

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, SEPTEMBER 17, 2008**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Panel Vice Chair, Marla Beikman, regular member, Jim Gaspard, alternate member, Matt Murrah, alternate member and Alex Salinas, alternate member

MEMBERS ABSENT FROM BRIEFING: Samuel Gillespie, regular member, Christian Chernock, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Panel Vice Chair, Marla Beikman, regular member, Jim Gaspard, alternate member, Matt Murrah, alternate member and Alex Salinas, alternate member

MEMBERS ABSENT FROM HEARING: Samuel Gillespie, regular member, Christian Chernock, regular member

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

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11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 17, 2008 docket.**

1:00 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 August 13, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2008

MOTION: Beikman

I move approval of the Wednesday, **August 13, 2008** Board of Adjustment Public Hearing minutes.

SECONDED: Gaspard

AYES: 5– Reynolds, Beikman, Gaspard, Murrah, Salinas

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 067-018

REQUEST: To waive the two year limitation on a request for a variance to the front yard setback regulations that was granted with conditions by Board of Adjustment Panel B on January 17, 2007

LOCATION: 4448 Abbott Avenue

APPLICANT: L.T. Nelson, represented by Ed Simons of Masterplan

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two year limitation is waived.
- The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On August 7, 2008, the applicant's representative for BDA067-018 submitted a letter (and site plan) to the Board Administrator requesting him to schedule for the board's consideration, a request to waive the two year time limit in place in conjunction with a request for a variance to the front yard setback regulation of 20' that was granted by Board of Adjustment Panel B (with a condition imposed that compliance with the submitted site/plot plan is required) on January 17, 2007. (See Attachment A).
- On August 14, 2008, the Board Administrator responded to the applicant's representative's request, and shared the following additional information:
 - the public hearing date and panel that will consider the miscellaneous request;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the August 26th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- The January 2007 case report regarding BDA067-018 stated that a variance to the front yard setback regulations of 20' was made in conjunction with constructing and maintaining, according to the application, a single family home that would be located in the site's Armstrong Avenue 25' front yard setback.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2008

APPEARIN IN FAVOR: Ed Simons, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move to **deny** the request to waive the two year time limitation on a request for a variance to the front yard setback regulations that was granted by the Board of Adjustment pPanel B (with conditions) on January 17, 2007.

SECONDED: **Gaspard**

AYES: 5– Reynolds, Beikman, Gaspard, Murrah, Salinas

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-114

BUILDING OFFICIAL'S REPORT:

Application of Thomas H. Pritchett for special exceptions to the fence height regulations at 10331 Strait Lane. This property is more fully described as Lot 10 in City Block D/5532 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 4 inch fence in a required front yard setback which will require a special exception of 4 feet 4 inches.

LOCATION: 10331 Strait Lane.

APPLICANT: Thomas H. Pritchett

REQUEST:

- Special exceptions to the fence height regulations of 4' 4" are requested in conjunction with constructing and maintaining the following in the site's two 40' front yard setbacks on a site being developed with a single family home:
 - in Strait Lane and Dorset Road front yard setbacks:
 - A 7.5' high open iron picket fence/wall (with 2.5' high stone base) and a 7.5' high solid plaster fence/wall (with 2.5' high stone base) with 8' high columns, and 8' 4" high open iron gates with 8' 4" high entry columns; and
 - additionally/specifically in the Dorset Road front yard setback:
 - An 8' high iron tennis court fence.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the corner of Strait Lane and Dorset Road. The site has two front yard setbacks. The site has a front yard setback along Dorset Road given that this frontage is the shorter of the two street frontages, and a front yard setback

along Strait Lane given that the continuity of the established setback must be maintained on this street since a house faces Strait Lane immediately north of the subject site.

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 applicant has submitted a site plan and an elevation indicating a fence/wall/column/gate proposal that would be located in the site's two front yard setbacks and would reach a maximum height of 8' 4".

- A site plan has been submitted that indicates the location of the proposal in the front yard setbacks. The following additional information was gleaned from this site plan for the proposal *along Strait Lane*:
 - ☐ The proposal would be approximately 430' in length parallel to Strait Lane with recessed entryways, approximately 40' in length perpendicular to Strait Lane on the north.
 - ☐ The proposed fence/wall is shown to be located approximately on the Strait Lane front property line (or approximately 13' from the Strait Lane pavement line).
 - ☐ The proposed gates are to be located about 12' from the Strait Lane front property line (or approximately 23' from the Strait Lane pavement line).
- The following additional information was gleaned from the submitted elevation for the proposal *along Strait Lane*:
 - ☐ Of the approximately 430' length of the proposal about 180' would be comprised of the solid plaster fence/wall (with 2.5' high stone base), approximately 40' would be comprised of open iron gates, and the remaining 210' would be comprised of the open iron picket fence/wall (with 2.5' high stone base).
- The following additional information was gleaned from the submitted site plan for the proposal *along Dorset Road*:
 - ☐ The proposal would be approximately 195' in length parallel to Dorset Road, approximately 40' in length perpendicular to Dorset Road on the west.
 - ☐ The proposed fence/wall is shown to be located approximately on the Dorset Road front property line (or approximately 15' from the Dorset Road pavement line).
 - ☐ The proposed gate is to be located approximately on the Dorset Road front property line (or approximately 20' from the Dorset Road pavement line).

The site plan also indicates the location of the proposed tennis court fence in the Dorset Road front yard setback. Although no elevation has been submitted, the plan notes that the tennis court fence will be of iron material and will be 8' high. The fence is located about 23' from the Dorset Road front property line and will be approximately 60' in length parallel to Dorset Road.
- The following additional information was gleaned from the submitted elevation for the proposal *along Dorset Road*:
 - ☐ Of the approximately 195' length of the proposal about 90' would be comprised of the solid plaster fence/wall (with 2.5' high stone base), approximately 20' would be comprised of open iron gate, and the remaining 85' would be comprised of the open iron picket fence/wall (with 2.5' high stone base).
- An extensive "Landscape Planting Plan @ Wall" document has been submitted that provides details of landscape materials to be provided adjacent to the proposal. The applicant's representative has stated in a document submitted with the original

application that this plan “illustrates the planned landscape on both sides of the new fencing and walls. The use of layers of ground cover and shrubs are planned to soften the wall and provide for neighborhood quality along the streetscape. The major plants uses are Indian Hawthorn, English Boxwood, Pink Azaleas, Nellie R. Stevens, Ever Blooming Red Roses, and mondo grass. There will be additional planting behind the wall of Nellie R. Stevens and Live Oak trees for additional screening of the new house for privacy. All of the plants are evergreen and will be maintained weekly and installed with an automatic irrigation system.”

- The proposal *along Strait Lane* would be located on a site where three single family homes would have direct/indirect frontage, two of which have walls in their front yard setbacks – neither with recorded *granted* board of adjustment special exceptions. The home immediately east has an approximately 7.5’ high open iron fence (with a masonry base) and an approximately 16’ high gate. (Although a request for a fence height special exception of 6’ 6” was made to the board of adjustment in 1995, the board denied this request without prejudice: BDA95-062). The home immediately southeast has an approximately 5.5’ high solid brick wall with no recorded board of adjustment history.
- The Board Administrator conducted a field visit of the site and surrounding area *along Strait Lane* (approximately 500 feet north and south of the site) and noted the following additional fence/walls beyond those described above which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - ☐- an approximately 10’ high gate with 12’ high columns (14’ high with finials) located two lots northeast of the site (with no recorded BDA history); and
 - ☐- an approximately 5’ high open wrought iron fence with 6’ high brick columns and 8’ high entry gates and columns located two lots north of the site (which is a result of BDA 96-063).
- The proposal *along Dorset Road* would be located on a site where one single family home would have direct/indirect frontage, a home with a fence in the front yard setback that appear to be 4’ in height or under.
- The Board Administrator conducted a field visit of the site and surrounding area *along Dorset Road* (approximately 500 feet west of the site) and noted one fence/wall which appeared to be located in the front yard setback. The wall is immediately west of the site, is approximately 8’ in height and comprised of what appears to be stone veneer (with no recorded BDA history).
- On August 21, 2008, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a revised document entitled “Existing Residential Fence Improvements Installed in Neighborhood.”

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 95-062, Property at 10330 Strait Lane (the lot immediately east of the subject site) | On May 23, 1995, the Board of Adjustment granted a request for a variance to the height regulations (subject to compliance with the submitted elevation), granted a request for a special exception to allow an additional dwelling unit (subject to deed restrictions), and denied a request for a special exception to the height regulations of 6' 6" without prejudice. The case report stated that the requests were made to construct and maintain an approximately 40,000 square foot, single family home with a height of 41 feet and a chimney height of 56', an approximately 2,500 square foot gate house, and a 8'6" open metal fence with 12' 6" masonry columns. |
| 2. BDA 93-063, 10349 Strait Lane (two lots north of the subject site) | On April 27, 1993, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 4' requested in conjunction with constructing an 8' high fence. The Board granted a fence special exception "to maintain a 6' wrought iron fence with an 8' gate and columns of 6.5'." |

Timeline:

- | | |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| July 1, 2008 | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| August 14, 2008: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B. |
| August 14, 2008: | The Board Administrator contacted the applicant's representative and shared the following information: <ul style="list-style-type: none">• the public hearing date and panel that will consider the application; |

- the criteria/standard that the board will use in their decision to approve or deny the request;
- the August 26th deadline to submit additional evidence for staff to factor into their analysis;
- the September 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 21, 2008 The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The requests focus on constructing/maintaining a 7.5' high open iron fence and a 7.5' high solid plaster fence/wall (both with a 2.5' high stone base) in the site's Strait Lane and Dorset Road front yard setbacks, and additionally constructing/maintaining an 8' high iron tennis court fence in the site's Dorset Road front yard setback.
- A scaled site plan and elevation have been submitted documenting the location of the proposed fence/wall/columns/gates relative to their proximity to the Strait Lane and Dorset Road front property lines and pavement lines, the lengths of the proposals relative to the entire lot, and the proposed building materials. The fence is shown to be located approximately on the property lines or about 13' – 15' from the pavement lines. The proposal is about 430' long parallel to Strait Lane (where about 40 percent would be of solid materials) and about 40' long perpendicular; and the proposal is about 195' long parallel to Dorset Road (where about half would be of solid materials) and about 40' long perpendicular.
- An extensive "Landscape Planting Plan @ Wall" document has been submitted that provides details of landscape materials to be provided adjacent to the proposal.

- The Strait Lane proposal would be located on the site where three single family homes would have direct/indirect frontage, two of which have walls in their front yard setbacks – neither with recorded *granted* board of adjustment special exceptions. The home immediately east has an approximately 7.5’ high open iron fence (with a masonry base) and an approximately 16’ high gate. (Although a request for a fence height special exception of 6’ 6” was made to the board of adjustment in 1995, the board denied this request without prejudice: BDA95-062). The home immediately southeast has an approximately 5.5’ high solid brick wall with no recorded board of adjustment history.
- Beyond those described above, the following additional fences/walls were noted in a field visit of the site and surrounding area *along Strait Lane* (approximately 500 feet north and south of the site). (Note that these locations and dimensions are approximations):
 - ☐ an approximately 10’ high gate with 12’ high columns (14’ high with finials) located two lots northeast of the site (with no recorded BDA history); and
 - ☐ an approximately 5’ high open wrought iron fence with 6’ high brick columns and 8’ high entry gates and columns located two lots north of the site (which is a result of BDA 96-063).
- The Dorset Road proposal would be located on the site where one single family home would have direct/indirect frontage, a home with a fence in the front yard setback that appear to be 4’ in height or under.
- Beyond the fence described above, one other fence/wall was noted in a field visit of the site and surrounding area along *Dorset Road* (approximately 500 feet west of the site). The wall is immediately west of the site, is approximately 8’ in height and comprised of what appears to be stone veneer (with no recorded BDA history).
- As of September 9, 2008, no letters had been submitted to staff in opposition to the proposal, and one letter had been submitted in support.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 8’ 4” in height) will not adversely affect neighboring property.
- Granting these special exceptions of 4’ 4” with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents. The board may also feel it is necessary to impose the submitted “Landscape Planting Plan” as a condition to the request in order to assure that the special exception does not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2008

APPEARIN IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 078-114** listed on the uncontested docket because it appears, from our evaluation of the property and all

relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Beikman**

AYES: 5– Reynolds, Beikman, Gaspard, Murrah, Salinas

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-115

BUILDING OFFICIAL'S REPORT:

Application of Julio Diaz for a special exception for the handicapped at 1010 Woodlawn Avenue. This property is more fully described as the southern half of Lot 2 in City Block 34/3354 and is zoned PD-160 (Tract 1B) which requires a side yard setback of 5 feet. The applicant proposes to maintain a carport for a handicapped person and provide a 0 foot side yard setback which will require a special exception of 5 feet.

LOCATION: 1010 Woodlawn Avenue

APPLICANT: Julio Diaz

September 17, 2008 Public Hearing Notes:

- The applicant's representative testified at the public hearing that the handicapped person who had resided on the subject site and who had been referenced in a doctor's letter written in June of 2008 as handicapped had died since the application was submitted. Although the applicant's representative testified about the carport being needed for her father and/or brother who could possibly be deemed handicapped, the board indicated that since the application was made for a specific person who had resided on the site and had died, it would be in the best interest of all parties involved for them to reach a decision on this application ~~has submitted, and then to consider any new application that may be made if the applicant's representative were to determine at a later date that any other resident on the site was handicapped as that term is defined by the Federal Fair Housing Amendments Act. (Staff informed the board that there is no filing fee for any special exception request for the handicapped).~~

REQUEST:

- A special exception for the handicapped is requested in conjunction with maintaining an approximately 750 square foot (approximately 61' x 12.5') carport in the site's southern 5' side yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted site plan and elevation is required.
2. The special exception expires when a handicapped person no longer resides on the property.
3. All applicable building permits must be obtained.

Rationale:

- Staff concludes that the carport is needed to afford a handicapped person (in this case, the applicant's wife) equal opportunity to use and enjoy her dwelling unit. The attached carport in the site's side yard setback would not appear to be of a width at approximately 12.5' to shelter the applicant's wife from leaving her vehicle on the passenger side and entering the front entrance of the house if the carport structure were to comply with the side yard regulations and be approximately 7.5' wide.

STANDARD FOR A SPECIAL EXCEPTION TO AFFORD A HANDICAPPED PERSON EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING:

Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

GENERAL FACTS:

- Lots in Tract 1B of PD No. 160 are required to provide a 5' side yard setback for detached single-family dwelling units.
A survey plat/site plan has been submitted indicating that the existing carport structure (that according to the submitted elevation is 12.7 wide and 61' long) is located on the site's southern side property line or 5' into the 5' side yard setback.
- This application was originally submitted as a special exception to the side yard regulations for a carport. Staff later determined that given the site's location in PD No. 160 that this request can not be made in PD No. 160. Staff determined that the applicant could make application to the board to maintain the carport in the side yard setback only by requesting a special exception for the handicapped. On August 21, 2008, the Building Inspection Development Code Specialist forwarded a revised Building Official's Report to reflect the amended request (see Attachment A).
- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:

"(h) "Handicap" means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
2. a record of having such an impairment, or
3. being regarded as having such an impairment,
but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 160 (Planned Development District)
North: PD No. 160 (Planned Development District)
South: PD No. 160 (Planned Development District)
East: PD No. 160 (Planned Development District)
West: PD No. 160 (Planned Development District)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- June 30, 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 15, 2008: The Board Administrator contacted the applicant’s daughter 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 either a request for a special exception to the side yard regulations for a carport or a request for a special exception for the handicapped (which the applicant’s daughter selected the former option); and
 - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 21, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to staff (see Attachment A).
- August 22, 2008: The Board Administrator contacted the applicant’s daughter to inform her of staff’s determination that the only way to remedy the existing carport in the required side yard setback was by making application to the board for a special exception for the handicapped.

August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on a special exception for the handicapped to allow a carport to remain in its current location on the site's southern side property line (or 5' into the required 5' side yard setback).
- Unlike most requests where the board is considering to allow a structure that is encroaching into a setback via a variance (where property hardship must be demonstrated) or via a special exception for a carport (where lack of detrimental impact on neighboring property must be demonstrated), the board is to consider this structure that encroaches into a side yard setback via a special exception for the handicapped based solely on whether the Board concludes that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit.
- A medical doctor has submitted a letter concerning the applicant's wife (Juana Diaz). The letter states that "based on Mrs. Diaz's chronic medical condition completing basic daily tasks without assistance is impossible. The addition of a carport at her residence greatly improves her family's ability to aid her with mobility and ambulation. Therefore, a carport aids in her overall quality of life and her family's ability to care for her."
- The applicant has the burden of proof in establishing the following:
 - The special exception (which in this case is requested to retain a carport in a side yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and
 - there is a person with a "handicap" (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that: 1) compliance with the submitted site plan and elevation is required, 2) that the special exception expires when a handicapped person no longer resides on the property, and 3) all applicable building codes must be obtained, the carport could be retained of the size and location shown on these plans (*upon obtaining all necessary building permits required by the building code*) for as long as the applicant's wife or any other handicapped person resides on the property.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2008

APPEARIN IN FAVOR:

Maria Diaz, 1010 Woodlawn, Dallas, TX

APPEARING IN OPPOSITION:

No one

MOTION: **Murrah**

I move that the Board of Adjustment, in Appeal No. **BDA 078-115**, on application of Julio Diaz, **deny** the special exception for the handicapped requested by this applicant **without** prejudice, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the special exception is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

SECONDED: **Gaspard**

AYES: 5– Reynolds, Beikman, Gaspard, Murrah, Salinas

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-122(K)

BUILDING OFFICIAL'S REPORT:

Application of David Brown for a special exception to the fence height regulations at 10304 Ferndale Road. This property is more fully described as Lot 23 in City Block A/8085 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 10304 Ferndale Road.

APPLICANT: David Brown

REQUEST:

- ±• A special exception of 4 feet to the fence height regulation to construct and maintain an 8 foot high fence in the property's Faircrest Drive front yard setback.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25 feet. The applicant is requesting to construct and maintain an eight foot high fence in the site's Faircrest Drive required front yard setback, which will require a special exception of four feet.
- The applicant proposes to construct and maintain a solid 8' fence constructed of cedar. The fence will be parallel to the south property line along Faircrest Dr. and is 80 linear feet.
- The site is flat and approximately 9,320 (59' x 110') square feet. According to DCAD the site was developed in 1972 and is in very poor condition with 2,445 square feet of living space and includes the following additional improvements:
 - Addition 576 square feet

- Attached garage 456 square feet
- Pool
- Attached carport 400 square feet
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for fence height with a specific basis for this type of appeal.

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 dwelling. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

There is no case history for this site or any sites in the immediate area.

Timeline:

- May 6 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Panel B.
- August 15, 2008: The Board of Adjustment’s Senior Planner contacted the applicant and shared the following information by telephone and letter:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the August 25th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to

“documentary evidence,” and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the September public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

August 26, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The site is currently developed with a single family structure. The surrounding properties in the area are developed with single family structures.
- The applicant proposes to construct and maintain a solid 8’ fence constructed of cedar slates with metal support posts. The fence will be parallel to the south property line and will run 80 linear feet parallel to Faircrest Road.
- The site is flat and irregular in shape being approximately 9,320 square feet. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- This is different from other sites in the area in that it is encumbered by two front yard setbacks. The site has a front yard setback along Ferndale Road and Faircrest Drive. The applicant is only requesting a special exception to the fence height regulation for the Faircrest Drive front yard (what would typically be considered a side yard).
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation of 4 feet, allowing the applicant to construct and maintain an 8 foot high fence in the property’s front yard setback will not adversely impact neighboring properties.
- If the Board were to grant the special exception to the fence height regulation, staff would recommend imposing the following condition:
 1. Compliance with the submitted site plan and elevation.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2008

APPEARIN IN FAVOR: David Brown, 10304 Ferndale, Dallas, TX

APPEARING IN OPPOSITION: Anita Frank, 10204 Faircrest, Dallas, TX

MOTION #1: Gaspard

I move that the Board of Adjustment in Appeal No. **BDA 078-122**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Murrah

AYES: 4– Reynolds, Gaspard, Murrah, Salinas

NAYS: 1 – Beikman

MOTION PASSED 4 – 1

MOTION #2: Murrah

I move that the Board of Adjustment, in Appeal No. **BDA 078-122**, on application of David Brown, **deny** the special 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: Beikman

AYES: 5– Reynolds, Beikman, Gaspard, Murrah, Salinas

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-131

BUILDING OFFICIAL'S REPORT:

Application of Cesar Termulo, Jr., for a special exception to the fence height regulations at 2207 Pecan Grove Court. This property is more fully described as Lot 10 in City Block E/7041 and is zoned PD-542 which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot fence in a required front yard setback which will require a special exception of 5 feet.

LOCATION: 2207 Pecan Grove Court

APPLICANT: Cesar Termulo, Jr.

September 17, 2008 Public Hearing Notes:

- The applicant submitted a revised elevation and a revised site plan at the public hearing per the request of the board.

REQUEST:

- A special exception to the fence height regulations of 5' is requested in conjunction with constructing and maintaining an 8.5'- 9' high solid board-on-board wood fence/wall in the site's 20' Ash Grove Way front yard setback on a site developed with a single family home

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

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

The subject site is located at the southeast corner of Pecan Grove Court and Ash Grove Way. The site has two 20' front yard setbacks, one along its northern

boundary: Ash Grove Way (even though it is the longer of the two street frontages which in most cases would be deemed a side yard where a 9' high fence would be permitted by right, it is deemed a front yard in order to maintain the continuity of the established setback of homes to the east of the site that front northward onto Ash Grove Way); and another along its western boundary: Pecan Grove Court (the shorter of the two street frontages by 14').

The applicant has submitted a scaled site plan and a partial elevation indicating a board-on-board fence/wall to be located in the site's 20' Ash Grove Way front yard setback that would reach a maximum height of 9' (but ranging in height from approximately 8.5' – 9'). The plans show no fence to be located in the site's 20' Pecan Grove Court front yard setback.

- The submitted scaled site plan indicates that the proposal has the following additional characteristics:
 - ☐ approximately 60' in length parallel to Ash Grove Way, and 17' – 20' perpendicular to the street on the "sides" of the site in the Ash Grove Way front yard setback;
 - ☐ located at a range of approximately 0'- 3' from the Ash Grove Way front property line (or approximately 7' - 10' from the Ash Grove Way pavement line).
- The applicant has conveyed in an email to staff that he "officially offers to plant ten pots of 5-gallon English Ivy (or similar species) spaced out evenly across the fence (every 3-5 feet)."
- There are four single family homes to the north of the site on Ash Grove Way that would have direct/indirect frontage to the proposal. None of these homes have fences.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other visible fences above four (4) feet high located in a *front* yard setback. One approximately 8' high solid wood fence/wall is located immediately west of the subject site but this fence/wall (along Ash Grove Way) appears to be located in this site's side yard setback where a 9' high fence would be permitted by right.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 542 (Planned Development District)
North: PD No. 542 (Planned Development District)
South: PD No. 542 (Planned Development District)
East: PD No. 542 (Planned Development District)
West: PD No. 542 (Planned Development District)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- August 26, 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Sept. 2, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Sept. 2, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the September 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and, if not, may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

STAFF ANALYSIS:

- The request is made to construct/maintain an 8.5’ – 9’ high solid board-on-board wood fence/wall in the site’s Ash Grove Way front yard setback.
- A scaled site plan and scaled partial elevation have been submitted indicating that the location of the proposal in the one of the site’s two front yard setbacks: Ash Grove Way (located approximately 0’ – 3’ from the Ash Grove Way front property line or about 7’ -10’ from the pavement line), length (about 60’ in length parallel to Ash Grove Way, about 17’ – 20’ perpendicular to the street on the “sides” of the site in the Ash Grove Way front yard setback), height (ranging from 8.5’ – 9’), and material (board-on-board).
- The applicant has conveyed in an email to staff that he “officially offers to plant ten pots of 5-gallon English Ivy (or similar species) spaced out evenly across the fence (every 3-5 feet).”
- There are four single family homes to the north of the site on Ash Grove Way that would have direct/indirect frontage to the proposal. None of these homes have fences.
- No other fences were noted in a field visit of the site and surrounding area above four (4) feet high located in a *front* yard setback. One approximately 8’ high solid

wood fence/wall is located immediately west of the subject site (across Pecan Grove Court) but this fence/wall (“fronting” along Ash Grove Way) appears to be located in this site’s side yard setback where a 9’ high fence would be permitted by right.

- As of September 9, 2008, no letters had been submitted to staff in opposition to the request, and one letter (from the HOA president) and one petition signed by 19 owners/neighbors had been submitted in support of the request.
- The applicant has the burden of proof in establishing that the special exception of 5’ (whereby a maximum 9’ high board-on-board fence/wall located in the site’s Ash Grove Way front yard setback) does not adversely affect neighboring property.

Granting this special exception to the fence height regulations of 5’ with a condition imposed that the applicant complies with the submitted site plan and partial elevation would provide assurance that the proposed fence/wall would be maintained in the location (limited to a fence/wall the site’s Ash Grove Way front yard setback) and of the height/material shown on these documents. The board may also feel it is necessary to impose the applicant’s offer to plant ten pots of 5-gallon English Ivy (or similar species) spaced out evenly across the fence (every 3-5 feet) as a condition to the request in order to assure that the special exception does not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 17, 2008

APPEARIN IN FAVOR: Cesar Termulo, Jr., 2207 Pecan Grove, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Salinas

I move that the Board of Adjustment, in Appeal No. **BDA 078-131**, on application of Cesar Termulo, Jr., **grant** the request of this applicant to construct and maintain an eight-foot-high 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 site plan and revised partial elevation is required.

SECONDED: Murrah

AYES: 2–Murrah, Salinas

NAYS: 3 – Reynolds, Beikman, Gaspard

MOTION FAILED 2 – 3

MOTION #2: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 078-131**, on application of Cesar Termulo, Jr., **grant** the request of this applicant to construct and maintain an eight-foot-high 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 revised partial elevation is required.

SECONDED: **Beikman**

AYES: 5– Reynolds, Beikman, Gaspard Murrah, Salinas

NAYS: 0 –

MOTION PASSED 5 – 0

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: GillespieGaspard

AYES: 5– Reynolds, Gillespie, Beikman, Bateman, McBride

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

2:00-41 P.M. - Board Meeting adjourned for **September 17, 2008.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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