

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 5ES  
MONDAY, FEBRUARY 12, 2007**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Joel Maten, regular member and Carol Scott, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Joel Maten, regular member and Carol Scott, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Interim Chief Arborist, and Trena Law, Board Secretary

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

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**10:12 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 12, 2007** docket.  
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**1:02 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C December 11, 2006 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2007**

**MOTION:** Boyd

I move **approval** of the Monday, December 11, 2006 public hearing minutes.

**SECONDED:** Moore

**AYES:** 5– Madrigal, Boyd, Moore, Maten, Scott

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-022(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Roman Cruz for a special exception to the fence height regulations at 2125 N. Masters Drive. This property is more fully described as Lot 3 in City Block 1/6757 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 maintain a 6 foot fence in the required front yard setback, which would require a special exception of 2 feet.

**LOCATION:** 2125 N. Masters Drive

**APPLICANT:** Roman Cruz

**REQUEST:**

- A special exception to the fence height regulations of 2' is requested in conjunction with maintaining an approximate 6 foot high metal railing fence with brick base and columns located in the site's 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.
- Elevations have been submitted indicating the maximum height of the proposal is 6 feet. The elevations also show the materials of the fence and columns, metal railing on a brick base and brick columns respectively. A vehicular gate is shown on the elevation on the southern portion of the elevation
- The submitted scaled site plans shows the existing fence/columns/gate located in the site's front yard setback is 80' in length parallel to Masters Drive, perpendicular to Masters Drive at 19 feet, and continuing 34 feet in length, including the 16 foot vehicular gate, parallel to Masters Drive.
- No information related to landscape materials to be proposed in conjunction with this request has been submitted.
- The Board Senior Planner conducted a field visit of the site and surrounding area along Masters Drive (approximately 300' north and south of the subject site) and noted no other fences above four (4) feet high which appeared to be located in a front yard setback. One fence was noted that appeared to be higher than 4 feet in a front yard setback approximately 600' north of the request site.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single Family Residential District 7,500 square feet)  
North: R-7.5(A) (Single Family Residential District 7,500 square feet)  
South: CR (Community Retail District)  
East: TH-2(A) (Townhouse District)  
West: R-7.5(A) (Single Family Residential District 7,500 square feet)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, east, and west are developed with single family uses; the areas to the south and west are undeveloped. The area south of Bruton Road is developed with commercial 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:**

Dec. 27, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 22, 2007: The Board Senior Planner mailed a letter to 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, 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 Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- The submitted site plan shows the location of the fence relative to the property line and right-of-way. The site plan shows the fence is 5.3 feet from the property line for 80 feet, the fence has a perpendicular section that goes into the property by about 19 feet, and the fence continues south on the property approximately 34 feet at a distance of 23.3 feet from the property line. The site plan shows a 5 foot sidewalk that is between the property line and right-of-way.
- The Board Senior Planner measured the scaled site plan and found that the portions of the fence near the driveway are not within a 20'x20' visibility triangle.
- The submitted elevations denote the building material (metal and brick) and the maximum height of the existing fence panels and gate (6' high), and columns (6' high).
- No other fences above six (6) feet high which appeared to be located in a front yard setback were noted in the immediate area.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the existing approximately 6 foot high metal railing fence with brick base and 6' high brick columns) will not adversely affect neighboring property.
- Granting this special exception of 2' with conditions imposed that the applicant complies with the submitted site plans and elevations would assure that the existing fence, columns and gate are maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

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 site plans and elevation is required.

SECONDED: **Boyd**

AYES: 5—Madrigal, Boyd, Moore, Maten, Scott

NAYS: 0—

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-023(J)

**BUILDING OFFICIAL’S REPORT:**

Application of Charles Shelburne, represented by T. Howard and Associates, for a special exception to the visibility obstruction regulations at 3500 Gaston Avenue. This property is more fully described as City Block A/780 and is zoned PD 749, Subdistrict A which requires a 45 foot visibility triangle at street intersections. The applicant proposes to obtain a special exception to the visibility obstruction regulations.

**LOCATION:** 3500 Gaston Avenue

**APPLICANT:** Charles Shelburne  
Represented by T. Howard and Associates

**REQUESTS:**

A special exception to the visibility obstruction regulations requested in conjunction with constructing and maintaining a portion of a structure to be located in the site’s 45’ Hall Street/Worth Street intersection visibility triangle on a site that is developed with a hospital use.

**STAFF RECOMMENDATION**

Approval

Rationale:

- The City’s Development Services Senior Engineer has no objection to this request.

**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:**

- 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 construct and maintain a support column and portions of the building in the 45' Hall Street/Worth Street intersection visibility triangle.
- The request site is part of the Baylor University Medical Center campus. The only visibility triangle obstruction proposed in this application is at the Hall Street/Worth Street intersection at the south corner of the request site.
- The applicant has indicated that the request is in conjunction with a remodeling the Emergency Room canopy. The current structure in this location does not appear to encroach into the 45' Hall Street/Worth Street intersection visibility triangle.
- The elevations specify the portion of the building and the materials of the structures that proposed to encroach into the visibility triangle. The materials appear to be of solid construction with stucco and finished concrete façades.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD 749 Subdistrict A (Baylor University Medical Center Special Purpose District) and MU-3 (Mixed Use District 3)
- North: PD 298 (Bryan Place Special Purpose District)
- South: PD 749 Subdistrict A (Baylor University Medical Center Special Purpose District)
- East: PD 749 Subdistrict A (Baylor University Medical Center Special Purpose District) and MU-3 (Mixed Use District 3)
- West: PD 298 (Bryan Place Special Purpose District) and MU-3 (Mixed Use District 3)

**Land Use:**

The subject site is developed with a hospital. The areas to the north, east, south, and west are currently developed with a mix of hospital and medical office, parking, and restaurant uses.

**Zoning/BDA History:**

1. Z045-120 (the request site) On June 28, 2006, the City Council approved a Planned Development District for mixed uses on property zoned PD 298, PD 298-D, PD 613, MU-3, MU-3-D, GO, P(A), LO-3-D, and MF-2(A).

**Timeline:**

- Dec. 20, 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.
- January 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- January 22, 2007: The Board Senior Planner mailed the applicant's representative a letter containing 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, 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 Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

February 5, 2007 The Board's Senior Transportation Engineer submitted a review comment sheet was submitted for this case.

### **STAFF ANALYSIS:**

- The elevations specify the portion of the building and the materials of the structures that proposed to encroach into the visibility triangle. The materials appear to be of solid construction with stucco and finished concrete façades.
- The site plan indicates the 45' street intersection visibility triangle and the location of the proposed encroachment.
- The Development Services Senior Engineer has informed the Board Administrator that he has no objections.
- It was observed by the Board Senior Planner that the intersection of Hall and Worth Streets is a three-way intersection with traffic signals. The current configuration of these streets has turn lanes on southbound Hall Street, westbound Worth Street, and eastbound Hall Street. This is also an area observed to have many pedestrians.

Crosswalks were observed at this intersection, on Hall about 200 feet north of the intersection with Worth and about 150 feet east of the intersection on Worth Street.

- The applicant has the burden of proof in establishing the following:
  - Granting the special exception to the visibility obstruction regulations (whereby, according to the submitted site plan, a support column and portions of the building in the 45' Hall Street/Worth Street intersection visibility triangle will be located in the visibility triangle) will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and elevation, a support column and portions of the building would be "excepted" into the 45' Hall Street and Worth Street intersection triangle.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

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 site plan and elevation is required.

SECONDED: **Boyd**

AYES: 5—Madrigal, Boyd, Moore, Maten, Scott

NAYS: 0—

MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-035(J)

**BUILDING OFFICIAL'S REPORT:**

Application of Marvin Cannon, represented by Randy Daniels, for a special exception to the parking regulations at 2525 W. Mockingbird Lane. This property is more fully described as Lot 16 in City Block 2570 and is zoned MC-3 which requires parking to be provided. The applicant proposes to convert an existing warehouse to an animal shelter and clinic and provide 52 of the required 69 parking spaces which would require a special exception of 17 spaces (24.6% reduction) to the parking regulations.

**LOCATION:** 2525 W. Mockingbird Lane

**APPLICANT:** Marvin Cannon  
Represented by Randy Daniels

**February 12, 2007 Public Hearing Notes:**

- The applicant submitted a letter on February 9, 2007 that was provided to the Board in the briefing requesting the case be held under advisement until March 19, 2007.

**REQUEST:**

- A special exception to the off-street parking regulations of 17 spaces (or 24.6% of the required off-street parking) is requested in conjunction with converting approximately 30,737 square feet of “warehouse” use to 20,803 square feet of “animal shelter or clinic” use.

**STAFF RECOMMENDATION:**

Approval

Rationale:

- The Development Services Senior Engineer has no objection to this request.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
  - 4) In granting a special exception, the board may:
    - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
    - (B) impose restrictions on access to or from the subject property; or
    - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
  - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
  - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
    - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
    - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- The Dallas Development Code requires the following parking requirements for the former and proposed uses on the subject site:
  - 1 space is required per 1,000 square feet of floor area up to 20,000 square feet and 1 space per 4,000 square feet of floor area after 20,000 square feet for "warehouse" use.
  - 1 space is required per 300 square feet of floor area for "animal shelter or clinic" use.
- The submitted site plan indicates the applicant proposes to use 20,803 square feet of the existing structure for the animal shelter use. The existing structure has an additional 9,934 square feet of floor area that is designated as enclosed parking area. The site plan shows the area dedicated within the portion for the animal shelter as exercise spaces, boarding and grooming, and retail and reception.
- The applicant proposes to provide 52 off-street parking spaces (or 75.4%) when 69 spaces are required based on the floor area of animal shelter use.
- The Dallas Development Code defines "animal shelter or clinic" as "a facility for the diagnosis, treatment, hospitalization, or harbouring of animals, including but not limited to dogs, cats, birds, and horses."

- The applicant indicated with his application materials a detailed letter indicated the intended use would be harbouring dogs.
- No enlargement or addition to the existing structure on the subject site is planned in conjunction with this request. This special exception request is triggered by the applicant's intent to transition/convert a part of an existing warehouse structure on the site from "warehouse" use on the site (which required 23 off-street parking spaces) to a "animal shelter or clinic" use (which requires 69 off-street parking spaces).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: MC-3 (Multiple Commercial -3)  
North: MC-3 (Multiple Commercial -3)  
South: MC-3 (Multiple Commercial -3) and MU-2 (Mixed Use-2)  
East: MC-3 (Multiple Commercial -3)  
West: MC-3 (Multiple Commercial -3) and CS (Commercial Service)

### **Land Use:**

The subject site is developed with vacant structure previously occupied with "warehouse" use. The surrounding area is developed with light industrial and distribution uses 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:**

- January 2, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 22, 2007: The Board Senior Planner mailed the applicant's representative a letter containing 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, 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 Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

February 5, 2007: The Development Services Senior Engineer submitted a review comment sheet marked "no objection if certain conditions are met."

### **STAFF ANALYSIS:**

- 75.6% percent of the required off-street parking spaces is proposed to be provided in conjunction with the transitioning the use of part of an existing structure from "warehouse" use to a "animal shelter or clinic" use.
- The Board Senior Transportation Engineer submitted a review comment sheet marked "no objection if certain conditions are met." He noted that the special exception of 24.6% is in effect only for this use and that a parking study was not provided.
- No enlargement or addition to the existing structure on the site is planned in conjunction with this request. This special exception request is triggered by the applicant's intent to transition the use within part of an existing office structure to an animal shelter use which has a higher parking requirement.
- Granting this request, subject to the condition that the special exception of 17 spaces automatically and immediately terminates if and when the proposed animal shelter or clinic use on the site is changed or discontinued, would allow the site to be used as an animal shelter or clinic.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the proposed animal shelter does not warrant the number of off-street parking spaces required, and

- The special exception of 17 spaces (or 24.6% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2007**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 067-035**, hold this matter under advisement until **March 19, 2007**.

SECONDED: **Maten**

AYES: 5—Madrigal, Boyd, Moore, Maten, Scott

NAYS: 0—

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA 067-036

**BUILDING OFFICIAL’S REPORT:**

Application of Hamilton Fidelity, LP for special exceptions to the sign regulations at 300 N. Akard Street (AKA 1507 Pacific Avenue). This property is more fully described as Lots 1-20 in City Block 233 and is zoned CA-1(A) which limits the area of a sign to 180 square feet and the limits the location of a sign. The applicant proposes to construct an attached sign with an area of 300 square feet which would require a special exception of 120 square feet, and with a projection of 9 feet from the building and into the public right-of-way which would require a special exception with regard to the location of the sign.

LOCATION: 300 N. Akard Street (AKA 1507 Pacific Avenue).

APPLICANT: Hamilton Fidelity, LP

**REQUEST:**

- Special exceptions to the sign regulations are requested to locate and maintain an approximately 300 square foot sign on an existing parking garage. The proposed sign will serve a 440-unit apartment building with about 18,000 square feet of retail space.

**STAFF RECOMMENDATION:**

Approval, subject to compliance with the submitted site plan and elevation

Rationale:

- The applicant has substantiated through the submittal of support letters, a site plan, and a sign elevation (comprised of sign boards with a total gross sign area of 131 square feet that was approved by the City of Dallas Landmark Commission) how the special exceptions will not be contrary to the public interest, adversely affect neighboring properties, or create a traffic hazard, and that the special exception will be in harmony with the general purpose and intent of the sign regulations of the Downtown Special Provision Sign District.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A PROJECTING ATTACHED SIGN IN THE DOWNTOWN SPECIAL PROVISION SIGN DISTRICT:**

The Board of Adjustment may authorize a special exception to the effective area, height, or location restrictions for a projecting attached sign if the board finds, after a public hearing, that the special exception will not be contrary to the public interest, adversely affect neighboring properties, or create a traffic hazard, and that the special exception will be in harmony with the general purpose and intent of this division. In no event may a special exception be granted under this paragraph to authorize a sign to exceed 300 square feet in effective area or 45 feet in height.

**GENERAL FACTS:**

- The Dallas Development Code's Downtown Special Provision Sign District regulations state that no "upper projecting attached sign" may exceed 180 square feet in effective area.  
The applicant has submitted a sign elevation that indicates a sign that is 9' at its widest point and 33' at its longest point (or 297 square feet in area). The Building Official's Report on this application states that "the applicant proposes to construct an attached sign with an area of 300 sq. ft."  
In addition, these regulations state "no upper projecting attached sign may project more than five feet into the public right-of-way."  
The applicant has a site plan indicating the location of the proposed sign on the site's Akard Street front property line (see Attachment A). The 9' wide sign would therefore project 9' into the right-of-way, 4' more than what the ordinance allows.
- The Dallas Development Code's Downtown Special Provision Sign District regulations state that the following as its "purpose:"
  - The purpose of this division is to regulate both the construction of new signs and the alterations of existing signs with a view towards enhancing, preserving, and developing unique character of the downtown area while addressing the diversity of businesses and promoting the economy of downtown. The general objectives of this division include those listed in Section 51A-7.101 as well as aesthetic considerations to ensure that signs are appropriate to the architecture of the district, do not obscure significant architectural features of its buildings, and lend themselves to the developing retail and residential uses and the pedestrian character of the area. The district regulations are in large part inspired by the

high level of pedestrian activity and the need to maximize effective orientation of signage toward the walking public.”

- The City measures the effective area of a sign by encompassing the components of a sign or sign boards within a rectangle. The City has determined that the proposed sign has an effective area of 297 square feet – a measurement that represents the greatest length and width of the sign boards in the sign proposal. According to the dimensions on the submitted sign elevation, the total gross square footage of actual sign board inside the overall 33’ x 9’ rectangle is 131 square feet. (The remaining 166 square feet of the 297 square foot “sign” is merely space within the overall rectangle).
- The subject site is an individual City of Dallas landmark: The Fidelity Union Building. Because of its landmark status, the proposed sign was required to be reviewed by the City of Dallas Landmark Commission who on January 8, 2007 approved a Certificate of Appropriateness on the sign. (Staff had informed the applicant and the Landmark Commission of the need to obtain a special exception from the Board of Adjustment at that time).
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment C). This information included the following:
  - A letter that provide additional details about the requests; and
  - Two letters in support of the requests.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CA-1-H/126 (Central Area, Historic)  
North: CA-1 (Central Area)  
South: PD No. 619 (Planned Development)  
East: CA-1 (Central Area)  
West: CA-1 (Central Area)

### **Land Use:**

The site is currently developed with as a parking garage for residential and retail uses that are under development. The areas surrounding the site are a combination of retail and office uses.

### **Zoning/BDA History:**

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

### **Timeline:**

- Dec. 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.
- Jan. 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Jan. 19, 2007: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, 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 Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Jan. 29, 2007: The Board Administrator obtained a revised Building Official's Report on this appeal – revisions that reflected the need for special exception to the sign regulations with regard to the amount of a sign that can project into the public right-of-way (see Attachment B).

Feb. 2, 2007

The applicant submitted additional information beyond what was submitted with the original application (see Attachment C).

**STAFF ANALYSIS:**

- The applicant has submitted a site plan that indicates the location of the proposed sign that is located approximately on the site's Akard Street front property line whereby the 9' wide sign will project 9' into the right-of-way (or 4' more than the 5' that the ordinance allows).
- The applicant has submitted an elevation that indicates that size of the proposed sign (approximately 33' long and 9' wide, or 297 square feet in area). This area reflects a rectangle formed around the greatest length and width of the proposed sign. The submitted elevation indicates that the total gross square footage of actual sign boards within this overall 297 square foot rectangle is 131 square feet.
- The applicant has substantiated with the submitted elevation that the proposed sign will not exceed 300 square feet in effective area or 45 feet in height.
- The proposed sign on subject site obtained a Certificate of Appropriateness from the City of Dallas Landmark Commission on January 8, 2007.
- The applicant has the burden of proof in establishing the following:
  - The special exceptions pertaining to the location and size of the sign will not be contrary to the public interest, adversely affect neighboring properties, or create a traffic hazard and that the special exception will be in harmony with the general purpose and intent of this division.
- Granting these special exceptions with conditions imposed that the applicant complies with the submitted site plan and sign elevation would allow the sign to be located 4' further into the public right-of-way and 117 square feet larger than the total effective area that the ordinance allows.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2007**

**APPEARING IN FAVOR:**

Ted Hamilton, 7538 Overdale Dr., Dallas, TX  
Cecil Kirksey, 10826 Carissa Dr., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION#1: Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 067-036**, on application of Hamilton Fidelity, LP, **grant** the request of this applicant to construct an attached sign with an area of 297 square feet, because our evaluation of the property and the testimony shows that the special exception will not be contrary to the public interest, adversely affect neighboring properties, or create a traffic hazard, and that the special exception will be in harmony with the general purpose and intent of the Downtown Special Provision Sign District regulations. 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: Moore**

**AYES:** 5–Madrigal, Boyd, Moore, Maten, Scott

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION#2: Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 067-036**, on application of Hamilton Fidelity, LP, **grant** the request of this applicant to construct an attached sign which projects nine feet into the public right-of-way, because our evaluation of the property and the testimony shows that the special exception will not be contrary to the public interest, adversely affect neighboring properties, or create a traffic hazard, and that the special exception will be in harmony with the general purpose and intent of the Downtown Special Provision Sign District regulations. 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: Scott**

**AYES:** 5–Madrigal, Boyd, Moore, Maten, Scott

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 067-021(J)

**BUILDING OFFICIAL’S REPORT:**

Application of Zone Systems Inc. for a variance to the front yard setback regulations at 1941 S. Beckley Avenue. This property is more fully described as Lot 15 in City Block 4605 and is zoned CS which would require a front yard setback of 25 feet due to the site’s adjacency to an R-7.5(A) zoning district. The applicant proposes to maintain and construct a structure in the required front yard setback and provide a 0 foot front yard setback which would require a variance of 25 feet

**LOCATION:** 1941 S. Beckley Avenue

**APPLICANT:** Zone Systems Inc

**February 12, 2007 Public Hearing Notes:**

- The applicant's representative submitted photos at the public hearing.

**REQUEST:**

- A variance to the front yard setback regulations of 25' is requested in conjunction with constructing and maintaining a structure on a site developed with a home improvement center, lumber, brick or building materials sales yard that would be located in the site's Louisiana Avenue 25' front yard setback.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- At the time of the staff review team meeting on January 30<sup>th</sup>, no site constraint was evident to this parcel of land that warranted the variance for the structure. The request site appears to be flat, rectangular and 1.54 acres.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope prevents the site from being developed in a way that meets the applicable development standards, including the front yard setback provisions.

**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 CS Commercial Service District requires no front yard setback except where adjacent to an expressway or thoroughfare which requires a 15 foot front yard setback. The request site is required to provide a 25 foot front yard setback because of the adjacent R-7.5(A) Single Family District that is within the same block.
- The Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement.
- The request site is located at the corner of Beckley Avenue and Louisiana Avenue and has two front yard setbacks, which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural. Beckley Avenue is a thoroughfare and therefore requires a 15 foot front yard setback and Louisiana Avenue requires a 25 foot front yard setback due to the R-7.5(A) Single Family zoning in the same block.
- The application was originally submitted as a fence height special exception request. After conducting the site visit, it was observed that the fence was actually a roofed structure that has shelving. The applicant's representative has confirmed that the shelves are for storage of materials for the lumber yard use. Staff agreed in the staff team review meeting that the structure was not a fence and therefore not eligible for consideration for a special exception. Subsequently, the applicant revised the request to a 25 foot front yard variance.
- The applicant proposes to construct and maintain a 16 foot tall structure at a length of approximately 125 feet on the property line of the request site. Approximately 62 feet of the 16 foot tall structure is currently constructed.
- The submitted site plan shows the location of the existing and proposed structure, existing "open metal and office building", and a metal shed in the 25 foot Louisiana Avenue front yard setback.
- The applicant has verbally indicated that he wishes for the Board to consider the variance to apply to all of the structures in the Louisiana Avenue front yard setback as well as the expansion of the 16 foot tall structure.
- The existing "open metal and office building" is approximately 32 feet by 178 feet in area; the metal shed is dimensioned to be 10.2 feet by 20.1 feet. The entire metal shed and the southern 25 feet of the "open metal and office building" are located within the 25 foot Louisiana Avenue front yard setback.
- The site appears to be flat, rectangular in shape and (according to DCAD) approximately 59,082 square feet (1.35 acres) in area.
- According to DCAD records, the site is developed with three barns built in 1952, 1958 and 1974, a canopy built in 1973, and an 18,436 square foot retail building built in 1951.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CS (Commercial Service)  
North: CS (Commercial Service)  
South: CR (Community Retail) and R-7.5(A) (Single family 7,500 square feet)  
East: CR (Community Retail)

West: R-7.5(A) (Single family 7,500 square feet)

**Land Use:**

The subject site is developed with a home improvement center, lumber, brick or building materials sales yard. The areas to the north and east are developed with commercial uses including restaurant, personal service, and retail uses, and the areas to the 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:**

Nov. 21, 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.

January 19, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 22, 2007: The Board Senior Planner emailed 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the

Assistant Director of the Development Services Current Planning Division, 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 Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

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

January 31, 2007 The applicant's representative met with the Building Inspection Code Specialist to revise the application from a fence height special exception to a front yard setback variance.

**STAFF ANALYSIS:**

- The site appears to be flat, rectangular in shape and (according to DCAD) approximately 59,082 square feet (1.35 acres) in area.
- The Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement.
- The request site is located at the corner of Beckley Avenue and Louisiana Avenue and has two front yard setbacks, which is typical of any lot that has two street frontages and is not zoned single family, duplex, or agricultural. Beckley Avenue is a thoroughfare and therefore requires a 15 foot front yard setback and Louisiana Avenue requires a 25 foot front yard setback due to the R-7.5(A) Single Family zoning in the same block.
- The submitted site plan shows existing "open metal and office building" is approximately 32 feet by 178 feet in area; the metal shed is dimensioned to be 10.2 feet by 20.1 feet. The entire metal shed and the southern 25 feet of the "open metal and office building" are located within the 25 foot Louisiana Avenue front yard setback.
- In addition to these structures, the site plan shows the proposed 16 tall structure and the existing 16 tall structure that has shelving and a roof. The site plan provides an elevation of the proposed structure to show it is constructed of metal materials. The applicant has indicated that the proposed structure will not have a roof or shelving.
- 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 25 feet will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site 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 CS Commercial Service zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing

this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CS Commercial Service zoning classification.

- If the Board were to grant the front yard variance request of 25', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structures in the front yard setback would be limited to that which is shown on this plan – a 16 foot tall structure that is partially roofed, a metal shed, and an “open metal building and office” structure.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2007**

**APPEARING IN FAVOR:** Peter Kavanagh, 1620 Handley Ste A., Dallas, TX  
Richard Hill, 224 Conrad, Dallas, TX  
David Reichert, 1941 S. Beckley, Dallas, TX  
Griselda, Vasquez, 126 Louisiana, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-021**, on application of Zone Systems, Inc., **grant** the 25-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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- The existing structure must be painted to match the color of the new structure.

**SECONDED: Scott**

**AYES:** 5–Madrigal, Boyd, Moore, Maten, Scott

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 067-034(J)

**BUILDING OFFICIAL’S REPORT:**

Application of Tom Sharpe for a special exception to the single family use regulations and for a variance to the height regulations at 9929 Strait Lane. This property is more fully described as Lots 5 and 6 in City Block A/5544 and is zoned R-1ac(A) which limits the height of an accessory structure to not exceed the height of the main building and limits the number of dwelling units to one. The applicant proposes to construct a second dwelling on the property, which would require a special exception and to construct an accessory structure with a height of 24 feet which would require a variance of 7 feet 6 inches to the height regulations.

**LOCATION:** 9929 Strait Lane

**APPLICANT:** Tom Sharpe

**February 12, 2007 Public Hearing Notes:**

- The applicant's representative submitted a letter and photos that were provided to the Board at the briefing.

**REQUEST:**

- Requests for a variance of 7 feet 6 inches to the height regulations and special exception to the single family regulations are made in conjunction with constructing a second dwelling unit on a site developed with a single family use.

**STAFF RECOMMENDATION (related to the height variance request):**

Denial

Rationale:

- The subject site appears to be mostly flat, irregular in shape (approximately 315' of street frontage and approximately 365' deep), and 1.969 acres in area (approximately 85,769.64 square feet).
- The applicant has not substantiated how the site's area, shape or slope precludes its development in a way where the applicable development standards can not be met.
- The applicant has not provided any evidence to substantiate how these variances are necessary to develop this parcel of land (a parcel that is different from other R-1ac(A) zoned lots) whereby the lot's restrictive area, shape or slope precludes its development in a manner commensurate with other developments found on other similarly-zoned lots.
- The lot appears to be of such a large size that the applicant could construct an accessory structure of the same floor area at a height that is less than the main structure.

**STAFF RECOMMENDATION (related to the additional dwelling unit special exception):**

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

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

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not:

- 1) be used as rental accommodations; or
- 2) adversely affect neighboring properties.

In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**GENERAL FACTS:**

- The request site is zoned R-1ac(A), which limits the number of dwelling units on a lot to one.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- The Dallas Development Code defines a dwelling unit to mean one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.
- The accessory structure code states the following for accessory structures in single family districts:
  - No person shall rent an accessory structure;
  - The height of an accessory structure may not exceed the height of the main structure;



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| north of the request site)                                     | granted a fence height special exception and special exception to the visibility obstruction regulations at 9941 Strait Lane. |
| 2. BDA 056-122 (adjacent to the northwest of the request site) | On April 19, 2006, the Board of Adjustment granted a fence height special exception at 4722 Walnut Hill Lane.                 |

**Timeline:**

- Dec. 29, 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.
- January 19, 2007:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 22, 2007:      The Board Senior Planner emailed 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 January 26th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
  - the February 2nd 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 30, 2007:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of the Development Services Current Planning Division, 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 Inspection Development Code Specialist, the Interim Chief Arborist, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS (related to the variance request):**

- The plat map shows the request site is irregularly shaped with approximately 315' of street frontage, approximately 365' deep, and 1.969 acres in area (approximately 85,769.64 square feet).
- The request site is two separately platted lots.
- The typical lot size in R-1ac(A) zoning district is one acre (43,560 square feet).
- The subject site is appears mostly flat, irregular in shape, and almost twice the area of lots typical of an R-1ac(A) zoning district.
- The applicant has not substantiated how the site's area, shape or slope precludes its development in a way where the applicable development standards can not be met.
- The applicant has not provided any evidence to substantiate how these variances are necessary to develop this parcel of land (a parcel that is different from other R-1ac(A) zoned lots) whereby the lot's restrictive area, shape or slope precludes its development in a manner commensurate with other developments found on other similarly-zoned lots.
- The applicant has the burden of proof in establishing the following related to the front yard variance requests:
  - That granting the height variance of 7 feet 6 inches requested to construct a 2-story accessory dwelling unit structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The height variance of 7 feet 6 inches is necessary to permit development of the subject site 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-1ac(A) zoning classification.
  - The variance to the height regulations 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 not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant the 7 foot 6 inch variance to the height regulations, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the accessory structure would be limited to that what is shown on the on these documents.

**STAFF ANALYSIS (related to the additional dwelling unit special exception):**

- If the Board were to approve the additional dwelling unit special exception, subject to imposing a condition that the applicant comply with the site plan and elevation, the "dwelling unit" structure would be restricted to the specific location, size, and height shown on the plans, which in this case is a 2-story "dwelling unit" structure.

- If the Board were to deny the additional dwelling unit special exception and approve the variance to the height regulations, the structure would be allowed to be built in the location and size shown on the site plan and elevation, but it would not be allowed to be used as a dwelling unit.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions) and not adversely affect neighboring properties.
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 12, 2007**

APPEARING IN FAVOR: Bill Booziotis, 3420 Lindenway, Dallas, TX  
Richard Pollock, 9929 Strait Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 067-034** on application of Tom Sharpe, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development:

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

**SECONDED: Boyd**

**AYES:** 5—Madrigal, Boyd, Moore, Maten, Scott

**NAYS:** 0—

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION #2: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 067-034** on application of Tom Sharpe, **grant** the 7 foot, 6 inch variance to the height 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:

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

**SECONDED: Scott**  
**AYES:** 5—Madrigal, Boyd, Moore, Maten, Scott  
**NAYS:** 0—  
**MOTION PASSED:** 5 – 0 (unanimously)

\*\*\*\*\*

**MOTION: Maten**

I move to adjourn this meeting.

**SECONDED: Boyd**  
**AYES:** 5 —Madrigal, Boyd, Moore, Maten, Scott,  
**NAYS:** 0 - None  
**MOTION PASSED:** 5 – 0 (Unanimously)

**2:06 P. M.** - Board Meeting adjourned for **February 12, 2007.**

\_\_\_\_\_  
CHAIRPERSON

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

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BOARD SECRETARY

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