special exception request and deny the variance request, subject to imposing a condition that the applicant comply with the submitted elevation and a revised site plan showing the structure in a location that meets all setbacks, the proposed "dwelling unit" structure would be restricted to the specific location, size, and height shown on that plan, which in this case is a 2-story garage/guest house structure.
- As of June 6, 2005, no letters in opposition to this request had been submitted to staff, and one petition had been submitted signed by 4 neighbors who support the request.

- 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.
- The applicant wishes to maintain a large tree on the west side of the rear yard.
- The applicant could build the structure without a variance by only accessing the garage from within the lot. The rear of the lot is internally accessed through a porte-cochere which limits the driveway width adjacent to the main structure. The raised patio may also limit the available space for a turn around if the structure is only accessed internally.
- If the structure was repositioned to meet the 20' setback from the alley, it would then need to meet the 5' side yard setback per the CD 2 ordinance and it would be approximately 18' from the patio and 24' from the rear of the main building. The current location of the proposed building is approximately 27' from the patio and 34' from the rear of the main building.
- The submitted site plan indicates there would be a distance about 11' from the garage door to the alley – a distance that would not accommodate the length of most vehicles as they would enter/exit the enclosed parking spaces/garage from the alley. Most vehicles would not be able to park behind the structure without hanging over or impeding the alley.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
  - Compliance with the submitted site plan is required.
  - An automatic garage door must be installed and maintained in working order at all times.
  - At no time may the area in front of the garage be utilized for parking of vehicles.
  - All applicable permits must be obtained.
 These conditions are imposed to assure that the variance will not be contrary to public interest.

BOARD OF ADJUSTMENT ACTION: June 15, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Neumann

I move that the Board of Adjustment in Appeal No. BDA 045-252, hold this matter under advisement until **August 17, 2005**.

SECONDED: Wise

AYES: 5–Brannon, Cope, Gillespie, Neumann, Wise

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 045-225

**BUILDING OFFICIAL'S REPORT:**

Application of Agustin Daiman for a variance to the side yard setback regulations at 6925 Tillman Street. This property is more fully described as Lot 36 in City Block A/6230 and is zoned R 7.5 (A) which requires a 5 foot side yard setback. The applicant proposes to construct an addition and provide a 6 inch side yard setback which would require a variance of 4 feet 6 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:** 6925 Tillman Street

**APPLICANT:** Agustin Daiman

**REQUEST:**

- A variance to the side yard setback regulations of 4' 6" is requested in conjunction with completing a 478 square foot covered patio addition to 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 5'-side yard setback is required in the R-7.5(A) zoning district.
- According to the submitted site plan, the proposed single family home (including the covered patio) is 40'-wide and about 75' long with a building footprint of about 3,100 square feet. The area of the proposed home in the side yard setback is about 23.5' x 4.5' (or 106 square feet) in area.
- The site is flat, rectangular in shape (150' x 50'), and 7,500 square feet in area.

- According to DCAD, the site is developed with a single family house with 1,825 square feet of living space and a 400 square foot attached garage in “excellent” condition built in 2001.
- Building Inspection states that no permit was issued by the City for the patio addition on this site.

### **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 area to the north is open space; and the areas to the 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:**

- April 27, 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.
- May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 19, 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 June 1st 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, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The site is flat, rectangular in shape (150' x 50'), and 7,500 square feet in area (a parcel of land that is of a size that is typical in the R-7.5 (A) zoning district).
- As of June 2<sup>nd</sup>, no letters had been submitted to staff either in support or in opposition to the request.
- If the Board were to grant the side yard variance request, subject to the submitted site plan and elevation, the 478 square foot covered patio addition could be completed where the area of encroachment into 5'-side yard setback would be about 23.5' x 4.5' (or 106 square feet) in area resulting in a 6"-side yard setback.

**BOARD OF ADJUSTMENT ACTION: June 15, 2005**

APPEARING IN FAVOR: Maria Maldonado, 6925 Tillman, Dallas, TX 75217

APPEARING IN OPPOSITION: Joseph L. Vincent, 6929 Tillman, Dallas, TX 75217

APPEARING NEUTRAL: Donnie R. Brown, 6920 Tillman, Dallas, TX 75217

APPEARING FOR THE CITY: Frank Dominguez, Translator, 1500 Marilla, 5BN

**MOTION: Gillespie**

I move that the Board of Adjustment in Appeal No. BDA 045-225, on application of Augustin Daiman, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Neumann**

**AYES: 5—Brannon, Cope, Gillespie, Neumann, Wise**

**NAYS: 0 –**

**MOTION PASSED - 5 – 0 (Unanimously)**

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**FILE NUMBER: BDA 045-248**

**BUILDING OFFICIAL'S REPORT:**

Application of Manuel Suchil for a special exception to allow an additional dwelling unit at 6715 Day Street. This property is more fully described as Lot 14 in City Block 15/5814 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: 6715 Day Street**

**APPLICANT: Manuel Suchil**

**REQUEST:**

- A special exception to the single family use regulations is requested in conjunction with completing an additional “dwelling unit” structure on a site developed with a single family home. The proposed additional “dwelling unit” in this appeal is a 2-story garage/”storage rooms / game rooms / study” 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 7,500 square feet in area and according to DCAD records, developed with the following:
  - a single family home built in 1948 that is in good condition with 1,020 square feet of living area;
  - a 1,280 square foot detached garage; and
  - a 1,280 square foot “apt above garage (32 x 40).”
- The site plan indicates that the additional “dwelling unit” structure has a building footprint of approximately 40’ x 32’ or about 1,280 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure is located 6’ from the nearest side property line on the west side of the site, and 6’ from the rear property line on the north.
- The submitted elevation indicates that the 2-story additional “dwelling unit” structure is approximately 21.5’ in height.
- Floor plans indicate the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:
  - 1<sup>st</sup> floor: “two-car garage, game room, storage, study,” and toilet
  - 2<sup>nd</sup> floor: 5 “storage rooms,” a “game room,” and a “study.”
- 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.”
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures. This ordinance does not impact any special exceptions filed with the City of Dallas prior to May 11, 2005.
- At the time the application was submitted, the Dallas Development Code defined “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- 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.

- The Building Inspection Development Code Specialist has provided the following information regarding the accessory structure on the site:
  - A permit was issued on October 9, 2001 for an accessory structure building to a single family dwelling. One inspection was made and that was on October 10, 2001. The permit was expired on October 29, 2003. Building Inspection contacted the owner on May 13 and the owner informed Building Inspection that the structure was constructed illegally without inspections. A request has been made to the board for a special exception to allow a second dwelling unit with the admission that this will be a "forgiveness" request since the structure was constructed illegally.
- The District Manager of the Southeast Division of the City's Building Inspection Division forwarded photos (which will be shown at the briefing on this matter), and the following information regarding the accessory structure on the site:
  - The original permit had remarks on the second page that it could not be converted to living quarters. There has been electrical, plumbing, and mechanical work done without permits.

**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 and an accessory structure that is partially completed. 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:**

- May 2, 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.

May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 23, 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 June 1st 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, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

May 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

A review comment sheet was submitted from a Code Compliance staff person that indicated "Recommends that this be denied" adding the following comments: "Propensity for second dwelling use instead of proposed use."

In addition, comments on this matter have been forwarded from the Building Inspection Development Code Specialist and the District Manager of the Southeast Division of the City's Building Inspection Division. (These comments have been incorporated in the "General Facts" section of this case report).

#### **STAFF ANALYSIS:**

- The 2-story "dwelling unit" structure appears to meet 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 revised site plan, the "dwelling unit" structure would be restricted to the specific location, size, and height shown on the submitted site/floor plan and elevation, which in this case is a 2-story structure that includes a "two-car garage," two "game rooms," five "storage" rooms; and three "study" rooms.
- As of June 6, 2005, no letters had been submitted to City staff in opposition or in support of the request.
- If the Board were to approve the request, subject to imposing a condition that the applicant comply with the submitted site/floor plan and elevation, the proposed "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans.
- 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: June 15, 2005

APPEARING IN FAVOR: Manuel Mandoza, 9511 Day Street, Dallas, TX  
Manuel Suchil, 6715 Day Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Cope

I move that the Board of Adjustment in Appeal **No. BDA 045-248**, on application of Manuel Suchil, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property and 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.

SECONDED: Neumann

AYES: 5—Brannon, Cope, Gillespie, Neumann, Wise

NAYS: 0 –

MOTION PASSED - 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 045-251

**BUILDING OFFICIAL'S REPORT:**

Application of Ronald and Melissa Reiff, represented by Robert Baldwin for a special exception to allow an additional dwelling unit at 6617-25 Azalea Lane. This property is more fully described as Lots 9 and 10 in City Block D/7271 and is zoned R- 16 (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:** 6617-25 Azalea Lane

**APPLICANT:** Ronald and Melissa Reiff  
Represented by Robert Baldwin

**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 1-story garage/cabana 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.
- Currently, the subject site is a separate lot from the residence. The applicant has indicated in a letter submitted May 23, 2005 (Attachment C) that the owners intend on platting these two adjacent lots into one lot. The adjacent lot is located west of

the subject site. As of June 2, 2005, there has been no subdivision application made for these sites.

- The subject site is 21,090 square feet in area and undeveloped. The adjacent lot is 20,961 square feet and developed with, according to DCAD records, a single family home that is in very good condition, built in 1960 with 5,036 square feet of living area. The total area of the lots combined is 0.97 acres or 42,051 square feet.
- The site plan indicates that the additional "dwelling unit" structure has a building footprint of approximately 48' x 45' or is about 1,385 square feet in area.
- The site plan indicates that the additional "dwelling unit" structure will be located 40' from the nearest property line which in this case is the front property line on the south.
- The submitted elevation indicates that the 1-story additional "dwelling unit" structure will be approximately 12'6" in height.
- Floor plans indicate the following spaces within the proposed detached 1-story additional "dwelling unit" structure on the site:
  - a 3 car garage, storage room, bath, closet, and a bar.
- 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."
- On May 11, 2005, the City Council adopted an ordinance that amended the provisions set forth in the Dallas Development Code regarding single family accessory structures. This ordinance does not impact any special exceptions filed with the City of Dallas prior to May 11, 2005.
- At the time the application was submitted, the Dallas Development Code defined "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."
- 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.
- The applicant submitted a letter further explaining the nature and purpose of the request (see Attachment B). The applicant also submitted 4 letters of support for the request (see Attachment C).

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

### **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 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.
- May 19, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 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 June 1<sup>st</sup> 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 June public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

- May 23, 2005      The applicant submitted information beyond what was submitted with the original application (see **Attachment B**).
- May 27, 2005:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June 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, Senior Planner Pitner, the Development Services Department Transportation Engineer; and the Assistant City Attorney to the Board.
- May 31, 2005      The applicant submitted information beyond what was submitted with the original application (see **Attachment C**).

**STAFF ANALYSIS:**

- The proposed 1-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 proposed "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 1-story garage/cabana structure.
- The request site and adjacent, main structure site are intended to be replatted per the applicant. The proposed structure could be built as a main structure if the sites are not replatted.
- As of June 7, 2005, one letter in opposition (Attachment D), and 4 letters of support (Attachment C) to this request have 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: June 15, 2005**

**APPEARING IN FAVOR:**      Robert Baldwin, 401 Exposition, Dallas, TX

**APPEARING IN OPPOSITION:**      Laura Keith, 11015 Eastview Cr., Dallas, TX  
 Kevin Keith, 11015 Eastview Cr., Dallas, TX  
 Don Jancauskas, 6806 Azalea Ln., Dallas, TX  
 Thomas Hoffman, 6711 Azalea Ln., Dallas, TX  
 Mike Titmas, 6710 Azalea Ln., Dallas, TX  
 Danny W. Abdo, 11027 Eastview Cr., Dallas, TX  
 Liliane Richman, 6637 Azalea, Dallas, TX 75230  
 Mary Anne Titmas, 6710 Azalea Ln., Dallas, TX

**MOTION: Gillespie**

I move that the Board of Adjustment in Appeal No. BDA 045-251, on application of Ronald and Melissa Reiff, deny the request of this applicant to maintain an additional dwelling unit on the property without prejudice, because our evaluation of the property and 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.

**SECONDED: Cope**

**AYES:** 5—Brannon, Cope, Gillespie, Neumann, Wise

**NAYS:** 0 –

**MOTION PASSED** - 5 – 0 (Unanimously)

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**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

**REVISED REQUEST:**

- A special exception to the fence height regulations of 4' (reduced from 5') is requested in conjunction with constructing the following in the 40' front yard setback along Deloache Avenue on a site developed with a single family home:
  - i. a 6'-high open wrought iron fence (reduced from 7' in height) with five, 7'-high cast stone columns (reduced from eight columns at 8' in height),
  - ii. an 8'-high open wrought iron main entry gate (reduced from 9' in height) with 7'-high cast stone entry columns (reduced from 8' in height); and
  - iii. a 7'-high open wrought iron service entry gate (reduced from 8' in height) with 7'-high cast stone entry columns (reduced from 8' in height).

Solid stone wing walls flanking the main entry that were proposed on the original site plan and elevation have been replaced with an open metal fence on the revised site plan and elevation.



**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 original and revised submitted site plan make 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 originally 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.
- The *revised* submitted elevation plan makes the following notations:
  - A 6'-high open wrought iron picket fence with 7'-high cast stone columns;
  - A 8'-high open wrought iron picket entry gate with 7'-high cast stone columns; and
  - An 7'-high open wrought iron picket service gate with 7'-high cast stone columns.
- The original and revised "landscape plan" submitted in conjunction with the application detail 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 not fence, the home being constructed to the northwest sought a fence special exception from Board of Adjustment Panel A on May 17<sup>th</sup> (see #3 in the "Zoning/BDA History" section of this case report for further details), 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.
  - The Board of Adjustment held a public hearing on this matter on May 18<sup>th</sup>. An opposing property owner to the request submitted a notebook of photographs at the public hearing. (This notebook will be available for review upon request at the June 15<sup>th</sup> briefing and public hearing).
  - On May 24, 2005, the applicant's representative emailed the Board Administrator a note (and another support letter that will be filed in the "Hearing Letter File" and presented to the board at the June 15<sup>th</sup> briefing and public hearing) that states that "The Brewers and the Enthovens are negotiating on the fence. I hope to have information to you soon. I think we will reach a consensus."
  - On June 1, 2005, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
    - A copy of a May 19<sup>th</sup> letter from an opposing property owner to the applicant's representative that details what type of fence they would consider aesthetically pleasing and in keeping with the neighborhood;
    - A copy of a May 31<sup>st</sup> email from the applicant's representative back to the opposing property owner stating (and detailing) a new fence design that had been drafted that he believes meets the spirit and intent of concerns made in their May 19<sup>th</sup> letter; and
    - Copies of a revised elevation, landscape plan, and site plan.

## **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 granted a special exception to the fence height regulations of 2' 6", subject to a site plan and elevation that was revised at the May 17<sup>th</sup> public hearing. The applicant had requested a special exception to the fence height regulations of 4' 2" to construct

4. BDA 012-145, 5231 Deloache Avenue (the lot immediately northeast of the site)

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. The board imposed a site plan and elevation that limited the fence height to 6', the column heights to 7', and the entry column heights to 7' 6".

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 29<sup>th</sup> 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.
- May 18, 2005:              The Board of Adjustment Panel B conducted a public hearing and delayed action on this matter until June 15, 2005.
- May 27, 2005:              The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation

Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

June 1, 2005

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

**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 original scaled elevation has been submitted that documents the height of the proposed fence (7'), columns (8'), and gates (9' and 8'), and the building materials of the fence (open wrought iron), columns (stone), and gates (open wrought iron).
- The *revised* scaled elevation has been submitted that documents the height of the proposed fence (6'), columns (7'), and gates (8' and 7'), 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 June 2<sup>nd</sup>, 6 letters had been submitted in support of the request and 5 letters have been submitted in opposition.
- Granting the revised special exception of 4' with conditions imposed that the applicant complies with the submitted revised site plan/landscape plan and revised 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)

BOARD OF ADJUSTMENT ACTION: June 15, 2005

APPEARING IN FAVOR: Robert Baldwin, 401 Exposition, Dallas, TX  
Michael J. McCormack, 4517 Belclaire, Dallas, TX

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

MOTION#1: Neumann

I move that the Board of Adjustment in Appeal No. **BDA 045-191**, on application of Allegro Management, Inc., **grant** the request of this applicant to maintain an 8 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 submitted revised site plan and fence elevation dated 6/15/05 is required.

SECONDED: No one

MOTION #2: Cope

I move that the Board of Adjustment in Appeal No. **BDA 045-191**, on application of Allegro Management, Inc., **deny** the special exception requested by this applicant **with prejudice** because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: No one

MOTION #3: Cope

I move that the Board of Adjustment in Appeal No. **BDA 045-191**, on application of Allegro Management, Inc., **deny** the special exception requested by this applicant **without prejudice** because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Wise

AYES: 3—Brannon, Cope, Wise

NAYS: 2 – Neumann, Gillespie

MOTION PASSED - 3 – 2

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**MOTION: Cope**

I move to adjourn this meeting.

**SECONDED: Wise**

**AYES: 5** -Brannon, Cope, Gillespie, Neumann, Wise

**NAYS: 0** - None

**MOTION PASSED: 5- 0** (Unanimously)

**3:40 P.M.** - Board Meeting adjourned for June 15, 2005.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.