

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, JUNE 21, 2006**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Marla Beikman, regular member, Christian Chernock, regular member and Scott Griggs, alternate member

MEMBERS ABSENT FROM BRIEFING: Samuel Gillespie, regular member

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Marla Beikman, regular member, Christian Chernock, regular member and Scott Griggs, alternate member

MEMBERS ABSENT FROM HEARING: Samuel Gillespie, regular member

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

STAFF PRESENT AT HEARING: Claire Swann, Asst. City Attorney, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, and Trena Law, Board Secretary

10:18 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's June 21, 2006 docket.

1:01 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 May 17, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

MOTION: Beikman

I move approval of the Wednesday, May 17, 2006 Board of Adjustment Public Hearing minutes.

SECONDED: Brannon

AYES: 5–Cox, Brannon, Beikman, Chernock, Griggs

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 056-154

REQUEST: To reimburse the \$3,750.00 filing fee submitted in conjunction with a Board of Adjustment application for a variance to the off-street parking regulations and a special exception to the fence height regulations.

LOCATION: 7401 Ferguson Road

APPLICANT: Lakehill Preparatory School
Represented by Matt Morgan of Brockett Davis Drake

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.

- If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
- In making this determination, the board may require the production of financial documents.
- The applicant's representative submitted a letter to the Board Administrator that provided details about the variance and special exception requests, and requested a reimbursement of the filing fee submitted in conjunction these appeals to the Board of Adjustment (see Attachment A).

Timeline:

April 26, 2006 The applicant's representative submitted an application to the Board of Adjustment that included request requesting "a refund of application fees as this is for a school."

May 19, 2006: The Board Administrator contacted the applicant's representative's and informed him that the board would reimburse the filing fee upon his demonstration of how payment of the filing fee would result in substantial financial hardship to the applicant.

June 9, 2006 The applicant's representative submitted a letter to the Board Administrator that provided details about the variance and special exception requests, and requested a reimbursement of the filing fee submitted in conjunction these appeals to the Board of Adjustment (see Attachment A).

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

APPEARIN IN FAVOR: Matt Morgan, 327 McKinney, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Brannon**

I move that the Board of Adjustment **deny** the request to reimburse the filing fee submitted in conjunction with a Board of Adjustment application for a variance to the off-street parking regulations and a special exception to the fence height regulations

SECONDED: **Beikman**

AYES: 3—Brannon, Beikman, Chernock,

NAYS: 2 – Cox, Griggs

MOTION PASSED 3 – 2

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 056-158

REQUEST: To reimburse the \$1,800.00 filing fee submitted in conjunction with a Board of Adjustment application for variances to the off-street parking, front yard setback, and side yard setback regulations.

LOCATION: 6807 Hammond Avenue

APPLICANT: Lynda Lee Weaver

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

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

Timeline:

April 26, 2006 The applicant submitted an application to the Board of Adjustment that requests for variances to the off-street parking, front yard setback, and side yard setback regulations.

June 8, 2006: The Board of Adjustment Senior Planner informed the applicant that if she were to request the board to reimburse the filing fee submitted in conjunction with the application, the board would do this upon her demonstration of how payment of the filing fee would result in substantial financial hardship to the applicant.

June 9, 2006 The applicant submitted a letter to the Board Administrator that requested that the filing fee be reimbursed (see Attachment A).

This letter also provided some information as to why she felt that this request should be granted.

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

APPEARIN IN FAVOR: Lynda Lee Weaver, 6807 Hammond, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment **deny** the request to reimburse the filing fee submitted in conjunction with a Board of Adjustment application for a variance to the off-street parking regulations and a special exception to the fence height regulations

SECONDED: **Brannon**

AYES: 5– Cox, Brannon, Beikman, Chernock, Griggs

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 4

An executive session will be conducted by an assistant city attorney to brief the board pursuant to Texas Open Meetings Act Section 551.071, on a matter regarding - Pedro A. Lopez, Lela Sims, Robert Sims, Luis Alfredo Sierra T., Yolanda C. Sierra, Homer Hinojsa, Lucinda Hinojosa, and Ilda Cisneros v. The City of Dallas, Texas; Cause No. 3:03-CV-2223-M and BDA 056-149.

***This was not an action item.**

FILE NUMBER: BDA 056-154

BUILDING OFFICIAL'S REPORT:

Application of Lakehill Preparatory School, represented by Matt Morgan, for a special exception to the fence height regulations and for a variance to the parking regulations at 7401 Ferguson Road. This property is more fully described as Lot 1A in City Block A/7026 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and prohibits parking in a required front yard setback. The applicant proposes to construct a 6 foot fence in the required front yard setback which would require a special exception of 2 feet to the fence height regulations, and to construct a parking lot 15 feet into the required 25 foot front yard setback which would require a variance of 15 feet to the parking regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10), and 51A-4.602 (a) (6) of the Dallas Development Code, as

amended, which states the power of the Board to grant special exceptions, and grant variances.

LOCATION: 7401 Ferguson Road

APPLICANT: Lakehill Preparatory School
Represented by Matt Morgan

REQUESTS:

- The following appeals have been made in this application:
 1. A variance to the parking regulations of 15' is requested with locating off-street parking spaces in the required 25' front yard setback; and
 2. A special exception to the fence height regulations of 2' is requested in conjunction with constructing and maintaining an approximately 5' 8" high open metal fence with 6' high brick columns in the 25' front yard setback on Ferguson Road.

The site is currently undeveloped, however, the applicant plans to develop it with a 6,000 square foot "science pavilion" and as a continuation of athletic fields for a private school (Lakehill Preparatory School) located immediately southwest of the subject site.

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.

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 (related to the variance):

- A 25' front yard setback is required in the R-7.5 (A) zoning district.

A site plan has been submitted with the application that denotes 18 off-street parking spaces that are located as close as 10' from the Ferguson Road front property line (or as much as 15' into the 25' front yard setback).

- Although no topographic map has been submitted, the subject site appears to have areas that are sloped. In addition, the site is irregularly-shaped (approximately 550' on the northeast, approximately 515' on the southwest, approximately 385' on the northwest, and approximately 310' on the southeast), and approximately 4.5 acres in area. (Although the application states that the site is 17.3 acres, the applicant's representative has stated that this area includes the subject site and the area to the southwest that is a part of the Lakehill Preparatory School Athletic Center). The site has a number of mature trees that the applicant contends limits the location of the proposed parking lot in other areas on the site without removing these mature trees. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the property at 7401 Ferguson Road is developed with a "recreation building" built in 2003 with 5,000 square feet. (This building is most likely located on the lot immediately south of the subject site that is currently developed as athletic fields for a private school).
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provides additional details about the request, and a revised site plan and "fence exhibit" document.

GENERAL FACTS (related to the fence special exception):

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
A revised "fence exhibit" has been submitted that notes a "6'-0" high brick posts w/ open metal picket fence" in the site's Ferguson Road front yard setback.
- The following additional information was gleaned from the submitted revised site plan:
 - The fence is to be approximately 300' in length parallel to Ferguson Road.
 - The fence is to be located approximately 1' from the property line (or about 8' from the Ferguson Road curb line).
- The following additional information was gleaned from the submitted revised document entitled "Fence Exhibit;"
 - The maximum height of the proposal is 6' which describes the height of a "Typical brick post with cast stone top." The "open metal fence" on the elevation is slightly lower than the columns however the actual dimension cannot be derived since no scale is provided on the elevation drawing.
- No single family homes would have indirect frontage to the proposed fence since the area across Ferguson Road from the subject site is zoned NO(A) (Neighborhood Office).
- The Board Administrator conducted a field visit of the site and surrounding area and noted an approximately 6' high open iron picket fence to the south which appears to be the result of a previous Board of Adjustment special exception granted in 2002 (BDA 012-174), and an approximately 8' high open iron picket fence to the north which appears to be permitted by right since this area is zoned MF-2(A).

- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provides additional details about the request, and a revised site plan and "fence exhibit" document.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: MF-2(A) (Multifamily)
South: NO (A) (Neighborhood Office)
East: NO (A) (Neighborhood Office)
West: R-7.5(A)(SUP 1455) (Single family district 7,500 square feet, Specific Use Permit)

Land Use:

The somewhat-sloped, irregular-shaped, approximately 4.5 acre subject site is undeveloped. The area to the north is developed with multifamily uses; the areas to the east and south are developed with commercial, retail, and office uses; and the area to the west is developed as private school recreation fields (Lakehill Preparatory School).

Zoning/BDA History:

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|---|--|
| <ol style="list-style-type: none"> 1. BDA 012-174, 7401 Ferguson Road (the area immediately south of the subject site) | <p>On March 26, 2002, the Board of Adjustment Panel A granted a request to reimburse the filing fee submitted in conjunction with a variance and a special exception, and granted a special exception of 2' to the fence height regulations (subject to compliance with the submitted fence elevation/site plan) and granted a variance to the front yard setback regulations (subject to compliance with the submitted "concept plan"). The case report stated that the variance was requested to locate baseball field bleachers in the front yard setback, and that the fence special exception was requested to erect and maintain a 6' high ornamental metal fence and a 6' chain link fence in the front yard setback.</p> |
| <ol style="list-style-type: none"> 2. Z 056-241, Ferguson Road at Laughlin Drive (the subject site) | <p>On June 15, 2006, the City Plan Commission will consider an application to amend/expand an SUP (Specific Use Permit) for an institutional use (Lakehill Preparatory School Athletic Fields).</p> |
| <ol style="list-style-type: none"> 3. BDA 056-154, 7401 Ferguson | <p>On June 21, 2006, the Board of Adjustment</p> |

Road (the subject site)

Panel B will consider reimbursing the \$3,750.00 filing fee submitted in conjunction with requests for a variance and a special exception.

Timeline:

April 26, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 19, 2006: 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 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 2 & 9, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

June 5, 2006: 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 Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS (related to the variance):

- The subject site appears to have areas that are sloped. In addition, the site is irregularly-shaped (approximately 550' on the northeast, approximately 515' on the southwest, approximately 385' on the northwest, and approximately 310' on the southeast), and approximately 4.5 acres in area. The site has a number of mature trees that the applicant contends limits the location of the proposed parking lot in certain areas on the site without removing these mature trees.
- The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to the submitted site plan, 18 of 49 parking spaces will be located in the site's Ferguson Road 25' front yard setback.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the front yard setback regulations of 15' requested to locate off-street parking spaces in the site's 25' front yard setback 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 to the front yard setback regulations of 15' requested to locate off-street parking spaces in the front yard setback is necessary to permit development of the subject site (a site that is sloped in areas, is with mature trees in areas, and is irregularly-shaped and intended to be developed with 6,000 square foot "science pavilion" and athletic fields) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5 (A) zoning classification.
 - The variance to the front yard setback regulations of 15' requested to locate off-street parking spaces in the site's 25' front yard setback would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5 (A) zoning classification.
- If the Board were to grant the front yard variance request of 15', imposing a condition whereby the applicant must comply with the submitted site plan, the only encroachment into the front yard setback would be 18 off-street parking spaces – spaces that would be located as close as 10' from the site's Ferguson Road front property line (or as much as 15' into the 25' front yard setback).

STAFF ANALYSIS (related to the fence special exception):

- A revised site plan has been submitted that documents the location of the proposed fence in the Ferguson Road front yard setback relative to the its location of the entire site (about 300' in length) and its distance from the property line (approximately 1' off the property line) and Ferguson Road curb line (about 8' from the curb).
- A revised "fence exhibit" has been submitted that documents the height and materials of the proposed columns (6' high brick) and fence (approximately 5' 8" high open metal).
- Landscape materials adjacent to the open metal fence have not been specified.

- No single family home would have direct/indirect frontage to the proposed fence.
- An approximately 6' high open iron picket fence was noted to the south which appears to be the result of a previous Board of Adjustment special exception granted in 2002 (BDA 012-174). In addition, an approximately 8' high open iron picket fence was noted to the north which appears to be permitted by right since this area is zoned MF-2(A).
- As of June 12, 2006, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted revised site plan and "fence exhibit" would assure that the proposed fence and columns are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and "fence exhibit" is required.

SECONDED: Beikman

AYES: 5—Cox, Brannon, Chernock, Beikman, Griggs

NAYS: 0 –

MOTION PASSED: 5 – 0(Unanimously)

FILE NUMBER: BDA 056-155

BUILDING OFFICIAL'S REPORT:

Application of Luis Barrios, represented by Juan Medellin, for a special exception to the fence height regulations and to the visibility obstruction regulations at 103 Bridges Street. This property is more fully described as Lot 31 in City Block B/6355 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at drive approaches. The applicant proposes to maintain a 17 foot 4 inch fence in the required front yard setback which would require a special exception of 13 feet 4 inches to the fence height regulations, and to maintain items in required

visibility triangles which would require a special exception to the visibility obstruction regulations. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) and Section 51A-4.602 (d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 103 Bridges Street

APPLICANT: Luis Barrios
Represented by Juan Medellin

REQUESTS:

- The following appeals have been made in this application on a site developed with a single family home:
 1. A special exception to the fence height regulations of 13' 4" is requested to maintain, according to the submitted elevation and survey plat/site plan, the following in the site's 25' front yard setback:
 - what appears to be a 6' high open metal fence;
 - 7' high columns;
 - one 13' high pedestrian archway; and
 - two 17' 4" high vehicular archways.
 2. Special exceptions to the visibility obstruction regulations are requested to maintain portions of the existing open metal fence and columns as described above in four, 20'-visibility triangles at the two drive approaches to the site from Bridges Street.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (related to the fence height special exception):

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
A survey plat/site plan and elevation has been submitted that documents a fence, columns, and archways that exceed 4' in height and reach as high as 17' 4" in height.
- The following additional information was gleaned from the submitted survey plat/site plan:

- the fence that exceeds 4' in height in the site's front yard setback totals about 145' in length (about 95' in length parallel to the street, and 25' on both sides of the site in the front yard setback perpendicular to the street);
- the fence is curved in design (since the site is located at the end of Bridges Street) with two drive approaches to the site from the Bridges Street;
- the fence appears to be located on the site's front property line (or about 12' from the curb line).
- The existing fence is located on a site at the end of the street where one single family home has indirect frontage to it.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence/wall located a front yard setback. This fence/wall is located about 4 lots to the northwest of the subject site, and was "special excepted" by the Board of Adjustment Panel A in April of 2006 (BDA 056-069). The fence on this site is a 3' 2" high stucco wall (with 1.5' high metal pickets atop) with 6' high stucco columns; a 12' 6" high pedestrian archway; and a 14' 8" high vehicular archway.

GENERAL FACTS (related to the visibility obstruction special exceptions):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 The applicant requests to maintain portions of an existing open iron fence and columns in the site's four 20'-visibility triangles at the drive approaches on the site.
- According to calculations made by the Board Administrator, the site plan indicates that about 24' linear feet of fence and/or columns is located in the four drive approach visibility triangles.

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: IM (Industrial Manufacturing)
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 and west are developed with single family uses; the area to the east is open space; and the area to the south is undeveloped.

Zoning/BDA History:

1. 119 S. Bridges Street the lot about four lots northwest of the subject site)

On April 18, 2006, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 10' 8" and special exceptions to the visibility obstruction regulations. The board imposed the following condition as part of granting these requests: Compliance with the submitted site plan/elevation is required. The case report stated that these requests were made in conjunction with maintaining a 3' 2" high stucco wall (with 1.5' high metal pickets atop) with 6' high stucco columns; a 12' 6" high pedestrian archway; and a 14' 8" high vehicular archway in the front yard setback and in drive approach visibility triangles.

Timeline:

- April 28, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 19, 2006: 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 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the June 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 28, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

June 5, 2006: 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 Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

June 7, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "No comments."

STAFF ANALYSIS (related to the fence height special exception):

- A scaled survey plat/site plan has been submitted that documents the location of the existing fence exceeding 4' in height and in the site front yard setback. The survey plat/site plan indicates its location relative to the property line and pavement line, and shows the length of the existing fence relative to the entire lot (about 95' long parallel to Bridges Street, and 25' on both sides in the front yard setback).
- An elevation plan has been submitted that documents a 6' high fence with 7' high columns, a 13' high arched pedestrian archway, and two 17' 4" high arched vehicular archways. The submitted elevation does not describe/denote the materials of any of these items however it appears that the "front" and "right" elevations portray an open metal fence; and that the "left" and "rear" elevations portray a solid fence/wall. The board may want the applicant to note the materials of the existing fence on the submitted elevation (or impose a condition that the fence must be maintained of open iron picket materials) to ensure that the existing fence over 4' in height is maintained as an open iron picket fence verses what it could become if no condition is imposed with regard to materials (chain link, chicken wire, solid board, solid brick, solid corrugated metal, plywood, etc).
- The existing fence is located on a site at the end of the street where one single family home has indirect frontage to it.
- One other fence/wall was noted in the area located a front yard setback. This fence/wall is located about 4 lots to the northwest of the subject site, and was "special excepted" by the Board of Adjustment Panel A in April of 2006 (BDA 056-069). The fence on this site is a 3' 2" high stucco wall (with 1.5' high metal pickets atop) with 6' high stucco columns; a 12' 6" high pedestrian archway; and a 14' 8" high vehicular archway.
- As of June 12th, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 13' 4" (whereby the existing fence, columns, and pedestrian and vehicular archways that exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 13' 4" with conditions imposed that the applicant complies with the submitted survey plat/site plan and elevation would provide

assurance that the fence, columns, and archways are maintained on the site as shown on these documents.

STAFF ANALYSIS (related to the visibility obstruction special exceptions):

- The Development Services Senior Engineer has submitted a review comment sheet marked “No comments.”
- According to calculations made by the Board Administrator, the site plan indicates that about 24’ linear feet of fence and/or columns is located in the four drive approach visibility triangles.
- The submitted elevation does not describe/denote the existing materials of the items located in the visibility triangles however it appears that the “front” and “right” elevations portray an open metal fence; and that the “left” and “rear” elevations portray a solid fence/wall. The board may want the applicant to note the materials of the existing fence on the submitted elevation (or impose a condition that the fence must be maintained of open iron picket materials) to ensure that the existing fence located in the visibility triangles is maintained as an open iron picket fence verses what it could become if no condition is imposed with regard to materials (solid board, solid brick, solid corrugated metal, solid plywood, etc).
- The applicant has the burden of proof in establishing the following:
 - That granting the special exceptions to the visibility obstruction regulations (whereby, according to the submitted site plan, about 24’ linear feet of fence/columns is located in the four drive approach visibility triangles) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted survey plat/site plan and elevation, the existing fence and columns would be “excepted” in the 20’ visibility triangles at the four drive approaches into the site from Bridges Street without specificity as to building materials.

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted survey plat/site plan and elevation is required.
- Excluding the arches and columns, the fence must be maintained of open-metal materials.

SECONDED: Beikman

AYES: 5–Cox, Brannon, Chernock, Beikman, Griggs

NAYS: 0 –,

MOTION PASSED: 5 – 0(Unanimously)

FILE NUMBER: BDA 056-156(J)

BUILDING OFFICIAL'S REPORT:

Application of Anthony J. Campagna represented by Zone Systems Inc. for a variance to the side yard setback regulations at 726 Paulus Avenue. This property is more fully described as part of Lots 6 and 7 in City Block 6/1884 and is zoned PD-281 which requires side yard setback of 5 feet for new construction. The applicant proposes to construct an accessory structure and provide a 0 foot side yard setback which would require a variance of 5 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: 726 Paulus Avenue

APPLICANT: Anthony J. Campagna
Represented by Zone Systems Inc.

REQUEST:

- A variance to the side yard setback regulations of 5 feet is requested in conjunction with constructing an accessory structure.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The request site is currently developed with an office use.
- The plat map shows that the request site is 55 feet by 142.5 feet, or 7,837.5 square feet in area.
- DCAD indicates that the request site is developed with a 3,129 square foot residential structure that is in average condition built in 1925.
- The property is zoned PD 281, the Lakewood Special Purpose District, Paulus Avenue Area Subdistrict A, which requires a minimum side yard setback of 5 feet. There is no minimum rear yard setback in this subdistrict.
- Paulus Avenue Area Subdistrict A allows specific residential, office, and retail uses.
- PD 281, the Lakewood Special Purpose District, was established in 1988 and last amended in September 2000.
- The submitted site plan shows the proposed garage will provide a 0 foot side yard setback and approximately 1 foot rear yard setback. The site plan also shows the proposed garage will be 30 feet wide by 22 feet in depth.
- The submitted elevations show the proposed height of the garage structure is 14.5 feet.
- The applicant is seeking to construct the garage in the same location as a garage structure that has been demolished. The demolished garage was approximately 31 feet by 20 feet (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

<u>Request Site:</u>	PD 281 (Lakewood Special Purpose District)
<u>North:</u>	PD 281 (Lakewood Special Purpose District)
<u>South:</u>	PD 281 (Lakewood Special Purpose District)
<u>East:</u>	PD 281 (Lakewood Special Purpose District)
<u>West:</u>	PD 281 (Lakewood Special Purpose District)

Land Use:

The request site is developed with an office use. The area to the east is developed with office uses; the area to the south is developed with a parking use; the area to the west and north are a mix of office and retail 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 28, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 30, 2006: The Board Senior Planner contacted the applicant via email 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 9th 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.
- June 5, 2006: 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 Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- June 9, 2006: The applicant submitted additional information (Attachment A).

STAFF ANALYSIS:

- Attachment A is survey showing the main structure and previous garage structure.
- The applicant proposes to construct a 30'x22' detached garage in a location where a 30' x 20' detached garage has been removed.
- The site appears to be flat, rectangular in shape, and approximately 7,837.5 (55'x 142.5') in area.
- Granting this variance, subject to the submitted site plan and elevation, would allow an accessory structure to encroach into the side yard setback by 5 feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the 5' side yard setback variance 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 5' side yard setback variance is necessary to permit development of the subject site (that appears to be flat, rectangular in shape, and approximately 7,837 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 281 zoning classification.
- The 5' side yard setback variance would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 281 zoning classification.

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

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

APPEARING IN OPPOSITION: No one

MOTION #1: Beikman

I move that the Board of Adjustment in **Appeal No. BDA 056-156**, on application of Anthony J. Campagna, **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: Chernock

AYES: 1–Beikman

NAYS: 4 – Cox, Brannon, Chernock, Griggs

MOTION FAILED: 4 – 1

MOTION #2: Brannon

I move that the Board of Adjustment in **Appeal No. BDA 056-156**, on application of Anthony J. Campagna, **grant** the five-foot variance to the side yard setback regulations, 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 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 and elevation is required.

SECONDED: Griggs

AYES: 4– Cox, Brannon, Chernock, Griggs

NAYS: 1 – Beikman

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 056-158(J)

BUILDING OFFICIAL'S REPORT:

Application of Lynda Lee Weaver for a variance to the front yard setback regulations, a variance to the side yard setback regulations, and a variance to the parking regulations at 6807 Hammond Avenue. This property is more fully described as Lot 15 in City Block 3/2711 and is zoned CD-6 which requires a 35 foot front yard setback, a 5 foot side yard setback and a 20 foot setback for an enclosed parking space. The applicant proposes to construct an accessory garage and provide a 17.9 foot front yard setback which would require a variance of 17.1 feet to the front yard setback regulations, provide a 1.8 foot side yard setback which would require a variance of 3.2 feet to the side yard setback regulations, and provide a 17.9 foot setback for an enclosed parking space which would require a variance of 2.1 feet to the parking regulations. 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: 6807 Hammond Avenue

APPLICANT: Lynda Lee Weaver

REQUEST:

- A variance to the front yard setback regulations of 17.1 feet, a variance of 2.1 feet for an enclosed parking space, and a variance to the side yard setback regulations of 3.2 feet are requested in conjunction with constructing an accessory structure.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The request site is currently developed with a single family structure and a detached garage.
- The plat map shows that the request site is irregularly shaped and has approximately 141 feet of frontage on Hammond Avenue and 143 feet of frontage on San Mateo Boulevard.
- DCAD indicates that the request site is developed with a 2,040 square foot residential structure that is in average condition built in 1930. DCAD shows the lot area of the request site as 12,174 square feet.
- The property is zoned CD-6, the Hollywood/Santa Monica Conservation District. The request site is within Tract I, which requires a minimum 35 foot front yard setback and a minimum 5 foot side yard setback. CD 6 specifically requires garages and carports located on corner lots in Tract I to meet the front and side setback requirements of the main structure and requires an architectural compatibility with the main structure.
- CD-6 requires a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet and a minimum lot depth of 100 feet.
- The request site has front yards on both Hammond Avenue and San Mateo Boulevard. The yard adjacent to Hammond Avenue is the shorter of the two frontages, but the yard adjacent to San Mateo Boulevard has a front yard requirement due to the single family use to the north having a front yard on San Mateo Boulevard. The continuity of the established San Mateo Boulevard front yard must be maintained.
- A survey submitted with the application shows the existing garage is approximately 18 feet by 18 feet. The submitted site plan shows the proposed garage is 23'4" by 21'8".
- The submitted elevations show the proposed height of the garage structure is approximately 15 feet. The elevations have been approved for compliance with the architectural requirements of the conservation district.
- The minimum side yard setback is 5 feet in the CD 6 zoning district. The proposed garage would provide a 1.8 foot setback to the northeast property line and an 11 foot side yard setback to the northwest property line.
- The enclosed parking spaces in the proposed garage provide a setback of 17.9 feet to the property line. A setback of 20 feet from the property line is required for an enclosed parking space.
- The request site may have other deficiencies that the applicant is not seeking remedy by this application: fences located in front yards, a visibility triangle obstruction by a fence, the main structure encroaching in front yards, a pool encroaching in a front yard. Existing structures that are deficient in meeting code requirements may or may not have non-conforming rights.
- CD 6 was adopted by City Council in September of 1989 and last revised in March 1993.

BACKGROUND INFORMATION:

Zoning:

Request Site: CD 6 (Hollywood/Santa Monica Conservation District)

North: CD 6 (Hollywood/Santa Monica Conservation District)
South: CD 6 (Hollywood/Santa Monica Conservation District)
East: CD 6 (Hollywood/Santa Monica Conservation District)
West: CD 6 (Hollywood/Santa Monica Conservation District)

Land Use:

The request site is developed with a single family use. The areas to 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:

- April 24, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 30, 2006: The Board Senior Planner 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 9th 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.
- June 5, 2006: 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 Board of Adjustment Chief Planner, the Board Administrator, the

Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

June 8, 2006: Transportation Engineer Nguyen provided a review comment sheet (Attachment B).

June 11, 2006 The applicant submitted additional information (Attachment A).

STAFF ANALYSIS:

- Attachment A is a letter and related documents further explaining the request and addressing potential non-conforming issues.
- The applicant is not seeking to remedy existing issues with this application. The applicant is seeking relief from front, side, and enclosed parking space setbacks in order to replace an existing garage with a somewhat larger garage in generally the same location.
- It was noted on the site visit that the fence in the San Mateo Boulevard front yard is a solid fence that is larger than 2 ½ feet in height. The survey submitted is a reduction (therefore not to scale) and does not show the location of the curb or right-of-way. It appears from both the site visit and the survey showing the location of the fence relative to the existing driveway that the fence may be located within a visibility triangle. The fence is not shown on the site plan proposing the new garage structure.
- Attachment B is review comment sheet from Transportation Engineer Nguyen. He notes that the existing garage is to be demolished and a new driveway is proposed.
- The site appears to be somewhat sloped, irregular in shape, and approximately 12,174 square feet in area.
- Granting these variances, subject to the submitted site plan and elevation, would allow a garage structure to encroach into the San Mateo Boulevard front yard setback by 17.1 feet, encroach 3.2 feet into the side yard setback, and provide enclosed parking spaces to be closer to the property line by 2.1 feet.
- Typically, when the Board has found that an enclosed parking space variance is warranted, they have imposed the following conditions to assure that the variance will not be contrary to public interest:
 - 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.
- The applicant has the burden of proof in establishing the following in regards to the three variance requests (front yard setback, side yard setback, and enclosed parking spaces):
 - That granting the variances will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variances are necessary to permit development of the subject site (that appears to be somewhat sloped, irregular in shape, and approximately 12,174 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 6 zoning classification.
- The variances would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 6 zoning classification.
- Granting the variances subject to the site plan would only apply to the front yard, side yard, and enclosed parking space setbacks for the proposed detached garage. Any existing deficiencies shown on the site plan will not be remedied with approval of the variances of this application.

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

APPEARING IN FAVOR: Lynda Lee Weaver, 6807 Hammond, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Griggs

I move that the Board of Adjustment in Appeal No. **BDA 056-158**, on application of Lynda Lee Weaver, **grant** the 2.1 foot variance to the off-street parking 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan an elevation 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.

SECONDED: Brannon

AYES: 5–Cox, Brannon, Chernock, Beikman, Griggs

NAYS: 0 –,

MOTION PASSED: 5 – 0(Unanimously)

MOTION #2: Griggs

I move that the Board of Adjustment in Appeal No. **BDA 056-158**, on application of Lynda Lee Weaver, **grant** the 3.2 foot 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Brannon

AYES: 5–Cox, Brannon, Chernock, Beikman, Griggs

NAYS: 0 –,

MOTION PASSED: 5 – 0(unanimously)

MOTION #3: Griggs

I move that the Board of Adjustment in Appeal No. **BDA 056-158**, on application of Lynda Lee Weaver, **grant** the 17.1 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Beikman

AYES: 5–Cox, Brannon, Chernock, Beikman, Griggs

NAYS: 0 –,

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 056-166

BUILDING OFFICIAL'S REPORT:

Application of Lejon Partners Ltd., represented by Brian Grant, for a variance to the side yard setback regulations and a variance to the off-street parking regulations at 4120 Bowser Avenue. This property is more fully described as Lots 6 and 7 in City Block 32/1573 and is zoned PD-193 which requires a 10 foot side yard setback, and requires 13 parking spaces for the existing multifamily dwelling. The applicant proposes to construct/maintain structures and provide a 0 foot side yard setback which would require a variance of 10 feet to the side yard setback regulations, and to provide 10 parking spaces which would require a variance of 3 parking spaces to the off-street parking regulations. 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: 4120 Bowser Avenue

APPLICANT: Lejon Partners Ltd.

REQUESTS:

- The following appeals have been made in this application:
 1. Variances to the side yard setback regulations of up to 10' are requested to maintain recently-constructed decks and carport, and a portion of an existing nonconforming 1950's condominium structure located in the site's 10' side yard setbacks.
 2. A variance to the off-street parking regulations of 3 spaces (or 23% of the required parking spaces) is requested to maintain the 10-unit condominium that, according to the Building Inspection Development Code Specialist requires 13 off-street parking spaces.

On June 2, 2006, the applicant's representative submitted a revised site plan and corresponding letter that eliminated the original request for a rear yard variance of 7' thought to have been needed in order to maintain a carport in the site's 10' rear yard setback (see Attachment A).

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 10' side yard setback is required in an MF-2 Subdistrict of PD No. 193. A site plan was submitted on May 24, 2006, that indicated patio decks (which are deemed structures by Building Inspection if they exceed 6" above grade) and a carport located as close as on the site's western side property line (or 10' into the 10' side yard setback), and patio decks and carport located as close as 1.3' from the site's eastern side property line (or 8.7' into the site's 10' side yard setback). The site plan also indicates that a portion of the existing condominium structure (built according to DCAD records in 1959) is located as close as 8.1' from the site's western side property line (or 1.9' into the site's 10' side yard setback). The existing 1959 condominium structure is a structure that appears to have been "varied" in

1958. But Building Inspection has determined that this variance is no longer in effect since conditions were imposed with the 1958 variance that the site is no longer in compliance with. The recently constructed patio decks and carport appear to be illegal structures since the City has no record of permits issued for these structures.

- The Building Inspection Development Code Specialist has prepared a Building Official's Report stating that 13 off-street parking spaces are required on the subject site. A site plan was submitted on May 24, 2006, that indicated 10 off-street parking spaces provided on the site (or 77% of the total required parking spaces). Even though the applicant is requesting a reduction in parking by less than 25% of the required spaces, the applicant must seek a variance to the parking regulations (verses a special exception to the parking regulations) since the site is located in a Planned Development zoning district with its own specific off-street parking regulations. The Building Official's Report states "the applicant proposes to construct an addition and eliminate 3 required parking spaces." According to the Interim Assistant Building Official, the "addition" referred to in the Building Official's Report that created the elimination of 3 parking spaces is a recently completed staircase that reconfigured the parking that had been in the rear yard of the subject site.
- The site is flat, rectangular in shape (160' x 100'), and 16,000 square feet in area. The site is zoned PD No. 193 (MF-2 Subdistrict).
- DCAD records indicate that Suites A, B, C, and D of 4120 Bowser Avenue are each developed with a 940 square foot condominium built in 1959.
- The applicant's representative submitted additional information on June 2 and June 9, 2006 (see Attachments A and B). This information included the following:
 - a letter that requested withdrawal of the originally requested variance to the rear yard setback regulation to maintain a carport in the 10' rear yard setback;
 - a revised colored site plan that detailed the amount of the decks in the side yard setbacks and the existing carport in compliance with the 10' rear yard setback;
 - color "before and after" photos of the structure on the subject site (that will be available for review at the June 21st briefing/hearing); and
 - a document that provides additional details about the requests.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-2 Subdistrict) (Planned Development, Multifamily Subdistrict)
North: PD No. 193 (MF-2 Subdistrict) (Planned Development, Multifamily Subdistrict)
South: PD No. 193 (MF-2 Subdistrict) (Planned Development, Multifamily Subdistrict)
East: PD No. 193 (MF-2 Subdistrict) (Planned Development, Multifamily Subdistrict)
West: PD No. 193 (MF-2 Subdistrict) (Planned Development, Multifamily Subdistrict)

Land Use:

The subject site is developed as a 10-unit condominium (The Portico on Bowser). The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

1. Board of Adjustment Appeal
7267 (the subject site)

On July 22, 1958, the Board of Adjustment granted a request to construct a 2 story apartment building that was not providing the side yard spaces as required by the zoning ordinance. The 1958 application states that on the right hand side, the side yard required is 19' 9" (proposed 13', requests a variance of 6' 9"), and on the left hand side, the applicant proposes a side yard of 10' (the requirement is 19' 9", requests a variance of 9' 9"); and that the applicant is not meeting the lot area requirement of the zoning ordinance which requires 17,400 square feet (proposed 16,000 square feet, requests a variance of 1,400 square feet). The 1958 application mentions another variance request that is illegible. The decision stamped on the 1958 application was one marked ""granted" with the following notes: "subject to meeting J. E. requirements, 6 ft screening fence along back property line and along front property line on driveway side to the rear property line and along the north side to the edge on end of the bldg. and that bldg. be moved over 2 ft north so as to provide a side yard of 8 ft on one side and 15' on the other." The favorable actions on these requests are no longer valid since the site no longer complies with conditions imposed with the requests.

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.
- May 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 19, 2006: 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 requests;
 - 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 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the June 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

June 2 & 9, 2006 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B).

June 5, 2006: 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 Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

June 7, 2006 The Development Services Senior Engineer submitted a review comment sheet marked "Comments below." The engineer added the following comment:

- "Info. is insufficient."

STAFF ANALYSIS:

- The site is flat, rectangular in shape (160' x 100'), and 16,000 square feet in area. The site is zoned PD No. 193 (MF-2 Subdistrict).
- DCAD records indicate that Suites A, B, C, and D of 4120 Bowser Avenue are each developed with a 940 square foot condominium built in 1959.
- The submitted revised site plan of June 2, 2006, denotes that 764 square feet of the existing decks and 350 square feet of the existing carport are located in the two 10' side yard setbacks. According to calculations taken from this site plan by the Board Administrator, about 108 square feet (or an area that is 54' x 2') of the existing circa 1959 structure is located in the site's western side yard setback.
- 77% of the required off-street parking spaces (10 of 13) are provided on the site. The Development Services Senior Engineer submitted a review comment sheet commenting: "Info. is insufficient."
- The applicant has the burden of proof in establishing the following related to the side yard setback and parking variance requests:
 - That granting the variances to the side yard setback regulations of up to 10' (requested to maintain recently constructed decks and carport, and an existing

1950's structure in the site's side yard setbacks) and to the parking regulations of 3 parking spaces 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.

- These variances are necessary to permit development of the subject site (a site that is developed with a 1950's structure with recently constructed decks and carport, and a site that is flat, rectangular in shape, and 16,000 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (MF-2 Subdistrict) zoning classification.
- These variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (MF-2 Subdistrict) zoning classification.
- If the Board were to grant the variances to the side yard setback regulations of up to 10' and to the parking regulations of 3 parking spaces, imposing a condition whereby the applicant must comply with the submitted revised site plan, the existing decks, carport and condominium structure would be permitted to encroach into the site's two 10' side yard setbacks as close as on the site's side property lines (or as much as 10' into the 10' side yard setbacks), and the structure could be maintained with providing 10 of 13 required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

APPEARING IN FAVOR: Brian Grant, 4109 Brook Tree Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Chernock

I move that the Board of Adjustment in Appeal No. **BDA 056-166**, on application of Lejon Partners Ltd., **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: **Beikman**

AYES: 4–Cox, Brannon, Chernock, Beikman,

NAYS: 1 – Griggs

MOTION PASSED: 4 – 1

MOTION #2: Chernock

I move that the Board of Adjustment in Appeal No. **BDA 056-166**, on application of Lejon Partners Ltd., **grant** the variance to the off-street parking regulations of three

parking spaces, 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 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 revised site plan is required.

SECONDED: Brannon

AYES: 3–Cox, Brannon, Chernock

NAYS: 2 – Beikman, Griggs

MOTION FAILED: 3 – 2

***Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

FILE NUMBER: BDA 056-149(J)

BUILDING OFFICIAL'S REPORT:

Application of Tom Molini to enlarge a non-conforming use at 1240 Sargent Road. This property is more fully described as Lot 1 in City Block A/7721 and is zoned IM which requires board approval to enlarge a non-conforming use. The applicant proposes to construct an addition to an existing non-conforming use which would require board approval to enlarge a non-conforming use. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (6) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide requests for the enlargement of a non-conforming use.

LOCATION: 1240 Sargent Road

APPLICANT: Tom Molini

REQUEST:

- A request is made to enlarge a nonconforming use (fat rendering).

GENERAL STANDARD FOR THE BOARD OF ADJUSTMENT:

In general. The regulations in this chapter have been established in accordance with a comprehensive plan for the purpose of promoting the health, safety, morals, and general welfare of the city in order to:

- (A) lessen the congestion in the streets;
- (B) secure safety from fire, flooding, and other dangers;
- (C) provide adequate light and air;
- (D) prevent the overcrowding of land;
- (E) avoid undue concentration of population;

- (F) facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements;
- (G) promote the character of areas of the city;
- (H) limit the uses in areas of the city that are peculiarly suitable for particular uses;
- (I) conserve the value of buildings; and
- (J) encourage the most appropriate use of land throughout the city.

GENERAL FACTS:

- The request site is developed with a fat rendering facility. A fat rendering facility is considered a potentially incompatible industrial use which is permitted only by Specific Use Permit (SUP) in an IM Industrial Manufacturing zoning district.
- The request site is located within a flood plain overlay district.
- The fat rendering use on the site could only become a conforming use once it has obtained a zoning classification from the City Council that makes it a conforming use.
- According to DCAD, the request site is developed with a 1,848 square foot office building constructed in 1942, a 1,500 square foot automotive service building constructed in 1950, three storage warehouse buildings (2,025 square feet and 2,600 square feet constructed in 1978 and 2,800 square feet constructed in 1981), and a 3,942 square foot heavy industrial building constructed in 1976.
- A site plan has been submitted indicating the location of the proposed additional building for housing electrical equipment.
- An elevation has been submitted indicating that the addition will be approximately 14' in height. A submitted layout drawing indicates the addition will be 17' x 26' or 442 square feet in area.
- The site plan shows 11 buildings that are on the two tracts that the fat rendering facility occupies. According to the site plan, the 11 buildings on the two tracts total approximately 51,328 square feet of metal and concrete buildings. The site plan notes that the square footage listed is calculated from outside building dimensions. Additional floor area may exist on site.
- The Dallas Development Code states that the board has the power "to hear and decide requests for the enlargement of a nonconforming use."
- The Dallas Development Code defines a nonconforming use as "a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time."
- The applicant was provided by mail a copy of the section of the Dallas Development Code pertaining to "Nonconforming Uses and Structures" which fully explains the purpose of how the purpose of this section of the code "that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code; and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided

under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

- The request to the board is to enlarge a nonconforming *use*. The request is not to enlarge a nonconforming *structure*. The fat rendering use would be in compliance with development code standards such as setbacks, coverage requirements, and height requirements.
- The site plan indicates 11 parking spaces are provided. Industrial (inside) uses require one space per 600 square feet of floor area. Assuming 51,328 square feet of floor area per the site plan, the use requires at least 85 spaces. The applicant is not seeking relief from the parking regulations with this application.

BACKGROUND INFORMATION:

Zoning:

Site: IM (Industrial Manufacturing)
North: IM (Industrial Manufacturing)
South: IM (Industrial Manufacturing) and IR (Industrial Research)
East: IM (Industrial Manufacturing)
West: IM (Industrial Manufacturing)

Land Use:

The subject site is developed with a fat rendering use. The area to the north is developed with an industrial use, the areas to the east and west are undeveloped and the area to the south is developed with a waste water treatment use (Dallas Water Utilities). The area located approximately 500 feet to the southwest of the request site is developed with single family residential.

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 7, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 20, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 2006: The Board Administrator contacted the applicant via letter 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 May 5th 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 1, 2006: 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 Development Services Department Transportation Engineer, Senior Planner Hiromoto, Development Services Department Code Specialist, and the Assistant City Attorney to the Board.

No review comment sheets were received on this case.

STAFF ANALYSIS:

- The request site is zoned IM with a flood plain overlay.
- The fat rendering use is considered a potentially incompatible use which requires an SUP in the IM zoning district.
- An elevation has been submitted indicating that the addition will be approximately 14' in height.
- A submitted layout drawing indicates the addition will be 17' x 26' or 442 square feet in area.
- A site plan has been submitted indicating the location of the existing buildings for the fat rendering use and the proposed addition.
- It appears that the development meets the development code standards for an inside industrial use except for the parking requirement.
- Granting this request would allow the existing fat rendering use to be expanded with an additional building for electrical equipment.

It is the applicant's burden of proof to establish that the expansion of the non-conforming use is in accordance with the general purpose of the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2006

APPEARING IN FAVOR: Tom Molini, 1913 Wood Creek Dr., Grapevine, TX

APPEARING IN OPPOSITION: Brady R. Baxter, 11615 Forest Central Dr., #209, Dallas, TX

MOTION: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 056-149**, hold this matter under advisement until **June 21, 2006** with the directive to staff that the city provide mailed notices for the next hearing and that the area of notification be expanded to 750 feet.

SECONDED: **Gomez**

AYES: 5–Cox, Brannon, Chernock, Beikman, Gomez

NAYS: 0 –

MOTION PASSED: 5 – 0(Unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 21, 2006

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX
Tom Molini, 1913 Wood Creek Dr., Grapevine, TX

APPEARING IN OPPOSITION: Brady Baxter, 11615 Forest Central Dr., #209, Dallas, TX

2:50 P.M. Break

2:55 P.M. Resumed

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 056-149** on application of Tom Molini, **grant** the request for the enlargement of the nonconforming use, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the enlargement is consistent with the general purposes of the Dallas Development Code, as amended. 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 applicant must comply with all of the off-street parking regulations for the addition as set forth in the Dallas Development Code.

SECONDED: **Brannon**

AYES: 4–Cox, Brannon, Chernock, Griggs

NAYS: 1 –Beikman,

MOTION PASSED: 4 – 1

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Brannon

AYES: 5– Cox, Brannon, Beikman, Chernock, Griggs

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

2:55 P.M. - Board Meeting adjourned for June 21, 2006.

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.