

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, L1FN AUDITORIUM
MONDAY, SEPTEMBER 18, 2006**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Danny Sipes, Development Code Specialist, Mike Sultan, Chief Arborist and Trena Law, Board Secretary

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

10:12 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 18, 2006** docket.

1:07 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 August 14, 2006 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

MOTION: Scott

I move **approval** of the Monday, August 14, 2006 public hearing minutes.

SECONDED: Moore

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-216

BUILDING OFFICIAL’S REPORT:

Application of Randy Vargo for a special exception to the landscape regulations at 3839 McKinney Avenue. This property is more fully described as Lot 1 in City Block 1/982 and is zoned PD-305 which requires mandatory landscaping for new construction. The applicant proposes to construct a structure and provide an alternate landscape plan which would require a special exception to the landscape regulations.

LOCATION: 3839 McKinney Avenue

APPLICANT: Randy Vargo

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final CO (Certificate of Occupancy) and building permit on a site developed with a mixed use development (Gables West Village).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City's Chief Arborist supports the landscape special exception request.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS
IN PD No. 305:**

The board may grant a special exception to the landscaping requirements of the Landscaping Requirements section of Planned Development District No. 305 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:

- The Landscaping Requirements of PD No. 305 includes a provision stating that a landscape plan for each building site must be submitted to and approved by the city plan commission; that the landscape plan must be submitted to the commission with the detailed development plan for that building site; and that this section shall become applicable to all uses (other than single family and duplex uses in detached structures or single family attached structures in Subdistrict A of the West Residential Subzone) on a individual lot when work on the lot is performed that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot.

The applicant is proposing an alternate landscape plan that does not fully comply with the landscaping requirements of PD No. 305, specifically a landscape plan where, according to the City of Dallas Chief Arborist, the applicant is requesting relief from the site tree, street tree, design standard, planting area, and sidewalk requirements.

- The 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 site tree, street tree, design standards, planting area, and sidewalk requirements.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide one, 2" diameter site tree for every 4,000 square feet of lot area (which on this site is 12 trees)
The applicant is proposing to provide 8, 3" diameter trees.
 2. The applicant is required to provide one, 3.5" diameter street tree for every 25' of street frontage (which on this site is 25 trees)
The applicant is proposing to provide 23, 5" diameter trees.
 3. The applicant is required to provide 2 design standards.
The applicant is proposing to provide only 1 complete design standard: originally proposed enhanced vehicular paving (which requires the concrete to

be both stamped and stained) when the area identified as enhanced paving is only stained.

4. The applicant is required to designate 20% of the lot as “landscape site area” (which on this site is 9,606 square feet).
The applicant is proposing to provide a 6,274 square foot “landscape site area.”
5. The applicant is required to designate 50% of the lot as “general planting area” (which on this site is 4,803 square feet).
The applicant is proposing to provide a 1,457 square foot “general planting area.”
6. The applicant is required to designate 20% of the parkway as “parkway planting area” (which on this site is 679 square feet).
The applicant is proposing to provide 126 square feet.
7. The applicant is required to provide an 8’ wide sidewalk.
The applicant is proposing to provide a 6’ wide sidewalk.

Factors for consideration:

- The site previously went before the City Plan Commission seeking approval of a development plan and a landscape plan. Both plans were approved. During final landscape inspection, the city arborists determined that the as-built landscaping did not meet the CPC-approved landscape plan. After the applicant sought a minor amendment to correct the landscape issue, the city attorney ruled that the original CPC-approved landscape plan was approved in error because the plan did not meet the minimum landscape requirements of PD No. 305. The applicant is now seeking a special exception and, if approved, will then return to the CP for a minor amendment to the landscape plan.
- The arborist recommends approval.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 305 (Planned Development District)
North: PD No. 305 (Planned Development District)
South: PD No. 305 (Planned Development District)
East: PD No. 305 (Planned Development District)
West: PD No. 305 (Planned Development District)

Land Use:

The subject site is developed with a mixed use development (Gables West Village). The areas to the north, east, south, and west are developed with a mix of office, retail, and residential uses.

Zoning/BDA History:

1. BDA034-102, 3102 Blackburn Street (the subject site) On January 21, 2004, the Board of Adjustment Panel B granted a request for a

variance to the front yard setback regulations of 2', granted a request for a variance to the floor area ratio regulations of 0.6; and granted a request for a variance to the parking setback regulations of 17'.

Timeline:

- August 3, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 17, 2006: 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 August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

August 30, 2006 The 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:

- An alternate landscape plan has been submitted with this request that, according to the City of Dallas Chief Arborist, is not fully complying with site tree, street tree, design standard, planting area, and sidewalk requirements of PD No. 305.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate plan has been submitted that, according to the Chief Arborist, is providing 8 of the required 12 site trees; 23 of the required 25 street trees; 1 of 2 required design standards; 6,274 square feet of the required 9,606 square foot landscape site area; 1,457 square feet of the required 4,803 square foot general planting area; 126 square feet of the required 679 square foot parkway planting area; and a 6' wide sidewalk when an 8' wide sidewalk is required) will not compromise the spirit and intent of the landscaping requirements of PD No. 305.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the final building permit and Certificate of Occupancy could be issued on the site, where the site would be "excepted" from full compliance to the site tree, street tree, design standard, planting area, and sidewalk requirements of PD No. 305

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

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:

- This special exception allows the applicant to provide only:
 - Eight, three inch diameter site trees
 - Twenty three, five-inch diameter street trees
 - One design standard
 - 6,274 square feet for a "landscape site area."

- 1,457 square feet for a “general planting area.”
- 126 square feet for a “parkway planting area.”
- A six foot wide sidewalk
- The applicant must meet all other landscape requirements of PD 305.
- If additional landscaping requirements are triggered by future development, the applicant must meet those additional landscaping requirements.

SECONDED: Boyd

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-180

BUILDING OFFICIAL’S REPORT:

Application of Stephen Akin for a special exception to the fence height regulations at 5110 Meaders Lane. This property is more fully described as Lot 1 in City Block 5517 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 the required front yard setback which would require a special exception of 4 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602(a)(6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5110 Meaders Lane

APPLICANT: Stephen Akin

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining an 8’ high board on board fence/wall and gate in the site’s Inwood Road 40’ front yard setback on a site developed with a single family home.

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 site plan and elevation indicating a fence/wall that would reach a maximum height of 8'.

- The subject site has two front yard setbacks: one along Meaders Lane, the other along Inwood Road. The only front yard setback where a fence is proposed to exceed 4' in height is the site's Inwood Road front yard setback.
- The following additional information was gleaned from the originally submitted site plan:
 - The proposed fence/wall located in the Inwood Road 40' front yard setback would be approximately 145' in length parallel to Inwood Road and 35' in length on the two sides perpendicular to Inwood Road.
 - The proposed fence/wall is to be located about 5' from the Inwood Road front property line or about 30' from the Inwood Road pavement line.
- The following additional information was gleaned from the originally submitted elevation plan:
 - A notation of "Mixture of trees & crepe myrtle" on the street side of the fence/wall.
- Fence/wall materials were not specified on either the originally submitted site plan or elevation.
- There appears to be only one single family home across the four lane divided Inwood Road that would have frontage to the proposed Inwood Road fence/wall, and one single family home across Meaders Lane that would have frontage to the proposed fence/wall in the Inwood Road front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Inwood Road (approximately 500 to the north and south of the site) and noted one other visible fences/entry gate above four (4) feet high which appeared to be located in the front yard setback. This fence/entry gate was located immediately southwest of the subject site and appeared to be 8' -12' in height.
- The Board of Adjustment held a public hearing on this matter on August 14, 2006. The applicant amended the originally submitted site plan and elevation by noting that the fence would be constructed with board on board cedar or equivalent material (see Attachment A). The board delayed action until September 18th in order for the applicant to consider/provide a landscape plan that would denote landscape materials to be planted on the street side of the proposed Inwood Road wall.
- The applicant submitted a "Landscape Plan" on September 5, 2006 (see Attachment B). This plan denoted a series of landscape materials to be planted near the proposed wall. The following materials were noted to be planted on the street side of the proposed Inwood Road wall:
 - 4 Crape Myrtles;
 - 2 Live Oaks (or Bald Cypress); and
 - Evergreen vine.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 ac (A) (Single family district 1 acre)
North: R-1 ac (A) (Single family district 1 acre)
South: R-1 ac (A) (Single family district 1 acre)

East: R-1 ac (A) (Single family district 1 acre)
West: R-1 ac (A) (Single family district 1 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:

1. BDA 89-021, 5110 Meaders Lane (the subject site) On March 14, 1989, the Board of Adjustment granted a request for a special exception to the fence height regulations of 2' 7" and imposed the following conditions: The fence shall be setback 4 feet along Inwood Road; and evergreen shrubs planted on the outside of the fence along Inwood Road and Meaders Lane should be in compliance with the submitted landscape plan dated March 2, 1989. The case report stated that the request was made to locate a 6' high solid wood (board and batten style) fence with 6' 7" high columns approximately 4' from the property line along Inwood Road.

Timeline:

- June 22, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (A color photo submitted with the application and described as "Inwood Side: Proposed Look of Berm" will be available for review at the briefing/public hearing).
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 12, 2006: 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 July 24th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;

- the August 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 26, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

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

August 14, 2006: The Board of Adjustment conducted a public hearing on the request but delayed action until their next scheduled public hearing to be held on September 18, 2006. (The applicant amended the originally submitted site plan and elevation by noting that the fence/wall would be constructed with board on board cedar or equivalent material). (See Attachment A).

August 22, 2006: The Board Administrator wrote the applicant a letter that conveyed the August 14th action taken by the board, and informed the applicant of the September 8th deadline to submit a more detailed landscape plan of what he intends to install/maintain on the street side of the proposed wall along Inwood Road.

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

Sept. 6, 2006

The applicant submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- A revised scaled site plan has been submitted that documents the location of the entire proposed fence/wall in the site's Inwood Road front yard setback (about 145' long parallel to Inwood Road and 35' long on the two sides perpendicular to Inwood Road), and its location relative to the front property line (about 5' off) and pavement line (about 30' off).
- A revised scaled elevation has been submitted that denotes the maximum height of the proposed fence/wall (8'- 0") with a notation of landscape materials to be placed on the street side of the proposed fence/wall: "Mixture of trees & crepe myrtle".
- A "Landscape Plan" has been submitted that denotes the following landscape materials to be planted on the street side of the proposed Inwood Road wall: 4 Crape Myrtles, 2 Live Oaks (or Bald Cypress), and an Evergreen vine.
- The revised submitted site plan and elevation specify the building materials of the proposed fence/wall: board on board cedar or equivalent material.
- There appears to be only one single family home across the four lane divided Inwood Road that would have frontage to the proposed Inwood Road fence/wall, and one single family home across Meaders Lane that would have frontage to the proposed fence/wall in the Inwood Road front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Inwood Road (approximately 500 to the north and south of the site) and noted one other visible fences/entry gate above four (4) feet high which appeared to be located in the front yard setback. This fence/entry gate was located immediately southwest of the subject site and appeared to be 8' -12' in height.
- As of September 11th, one letter had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposed 8' high board on board fence/wall and gate) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted revised site plan, revised elevation, and landscape plan would assure that the proposed fence/wall and gate would be constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARING IN FAVOR: Steven Akin, 5110 Meaders Ln., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 056-180**, hold this matter under advisement until **September 18, 2006** so that the applicant may come back with a detailed landscape plan.

SECONDED: **Scott**

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–
MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: Stephen Akin, 5110 Meaders Ln, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment in Appeal No. **BDA 056-180**, on application of Stephen Akin, **grant** the request of this applicant to construct an eight foot high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan, revised elevation, and landscape plan is required.
- The applicant must acquire any licenses required by Property Management to plant in the right-of-way

SECONDED: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-189

BUILDING OFFICIAL’S REPORT:

Application of Robby Rahmani for a special exception to the landscaping regulations at 2816 Thomas Avenue #2. This property is more fully described as Lot 1C in City Block H/573 and is zoned PD-225 which requires mandatory landscaping for new construction. The applicant proposes to construct a single family dwelling and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2816 Thomas Avenue #2

APPLICANT: Robby Rahmani

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a shared access development.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscaping requirements of PD 225, the State-Thomas Special Purpose District, upon making a special finding from the evidence presented that strict compliance with the requirements of this section will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

GENERAL FACTS:

- The landscaping provisions of Planned Development District No. 225, the State-Thomas Special Purpose District, require full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet, increases the floor area by more than 10% or 10,000 square feet, increases the number of buildings, or the number of stories on a lot.
- The applicant has submitted a landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the submitted landscape plan, the 1,604-square foot (0.0368 acres) site will be developed with a single family use (townhouse).
- According to DCAD, the site is developed with 2,357 square foot single family use constructed in 2005.
- The City of Dallas Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner that stated the following:
 - The applicant is seeking a landscape special exception, specifically seeking relief from the point requirements of PD No. 225.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. Required to earn 20 design points; Proposed alternate landscape plan provides enough design elements to earn only 16 points.
 2. Required to provide (1) 4" dia. street tree for every 25' of street frontage within the tree planting zone (between 2.5 and 4') = 1 tree; Proposed alternate landscape plan provides 0 street trees.
 - Factors for consideration:
 1. Original landscape plan was approved under the misunderstanding that this project was one lot and not five individual lots,
 2. Providing 1 street tree w/in 12' of the street curb, and

3. PD 225 allows the board to grant a special exception if strict compliance would cause substantial financial hardship without a corresponding benefit to the city.
- The Board of Adjustment held a public hearing on this matter on August 14, 2006 where the board moved to delay action on the request until their next scheduled public hearing to be held on September 18, 2006. The applicant submitted the following items at the August 14th hearing:
 - photographs of the site and surrounding area (which will be available for review at the September 18th briefing and public hearing);
 - a copy of a landscape checklist prepared by a former City of Dallas Arborist (see Attachment A); and
 - a copy of a stamped site plan that included the subject site and four other adjacent townhomes that are part of the applicant's development (see Attachment A).
 - According to the City's Chief Arborist, the applicant has developed 5 individually platted lots, each with its own townhome. Two of the 5 contiguous townhomes have passed the landscape inspection with the remaining 3 lots not achieving enough points to pass the landscape inspection, hence the requests for landscape special exceptions on the subject site and two other lots immediately adjacent on Thomas Avenue. The Chief Arborist has stated that if the 5 lots were actually 1 lot, the development would have complied with the landscape regulations on a plan that was submitted for building permits and reviewed by the former City of Dallas Arborist. The Chief Arborist stated that the stamped plan that was submitted by the applicant at the August 14th hearing is the plan in which the landscape checklist was prepared, is the plan that most likely is being interpreted by some as "the original plan," and is a plan that was never stamped by a City Arborist.

BACKGROUND INFORMATION:

Zoning:

Site: PD 225 (State-Thomas Special Purpose District)
North: PD 225 (State-Thomas Special Purpose District)
South: PD 225 (State-Thomas Special Purpose District)
East: PD 225 (State-Thomas Special Purpose District)
West: PD 225 (State-Thomas Special Purpose District)

Land Use:

The 1,604-square foot subject site is developed with a single family uses. The areas to the north, south, east, and west are developed with multifamily and single family residential uses. To the northeast, there are some neighborhood retail uses.

Zoning/BDA History:

1. BDA 989-269 On August 16, 1999, the Board of Adjustment granted a variance to the

parking regulations and a variance to the front yard setback regulations at 2812 Thomas.

2. BDA 023-036

On January 28, 2003, the Board of Adjustment granted a variance to the parking regulations for an enclosed parking space at 2812 Thomas.

Timeline:

- June 21, 2006 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2006: The Board Senior Planner contacted the applicant and conveyed 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 August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

- July 28, 2006 Chief Arborist Sultan provided a review comment letter on the request.
- August 14, 2006 The Board of Adjustment conducted a public hearing on this appeal and delayed action until September 18, 2006.
- August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant has submitted an alternate landscape plan that provides the location of the proposed landscaping.
- The request site is adjacent to residential uses to the north, south, east and west.
- The Chief Arborist in his memo recommended approval of the landscape special exception.
- Granting this request, subject to a condition that the applicant comply with the submitted landscape plan, will allow the site to be developed with a townhouse use and provide 16 out of the 20 landscaping points.
- The applicant has the burden of proof to establish that strict compliance with the requirements of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARIN IN FAVOR: Robby Rahamni, 2816 Thomas Ave., #1, Dallas, TX

PEARING IN OPPOSITION: Jack Irwin, 2708 Fairmount, Dallas, TX
Michele Costello, 2806 Thomas Ave., Dallas, TX

MOTION #1: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-189**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: **Scott**

AYES: 4– Boyd, Moore, Scott, Wise

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION #2: Scott

I move that the Board of Adjustment in Appeal No. **BDA 056-189**, on application of Robby Rahmani, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that strict compliance with the landscape regulations of PD No. 225 will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city or its citizens in accomplishing the objectives and purposes of the landscape regulations in PD No. 225. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **No one**

AYES:

NAYS:

***MOTION FAILED FOR LACK OF A SECOND**

MOTION #3: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-189**, on application of Robby Rahmani, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that strict compliance with the landscape regulations of PD No. 225 will not result in substantial financial hardship or inequity to the applicant with sufficient corresponding benefit to the city or its citizens in accomplishing the objectives and purposes of the landscape regulations in PD No. 225.

SECONDED: **No one**

***MOTION FAILED FOR LACK OF A SECOND**

MOTION #4: Wise

I move that the Board of Adjustment in Appeal No. **BDA 056-189**, hold this matter under advisement until **September 18, 2006** so that the original landscape plan that was submitted to the city be presented to the board.

SECONDED: Scott

AYES: 3– Boyd, Moore, Wise

NAYS: 1–Scott

MOTION PASSED: 3 – 1

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-189**, on application of Robby Rahmani, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the landscape regulations of PD No. 225 will not result in substantial financial hardship or inequity to the applicant with sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of the landscape regulations in PD No. 225.

SECONDED: Maten

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-190

BUILDING OFFICIAL’S REPORT:

Application of Robby Rahmani for a special exception to the landscaping regulations at 2816 Thomas Avenue #3. This property is more fully described as Lot 1D in City Block H/573 and is zoned PD-225 which requires mandatory landscaping for new construction. The applicant proposes to construct a single family dwelling and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2816 Thomas Avenue #3

APPLICANT: Robby Rahmani

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a shared access development.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscaping requirements of PD 225, the State-Thomas Special Purpose District, upon making a special finding from the evidence presented that strict compliance with the requirements of this section will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

GENERAL FACTS:

- The landscaping provisions of Planned Development District No. 225, the State-Thomas Special Purpose District, require full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet, increases the floor area by more than 10% or 10,000 square feet, increases the number of buildings, or the number of stories on a lot.
- The applicant has submitted a landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the submitted landscape plan, the 1,604-square foot (0.0368 acres) site will be developed with a single family use (townhouse).
- According to DCAD, the site is developed with 2,357 square foot single family use constructed in 2005.
- The City of Dallas Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner that stated the following:
 - The applicant is seeking a landscape special exception, specifically seeking relief from the point requirements of PD No. 225.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. Required to earn 20 design points; Proposed alternate landscape plan provides enough design elements to earn only 15 points.
 2. Required to provide (1) 4" dia. street tree for every 25' of street frontage within the tree planting zone (between 2.5 and 4') = 1 tree; Proposed alternate landscape plan provides 0 street trees.
 - Factors for consideration:
 1. Original landscape plan was approved under the misunderstanding that this project was one lot and not five individual lots,

2. Providing 1 street tree w/in 12' of the street curb, and
 3. PD 225 allows the board to grant a special exception if strict compliance would cause substantial financial hardship without a corresponding benefit to the city.
- The Board of Adjustment held a public hearing on this matter on August 14, 2006 where the board moved to delay action on the request until their next scheduled public hearing to be held on September 18, 2006. The applicant submitted the following items the August 14th hearing:
 - photographs of the site and surrounding area (which will be available for review at the September 18th briefing and public hearing);
 - a copy of a landscape checklist prepared by a former City of Dallas Arborist (see Attachment A); and
 - a copy of a stamped site plan that included the subject site and four other adjacent townhomes that are part of the applicant's development (see Attachment A).
 - According to the City's Chief Arborist, the applicant has developed 5 individually platted lots, each with its own townhome. Two of the 5 contiguous townhomes have passed the landscape inspection with the remaining 3 lots not achieving enough points to pass the landscape inspection, hence the requests for landscape special exceptions on the subject site and two other lots immediately adjacent on Thomas Avenue. The Chief Arborist has stated that if the 5 lots were actually 1 lot, the development would have complied with the landscape regulations on a plan that was submitted for building permits and reviewed by the former City of Dallas Arborist. The Chief Arborist stated that the stamped plan that was submitted by the applicant at the August 14th hearing is the plan in which the landscape checklist was prepared, is the plan that most likely is being interpreted by some as "the original plan, " and is a plan that was never stamped by a City Arborist.

BACKGROUND INFORMATION:

Zoning:

Site: PD 225 (State-Thomas Special Purpose District)
North: PD 225 (State-Thomas Special Purpose District)
South: PD 225 (State-Thomas Special Purpose District)
East: PD 225 (State-Thomas Special Purpose District)
West: PD 225 (State-Thomas Special Purpose District)

Land Use:

The 1,604-square foot subject site is developed with a single family uses. The areas to the north, south, east, and west are developed with multifamily and single family residential uses. To the northeast, there are some neighborhood retail uses.

Zoning/BDA History:

1. BDA 989-269

On August 16, 1999, the Board of Adjustment granted a variance to the parking regulations and a variance to the front yard setback regulations at 2812 Thomas.

2. BDA 023-036

On January 28, 2003, the Board of Adjustment granted a variance to the parking regulations for an enclosed parking space at 2812 Thomas.

Timeline:

June 21, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 17, 2006: The Board Senior Planner contacted the applicant and conveyed 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 August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 26, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.

- July 28, 2006 Chief Arborist Sultan provided a review comment letter on the request.
- August 14, 2006 The Board of Adjustment conducted a public hearing on this appeal and delayed action until September 18, 2006.
- August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant has submitted an alternate landscape plan that provides the location of the proposed landscaping.
- The request site is adjacent to residential uses to the north, south, east and west.
- The Chief Arborist in his memo recommended approval of the landscape special exception.
- Granting this request, subject to a condition that the applicant comply with the submitted landscape plan, will allow the site to be developed with a townhouse use and provide 15 out of the 20 landscaping points.
- The applicant has the burden of proof to establish that strict compliance with the requirements of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARIN IN FAVOR: Robby Rahamni, 2816 Thomas Ave., #1, Dallas, TX

PEARING IN OPPOSITION: Jack Irwin, 2708 Fairmount, Dallas, TX
Michele Costello, 2806 Thomas Ave., Dallas, TX

MOTION: Wise

I move that the Board of Adjustment in Appeal No. **BDA 056-190**, hold this matter under advisement until **September 18, 2006** so that the original landscape plan that was submitted to the city be presented to the board.

SECONDED: Boyd
AYES: 4– Boyd, Moore, Wise Scott

NAYS: 0–
MOTION PASSED: 4 – 0

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

I move that the Board of Adjustment in Appeal No. **BDA 056-190**, on application of Robby Rahmani, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the landscape regulations of PD No. 225 will not result in substantial financial hardship or inequity to the applicant with sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of the landscape regulations in PD No. 225.

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

FILE NUMBER: BDA 056-191

BUILDING OFFICIAL’S REPORT:

Application of Robby Rahmani for a special exception to the landscaping regulations at 2816 Thomas Avenue #4. This property is more fully described as lot 1E in City Block H/573 and is zoned PD-225 which requires mandatory landscaping for new construction. The applicant proposes to construct a single family dwelling and provide an alternate landscape plan which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-10.110 of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 2816 Thomas Avenue #4

APPLICANT: Robby Rahmani

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a shared access development.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscaping requirements of PD 225, the State-Thomas Special Purpose District, upon making a special finding from the

evidence presented that strict compliance with the requirements of this section will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

GENERAL FACTS:

- The landscaping provisions of Planned Development District No. 225, the State-Thomas Special Purpose District, require full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet, increases the floor area by more than 10% or 10,000 square feet, increases the number of buildings, or the number of stories on a lot.
- The applicant has submitted a landscape plan that does not fully comply with the landscape regulations, specifically a plan where (according to the City of Dallas Chief Arborist) the applicant is requesting relief from portions of the required landscaping.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- According to the submitted landscape plan, the 1,604-square foot (0.0368 acres) site will be developed with a single family use (townhouse).
- According to DCAD, the site is developed with 2,357 square foot single family use constructed in 2005.
- The City of Dallas Chief Arborist submitted a memo to the Board Senior Planner and the Board of Adjustment Chief Planner that stated the following:
 - The applicant is seeking a landscape special exception, specifically seeking relief from the point requirements of PD No. 225.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. Required to earn 20 design points; Proposed alternate landscape plan provides enough design elements to earn only 15 points.
 - Factors for consideration:
 1. Original landscape plan was approved under the misunderstanding that this project was one lot and not five individual lots,
 2. PD 225 allows the board to grant a special exception if strict compliance would cause substantial financial hardship without a corresponding benefit to the city.
- The Board of Adjustment held a public hearing on this matter on August 14, 2006 where the board moved to delay action on the request until their next scheduled public hearing to be held on September 18, 2006. The applicant submitted the following items the August 14th hearing:
 - photographs of the site and surrounding area (which will be available for review at the September 18th briefing and public hearing);
 - a copy of a landscape checklist prepared by a former City of Dallas Arborist (see Attachment A); and

- a copy of a stamped site plan that included the subject site and four other adjacent townhomes that are part of the applicant's development (see Attachment A).
- According to the City's Chief Arborist, the applicant has developed 5 individually platted lots, each with its own townhome. Two of the 5 contiguous townhomes have passed the landscape inspection with the remaining 3 lots not achieving enough points to pass the landscape inspection, hence the requests for landscape special exceptions on the subject site and two other lots immediately adjacent on Thomas Avenue. The Chief Arborist has stated that if the 5 lots were actually 1 lot, the development would have complied with the landscape regulations on a plan that was submitted for building permits and reviewed by the former City of Dallas Arborist. The Chief Arborist stated that the stamped plan that was submitted by the applicant at the August 14th hearing is the plan in which the landscape checklist was prepared, is the plan that most likely is being interpreted by some as "the original plan," and is a plan that was never stamped by a City Arborist.

BACKGROUND INFORMATION:

Zoning:

Site: PD 225 (State-Thomas Special Purpose District)
North: PD 225 (State-Thomas Special Purpose District)
South: PD 225 (State-Thomas Special Purpose District)
East: PD 225 (State-Thomas Special Purpose District)
West: PD 225 (State-Thomas Special Purpose District)

Land Use:

The 1,604-square foot subject site is developed with a single family uses. The areas to the north, south, east, and west are developed with multifamily and single family residential uses. To the northeast, there are some neighborhood retail uses.

Zoning/BDA History:

- | | |
|----------------|--|
| 1. BDA 989-269 | On August 16, 1999, the Board of Adjustment granted a variance to the parking regulations and a variance to the front yard setback regulations at 2812 Thomas. |
| 2. BDA 023-036 | On January 28, 2003, the Board of Adjustment granted a variance to the parking regulations for an enclosed parking space at 2812 Thomas. |

Timeline:

- June 21, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 12, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2006: The Board Senior Planner contacted the applicant and conveyed 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 August 4th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the Chief Arborist, and the Assistant City Attorney to the Board.
- July 28, 2006 Chief Arborist Sultan provided a review comment letter on the request.
- August 14, 2006 The Board of Adjustment conducted a public hearing on this appeal and delayed action until September 18, 2006.
- August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board

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

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

STAFF ANALYSIS:

- The applicant has submitted an alternate landscape plan that provides the location of the proposed landscaping.
- The request site is adjacent to residential uses to the north, south, east and west.
- The Chief Arborist in his memo recommended approval of the landscape special exception.
- Granting this request, subject to a condition that the applicant comply with the submitted landscape plan, will allow the site to be developed with a townhouse use and provide 15 out of the 20 landscaping points.
- The applicant has the burden of proof to establish that strict compliance with the requirements of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this section.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2006

APPEARIN IN FAVOR: Robby Rahamni, 2816 Thomas Ave., #1, Dallas, TX

PPEARING IN OPPOSITION: Jack Irwin, 2708 Fairmount, Dallas, TX
Michele Costello, 2806 Thomas Ave., Dallas, TX

MOTION: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 056-191**, hold this matter under advisement until **September 18, 2006** so that the original landscape plan that was submitted to the city be presented to the board.

SECONDED: **Boyd**

AYES: 4– Boyd, Moore, Wise Scott

NAYS: 0–

MOTION PASSED: 4 – 0

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 056-191**, on application of Robby Rahmani, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the landscape regulations of PD No. 225 will not result in substantial financial hardship or inequity to the applicant with sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of the landscape regulations in PD No. 225.

SECONDED: **Maten**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-211

BUILDING OFFICIAL’S REPORT:

Application of Michael Power, represented by Rob Baldwin, for a special exception to the fence height regulations at 12400 Grovedale (aka 7127 Churchill Way). This property is more fully described as Lot 1C in City Block A/7463 and is zoned R-1/2ac(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 the required front yard setback which would require a special exception of 4 feet.

LOCATION: 12400 Grovedale (aka 7127 Churchill Way)

APPLICANT: Michael Power
Represented by Rob Baldwin

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining an 8’ high stone wall with a 8’ high sliding metal and wood gate to be located in the site’s Grovedale Drive 40’ front yard setback on a site 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 site plan and elevation indicating a wall/gate proposal that would reach a maximum height of 8'.
- The following additional information was gleaned from the site plan:
 - The proposed wall/gate located in the 40' front yard setback would be approximately 34' in length located somewhat diagonally to the Grovedale Drive front property line and 40' in length perpendicular to Grovedale Drive on the west side of the subject site.
 - The proposed wall/gate is to be located at a range of 1' – 6' ' from the front property line.
- The elevation of the proposed 8' high stone wall and 8' high metal frame with wood overlay gate submitted with the application was lost in the delivery of the case from to City Hall from Building Inspection at the Oak Cliff Municipal Center. However, on August 25th, the applicant's representative forwarded a copy of the wall/gate elevation to the Board Administrator (see Attachment A).
- No landscape plan or landscape materials have been noted to be provided in conjunction with this proposal.
- There are no single family homes that would have direct frontage to the proposed wall given that the subject site is the only lot that has frontage to Grovedale Drive. (The applicant's representative has described Grovedale Drive as a street that functions a driveway for the applicant and for the owner of the lot immediately west of the subject site – a lot that "fronts" Churchill Way). The lots immediately east of the subject site front east to Pecan Forest Drive, the lots immediately west of the subject site front south to Churchill Way, and the lots immediately south of the subject site front south to Lake Edge Drive.
- The Board Administrator conducted a field visit of the site and surrounding area and noted approximately 9' high solid brick walls to the east and south of the site both of which are most likely permitted by right given that they appear of be located in these lot's side yards.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included the following:
 - a letter that provided additional details about the request; and
 - a copy of letters in support of the request from the owners located immediately east and west of the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2 ac (A) (Single family district 1/2 acre)
North: PD No. 381 (Planned Development District)

South: PD No. 381 (Planned Development District)
East: PD No. 381 (Planned Development District)
West: R-1/2 ac (A) (Single family district 1/2 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:

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

Timeline:

- Undated: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. (Color photos of the site and surrounding area submitted with the application will be available for review at the briefing/public hearing).
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 18, 2006: The Board Administrator emailed the applicant’s representative with 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 August 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 25 & 28, 2006:

The applicant's representative forwarded a copy of the wall/gate elevation that was submitted with the original application (but lost in the delivery of the case file from the Oak Cliff Municipal Center to City Hall) (see Attachment A), and additional information pertaining to this request (see Attachment B).

August 30, 2006:

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

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

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the entire proposed wall/gate in the site's front yard setback (about 34' long diagonally to Grovedale Drive and 40' long on the west side perpendicular to Grovedale Drive), and its location relative to the front property line (about 1' – 6' off).
- A wall/gate elevation has been submitted that denotes the maximum height of the proposed gate/wall (8'- 0") and building materials (wall to be stone to match residence, and gate to be metal frame with wood overlay).
- No landscape plan or notation of landscape materials to be planted adjacent to the wall have been submitted in conjunction with the appeal.
- There are no single family homes that would have direct frontage to the proposed wall given that the subject site is the only lot that has frontage to Grovedale Drive.
- Approximately 9' high solid brick walls were noted east and south of the site, both of which are most likely permitted by right given that they appear of be located in these lot's side yards.
- As of September 8th, two letters had been submitted in support of the request (one from the property owner immediately west of the site, and the other from a property owner immediately east of the site) and no letters had 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 4' (whereby the proposed 8' high wall/gate) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan and elevation would assure that the proposed wall and gate would be constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX
Judd Austin, 1700 Pacific Ave, #2700, Dallas, TX

APPEARING IN OPPOSITION: George Simon, 12219 Pecan Forest Dr., Dallas, TX

MOTION: Maten

I move that the Board of Adjustment in Appeal No. **BDA 056-211**, on application of Michael Power, represented by Rob Baldwin, **grant** the request of this applicant to construct an eight foot high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.
- This special exception does not apply to any portion of the fence outside the property line.
- The fence along the west side of the property will be constructed of stucco rather than stone.

SECONDED: Moore

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-212

BUILDING OFFICIAL’S REPORT:

Application of Stonegate Hood Partners, LP, represented by Rob Baldwin, for a variance to the side yard setback regulations at 2811 Hood Street. This property is more fully described as a tract of land in City Block 1/1024 and is zoned PD-193 which requires a side yard setback of 10 feet. The applicant proposes to construct multifamily dwellings and provide a 0 foot side yard setback which would require a variance of 10 feet.

LOCATION: 2811 Hood Street

**APPLICANT: Stonegate Hood Partners, LP
Represented by Rob Baldwin**

REQUEST:

- A variance to the side yard setback regulations of 10' is requested in conjunction with constructing and maintaining two, 3 story, 3 unit multifamily structures on a site that is currently developed with a vacant, one-story apartment structure.

STAFF RECOMMENDATION:

Approval, subject to compliance with the submitted site plan

Rationale:

- The lot's restrictive area (where the approximately 195' long subject site narrows to 41' in width) and shape preclude its development in a manner commensurate with other developments found on similarly-zoned PD No. 193 (MF-3 Subdistrict) lots.
- Granting the variance, subject to compliance with the submitted site plan, would limit the side yard encroachment to the subject site's east side yard setback, allowing the proposed multifamily structures to be located on the subject site's eastern side property line that would abut to an existing structure on the lot immediately to the east located on its western side property line.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 10' side yard setback is required for multiple-family structures 36' or less in height on MF-3 Subdistrict zoned properties in PD No. 193.
The application states that in Section 51P-193.119(a)(11), a 10-foot side yard setback is required. The applicant has submitted plans indicating two, 3-story structures (both of which are noted on the submitted site plan to be less than 36') on the site's eastern side property line (or 10' into the 10' side yard setback).
- The submitted site plan indicates that "Building A" will be comprised of 3 units with a total of 6,143 square feet, and that "Building B" will be comprised of 3 units with a total of 6,464 square feet. According to calculations made by the Board Administrator from the submitted site plan, "Building A" has a building footprint of 74'

x 40' (or 2,960 square feet) of which 740 square feet would be located in the required 10' side yard, and "Building B" has a building footprint of 90' x 32' (or 2,880 square feet) of which 900 square feet would be located in the required 10' side yard.

- The site is flat, irregular in shape that, according to the application, is 9,576± square feet in area. The site is 50' wide frontage along Hood Street and narrows to approximately 41' in width about midway into the approximately 195' long lot.
- DCAD records indicate that the site is developed with a 3,591 square foot apartment built in 1954.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the request; and
 - photographs of the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
North: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
South: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
East: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
West: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)

Land Use:

The subject site is developed with a vacant one-story multifamily structure. The areas to the north, east, south, and west are developed with residential 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:

- July 28, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 18, 2006: The Board Administrator emailed the applicant's representative with 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 August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

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

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is flat, irregular in shape that, according to the application, is 9,576± square feet in area. The site is 50' wide frontage along Hood Street and narrows to approximately 41' in width about midway into the approximately 195' long lot.
- According to calculations made by the Board Administrator from the submitted site plan, "Building A" has a building footprint of 74' x 40' (or 2,960 square feet) of which 740 square feet would be located in the required 10' side yard, and "Building B" has a building footprint of 90' x 32' (or 2,880 square feet) of which 900 square feet would be located in the required 10' side yard.
- The applicant has the burden of proof in establishing the following related to the front yard variance requests:

- That granting the variance to the side yard setback regulations of 10' on the east side of the subject site requested to construct and maintain two, 3-story, 3-unit multifamily structures will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance to side yard setback regulations of 10' on the east side of the subject site requested to construct and maintain two, 3 story, 3 unit multifamily structures is necessary to permit development of the subject site (a site that is developed with a vacant, one-story apartment structure, and a site that is flat, irregular in shape that, according to the application, is 9,576± square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (MF-3 Subdistrict) zoning classification.
- The variance to side yard setback regulations of 10' on the east side of the subject site requested to construct and maintain two, 3 story, 3 unit multifamily structures would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (MF-3 Subdistrict) zoning classification.
- If the Board were to grant the side yard variance request of 10', imposing a condition whereby the applicant must comply with the submitted site plan, the structures in the setback would be limited to that what is shown on the submitted plan – structures that would be located on the site's eastern side property line (or 10' into the 10' side yard setback).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: Frank M. Stich, 4224 N. Hall St, Dallas, TX

MOTION #1: Boyd

I move that the Board of Adjustment in Appeal No. **BDA 056-212** on application of Stonegate Hood Partners, LP., represented by Rob Baldwin, **deny** the variance requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: NO ONE

***MOTION FAILED FOR LACK OF A SECOND**

MOTION #2: Moore

I move that the Board of Adjustment in Appeal No. **BDA 056-212** on application of Stonegate Hood Partners, LP., represented by Rob Baldwin, **grant** the ten foot variance to the side yard setback regulations, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Maten

AYES: 4– Madrigal, Moore, Maten, Scott

NAYS: 1–Boyd

MOTION PASSED: 4– 1

FILE NUMBER: BDA 056-182

BUILDING OFFICIAL'S REPORT:

Application of Metrotown Homes LP., represented by Blane Ladymon, for variances to the front yard setback regulations at 3824 Brown Street. This property is more fully described as Lots 17 and 18 in City Block1/1337 and is zoned PD-193 (O-2 Subdistrict) which requires a front yard setback of 20 feet. The applicant proposes to construct a multifamily dwelling and provide a 15 foot front yard setback which would require a variance of 5 feet.

LOCATION: 3824 Brown Street.

APPLICANT: Metrotown Homes LP.
Represented by Blane Ladymon

REQUEST:

- Variances to the front yard setback regulations of 5' are requested in conjunction with constructing and maintaining three, 3-story townhomes (each with an approximately 625 square foot building footprint) on a site that is currently undeveloped.

STAFF RECOMMENDATION:

Denial

Rationale:

- The subject site is flat, rectangular in shape (100' x 55'), and 5,500 square feet in area. Although the site has two front yard setbacks, this characteristic is not of any distinction for any lot that has street frontage and that is not zoned single family, duplex, or agricultural.
- The applicant has not substantiated how the site's area, shape or slope precludes its development in a way where the applicable development standards can not be met.
- The applicant has not provided any evidence to substantiate how these variances are necessary to develop this parcel of land (a parcel that is different from other PD No. 193 O-2 Subdistrict zoned lots) whereby the lot's restrictive area, shape or slope precludes its development in a manner commensurate with other developments found on other similarly-zoned lots.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to

special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- A 20' front yard setback is required in the PD No. 193 (O-2 Subdistrict) zoning district.
The applicant proposes to construct and maintain three, 3-story townhomes in the site's two front yard setbacks. The 2nd and 3rd floors of structures are proposed to be located 15' from the Shelby Avenue front property line (or 5' into the 20' front yard setback), and the 1st, 2nd, and 3rd floors of the townhomes would be located 15' from the Brown Street front property line (or 5' into the 20' front yard setback).
- The submitted site plan denotes that the combined building footprint of the three townhomes to be 1,875 (25' wide and 75' long). According to calculations made by the Board Administrator from the submitted site plan, approximately 375 square feet of the 1,875 square foot building footprint would be located in the 20' Shelby Avenue front yard setback, and approximately 125 square feet of the 1,875 building footprint would be located in the 20' Brown Street front yard setback.
- DCAD records indicate that the site is developed with a single family home in fair condition built in 1913 with 1,120 square feet of living area, and a 320 square foot detached garage. (A field visit of the site indicates that these structures have been demolished).
- The site is undeveloped, flat, rectangular in shape (100' x 55'), and 5,500 square feet in area. The site has two 20' front yard setbacks, one along Shelby Avenue, the other along Brown Street. The site is zoned PD No. 193 (O-2 Subdistrict). The front yard setbacks on this lot are typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (O-2 Subdistrict) (Planned Development, Office Subdistrict)
North: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
South: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
East: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)
West: PD No. 193 (MF-3 Subdistrict) (Planned Development, Multifamily Subdistrict)

Land Use:

The subject site is undeveloped. The areas to the north, east, south, and west are developed with residential 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 16, 2006 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 11, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 12, 2006: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 24th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 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 August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- July 26, 2006: 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the 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, 2006: The applicant postponed this case until Panel C's September 18th public hearing.

August 21, 2006: The Board Administrator contacted the applicant's representative and shared the following information:

- the August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
- the September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is undeveloped, flat, rectangular in shape (100' x 55'), and 5,500 square feet in area.
- The site is zoned PD No. 193 (O-2 Subdistrict).
- Although the site has two 20' front yard setbacks, one along Shelby Avenue, the other along Brown Street, the two front yards on this lot are typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 375 square feet of the 1,875 square foot building footprint would be located in the 20' Shelby Avenue front yard setback, and approximately 125 square feet of the 1,875 building footprint would be located in the 20' Brown Street front yard setback.

- If the Board were to grant the front yard variance requests of 5', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the setbacks would be limited to what is shown on the submitted plan – a structure that is 15' from the Shelby Avenue and Brown Street front property lines (or 5 into the site's two 20' front yard setbacks).

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: Blane Ladymon, 6008 Monticello, Dallas, TX

APPEARING IN OPPOSITION: Frank Stich, 4224 N. Hall, Dallas, TX

2:45 P.M. Executive Session Begins

2:51 P.M. Executive Session Ends

MOTION: Boyd

I move that the Board of Adjustment in Appeal No. **BDA 056-182** on application of Metrotown Homes LP, represented by Blane Ladymon, **deny** the variance requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant

SECONDED: Moore

AYES: 4– Madrigal, Boyd, Moore, Scott

NAYS: 1– Maten

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 056-201

BUILDING OFFICIAL'S REPORT:

Application of Richard Gussoni, represented by Ed Simons, for a variance to the height regulations at 8727 Douglas Avenue. This property is more fully described as a tract of land in City Block 9/5599 and is zoned R-1ac(A) which limits the height of a structure to 36 feet. The applicant proposes to construct a single family dwelling and provide a height of 43 feet which would require a variance of 7 feet.

LOCATION: 8727 Douglas Avenue

**APPLICANT: Richard Gussoni
Represented by Ed Simons**

REQUEST:

- A variance to the height regulations of 7' is requested in conjunction with constructing and maintaining a 3-level single family home that would reach 43' in height.

STAFF RECOMMENDATION:

Denial

Rationale:

- The subject site slopes in its middle to a creek bed, and is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west) and is 6.562 acres in size.
- The current features of the site have allowed the development of an existing single family home that, according to DCAD has over 6,000 square feet of living space, and that appears to be two-stories in height.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope precludes the development of a new single family home that could meet the applicable development standards including the maximum 36' height provision commensurate with other developments found on other similarly-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:

- The maximum height for a structure in the R-1ac (A) zoning district is 36 feet. The applicant has submitted elevations indicating a proposed single family structure that will reach 42' 6 ¼" in height. (The Building Official's Report indicates the structure would reach 43' in height).
- "Height" is defined in the Dallas Development Code as "the vertical distance measured from grade to:
 - A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure;

B) for a structure with a dome roof, the midpoint of the vertical dimension of the dome; and

C) for any other structure, the highest point of the structure.

- According to calculations taken from the submitted site plan by the Board Administrator, the proposed single family home has a building footprint of about 8,400 square feet (140' x 60').
- According to dimensions taken from the submitted elevations by the Board Administrator, portions of third level and roof of the home exceeds the maximum 36' height limit.
- A site plan has been submitted with contour lines. This plan indicates that the site is about 625' in width at its widest point from Chatham Hill Road on the south to the site's property line on the north. The application states that a creek runs through the site which is substantiated by contour lines on the site plan. The site elevation begins on the south at 583' and declines over a length of about 210' to the middle of the site where a creek bed that divides the site at an elevation of 548'. The site then inclines from the creek bed over about a length of about 210' back to northern edge of the site at an elevation of 563'.
- The site is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west). According to the application, the site is 6.562 acres in area. The site is zoned R-1ac (A) where lots are typically 1 acre in area.
- DCAD records indicate that the site is developed with the following:
 - a single family home in fair condition built in 1939 with 6,342 square feet of living space;
 - a 510 square foot cabana;
 - a 996 square foot attached garage;
 - a pool;
 - a 560 square foot detached servants quarters;
 - a 400 square foot basement; and
 - a 337 square foot storage building.
- On September 8th, 2006, the applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter to the board requesting a postponement of the issue at hand. (A copy of the board administrator's response to this letter is included in Attachment A).

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 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:

- July 21, 2006 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 18, 2006: The Board Administrator emailed the applicant's representative with 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 August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection

Development Code Specialist, and the Assistant City Attorney to the Board.

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

Sept. 8, 2006

The applicant's representative submitted additional information beyond what was submitted with the original application and beyond the staff review team meeting. (Attachment A is a copy of this letter and a response to the letter by the Board Administrator).

STAFF ANALYSIS:

- A site plan has been submitted with contour lines. This plan indicates that the site is about 625' in width at its widest point from Chatham Hill Road on the south to the site's property line on the north. The application states that a creek runs through the site which is substantiated by contour lines on the site plan. The site elevation begins on the south at 583' and declines over a length of about 210' to the middle of the site where a creek bed that divides the site at an elevation of 548'. The site then inclines from the creek bed over about a length of about 210' back to northern edge of the site at an elevation of 563'.
- The site is "L"-shaped (about 600' on the north, about 420' at the south, about 320' on the east, and about 550' on the west). According to the application, the site is 6.562 acres in area. The site is zoned R-1ac (A) where lots are typically 1 acre in area.
- The submitted elevation shows that part of the 3rd level of the proposed single family home would exceed the maximum 36' height limit.
- The applicant has the burden of proof in establishing the following related to the front yard variance request:
 - That granting the variance to the height regulations of 7' requested to construct and maintain a 3-level single family home will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the height regulations is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac (A) zoning classification.
 - The variance to the height regulations would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land not permitted by this chapter to other parcels of land in districts with the same R-1ac (A) zoning classification.
- If the Board were to grant the variance to the height regulations of 7', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the amount of the structure that would be permitted to encroach above the 36' maximum height would be limited to what is shown on these documents.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Scott**

I move that the Board of Adjustment in Appeal No. **BDA 056-201**, hold this matter under advisement until **October 16, 2006** due to the applicant's failure to post the notification sign on the property.

SECONDED: **Boyd**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-214

BUILDING OFFICIAL'S REPORT:

Application of Lisa Luke and William Piazza, represented by Rob Baldwin, for variances to the side yard setback regulations at 5407 Monticello Avenue. This property is more fully described as Lot 25 in City Block 12/2177 and is zoned CD No. 9 which requires a side yard setback of 5 feet on the west side and a 10 foot setback on the east side. The applicant proposes to construct an addition and provide a 1 foot 6 inch side yard setback on the west side and a 7 foot 6 inch setback on the east side, which would require a variance of 3 feet 6 inches to the west side yard and 2 feet 6 inches to the east side.

LOCATION: 5407 Monticello Avenue

APPLICANT: Lisa Luke and William Piazza
Represented by Rob Baldwin

REQUESTS:

- The following appeals have been made in this application on a site developed with a single family home constructed in the 20's:
 1. Variances to the side yard setback regulations of up to 3' 6" on the west side and up to 2' 6" on the east side of the site are requested in conjunction with maintaining portions of the approximately 2,100 square foot home located in the side yard setbacks (i.e. variances to remedy what appears to be a nonconforming single family structure).
 2. Variances to the side yard setback regulations of 1' 3" on the west side and 6" on the east side are requested in conjunction with constructing and maintaining kitchen/family room and master bedroom/guest bedroom additions to the existing structure that would be located in the side yard setbacks.

STAFF RECOMMENDATION:

Denial

Rationale:

- No site constraint is evident to this parcel of land that warrants variances to either maintain the house in the side yard setbacks or to construct additions on the house in the side yard setbacks. The subject site is flat, rectangular in shape (50' x 145'), and 7,250 square feet in area.
- The site is zoned CD No. 9 that had been previously zoned R-7.5(A) where lots are typically 7,500 square feet in area. If indeed the 1920's home is deemed a nonconforming structure, the Code allows it to be replaced back in the same building footprint if there is a casualty loss (i.e. fire, wind, natural consequence that destroys the home). If the home is intentionally destroyed, there appears to be no physical site constraints that are unique to this parcel of land whereby a new house could not be constructed on the site of commensurate size with other developments in the zoning district, and in compliance with the current development standards.
- The applicant has not substantiated how the site's restrictive area, shape and/or slope preclude the site to be developed in a way that meets the applicable development standards, including the side yard setback provisions, commensurate with other developments found on other similarly-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:

- A 5' side yard setback is required on the west side of a lot, and a 10' side yard setback is required on the east side of a lot in the CD No. 9 zoning district. The applicant has submitted a site plan indicating that the existing home is located as close as 1' 7.5" from the site's western side property line (or, according to the

Building Official's Report, as much as 3' 6" into the site's 5' western side yard setback).

The site plan indicates that the existing home is located as close as 7' 6" +/- from the site's eastern side property line (or, according to the Building Official's Report, as much as 2' 6" into the site's 10' eastern side yard setback).

The applicant has submitted a site plan indicating that the kitchen/family room addition to the existing home would be located as close as 3' 10" +/- from the site's western side property line (or 1' 2" +/- into the site's 5' western side yard setback).

The applicant has submitted a site plan indicating that the master bedroom/guest bedroom addition to the existing home would be located as close as 9' 6" +/- from the site's eastern side property line (or 6" +/- into the site's 10' eastern side yard setback).

None of the proposed additions will be located closer to the side property lines than the existing home that was constructed in the 20's.

- Two of the four variances are requested in order to remedy what appears to be a nonconforming structure – a structure that does not conform to the current setback regulations but was lawfully constructed under the regulations in force at the time of construction. The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The other two variances are requested in order to construct and maintain additions to the existing nonconforming single family structure.
- Floor plans have been submitted that denote that the kitchen/family room addition on the west side of the site in the 5' side yard setback will be about 3' 4" in length (where about 4 square feet of the addition would be located in the side yard setback). The floor plans denote that the master bedroom addition on the east side of the site in the 10' side yard setback will be about 11' 4" in length (where about 6 square feet of this addition would be located in the side yard setback), and that the guest bedroom addition on the east side of the site in the 10' side yard setback will be about 15' in length (where about 7.5 square feet would be of this addition would be in the side yard setback).
- The subject site is flat, rectangular in shape (50' x 145'), and 7,250 square feet in area. The site is zoned CD No. 9 that had been previously zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD records indicate that the site is developed with a single family home in "very good" condition built in 1922 with 1,708 square feet of living space, and a 360 square foot detached garage.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - site plans of the "existing structure" and of the "variances requested;"
 - four letters in support of the requests (two of which are from property owners on either side of the subject site).

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 9 (Conservation District)
North: CD No. 9 (Conservation District)
South: CD No. 9 (Conservation District)
East: CD No. 9 (Conservation District)
West: CD No. 9 (Conservation District)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- July 28, 2006: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 17, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 18, 2006: The Board Administrator emailed the applicant's representative with 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 August 28th deadline to submit additional evidence for staff to factor into their analysis/recommendation;
 - the September 8th 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 September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

August 29, 2006 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

August 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Chief Arborist, the Board Administrator, the Board of Adjustment Senior Planner; the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The subject site is flat, rectangular in shape (50' x 145'), and 7,250 square feet in area. The site is zoned CD No. 9 that had been zoned R-7.5(A) prior to the creation of CD No. 9 in 2002 where lots are typically 7,500 square feet in area.
- According to DCAD records, the site is developed with a single family home in "very good" condition built in 1922 with 1,708 square feet of living space, and a 360 square foot detached garage.
- According to calculations taken from the submitted floor plans by the Board Administrator, the kitchen/family room addition on the west side of the site in the 5' side yard setback will be about 3' 4" in length (where about 4 square feet of the addition would be located in the side yard setback); the master bedroom addition on the east side of the site in the 10' side yard setback will be about 11' 4" in length (where about 6 square feet of this addition would be located in the side yard setback); and that the guest bedroom addition on the east side of the site in the 10' side yard setback will be about 15' in length (where about 7.5 square feet would be of this addition would be in the side yard setback).
- None of the proposed additions will be located closer to the side property lines than the existing home that was constructed in the 20's.
- The applicant has the burden of proof in establishing the following:
 - That granting the four variances to the 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 four variances to the side yard setback regulations 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 CD No. 9 zoning classification.

- The four variances to the side yard setback regulations would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land not permitted by this chapter to other parcels of land in districts with the same CD No. 9 zoning classification.

If the Board were to grant the four side yard variances, imposing a condition whereby the applicant must comply with the submitted site plan, the existing nonconforming single family structure could be intentionally destroyed by the owner and replaced back to the building footprint shown on the submitted site plan, and the additions could be made to the east and west sides of the structure as shown on the submitted site plan.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 18, 2006

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX
Bill Piazza, 5407 Monticello, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Maten

I move that the Board of Adjustment in Appeal No. **BDA 056-214** on application of Lisa Piazza, represented by Rob Baldwin, **grant** the variances to the side yard setback regulations of three feet, six inches on the west side of the property, and two feet six inches on the east side of the property, because our evaluation of the property 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 is required.

SECONDED: Boyd

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Boyd**

I move to adjourn this meeting.

SECONDED: **Scott**

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

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

3:12 P. M. - Board Meeting adjourned for **September 18, 2006.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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