

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 5ES
MONDAY, AUGUST 13, 2007**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Joel Maten, regular member and Johnny Jefferson, regular 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 Johnny Jefferson, regular 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, Phil Erwin, Interim Chief Arborist and Chau Nguyen, Traffic Engineer 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 Specialist, Phil Erwin, Interim Chief Arborist and Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

9:45 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 13, 2007** docket.

1:10 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 C June 11, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

MOTION: Moore

I move **approval** of the Monday, June 11, 2007 public hearing minutes.

SECONDED: Maten

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 067-115

BUILDING OFFICIAL’S REPORT:

Application of Boulevard Builders/Malaga City Townhomes, L.P., represented by Masterplan/Karl A. Crawley, for a special exception to the landscape regulations at 4230 Travis Street. This property is more fully described as Lot 11A in City Block C/1523 and is zoned PD-193(MF-2) which requires mandatory landscaping. The applicant proposes to construct residential structures and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 4230 Travis Street

APPLICANT: Boulevard Builders/Malaga City Townhomes, L.P.
Represented by Masterplan/Karl A. Crawley

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an 18-unit townhome development on a site that is currently under development.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Full compliance with the Oak Lawn PD No. 193 Landscape Requirements is required upon completion of the third and final phase on the site, or by August 13, 2009, whichever comes first.

Rationale:

- The City's Acting Chief Arborist supports the request in that if the special exception is granted (with the condition mentioned above imposed), the special exception will not compromise the spirit and intent of the landscaping requirements of PD No. 193.
- If the Board were to grant this request and impose the condition suggested above, the applicant would only be "excepted" from the timing of when required landscaping must be installed on the site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot is performed that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.
The application states that this request has been made for phasing of landscaping on the site- that the proposed alternate landscape plan would allow the development of the site without changing the landscape requirements. The alternate landscape plan denotes a site that is divided into thirds labeled A, B, and C. It is assumed that these areas represent the phasing of the three separate structures that are proposed on the subject site.
- The Acting City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements of PD 193, more specifically, relief from the section of the ordinance stating if a landscape plan is required, all landscaping must be completed in accordance with the approved landscape plan before the final inspection of any structure on the lot, or, if no final inspection is required, within 120 days of the date of the issuance of the landscape permit.

- The special exception request is triggered by new building construction of three buildings on one lot that required a single landscape plan for the entire lot.
- Deficiency:
 1. All landscaping must be completed upon the first building completion prior to its final certificate of occupancy. Although there have been no inspections to date, a landscape final inspection will not be provided until all landscaping is in place on the lot.
- Factors for consideration:
 - A landscape plan has been reviewed and approved for the lot by the city arborist that is shown in compliance with PD No. 193 requirements for this property.
 - The buildings are on separate schedules. Current ordinance provisions require that all landscaping be installed throughout the lot prior to the first building inspection final. This could place plant materials that would be required for the remaining two buildings in an inhospitable situation if they were to be planted in the midst of heavy construction for those buildings. The individual building sites may not be in a stage of completion that would warrant installing landscaping in the building area.
 - Phasing the landscape materials for each building would place each building's final certificate of occupancy contingent upon a final landscape inspection approval for each individual structure. Essentially, this would treat each phase as if they were separate lots for landscape purposes only.
- Recommendation:
 - Approval.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is under development. The areas to the north, east, south and west are developed with residential uses; and the area to the south is developed with 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:

- June 29, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- August 1, 2007 The Acting City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

STAFF ANALYSIS:

- The applicant has submitted a landscape plan that denotes three separate areas that most likely represent three phases of the development proposed on the subject site.
- The City of Dallas Acting Chief Arborist has stated that a single landscape plan is required for the entire lot/subject site even though the construction triggering the landscape requirements in this case involves the construction of three buildings on the one site that will be constructed in phases. The arborist also has stated that the applicant is seeking relief from the PD No. 193 ordinance provision stating that if a landscape plan is required, all landscaping must be completed in accordance with the approved landscape plan before the final inspection of any structure on the lot, or, if no final inspection is required, within 120 days of the date of the issuance of the landscape permit.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where, according to the Acting Chief Arborist, the applicant is only seeking relief from the timing of when all landscape materials must be installed on the site) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must fully comply with the Oak Lawn PD No. 193 Landscape Requirements upon completion of the third and final phase on the site, or by August 13, 2009, whichever comes first, the site would be “excepted” only from the timing of when landscape materials must be installed on the subject site.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Boyd

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:

- Full compliance with the PD 193 landscape requirements is required upon completion of the third and final phase on the site, or by August 13, 2009, whichever comes first.

SECONDED: Moore

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 067-122

BUILDING OFFICIAL'S REPORT:

Application of Mary & Mitch Rosenbleeth for a special exception to the fence height regulations at 4611 Melissa Lane. This property is more fully described as Lot 21 in City Block 3/6391 and is zoned R-1/2ac(A) Neighborhood Stabilization Overlay District #1 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 4 feet.

LOCATION: 4611 Melissa Lane

APPLICANT: Mary & Mitch Rosenbleeth

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with replacing a 4' high open board fence with an 8' high solid cedar wood fence in the site's 40' Welch Road 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 northeast corner of Melissa Lane and Welch Road. The site has a 35' front yard setback along Welch Road (since it is the shorter of the two street frontages) and a 35' front yard setback along Melissa Lane. (Even though the Melissa Lane frontage is the shorter of the two street frontages, 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 southward onto Melissa Lane). It appears from the submitted plat map that if the subject site's Welch Road frontage were 0.7' longer, this frontage would be deemed a side yard where the proposed 8' high fence/wall would be permitted by right. (The Dallas Development Code allows a 9' high fence/wall in a required side yard).

The applicant has submitted a scaled survey plat/site plan and an elevation indicating a fence/wall proposal that would reach a maximum height of 8' in the site's Welch Road front yard setback. (No fence/column/gate is noted on the plan or elevation that would exceed 4' in height in the site's Melissa Lane front yard setback).

- The submitted scaled survey plat/site plan indicates that the fence/wall proposed to be located in the site's Welch Road 35' front yard setback has the following additional characteristics:
 - approximately 100' in length parallel to Welch Road, and approximately 30' perpendicular to Welch Road;
 - located on site's Welch Road front property line; and
 - linear in design.
- A partial fence/wall elevation has been submitted that shows unspecified landscape materials. The City of Dallas Acting Chief Arborist submitted a memo to the Board of Adjustment Chief Planner and Administrator regarding the proposed landscape materials adjacent to the proposed fence/wall (see Attachment A). This memo generally expressed the arborist's concerns with planting landscape materials adjacent to the fence/wall in the required visibility triangles, and under/over utilities.
- There is no single family home that would have direct frontage to the proposal since the house immediately west of the site is oriented south to Melissa Lane, as is the house on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along Welch Road and noted no other fences above four (4) feet high which appeared to be located in a *front* yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2ac (A) (Single family district 1/2 acre)
North: R-1/2ac (A) (Single family district 1/2 acre)
South: R-1/2ac (A) (Single family district 1/2 acre)
East: R-1/2ac (A) (Single family district 1/2 acre)
West: R-1/2ac (A) (Single family district 1/2 acre)

Land Use:

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

Zoning/BDA History:

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 29, 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.

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

July 17, 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 July 29th deadline to submit additional evidence for staff to factor into their analysis;
- the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

Although no review comment sheets with comments were submitted in conjunction with this application, the Acting Chief Arborist submitted a memo on this request – a memo that states his concerns with landscape materials that may be planted/located adjacent to the proposed fence/wall (see Attachment A).

STAFF ANALYSIS:

- If the subject site's Welch Road frontage were 0.7' longer, the proposed 8' high fence/wall would be allowed by right since this frontage would be a side yard setback where the zoning code allows a 9' high fence/wall.
- A scaled survey plat/site plan has been submitted that documents the location of the proposed fence/wall relative to the front property line and pavement line. (The fence/wall is shown to be about 100' in length parallel to Welch Road, and located approximately on the site's Welch Road front property line).
- A partial elevation has been submitted that documents the height and material of the proposal - an approximately 8' high cedar wood fence/wall.
- There is no single family home that would have direct frontage to the proposal since the house immediately west of the site is oriented south to Melissa Lane, as is the house on the subject site.
- No other fences were noted in the area above four (4) feet high which appeared to be located in a *front* yard setback. (Other fences above 4' in height were noted immediately west of the site along Welch Road, but these fences, according to the applicant, appear to be fences in *side* yards that are allowed to reach 9' in height).
- As of August 6, 2007, a petition signed 8 neighbors/owner had been submitted in support, and no letters had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed fence/wall to exceed 4' in height in the site's Welch Road front yard setback) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' with a condition imposed that the applicant complies with the submitted survey plat/site plan and elevation would provide assurance that the proposal would be constructed and maintained in the location and of the height/material shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Boyd

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

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

SECONDED: Moore

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson
NAYS: 0–
MOTION PASSED: 5-0(unanimously)

FILE NUMBER: BDA 067-093

BUILDING OFFICIAL’S REPORT:

Application of Richard Malouf for special exceptions to the fence height and the visibility obstruction regulations at 10727 Camellia Drive. This property is more fully described as Lot 1 in City block 2/5499 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet, and requires a 20 foot visibility triangle at driveway to street intersections and a 45 foot visibility triangle at a street to street intersection. The applicant proposes to maintain an 8 foot 4 inch fence in a required front yard setback which will require a special exception of 4 feet 4 inches to the fence height regulations. In addition, the applicant proposed to maintain items in multiple visibility triangles which will require special exceptions to the visibility obstruction regulations.

LOCATION: 10727 Camellia Drive

APPLICANT: Richard Malouf

August 13, 2007 Public Hearing Notes:

- The applicant acknowledged receipt of the case report on this matter, that the board was only considering the existing fence/wall/gates/columns located on Lot 1 of City block 2/5499, and that the existing fence on Lot 2 of City block 2/5499 (which he owns as well) in a front yard setback higher than 4’ in height would have to be brought into compliance with the code or sought to be remedied by a separately filed application to the board of adjustment. The applicant submitted photos of the fence/wall/gates on subject site.

REQUESTS:

- The following appeals have been made in this application on a site (Lot 1 of City Block 2/5499) developed with a single family home:
 1. A special exception to the fence height regulations of 4’ 4” is requested in conjunction with maintaining the following in the site’s 35’ front yard setback:
 - a 5’ 10” high open wrought iron fence;
 - an 8’ 4” high open wrought iron gate; and
 - an 8’ high solid cedar plank wall with 8’ 4” high columns.
 2. Special exceptions to the visibility obstruction regulations are requested in conjunction with maintaining portions of the open wrought iron fence and gates in the site’s six 20’ visibility triangles at the three drive approaches into the site from Mum Place and Camellia Drive, in the site’s 20’ visibility triangle at the

intersection of the alley and Mum Place, and in the site's 45' visibility triangle at the intersection of Mum Place and Camellia Drive.

Note that these appeals are made to maintain the same fence, wall, and gates that exceeded the maximum fence height and visibility obstruction regulations on the subject site (and the separately platted lot immediately adjacent that is owned by the same person as the subject site) that were filed in 2005: BDA045-275. The Board of Adjustment Panel C denied requests for special exceptions to the fence height and visibility obstruction regulations on these lots in November of 2005 without prejudice.

STAFF RECOMMENDATION (related to fence height special exception):

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.

STAFF RECOMMENDATION (related to visibility obstruction special exception):

Approval, subject to the following condition:

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

Rationale:

- The City's Development Services Senior Engineer has indicated that he has no objections to these requests.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has referenced a 4' 4" exception on his application, as well as submitted a site plan and elevation which indicates a fence/wall/column/gate proposal that reaches a maximum height of 8' 4" in the site's Camellia Drive 35' front yard setback. (Although the site is located at the corner of Camellia Drive and Mum

Place, the site has one front yard setback: Camellia Drive – the shorter of the site’s two frontages).

Although the applicant also submitted a photograph/”elevation” showing “Detail C” of a “10’ Wood And Stone Column Fence,” the applicant specifically requested a special exception of 4’ 4” to address a fence/wall/gate/column on the subject site that is no higher than 8’ 4”.

The Building Inspection Development Code Specialist identified at the July 30th staff review team meeting how the submitted site plan also denotes a “10’ Ht. Wood Fence Along Alley” where the code allows a 9’ high fence by right when located in a required side or rear yard setback. Note that regardless of what is shown on the submitted site plan, no application has been made for a fence height special exception to maintain a fence in a required side or rear yard higher than 9’.

- The submitted scaled site plan indicates that the proposal in the site’s 35’ front yard setback has the following additional characteristics:
 - approximately 125’ in length parallel to Camellia Drive (of which approximately 100’ is open metal, approximately 25’ is solid cedar plank), approximately 35’ perpendicular to Camellia Drive on the north and south sides of the site;
 - located on the site’s Camellia Drive front property line or about 12’ from the pavement line; and
 - generally linear in design.
- There is one single family home that has direct frontage to the existing fence/wall on the site. This home has no fence.
- The Board Administrator conducted a field visit of the site and surrounding area along Camellia Drive. One other fence/wall was noted on the block between Orchid Lane and Royal Lane. This fence/wall located immediately adjacent to the subject site (and owned by the same person as the subject site) is an approximately 8’ high solid wood fence/wall with approximately 8.5’ high stucco columns. This fence/wall appears to be a continuation of what is shown on the applicant’s submitted elevation as an 8’ high fence with 8’ 4” high columns that is part of this application on the subject site. This fence immediately adjacent to the subject site was part of the fence special exception application that was denied (without prejudice) by the Board of Adjustment in November of 2005: BDA 045-275. (The Building Inspection Development Code Specialist has stated that the subject site in this previous case, encompassing Lots 1 and 2 of City Block 2/5499, was erroneously combined as one case/application since apparently no one noticed that this site was two separately platted lots which should have required two separately filed applications).

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

- 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 has submitted a site plan and elevation that denotes portions of an open wrought iron fence and three gates that are located in the site's six 20' visibility triangles at the three drive approaches into the site from Mum Place and Camellia Drive, in the site's 20' visibility triangle at the intersection of the alley and Mum Place, and in the site's 45' visibility triangle at the intersection of Mum Place and Camellia Drive.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home. The area immediately north is a lot that appears to be developed with a swimming pool; the areas to the east and south are developed with single family uses; and the area to the west is developed with retail uses.

Zoning/BDA History:

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| <p>1. BDA 045-275, 10727 and 10735 Camellia Drive (the subject site and the lot immediately north, Lots 1 and 2 of City Block 2/5499)</p> | <p>On November 14, 2005, the Board of Adjustment Panel C denied a request for a special exception to the fence height regulations of 3' 5" and a special exception to the visibility obstruction regulations without prejudice. The case report stated that the requests were made to maintain an 8' high wood fence with 8' 5" high stucco and concrete brick columns, and a 5' 10" high wrought iron fence with 6' 6" high wrought iron posts with 8' 4" high wrought iron gates in the 35' Camellia Drive front yard setback; and to maintain the above referenced fence and gates located in the 45' visibility triangle at the Camellia Drive and Mum Place intersection, and in nine 20' visibility triangles on Mum Place and Camellia Drive.</p> |
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Timeline:

April 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.

July 17, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

July 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 requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 27th deadline to submit additional evidence for staff to factor into their analysis;
- the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

The administrator also informed the applicant that the subject site for this application was just Lot 1 of City Block 2/5499, and that any fence in a required front yard setback over 4' in height of the lot adjacent to the site would have to be addressed in a separately filed application.

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

August 1, 2007 The Development Services Senior Engineer submitted a Review Comment Sheet marked "Has no objections" commenting "Previous BDA045-275." (The case report for BDA045-275 stated that the engineer had no objections stating his "site visit on July 25, 2005 indicates that the existing wrought iron fence/gate inside the 45' x 45' intersection and the 20' x 20' visibility triangles does not create a traffic hazard due to its open nature.")

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

- A scaled site plan has been submitted that documents the location of the existing fence/wall, columns, and gate in the subject site's front yard setback relative to their proximity to the front property line and pavement line. (The fence/wall in the site's front yard setback is shown to be about 125' in length parallel to Camellia Drive and about 35' perpendicular on the north and south sides of the site in the front yard setback, located approximately on the front property line and about 12' from the pavement line).
- An elevation has been submitted that provides partial elevations of the existing fence and wall in the subject site's front yard setback. The elevation documents the heights and materials of the fence to be of open wrought iron material and 5' 10' in height, the height and materials of the gate to be of open wrought iron material at 8' 4" in height, and the height and materials of the solid wall to be of cedar planks at 8' in height with 8' 4" high stucco columns.
- There is one single family home that has direct frontage to the existing fence/wall on the site. This home has no fence.
- One other fence/wall was noted on the block between Orchid Lane and Royal Lane. This fence/wall located immediately adjacent to the subject site is an approximately 8' high solid wood fence/wall with approximately 8.5' high stucco columns. This fence/wall appears to be a continuation of what is shown on the applicant's submitted elevation as an 8' high fence with 8' 4" high columns that is part of the subject site. This fence immediately adjacent to the subject site was part of the fence special exception application that was denied (without prejudice) by the Board of Adjustment in November of 2005: BDA 045-275. (The Building Inspection Development Code Specialist has stated that the subject site in this case, encompassing Lots 1 and 2 of City Block 2/5499, was erroneously combined as one case since no one noticed that this site was two separately platted lots which should have required two separately filed applications).
- As of August 6, 2007, no letters had been submitted in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 4" (whereby the existing fence/wall, columns, and gate that exceed 4' in height in the subject site's Camellia Drive front yard setback) does not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 4' 4" with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the existing fence/wall, columns, and gate would be maintained in the location and of the heights and materials as shown on these documents.

- Approval of this request would not provide any relief for any fence, wall, gate, and/or column in the front yard setback on the subject site higher than 8' 4", or any fence, wall, gate, and/or column in a side or rear yard setback on the subject site higher than 9'.
- Approval of this request would not provide any relief for any fence, wall, gate, and/or column in a front yard setback on any other lot other than the subject site, regardless of another lot's adjacency or shared ownership to that of the subject site.

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

- The Development Services Senior Engineer has commented that he has no objections to the requests, referencing his rationale made in the previous application on this site where he had concluded (based on his field visit) that the fence and gate does not create a traffic hazard due to the open nature of the building materials.
- 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 and elevation, an open metal fence and three gates would be maintained in eight visibility triangles on the site) will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted site plan and elevation, the items "excepted" into the visibility triangles would be restricted to the items, location, and materials shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: Richard Malouf, 10727 Camelia Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 067-093**, on application of Richard Malouf, **grant** the request of this applicant to maintain an eight-foot-four-inch-tall 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 elevation is required.

SECONDED: Jefferson

AYES: 4– Madrigal, Boyd, Maten, Jefferson

NAYS: 1– Moore

MOTION PASSED: 4-1

MOTION #2: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 067-093**, on application of Richard Malouf, **grant** the request of this applicant to maintain a fence in the site's 20' x 20' visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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: Jefferson

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

MOTION #3: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 067-093**, on application of Richard Malouf, **grant** the request of this applicant to maintain a fence in the site's 45' x 45' visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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: Jefferson

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 067-051(J)

BUILDING OFFICIAL'S REPORT:

Application of DeShazo, Tang & Associates, Inc. represented by John J. DeShazo, Jr. for a special exception to the parking regulations at 8333 Douglas Avenue (aka 8383 Douglas Avenue). This property is more fully described as Lot 5A and part of Lot 6 in City Block 2/5625 and a portion of an abandoned alley and is zoned PD-314, Tract II, which requires parking to be provided. The applicant proposes to construct an addition to an existing nonresidential building for office and financial institution use and provide 1,114 parking spaces, which would require a special exception of 181 spaces (14% reduction) to the parking regulations.

LOCATION: 8333 Douglas Avenue (aka 8383 Douglas Avenue)

APPLICANT: DeShazo, Tang & Associates, Inc.
Represented by John J. DeShazo, Jr.

REQUEST:

- A special exception to the off-street parking regulations of 181 spaces (or 14% of the required off-street parking) is requested in conjunction with constructing an office tower with 144,400 square feet of office uses and 4,600 square foot bank use. The applicant proposes to provide 1,114 (or 86%) of the total required 1,295 off-street parking spaces on a site currently developed with an approximately 278,000 square foot office tower.

PREVIOUS ACTION:

- On March 19, 2007, Panel C of the Board of Adjustment held this case under advisement until May 14, 2007. The Board requested that the applicant meet with the surrounding property owners to address issues discussed in the public hearing.
- On May 14, 2007, Panel C of the Board of Adjustment held this case under advisement until August 13, 2007 pursuant to the applicant's written request to the Board for a delay.

STAFF RECOMMENDATION:

Denial without prejudice

Rationale:

On August 6, 2007, the applicant submitted a written request to the Board for a delay until the October 15, 2007, Panel C meeting.

The applicant has previously requested two delays primarily based on neighboring opposition. Staff was not opposed to the first two delays and supported the application based on the Senior Engineer's review of the parking study submitted. Staff believes that five months from the first hearing and two delays are sufficient time for the applicant to meet with surrounding property owners and be sure of the reduction in parking needed. Staff recommends that the case be denied without prejudice so that the applicant can reevaluate the request and make a new application.

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:

- On February 13, 2006, the Board of Adjustment Panel C approved a parking special exception of 288 spaces (or 22% of the required off-street parking) in conjunction

with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant on a site developed with an existing office with 277,500 square feet. The parking special exception was subject to automatically and immediately terminate if and when the office and restaurant use on the site is changed or discontinued. The applicant is proposing to develop the site with only office and bank uses and therefore the special exception will not be valid.

- The applicant is proposing the following on the request site:
 - Maintain the existing 277,500 square feet building containing office uses
 - Construct a new 149,000 square foot building containing (144,400 square feet) office uses and 4,600 square foot bank use.
- The Dallas Development Code requires the following parking requirements for the existing/proposed uses on the subject site:
 - 1 space is required for every 333 square feet of office use.
 - 1 space is required for every 333 square feet of financial institution with or without drive-in window use.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 314 (Planned Development District)
North: PD No. 314 (Planned Development District)
South: PD No. 314 (Planned Development District)
East: PD No. 314 (Planned Development District)
West: PD No. 314 (Planned Development District)

Land Use:

The subject site is developed with an office tower. The areas to the north, east, south, and west are developed with office, restaurant, and retail uses.

Zoning/BDA History:

1. BDA 056-053 (subject site) On February 13, 2006, the Board of Adjustment Panel C approved a parking special exception of 288 spaces (or 22% of the required off-street parking) in conjunction with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant on a site developed with an existing office with 277,500 square feet.

Timeline:

January 24, 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.

- Feb. 15, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Feb. 13, 2007: The Board Administrator mailed the applicant 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 March 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the March 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 5, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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.
- March 7, 2007 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments:
- "Based on the (revised) study dated January 26, 2007."
- April 30, 2007 The applicant submitted a written request to the Board for a delay until the June 11th 2007 Panel C meeting.
- August 6, 2007 The applicant submitted a written request to the Board for a delay until the October 15, 2007 Panel C meeting.

STAFF ANALYSIS:

- 86 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a new 144,400 square feet of office uses and 4,600 square foot bank use on a site developed with an approximately 278,000 square foot office tower.
- Granting this request, subject to the condition that the special exception of 181 spaces automatically and immediately terminates if and when the office and bank uses on the site are changed or discontinued, would allow development of the office and bank on the site.
- The applicant has the burden of proof in establishing the following:
 - that the parking demand generated by the proposed office and bank uses do not warrant the number of off-street parking spaces required, and
 - the special exception of 181 spaces (or 14% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments:
 - "Based on the (revised) study dated January 26, 2007." The study is revised from the study submitted with the February Board of Adjustment case, BDA 056-053.

BOARD OF ADJUSTMENT ACTION: MARCH 19, 2007

APPEARING IN FAVOR: John DeShazo, 400 S Houston St., Dallas, TX

APPEARING IN OPPOSITION: Fran Powell, 14796, Dallas, TX 75254
 Jane Williams, 3015 Idlecreek, Dalworthington Gardens, TX 76016
 Sabine Rowell, 1735 Sandly Lake Rd, Carrollton, TX
 Katherine Garth, 2075 Chisholm Trl, Frisco, TX 75034
 Elliot Prieur, 5516 Greenbrier, Dallas, Tx 75209

MOTION #1: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 067-051**, on application of DeShazo, Tang and Associates, Inc., represented by John J. DeShazo, Jr., **deny** the special exception to the off-street parking regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: Moore

AYES: 2–Boyd, Moore

NAYS: 3– Madrigal, Scott, Gomez

MOTION FAILED: 2 – 3

MOTION #2: Scott

I move that the Board of Adjustment, in Appeal No. **BDA 067-051**, on application of DeShazo, Tang and Associates, Inc., represented by John J. DeShazo, Jr., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 181 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would NOT create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office and financial institution with or without drive-in window uses on the site are changed or discontinued.

SECONDED: Gomez

AYES: 3– Madrigal, Scott, Gomez

NAYS: 2 – Boyd, Moore

MOTION FAILED: 3 –2

MOTION #3: Boyd

I move that the Board of Adjustment in Appeal No. **BDA 067-051**, hold this matter under advisement until **May 14, 2007**.

SECONDED: Moore

AYES: 5– Madrigal, Boyd, Moore, Scott, Gomez

NAYS: 0 –

MOTION PASSED: 5 –0

BOARD OF ADJUSTMENT ACTION: MAY 14, 2007

APPEARING IN FAVOR: John DeShazo, 330 Union Station, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gomez

I move that the Board of Adjustment in Appeal No. **BDA 067-051**, hold this matter under advisement until **August 13, 2007**.

SECONDED: Maten

AYES:5–Madrigal, Boyd, Maten, Scott, Gomez

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: John Deshazo, 400 S. Houston St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 067-051**, on application of DeShazo, Tang and Associates, Inc., represented by John J. DeShazo, Jr., **deny** the special exception to the off-street parking regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the use warrants the number of off-street parking spaces required, and the special exception would create a traffic hazard and increase traffic congestion on adjacent and nearby streets.

SECONDED: Boyd

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0(unanimously)

FILE NUMBER: BDA 067-082

BUILDING OFFICIAL’S REPORT:

Application of Michael Dees for a special exception to the fence height regulations at 5404 Walnut Hill Lane. This property is more fully described as Lot 3 in City Block 1/5602 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 fence in a required front yard setback which would require a 4 foot special exception.

LOCATION: 5404 Walnut Hill Lane

APPLICANT: Michael Dees

August 13, 2007 Public Hearing Notes:

- The board delayed action on this request until their September 17th public hearing, and encouraged the applicant’s representative to consider submitting (prior to/or at this public hearing) a proposal with reduced heights and/or different materials (perhaps if not an entirely open metal fence, a wall with some breaks/openings of open metal material).

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining a 7' 6" high solid stone wall with 8' high stone columns and two, approximately 7' high sliding electric open wrought iron gates in the site's 40' front yard setback. (The site is being 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 applicant has submitted a revised scaled site plan and a revised elevation that denotes that the proposal will reach a maximum height of 8 feet.
- The following additional information regarding the proposed fence/wall was gleaned from the originally submitted site plan:
 - Approximately 176' in length parallel to the street (and approximately 22' on either side of the site perpendicular to the street in the front yard setback).
 - Ranging from 4'- 17' from the property line (or about 9' – 22' from the pavement line).
- There are approximately 2 single family homes that would have direct frontage to the proposed fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, the Board Administrator noted three other fences/walls in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There are approximately 5' high solid walls located immediately east and west of the site (with the fence to the east of the site having Board of Adjustment history: BDA88-096), and an approximately 7' high solid concrete wall located two lots west of the site that appears to be a result of a previous board case at this location (BDA 956-193).
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included photographs of the site and neighboring fences.
- The board conducted a public hearing on this appeal on June 11, 2007, and delayed action on this request until their August 13th public hearing. The board encouraged

the applicant's representative to consider submitting (prior to/or at this public hearing) a more detailed account of landscape materials that is intended to be located adjacent to the proposed wall.

- The applicant submitted information beyond what was submitted with the original application and June public hearing (see Attachments B and C). This information included a revised site/landscape plan which appears to show minor amendments to the wall location on the site (a fence wall that appears to be located about 6' – 17' from the site's front property line) as well as landscape materials to be placed on either side of the proposed fence/wall; and a revised elevation that shows a wall that has been reduced from 8' to 7' 6" in height but with added 8' high stone columns.

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 956-193, 9930
Meadowbrook Drive (two lots west of the subject site)
On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 8" imposing the following condition with the request: compliance with the submitted revised landscape/site plan and elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.
2. BDA 88-096, 5414 Walnut Hill Lane (the lot immediately east of the subject site)
On September 27, 1988, the Board of Adjustment Panel granted a request for a special exception to fence height regulations of 1' 6", and imposed the following conditions: 1. The fence shall be constructed in accordance with the revised fence elevation plan submitted; 2. The pilasters shall be evenly spaced approximately 16 feet apart; 3. The fence

3. BDA 90-023, 9995 Hollow Way
two lots immediately east of the
subject site)

shall be located at least 5 feet from the front property line, and the area between the fence and the street shall be landscaped; 4. The fence on the west property line shall be eliminated; and 5. The fence shall comply with all visibility obstruction triangles. The case report states that a request was made to construct an 8' high fence; however, the board specified in their motion that the special exception was granted to erect a fence 5' 6" high.

On April 10, 1990, the Board of Adjustment granted a request for a special exception to fence height regulations of 2' and imposed the following conditions to the request: submit a revised landscape plan that indicates the wall recessed and additional landscaping as provided. The case report states that the case report was made to construct a 6' high solid masonry fence in the site's Walnut Hill front yard setback.

Timeline:

April 23, 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.

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

May 17, 2007: The Board Administrator contacted with 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 May 25th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
- the June 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently

adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and

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

May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

May 30, 2007 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

June 11, 2007: The Board of Adjustment conducted a public hearing on this appeal. The board encouraged the applicant’s representative to consider submitting (prior to/or at this public hearing) a more detailed account of landscape materials that is intended to be located adjacent to the proposed wall.

June 18, 2007: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the application;
- the July 27th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting; and
- the August 3rd deadline to submit additional evidence to be incorporated into the Board’s docket materials.

July 27, 2007: The applicant submitted information beyond what was submitted with the original application and the June public hearing (see Attachment B).

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

August 3, 2007: The applicant submitted information beyond what was submitted with the original application, the June public hearing, and the July 30th staff review team meeting (see Attachment C).

STAFF ANALYSIS:

- A revised scaled site/landscape plan and a revised elevation has been submitted that documents the location and materials of the proposal to exceed 4' in height in the front yard setback which in this case is an approximately 176' long, 7' 6" high solid stone wall with 8' high stone columns, and two, approximately 7' high open wrought iron gates.
- There are approximately 2 single family homes that would have direct frontage to the proposed fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, three other fences/walls were noted in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There are approximately 5' high solid walls located immediately east and west of the site (with the fence to the east of the site having Board of Adjustment history: BDA88-096), and an approximately 7' high solid concrete wall located two lots west of the site that appears to be a result of a previous board case at this location (BDA 956-193).
- As of August 6th, no letters had been submitted in support and one letter had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site/landscape plan and revised elevation would assure that the proposed wall, columns, and gates would be limited to and constructed/maintained with the materials and in the location shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

APPEARING IN FAVOR: Michael Dees, 13012 Berrywood Trl, Keller, TX 76248

APPEARING IN OPPOSITION: No one

MOTION: **Boyd**

I move that the Board of Adjustment in Appeal No. **BDA 067-082**, hold this matter under advisement until **August 13, 2007**.

SECONDED: **Maten**
AYES: 4– Madrigal, Boyd, Moore, Maten
NAYS: 0–
MOTION PASSED: 4-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: Michael Dees, 3901 Airport Fwy, #312, Bedford, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 067-082**, on application of Michael Dees, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Boyd**
AYES: 2–Boyd, Moore
NAYS: 3– Madrigal, Maten, Jefferson
MOTION FAILED: 2-3

MOTION #1: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 067-082**, hold this matter under advisement until **September 17, 2007**.

SECONDED: **Moore**
AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson
NAYS: 0 –
MOTION PASSED: 5-0

FILE NUMBER: BDA 067-086

BUILDING OFFICIAL’S REPORT:

Application of Rajan Dudhwala, represented by Masterplan, for a special exception to the parking regulations and variances to the front yard and urban form front yard setback regulations at 1521 Inwood Road. This property is more fully described as Lot 2B in City Block A/7910 and is zoned MU-3 which requires off-street parking, a front yard setback of 15 feet for a portion of a structure 45 feet in height or less, and an urban form front yard setback of 35 feet for any portion of a structure exceeding 45 feet in height. The applicant proposes to construct a nonresidential building for a hotel/motel

use and to provide 76 of the 94 required parking spaces which will require a special exception of 18 spaces to the parking regulations. In addition, the applicant proposes to provide a 5 foot front yard setback which will require a variance of 10 feet to the front yard setback regulations for the portion of the structure 45 feet in height or less, and a variance of 30 feet to the urban form front yard setback regulations for the portion of the structure over 45 feet in height.

APPLICANT: Rajan Dudhwala
Represented by Masterplan

LOCATION: 1521 Inwood Road

August 13, 2007 Public Hearing Notes:

- The applicant's representative submitted additional written information to the board at the briefing/public hearing (see Attachment C).

REQUESTS:

- The following appeals have been made in this application:
 1. a variance to the front yard setback regulations of 10' for a portion of a proposed structure less than 45' in height;
 2. a variance to the urban form front yard setback regulations of 30' for a portion of a proposed structure over 45' in height; and
 3. a special exception to the off-street parking regulations of 18 spaces (or 19% of the parking requirement).

These appeals are requested in conjunction with constructing and maintaining an approximately 64' high, 4-level hotel tower structure (Holiday Inn Express) on a site that is undeveloped.

STAFF RECOMMENDATION (related to the variances):

Denial

Rationale:

- Although the site is pan-handle/irregular in shape and partially in the floodplain, these physical features do not preclude the applicant from developing the approximately 1.2 acre undeveloped parcel of land/subject site in a manner commensurate with development found on other MU-3 zoned lots.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude it from being developed (in this case, with a structure that could meet the applicable development standards including the 15' front yard setback and the 35' urban form front yard setback for the portion of the structure that would exceed 45' in height) in a manner commensurate with development found on other MU-3 zoned lots.

STAFF RECOMMENDATION (related to the parking special exception):

Approval, subject to the following condition:

- The special exception of 18 spaces shall automatically and immediately terminate if and when the hotel or motel use on the site is changed or discontinued.

Rationale:

- The City's Development Services Senior Engineer has no objections to the request based on a parking study dated July 23, 2007.

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 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 (related to the variances):

- Development on lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height. The applicant has submitted a site plan and elevation indicating a structure that is about 64' in height located as close as 5' from the site's Inwood Road front property line (or 10' into the 15' front yard setback and 30' into the 35' urban form front yard setback).
- Staff has interpreted that the additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The subject site is flat, pan-handle/irregular in shape, and 1.175 acres in area. A part of the subject site is located in the flood plain. The site was recently rezoned from CS (Commercial Service) to MU-3 (Mixed Use).
- According to calculations taken from the submitted site plan by the Board Administrator, about 100 square feet of the proposed 12,300 square foot building footprint is proposed to be located in the 15' front yard setback, and about 1,300

square feet of the proposed 12,300 square foot building footprint is proposed to be located in the additional 20' urban form front yard setback.

- The Board of Adjustment conducted a public hearing on the requests on June 11, 2007 where the board delayed action on the application until August 13, 2007. The board delayed action in response to applicant's request. (The applicant's newly designated representative submitted a letter written by the applicant requesting that the board delay action on the requests until their next meeting in order for his newly hired representative to prepare the presentation to the board).
- The applicant's representative submitted information beyond what was submitted with the original application and June public hearing (see Attachment B). This information included documents that provided additional details about the requests. Note that although the applicant references a distance from the property line to the curb line of Inwood Road which is fully improved of approximately 40 feet (that he contends fully mitigates a tower spacing requirement), the submitted site plan shows a distance from the property line to the curb line of Inwood Road to be approximately 10 feet.

GENERAL FACTS (related to parking special exception):

- The Dallas Development Code requires the following off-street parking requirements for a hotel or motel use:
 - 1 space for each unit for units 1 to 250;
 - 3/4 space for each unit for units 251-500;
 - 1/2 space for all units over 500;
 - plus one space per 200 square feet of meeting room.The submitted site plan denotes that the hotel will have 92 guestrooms, and the Building Official's Report states that the applicant proposes to provide 76 (or 81%) of the required 94 parking spaces.
- The Board of Adjustment conducted a public hearing on the requests on June 11, 2007 where the board delayed action on the application until August 13, 2007. The board delayed action in response to applicant's request. (The applicant's newly designated representative submitted a letter written by the applicant requesting that the board delay action on the requests until their next meeting in order for his newly hired representative to prepare the presentation to the board).
- The applicant's representative submitted information beyond what was submitted with the original application and June public hearing (see Attachment B). This information included documents that provided additional details about the requests.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: CS (Commercial Service)
South: CS (Commercial Service)
East: PD No. 312 (Planned Development District)
West: MU-3 and IR (Mixed Use and Industrial Research)

Land Use:

The subject site is undeveloped. The area to the north and south are developed with office and retail uses; the area to the east is developed with office uses; and the area to the west is developed with office and warehouse uses.

Zoning/BDA History:

1. Z067-183, Inwood Road and IH 35E (the subject site) On May 23, 2007, the City Council created an ordinance establishing MU-3 (Mixed Use) zoning on property that had been zoned CS (Commercial Service).

Timeline:

- April 26, 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.
- May 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 17, 2007: The Board Administrator discussed/emailed the applicant's representative the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the May 25th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the June 1st deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 29, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Acting Building Official, 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, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

May 30, 2007: The Building Inspection Development Code Specialist forwarded an amended Building Official's Report on this appeal – a report that added a variance request for the portion of the proposed structure under 45' in height (see Attachment A).

May 31, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked "Recommends that this be denied" with the following additional comment: "(Ref. Z 067-183) No supporting documentation."

June 11, 2007: The Board of Adjustment conducted a public hearing on this appeal. The board encouraged the applicant's representative to consider submitting (prior to/or at this public hearing) a more detailed account of landscape materials that is intended to be located adjacent to the proposed wall.

June 18, 2007: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the application;
- the July 27th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting; and
- the August 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials.

July 27, 2007: The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B).

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

August 1, 2007 The City's Development Services Senior Engineer forwarded a revised review comment sheet marked "Has no objections" with the following additional comment: "Based on study dated 7/23/07."

STAFF ANALYSIS (related to the variances):

- The subject site is flat, pan-handle/irregular in shape, and 1.175 acres in area. A part of the subject site is located in the flood plain. The site was recently rezoned from CS (Commercial Service) to MU-3 (Mixed Use).
- According to calculations taken from the submitted site plan by the Board Administrator, about 100 square feet of the proposed 12,300 square foot building footprint is proposed to be located in the 15' front yard setback, and about 1,300 square feet of the proposed 12,300 square foot building footprint is proposed to be located in the additional 20' urban form front yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback and the urban form front yard setback regulations requested to construct and maintain a 64' high, 4-level hotel tower 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 variances are 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 MU-3 zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant the front yard variance request of 10' and the urban form front yard variance request of 30', imposing a condition whereby the applicant must comply with the submitted site plan and section drawings, the structure would be limited to that what is shown on these submitted plans – a structure below 45' in height that is located at its closest point 5' from the site's Inwood Road front property line (or 10' into the 15' front yard setback); and a structure above 45' in height that is located at its closest point 5' from the site's Inwood Road front property line (or 30' into the 35' urban form front yard setback for portions of a structure that exceeds 36' in height).

STAFF ANALYSIS (related to the parking special exception):

- 81 percent of the required off-street parking spaces (76 of 94 spaces) are proposed to be provided in conjunction with constructing and maintaining a 92 room hotel on the site.
- Granting this request, subject to the condition that the special exception of 18 spaces automatically and immediately terminates if and when the hotel or motel use

is changed or discontinued, would allow the site to be developed with the proposed 92 room hotel.

- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed hotel or motel use does not warrant the number of off-street parking spaces required, and
 - The special exception of 18 spaces (or 19% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The City's Development Services Senior Engineer has commented that he no longer has objections to the request based on a July parking study that was submitted by the applicant.

BOARD OF ADJUSTMENT ACTION: JUNE 11, 2007

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 067-086**, hold this matter under advisement until **August 13, 2007**.

SECONDED: **Moore**

AYES: 4– Madrigal, Boyd, Moore, Maten

NAYS: 0–

MOTION PASSED: 4-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-086**, on application of Rajan Dudhwala, represented by Masterplan, **grant** the 10-foot variance to the front yard setback regulations for a portion of the proposed structure less than 45 feet in height because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and section drawings is required.

SECONDED: **Jefferson**

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0(unanimously)

MOTION #2: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-086**, on application of Rajan Dudhwala, represented by Masterplan, **grant** the 30-foot variance to the urban form front yard setback regulations for a portion of the proposed structure greater than 45 feet in height because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and section drawings is required.

SECONDED: **Jefferson**

AYES: 4 – Madrigal, Moore, Maten, Jefferson

NAYS: 1– Boyd

MOTION PASSED: 4-1

MOTION #3: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 067-086** on application of Rajan Dudhwala, represented by Masterplan, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 18 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed uses on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 18 spaces shall automatically and immediately terminate if and when the hotel or motel use on the site is changed or discontinued.

SECONDED: **Jefferson**

AYES: 4 – Madrigal, Moore, Maten, Jefferson

NAYS: 1– Boyd

MOTION PASSED: 4-1

FILE NUMBER: BDA 067-106(J)

BUILDING OFFICIAL'S REPORT:

Application of Julia Fraga, represented by Masterplan, for a special exception to the fence height regulations at 1511 N. Buckner Blvd. This property is more fully described as Lot 1 in City Block H/5316 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 6 foot 10 inch fence in the required front yard setback which will require a special exception of 2 feet 10 inches.

LOCATION: 1511 N. Buckner Blvd

APPLICANT: Julia Fraga, represented by Masterplan

REQUEST:

- A special exception to the fence height regulations of 2' 10" is requested in conjunction with constructing and maintaining a 6' high solid cedar with 6' 10" polyvinyl fence posts and five 6' high brick columns in the site's 30' Hermosa Drive front yard setback. (The site is 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 applicant previously requested a fence special exception in April and June 2007. The first request was to maintain a 6' high solid polyvinyl with 6'10" polyvinyl posts and five 6' high brick columns. The second request was the same height and materials of the existing fence with the addition of landscaping in the 3' between the fence and property line. Both cases were denied without prejudice.
- The present application is proposing to maintain the 6'10" polyvinyl posts and five 6' high brick columns, but to change the fence panel materials from polyvinyl to wood on the portion parallel to Hermosa Drive. The portion perpendicular to Hermosa Drive adjacent to the alley is shown as a 6' high solid polyvinyl fence. No landscaping is shown on the current site plan.
- The subject site is located at the southwest corner of Hermosa Drive and Buckner Boulevard. The site has two front yard setbacks, one along Buckner Boulevard

(given that this frontage is the shorter of the two street frontages) and another along Hermosa Drive due to the requirement that continuity of an established setback must be maintained. The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

- The submitted site plan/elevation shows the location, height, and materials of the existing/proposed fence. The application notes that the applicant proposes to place 6' cedar plank fence with 6'10" posts, but the application and site plan/elevation do not specify the materials of the posts. The applicant's representative has indicated that the 6'10" polyvinyl posts are proposed to remain.
- The site plan also denotes five, "6' high posts" that are have been established by previous case materials and the site visit as brick columns. No elevation of these columns has been submitted.
- The submitted site plan shows that the existing fence in the Hermosa Drive 30' front yard setback has the following additional characteristics:
 - Approximately 140' in length parallel to Hermosa Drive located approximately 3 feet from the property line;
 - Approximately 7' at the driveway intersection, and 20' perpendicular to Hermosa Drive and adjacent to the driveway;
 - Approximately 8' at the alley intersection, and 23' on the "side" perpendicular to Hermosa Drive and adjacent to the alley located approximately 8' from the property line and 3'6" from the alley line; and
 - Five 6' gate posts within the 30' front yard setback on each side of the circular driveway.
- There are two single family homes that would have direct/indirect frontage to the proposed fence located in the Hermosa Drive front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Hermosa Drive and noted one other fence above four (4) feet high which appeared to be located in the front yard setback This fence is located immediately north of the site and appears to be about a 6' high open iron fence. There is no history of fence special exceptions in this area.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000 square feet)
North: R-10(A) (Single family district 10,000 square feet)
South: R-10(A) (Single family district 10,000 square feet)
East: R-10(A) (Single family district 10,000 square feet)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 067-048, 1511 N. Buckner Boulevard (the subject site)
On April 16, 2007, the Board of Adjustment Panel C denied a request for a special exception to fence height regulations of 2' 10" without prejudice. The case report stated that the request was made in conjunction with maintaining a 6' 10" high solid vinyl fence in the site's 30' Hermosa Drive front yard setback.
2. BDA 067-096, 1511 N. Buckner Boulevard (the subject site)
On June 11, 2006, the Board of Adjustment Panel C denied a request for a special exception to fence height regulations of 2' 10" without prejudice. The case report stated that the request was made in conjunction with maintaining a 6' 10" high solid vinyl fence in the site's 30' Hermosa Drive front yard setback.

Timeline:

- June 22, 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.
- July 17, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- July 23, 2007: The Board Senior Planner contacted the applicant's representative and discussed 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 July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting 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:

- There are two single family homes that would have direct/indirect frontage to the proposed fence located in the Hermosa Drive front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Hermosa Drive and noted one other fence above four (4) feet high which appeared to be located in the front yard setback This fence is located immediately north of the site and appears to be about a 6' high open iron fence. There is no history of fence special exceptions in this area.
- As of August 6th, one letter has been submitted in opposition to the special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 10" (whereby the proposal that would exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' 10" with a condition imposed that the applicant complies with the submitted site plan/elevation would assure that the fence and posts would be limited to and maintained with the materials and in the location shown on this document (which in this case, is a fence exceeding 4' in height in the site's Hermosa Drive front yard setback only).

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR:

Santos Martinez, 900 Jackson St., #640, Dallas, TX
Daniel Schmalzer, 1421 El Campos, Dallas, TX
Dean Malone, 1439 Sereno Drive, Dallas, TX
Curtis Gafford, 1435 N Buckner, Dallas, TX
Jerry Wolfe, 1419 Sereno, Dallas, TX

APPEARING IN OPPOSITION:

Virginia Burke, 10001 Chimney Hill, Dallas, TX
Phil Mendershausen, 9425 Hermosa Dr., Dallas, TX
Jennifer Rodas, 8807 Eustis, Dallas, TX

Robert Sherman, 1410 Billa Vista, Dallas, TX
Richard Cartwright, 1516 N Buckner, Dallas, TX
Jim Moriarty, 9425 Hermosa, Dallas, TX
Dee Van Leer, 11303 Joaquin Dr., Dallas, TX
Lynn Foster, 9320 Redondo, Dallas, TX

Break: 2:26 P.M.
Resumed: 2:38 P.M.

MOTION #1: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 067-106**, on application of Julia Fraga, represented by Masterplan, **grant** the request of this applicant to construct and maintain a six-foot-10-inch-tall 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation dated June 15, 2007 is required including the landscape plan and poly vinyl fence.

SECONDED: Jefferson
AYES: 3– Madrigal, Boyd, Jefferson
NAYS: 2– Maten, Moore
MOTION FAILED: 3-2

MOTION #2: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 067-106**, on application of Julia Fraga, represented by Masterplan, **grant** the request of this applicant to construct a six-foot-10-inch-tall 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation is required including the landscaping from the landscape plan dated June 15, 2007.

SECONDED: Moore
AYES: 5– Madrigal, Boyd, Maten, Moore, Jefferson
NAYS: 0–
MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 067-108

BUILDING OFFICIAL’S REPORT:

Application of Jason Osterberger Designs, LLC, represented by Karen Killgo, for special exceptions to the fence height and visibility obstruction regulations at 4835 N. Lindhurst Avenue. This property is more fully described as Lot 2 in City Block 1/5531 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 7 foot 9 inch fence in a required front yard setback which will require a 3 foot 9 inch special exception to the fence height regulations. In addition, the applicant proposes to locate and maintain items in visibility triangles which will require special exceptions to the visibility obstruction regulations.

LOCATION: 4835 N. Lindhurst Avenue

APPLICANT: Jason Osterberger Designs, LLC
Represented by Karen Killgo

August 13, 2007 Public Hearing Notes:

- The applicant's representative submitted a full landscape plan to the board at the public hearing.

REQUESTS:

- The following appeals have been made in this application:
 1. A special exception to the fence height regulations of 3' 9" is requested in conjunction with constructing and maintaining a 6' high open wrought iron fence with 6' 9" high metal columns, and a 7' 9" high open wrought iron gate with 7' 9" high cast stone entry columns in the site's 40' front yard setback.
 2. Special exceptions to the visibility obstruction regulations are requested in conjunction with locating and maintaining a portion of the fence, entry columns, and landscape materials in the site's two 20' visibility triangles at the drive approach into the site from N. Lindhurst Avenue.
(The site is being developed with a single family home).

STAFF RECOMMENDATION (related to fence height special exception):

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.

STAFF RECOMMENDATION (related to visibility obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer and Acting Chief Arborist have both indicated that the request to locate/maintain a fence, columns, and landscape materials in the drive approach visibility triangles would constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

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

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and partial elevations indicating a fence/column/gate proposal that would reach a maximum height of 7' 9" in the site's front yard setback.
- The submitted scaled site plan indicate that the proposal in the site's 40' front yard setback has the following additional characteristics:
 - approximately 250' in length parallel to N. Lindhurst Avenue, approximately 39' perpendicular to N. Lindhurst Avenue on the west side of the site;
 - located about 1' from the site's front property line or about 11' from the pavement line; and
 - linear in design.
- A partial site plan has been submitted of the proposal. This partial site plan shows the entryway into the site denoting the fence, gate, driveway, and landscape materials. Although landscape materials are shown on this partial plan, the number of materials and heights are not shown. The City of Dallas Acting Chief Arborist submitted a memo to the Board of Adjustment Chief Planner and Administrator regarding the proposed landscape materials adjacent to the proposal (see Attachment C). This memo generally expressed the arborist's concerns with planting landscape materials adjacent to the fence in the required visibility triangles.
- There is one single family home that would have direct frontage to the proposal. This home has an approximately 6' high open iron fence with approximately 6.5' high columns and approximately 8' high gates. (The Board of Adjustment granted a fence height special exception of 4' at this location in June of 1998 in conjunction with constructing a cast stone/open wrought iron picket fence, stucco or cast stone columns, and gates along North Lindhurst Avenue: BDA 978-186).
- The Board Administrator conducted a field visit of the site and surrounding area along N. Lindhurst Avenue. Other than the fence noted above, one other fence was noted on the block immediately east of the site. This fence is an approximately 6' high open metal fence with approximately 6.5' high stucco columns. (The Board of Adjustment granted a fence height special exception of 3' 4" at this location in April

of 1997 in conjunction with constructing a 6' open metal fence, 6' 4" stucco columns, and a 7' 4" open iron gate: BDA 967-213).

- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a copy of the originally submitted site plan, elevation, and partial elevation;
 - photos of other fences/gates/columns in the area; and
 - three letters in support of the request.

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

- 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 has submitted a site plan that denotes a 32" square cast stone entry columns and about 5' of the proposed 6' high open metal fence that are proposed to be located in the two, 20' visibility triangles at the drive approach into the site from N. Lindhurst Avenue. The applicant has also submitted a partial site plan that shows landscape materials (needlepoint hollies and NRS Holly hedges) to be located/maintained in these triangles, too. Since the heights of these materials are not specified on this plan, staff cannot determine which materials would be located in the visibility triangles. The City of Dallas Acting Chief Arborist submitted a memo to the Board of Adjustment Chief Planner and Administrator regarding the proposed landscape materials adjacent to the proposed fence (see Attachment C). This memo generally expressed the arborist's concerns with planting landscape materials adjacent to the fence in the required visibility triangles.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a copy of the originally submitted site plan, elevation, and partial elevation;
 - photos of other fences/gates/columns in the area; and
 - three letters in support of the request.

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 067-073, 4818 N. Lindhurst Avenue (the lot southwest of the subject site)

On June 12, 2007, the Board of Adjustment Panel A granted requests for a special exception to the fence height regulations of 4' 8" and a special exception to the visibility obstruction regulations imposing the following condition to the requests: Compliance with the submitted revised site plan and elevation is required. The case report stated that the request was made to construct and maintain an approximately 7' 6" high open iron fence with 8' high stone columns, and an approximately 7' 6" high open iron swing gate with 8' 3" high stone entry columns in the site's 40' front yard setback along Lennox Lane; and to maintain two, 8' 3" high stone columns in the site's two 20' visibility triangles at the drive approach into the site from Lennox Lane.
2. BDA 067-015, 4818 N. Lindhurst Avenue (the lot southwest of the subject site)

On January 16, 2007, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' imposing the following condition to the request: Compliance with the submitted revised site plan and elevation is required. The case report stated that the request was made to construct/maintain a 6' high open decorative iron fence with 6.5' high stone columns, an 8' high arched open iron pedestrian gate with 7' high stone columns flanked by two, approximately 10' long, 6' high solid stone wing walls on North Lindhurst and a 6' high decorative iron fence with 6.5' high stone columns, 6' high open iron vehicular gates, and a 7' high stone wall with 8' high columns on Lennox. On May 15, 2007, the Board of Adjustment Panel A waived the two-year time limitation on this request granted in January of 2007.
3. BDA 978-186, 4834 N. Lindhurst Avenue (the lot immediately south of the subject site)

On June 15, 1998, the Board of Adjustment Panel C granted a request for a fence height special exception of 4' and imposed the

following conditions: 1) compliance with the submitted elevation plan and a revised landscape/site plan to be submitted to the Board Administrator indicating no more than a 2' high continuous hedge to be placed along the length of the N. Lindhurst Avenue side of the fence/wall in addition to the landscape materials indicated on the landscape plan dated April 20, 1998 is required; and 2) an intercom at the gate to be operable 24 hours a day, and when in operable, be repaired, is required. The case report stated that the request was made to construct/maintain a cast stone/open wrought iron picket fence, stucco or cast stone columns, and gates along North Lindhurst Avenue.

4. BDA 967-213, 10235 Strait Lane (the lot immediately east of the subject site)

On April 21, 1997, the Board of Adjustment Panel C granted a request for a fence height special exception of 3' 4" to maintain a 6' open metal fence, 6' 4" stucco columns, and a 7' 4" open iron gate. The board imposed the following conditions: compliance with the submitted site plan, elevation plans, and landscape plan (except for the North Lindhurst drive approach visibility triangle). The board denied the applicant's request for a special exception to the visibility obstruction regulations requested to maintain a portion of the fence, gate, and columns in the visibility triangles at the drive approaches and intersection of Strait Lane and N. Lindhurst Avenue.

Timeline:

- June 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2007: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 27th deadline to submit additional evidence for staff to factor into their analysis;
- the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 18, 2007 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachments A and B).

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

Although no review comment sheets with comments were submitted in conjunction with this application, the Acting Chief Arborist submitted a memo on this request – a memo that states his concerns with landscape materials that may be planted/located adjacent to the proposed fence (see Attachment C).

August 1, 2007 The Development Services Senior Engineer submitted a Review Comment Sheet marked "Recommends that this be denied."

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

- A scaled site plan has been submitted that documents the location of the proposed fence, columns, and gate relative to their proximity to the front property line and pavement line. (The fence is shown to be about 250' in length parallel to the street, located about 1' from the front property line and about 11' from the pavement line).
- Partial elevations have been submitted that provides details about the proposal's heights and materials: a 6' high open wrought iron fence with 6' 9" high metal

columns, a 7' 9" high open wrought iron gate with 7' 9" high cast stone entry columns.

- A partial site plan has been submitted of the proposal showing the entryway into the site denoting the fence, gate, driveway, and landscape materials. Although landscape materials are shown on this partial plan, the number of materials and heights are not shown. The City of Dallas Acting Chief Arborist submitted a memo to the Board of Adjustment Chief Planner and Administrator regarding the proposed landscape materials adjacent to the proposal (see Attachment C). This memo generally expressed the arborist's concerns with planting landscape materials adjacent to the fence in the required visibility triangles.
- There is one single family home that would have direct frontage to the proposal. This home has an approximately 6' high open iron fence with approximately 6.5' high columns and approximately 8' high gates. (The Board of Adjustment granted a fence height special exception of 4' at this location in June of 1998 in conjunction with constructing a cast stone/open wrought iron picket fence, stucco or cast stone columns, and gates along North Lindhurst Avenue: BDA 978-186).
- Other than the fence noted above, one other fence was noted on the block immediately east of the site. This fence is an approximately 6' high open metal fence with approximately 6.5' high stucco columns. (The Board of Adjustment granted a fence height special exception of 3' 4" at this location in April of 1997 in conjunction with constructing a 6' open metal fence, 6' 4" stucco columns, and a 7' 4" open iron gate: BDA 967-213).
- As of August 6, 2007, three letters had been submitted in support and no letters had been submitted in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" (whereby the proposed fence, columns, and gate to exceed 4' in height in the site's Lennox Lane front yard setback) will not adversely affect neighboring property.
- Granting this special exception to the fence height regulations of 3' 9" with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

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

- The City of Dallas Acting Chief Arborist submitted a memo to the Board of Adjustment Chief Planner and Administrator regarding the proposed landscape materials adjacent to the proposal (see Attachment C). This memo generally expressed the arborist's concerns with planting landscape materials adjacent to the fence in the required visibility triangles.
- The City's Development Services Senior Engineer has commented that he feels the requests should be denied.
- The applicant has the burden of proof in establishing the following:
 - Granting the special exceptions to the visibility obstruction regulations (whereby, according to the submitted site plan, partial site plan, and elevations, portions of a fence, columns, and landscape materials would be located/maintained in the

two, 20' drive approach visibility triangles at the drive approach into the site from N. Lindhurst Avenue) will not constitute a traffic hazard.

- If these requests are granted, subject to compliance with the submitted site plan, partial site plan, and elevation, the portions of the fence, entry columns and landscape materials “excepted” into the two, 20’ drive approach visibility triangles into the site from N. Lindhurst Avenue would be restricted to the items, location, and materials shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: Jason Osterberger, 3816 Frankford, #535, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Jefferson

I move that the Board of Adjustment, in Appeal No. **BDA 067-108**, on application of Jason Osterberger Designs, LLC, represented by Karen S. Killgo, **grant** the request of this applicant to construct and maintain a seven-foot-nine-inch-tall 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 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, Jefferson

NAYS: 0–

MOTION PASSED: 5-0(unanimously)

MOTION #2: Jefferson

I move that the Board of Adjustment, in Appeal No. BDA 067-108, on application of Jason Osterberger Designs, LLC, represented by Karen S. Killgo, **GRANT** the request of this applicant to construct and maintain a fence, entry columns, and landscape materials in a visibility triangle as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. 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, partial site plan, and elevation is required.

SECONDED: Moore

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0(unanimously)

FILE NUMBER: BDA 067-112

BUILDING OFFICIAL’S REPORT:

Application of TCI Woodmont Group IV LP, represented by Kirk Williams and Tommy Mann of Winstead P.C, for a variance to the front yard (urban form) setback regulations and variances to the side yard (tower spacing) setback regulations and for at 12379 Merit Drive. This property is more fully described as tract 13.4 in City Block 7732 and is zoned MU-3 which requires a front yard setback of 35 feet due to the urban form setback regulations and a side yard setback of 17 feet 6 inches due to the tower spacing setback regulations. The applicant proposes to construct a residential structure and provide a 15 foot front yard setback which will require a 20 foot variance to the front yard setback regulations, and provide 10 foot side yard setbacks which will require variances of 7 foot 6 inches to the side yard setback regulations.

LOCATION: 12379 Merit Drive

APPLICANT: TCI Woodmont Group IV LP
Represented by Kirk Williams and Tommy Mann of Winstead P.C

REQUESTS:

- The following appeals have been made in this application in conjunction with constructing and maintaining a maximum 80’ high condominium structure (The Polo Estates at Park Forest) on a site that is undeveloped:
 1. A variance to the urban form front yard setback regulations of 20’ for the portion of the proposed structure above 45’ along Merit Drive (the east side of the site).
 2. A variance to the tower spacing side yard setback regulations of 7’ 6” for the portion of the proposed structure above 45’ on the west side of the site.

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the site is slightly irregular in shape, with a slight grade change (about 25’ over an approximately 480’ width), and two front yard setbacks (typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural) these physical features do not preclude the applicant from developing the approximately 3 acre undeveloped parcel of land/subject site in a manner commensurate with development found on other MU-3 zoned lots while simultaneously complying with zoning code setback requirements.

- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude it from being developed (in this case, with a structure that could meet the applicable development standards including the 35' urban form front yard setback and the 17' 6" tower spacing side yard setback for the portion of the structure that would exceed 45' in height) in a manner commensurate with development found on other MU-3 zoned lots.

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:

- With regard to front yard setbacks, a 15' front yard setback is required in the MU-3 (A) zoning district for portions of a structure 45' in height or less.
The submitted revised site plan denotes a structure that is providing a 15' front yard setback along Merit Drive and Churchill Way for the portion of the structure 45' in height or less.
An urban form front yard setback is required in the MU-3 (A) zoning district where an additional 20' front yard setback must be provided for portions of a structure above 45' in height. (In this case, any portion of a structure over 45' in height would be required to be setback 35' from the site's front property lines on Merit Drive and Churchill Way).
The submitted revised site plan denotes portions of the building that are encroaching into the urban form front yard setback along Merit Drive – where portions of the structure above 45' that are as close as 15' from the site's front property lines along Merit Drive or as much as 20' into the 35' front yard setback required for the portion of the structure over 45' in height. (The revised site plan shows that the portion of the structure over 45' in height on Churchill Way will provide the additional 20' urban form setback).
- With regard to side yard setbacks, no side yard setback is required for the structure on the site less than 45' in height.
The submitted revised site plan denotes a structure this is providing a 10' side yard setback on the west side of the site for the portion of the structure 45' in height or less.

A tower spacing side yard setback is required in the MU-3 (A) zoning district where an additional side yard setback of one foot for each two feet in height over 45 feet must be provided for that portion of a structure above 45' in height for a total setback of 30 feet (which, according to the Building Official's Report, in this case is a setback of 17' 6").

The submitted revised site plan denotes portions of the structure above 45' in height that are as close as 10' from the site's west property line or as much as 7' 6" into the site's 17' 6" side yard setback on the west.

- According to calculations made by the Board Administrator from the submitted site plan, the structure has a building footprint of approximately 460' x 180' (or 82,800 square feet).
- The site has two, 15' front yard setbacks and as well as two, 35' front yard urban form setbacks: a front yard setback and urban form front yard setback on Merit Drive, and another front yard setback and urban form front yard setback on Churchill Way. The front yard setbacks on this MU-3 zoned site are typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural. The site has two, 0 foot side yard setbacks for the portion of a structure 45' in height or less, and two side yard setbacks of 17' 6" for the portion of the structure above 45' in height.
- Although the applicant's representative has described the subject site has having a "severe topography," the submitted "topographic survey" shows about a 25' difference in elevation across the approximately 480' width of the property. In addition, the site is somewhat irregular in shape, and, is approximately 3 acres in area. The site has street frontage on two streets (Merit Drive and Churchill Way), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The site is zoned MU-3 (Mixed Use 3) which allows a structure to reach 270' in height.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A, B, and C). This information included the following:
 - building elevations;
 - a topographical survey; and
 - exhibits displaying the areas in which the variances were granted on the site on a previous case as compared to where they are being requested for this case.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
South: MU-3 (Mixed Use)
East: MU-3 (Mixed Use)
West: MU-3 (Mixed Use)

Land Use:

The subject site is undeveloped. The areas to the north and east are developed with multifamily uses; and the areas to the south and west are developed with office uses.

Zoning/BDA History:

1. BDA056-116, 12379 Merit Drive (the subject site) On May 15, 2006, the Board of Adjustment Panel C denied requests for variances to the front yard setback regulations for the portion of the structure under 45' in height; granted a request for a variance to the urban form front yard setback regulations of 20' for the portion of the structure above 45' in height along Merit Drive; and granted a variance to the tower spacing side yard regulations of 7' 6" along the west side of the site. The board imposed the following conditions their approval: compliance with the submitted revised site plan submitted on April 28, 2006 (and amended per the applicant's request at the May 15th hearing) is required. The case report stated that the requests were made in conjunction with constructing and maintaining a maximum 80' high condominium structure on a site that is undeveloped.

Timeline:

- June 28, 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.
- July 17, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- July 17, 2007: The Board Administrator discussed/emailed the applicant's representative 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 July 27th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the August 3rd 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 27,31 & August 3, 2007: The applicant's representative submitted information beyond what was submitted with the original application (see Attachments A, B, and C).

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting 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:

- Two variances have been made in conjunction with constructing and maintaining an 80' high condominium structure – both of which pertain to the portion of the building that exceeds 45' in height: a variance to the urban form front yard setback regulations of 20' for the portion of the proposed structure above 45' along Merit Drive (on the east side of the site); and a variance to the tower spacing side yard setback regulations of 7' 6" for the portion of the proposed structure above 45' on the west side of the site.
- The subject site is slightly irregular in shape, and about 3 acres in area. The approximately 480' wide subject site has a 25' grade change from east to west. The site has street frontage on two streets (Merit Drive and Churchill Way), and as a result, has two front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The site is zoned MU-3 where structures can reach 270' in height.
- According to calculations made by the Board Administrator from the revised site plans submitted on April 28, 2006, the structure has a building footprint of approximately 95,000 square feet.
- The applicant has the burden of proof in establishing the following related to each of the 2 variance requests:

- That granting the variances to the urban form front and tower spacing side yard setback regulations to construct and maintain a structure in one of the site's two urban form front yard setbacks, and in one of the site's two tower spacing side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variances to the front urban form front yard setback regulations and tower spacing side yard setback regulations to construct and maintain a structure is necessary to permit development of the subject site (an undeveloped site that is about 3 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
- The variances to the urban form front yard setback regulations and tower spacing side yard setback regulations to construct and maintain a structure 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 MU-3 zoning classification.
- If the Board were to grant to the variances, and impose the revised site plan and revised building elevation as a condition to the requests, the areas of encroachments into these setbacks for the proposed 80' high structure would be limited to those areas as shown on these documents: areas in the Merit Drive urban form front yard setback that are as close as 15' from the front property line (or as much as 20' into the 35' setback), and in the tower spacing side yard setback on the west side of the site that is as close as 10' from the western side property line (or as much as 7' 6" into the 17' 6" setback).

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: Kirk Williams, 1201 Elm St., Dallas, TX
Dennis O'Connor, 411 Cecil Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 067-112**, on application of TCI Woodmont Group IV, LP, represented by Kirk Williams and Tommy Mann of Winstead, P.C., **grant** the 20-foot variance to the urban form front yard setback regulations for a portion of the proposed structure greater than 45 feet in height because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as

amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Boyd

AYES: 4– Madrigal, Boyd, Maten, Jefferson

NAYS: 1– Moore

MOTION PASSED: 4-1

MOTION #2: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 067-112**, on application of TCI Woodmont Group IV, LP, represented by Kirk Williams and Tommy Mann of Winstead, P.C., **grant** the seven-and-a-half-foot variance to the tower spacing side yard setback regulations for a portion of the proposed structure greater than 45 feet in height because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Boyd

AYES: 4– Madrigal, Boyd, Maten, Jefferson

NAYS: 1– Moore

MOTION PASSED: 4-1

FILE NUMBER: BDA 067-066

BUILDING OFFICIAL’S REPORT:

Application of Michael Davis and Dwaine Carraway to require compliance of a nonconforming use at 4343 S. Lancaster Road. This property is more fully described as Lot 39A in City Block 4326 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 4343 S. Lancaster Road

APPLICANT: Michael Davis and Dwaine Carraway.

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The Sunset Inn) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
 - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate that the motel use on the subject site became nonconforming on September 30, 1987 (Ordinance No. 19700).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned CR (Community Retail) that permits a "hotel or motel" use by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
 - "Hotel or motel."
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
 - (B) Districts permitted:

- (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
 - (ii) By SUP only in the CR district.
 - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
 - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
 - The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
 - On May 3, 2007, information was submitted on this matter from an unidentified source (see Attachment A). This information included the following:
 - a table entitled "Pt 1 Offenses – 4343 S Lancaster – Sunset Motel" that shows the number and type of offenses in 2004, 2005, 2006, and a portion of 2007;
 - a table entitled "DPD Calls – 4343 S Lancaster – Sunset Motel" that shows "SQLSIG1's" in 2005, 2006, and a portion of 2007.
 (The applicants provided testimony at the May 14th public hearing that they had submitted this information).
 - On May 4, 2007, the attorney for the owner of the nonconforming motel use on the subject site submitted information to the Board Administrator (see Attachment B). This information included the following:
 - a "motion for continuance" and related information; and
 - 10 photos of the site and neighboring area across from/and adjacent to the site on Lancaster Road.
 - The Board of Adjustment conducted a public hearing on the matter on May 14th. The applicants established that they had submitted the May 3rd information that had been referenced in the case report as "Attachment A." The applicant and the owner of the nonconforming motel use submitted additional written documentation at this public hearing.
 - The board determined at their May 14th hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date August 13, 2007 for the purpose of establishing a compliance date for this nonconforming use.
 - All information submitted by the applicant and owner of the motel (including but not limited to previous attachments entitled "Attachment A" and "Attachment B") related to whether continued operation of the nonconforming motel use would have an adverse effect on nearby properties has been retained in the case file and is available for review upon request.

- On May 17, 2007, a subpoena duces tecum and interrogatories were sent to the owner of the nonconforming motel use.
- On June 18 and 27, 2007, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories (see Attachment C).
- On August 3, 2007, a document was submitted to the Board Administrator entitled “The Sunset Motel BDA067-066 As of December 31, 2006” (see Attachment D). The document was prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner’s capital investments in structures, fixed equipment and other assets at the Sunset Motel made prior to the use becoming nonconforming, have been amortized. This document explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the operation of the Sunset Motel has exceeded the maximum amount of costs required to bring the property into conformance, and therefore, no additional time is necessary for the Sunset Motel to operate to recover costs necessary to bring the property into conformance.

BACKGROUND INFORMATION:

Zoning:

- Site: CR (Community Retail)
- North: CR (Community Retail)
- South: CR (Community Retail)
- East: R-7.5(A) (SUP 173) (Single family district, Specific Use Permit for Temporary Water Pump)
- West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The site is currently developed with a motel use (The Sunset Inn). The areas to the north is developed with a community service center use (The Urban League); the area to the east is developed with a hospital use (The Veterans Hospital); the area to the south is developed with a motel use (The Southern Comfort Motel), and the area to the west is developed with a cemetery and single family uses.

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA 92T-015, 4343 S. Lancaster Road (the subject site) | <p>On April 28, 1992, the Board of Adjustment provided a termination date of October 31, 1992 for the nonconforming motel being operated on the site. Records show that this decision was appealed to District Court. The City Attorney’s Office informed the Board Administrator in March of 2005 that the board’s order on this case (and a series of others for nonconforming motel uses made in the early 90’s) “should be treated</p> |
|---|--|

an unenforceable.”

Timeline:

March 15, 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.

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

April 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 May 4th 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 May public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

April 19, 2007: The Board Administrator wrote/sent the owner of the site (Ankita Patel) a certified letter that informed them that a Board of Adjustment case had been filed against her property. The letter included following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);

- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the date, time, and location of the briefing/public hearing.

April 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Assistant Director for Current Planning, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

May 3, 2007 Additional information was submitted in conjunction with the appeal from an unknown source (see Attachment A).

May 4, 2007 The attorney for the owner of the nonconforming motel use on the subject site submitted additional information to the Board Administrator (see Attachment B).

May 14, 2007: The Board of Adjustment conducted a public hearing on this appeal. The board determined based on the evidence and testimony presented to them at the public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date August 13, 2007 for the purpose of establishing a compliance date for this nonconforming use.

May 17, 2007: A subpoena duces tecum and interrogatories were sent to the owner of nonconforming use on the subject site.

June 18 & 28, 2007: The owner of the nonconforming use on the subject site submitted answers and responses to the subpoena duces tecum and interrogatories (see Attachment C).

July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code

Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.

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

August 3, 2007: A document was submitted to the Board Administrator prepared by a company retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets at the Sunset Motel made prior to the use becoming nonconforming, have been amortized (see Attachment D).

STAFF ANALYSIS:

- The motel use on the subject site is a nonconforming use. According to city records, the motel use became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- On May 14, 2007, the Board of Adjustment determined at their public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby property, and set a hearing date of August 13, 2007 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's August 13th public hearing is to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use).
- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

- Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
- Any return on investment since inception of the use, including net income and depreciation.
- The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- On June 18 and 28, 2007, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories (see Attachment C).
- On August 3, 2007, a document was submitted to the Board Administrator prepared by VALUE Incorporated, a company that the document describes as one that was retained by the City of Dallas to conduct an independent analysis to determine the extent to which the owner's capital investments in structures, fixed equipment and other assets at the Sunset Motel made prior to the use becoming nonconforming, have been amortized. This document explains, among other things, its methodology for concluding that it is in their opinion that the income generated by the operation of the Sunset Motel has exceeded the maximum amount of costs required to bring the property into conformance, and therefore, no additional time is necessary for the Sunset Motel to operate to recover costs necessary to bring the property into conformance.

BOARD OF ADJUSTMENT ACTION: MAY 14, 2007

APPEARING IN FAVOR:

Waine Caraway, 1934 Argyle, Dallas, TX
 Michael Davis, Box 720-181, Dallas, TX
 Bishop Larry McGriff, 2249 E Illinois Ave., Dallas, TX
 Willie Ards, 4119 Kushla Ave., Dallas, TX
 Melba Williams, 1406 Carson St., Dallas, TX
 Velma Millender, 1407 Laura Lane., Dallas, TX
 Bobbie McGee, 2254 Stovall Dr., Dallas, TX

APPEARING IN OPPOSITION:

Randall Reed, 6440 N. Central Expwy., #700, Dallas, TX
 Ankita Patel, 4343 S. Lancaster Rd., Dallas, TX

MOTION #1: Boyd

I move that the Board of Adjustment in Appeal No. **BDA 067-066**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Scott

AYES:5–Madrigal, Boyd, Maten, Scott, Gomez

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

MOTION#2: Boyd

I move that the Board of Adjustment in Appeal No. **BDA 067-066**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, and set a hearing date of **August 13, 2007** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: **Scott**

AYES: 5–Madrigal, Boyd, Maten, Scott, Gomez

NAYS: 0–

MOTION PASSED: 5-0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR: Robert Bridges, 4532 Postbridge Dr., Plano, TX
Michael Davis, P.O. Box 720181, Dallas, TX

APPEARING FOR THE CITY: Dan Weir, 1713 S Ervay, #101, Dallas, TX

APPEARING IN OPPOSITION: Randall Reed, 6440 N Central Expy, #70, Dallas, TX

MOTION: **Boyd**

I move that the Board of Adjustment, in Appeal No. **BDA 067-066**, provide a compliance date of **August 13, 2007** for the nonconforming hotel or motel use currently being operated on the property located at **4343 South Lancaster Road**, because the facts and testimony show that the owner’s actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner’s certificate of occupancy for the hotel or motel use be revoked on **August 31, 2007**, unless the hotel or motel use becomes a conforming use.

SECONDED: **Jefferson**

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0(unanimously)

FILE NUMBER: BDA 067-101

BUILDING OFFICIAL’S REPORT:

Application of Michael Davis and Dwaine Carraway to require compliance of a nonconforming use at 4411 S. Lancaster Road. This property is more fully described as Lot 8 in City Block 30/4328 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 4411 S. Lancaster Road

APPLICANT: Michael Davis and Dwaine Carraway

August 13, 2007 Public Hearing Notes:

- The applicant submitted additional written information to the board at the public hearing.

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The Southern Comfort Motel) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(b) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(x) The manner in which the use is being conducted.

(xi) The hours of operation of the use.

(xii) The extent to which continued operation of the use may threaten public health or safety.

(xiii) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

(xiv) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

- (xv) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (xvi) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (iii) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (iv) The following factors must be considered by the board in determining a reasonable amortization period:
- (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
- (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
- (cc) Any return on investment since inception of the use, including net income and depreciation.
- (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate that the motel use on the subject site became nonconforming on September 30, 1987 (Ordinance No. 19700).
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned CR (Community Retail) that permits a "hotel or motel" use by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):

- "Hotel or motel."
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
 - (B) Districts permitted:
 - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
 - (ii) By SUP only in the CR district.
 - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
 - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- On August 3, 2007, the owner of the motel submitted information to the Board Administrator on this application (see Attachment A). This information included the following:
 - photographs of the property and surrounding area;
 - a letter from the owner of the motel that explains additional details about the request;
 - two years of police calls; and
 - support letters from neighbors.
- On August 3, 2007, the applicants submitted additional information to the Board Administrator (see Attachment B). This information included an amended application.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: R-7.5(A) (SUP 173) (Single family district, Specific Use Permit for Temporary Water Pump)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The site is currently developed with a motel use (The Southern Comfort Motel). The areas to the north is developed with a motel (The Sunset Motel); the area to the east is

developed with a hospital use (The Veterans Hospital); the area to the south is developed with a commercial use; and the area to the west is developed with undeveloped land and single family uses.

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA 92T-015, 4343 S. Lancaster Road (the lot immediately north of the subject site) | On April 28, 1992, the Board of Adjustment provided a termination date of October 31, 1992 for the nonconforming motel being operated on the site. Records show that this decision was appealed to District Court. The City Attorney's Office informed the Board Administrator in March of 2005 that the board's order on this case (and a series of others for nonconforming motel uses made in the early 90's) "should be treated as unenforceable." |
| 2. BDA 067-066, 4343 S. Lancaster Road (the lot immediately north of the subject site) | On May 14, 2007, the Board of Adjustment Panel C found that continued operation of the nonconforming use on the site would have an adverse effect on nearby properties, and set a hearing date of August 13, 2007 for the purpose of establishing a compliance date for this nonconforming use. |

Timeline:

- March 15, 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.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2007: The Board Administrator wrote/sent the owner of the site (Jalian Investments, Inc.) a letter (with a copy to the applicants) that informed them that a Board of Adjustment case had been filed against her property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
 - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
 - a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));

- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the date, time, and location of the briefing/public hearing, and provided a deadline of August 3rd to submit any information that would be incorporated into the board’s docket.

July 30, 2007:

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

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

August 3, 2007

The owner of the motel on the site submitted information on this application (see Attachment A).

August 3, 2007

The applicants submitted additional information on this application (see Attachment B).

STAFF ANALYSIS:

- The motel use on the subject site is a nonconforming use. According to city records, the motel use became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site’s existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of

commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.

- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.

The purpose of the Board of Adjustment's August 13th public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR:

Dwaine Carraway, 1934 Argyle, Dallas, TX
Michael Davis, 1934 Argyle, Dallas, TX
Bishop Larry McGriff, Lancaster Rd, Dallas, TX
Beverly Mitchell Brooks, 4315 S. Lancaster, Dallas, TX
Anthony Green, 4343 Bonnie View, Dallas, TX
Claudia Fowler, 4531 Solar Lane, Dallas, TX
Bobby McGee, 2254 Stovall Dr., Dallas, TX

APPEARING IN OPPOSITION:

Frank Hernandez, 7161 Wayne St., Dallas, TX
Piyush Patel 4403 S Lancaster, Dallas, TX
Al Lipscomb, 830 Clearwood, Dallas, TX
Mel Jackson, 3714 S Marsalis, Dallas, TX
Aaron Shaw, 4338 Lashir, Dallas, TX
Kishori Patel, 4403 S Lancaster, Dallas, TX
Sean Craig, 4703 S Lancaster, Dallas, TX

MOTION: Moore

I move that the Board of Adjustment in Appeal No. **BDA 067-101**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, and set a hearing date of **October 15, 2007** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: Boyd

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0(unanimously)

MOTION: Moore

I move to adjourn this meeting.

SECONDED: **Boyd**

AYES: 5 – Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

6:10 P. M. - Board Meeting adjourned for **August 13, 2007**.

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.