

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, MARCH 30, 2005**

MEMBERS PRESENT AT BRIEFING: Randall White, Chair, Peggy Hill, Vice-Chair, Rev. H.J. Johnson, regular member, Ben Gabriel, regular member and Marla Beikman, regular member,

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, TJ Okwubanego, Asst. City Attorney, and Danny Sipes, Development Code Specialist

MEMBERS PRESENT AT HEARING: Randall White, Chair, Peggy Hill, Vice-Chair, Rev. H.J. Johnson, regular member, Ben Gabriel, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, TJ Okwubanego, Asst. City Attorney and Danny Sipes, Development Code Specialist

10:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's March 30, 2005 docket.

11:15 A.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.

FILE NUMBER: BDA 045-163

BUILDING OFFICIAL'S REPORT:

Application of TGC-Colby/Boll Partners, represented by Jackson Walker LLP, for a variance to the front yard and rear yard setback regulations at 2635 Colby Street. This property is more fully described as Lot 5A in City Block F/564 and is zoned PD 225 H-26 which requires an 8 foot front yard setback and a 5 foot rear yard setback. The applicant proposes to construct a single family dwelling and provide a 4 foot front yard setback and a 0 foot rear yard setback which would require a variance of 4 feet to the front yard and 5 feet to the rear yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 2635 Colby Street

APPLICANT: Jackson Walker LLP

March 30, 2005 Public Hearing Notes:

- The following information was submitted at the public hearing:
 - A list of proposed conditions, a landscape plan, and a revised site plan were submitted by the applicant's representative.
 - Photos, exhibits, and a list of conditions were submitted by the opposition's attorney.
- The applicant's representative established that the revised plans removed his client's previous request for a rear yard variance.
- A consensus was reached during the public hearing between the applicant and those who had originally opposed the variance requests prior to the public hearing. The consensus involved a list of terms/conditions that the parties requested that the board impose in conjunction with the variance to the front yard setback regulations.

AMENDED REQUESTS:

- A variance to the front yard setback regulations of 8' and a variance to the rear yard setback regulations of 5' are requested in conjunction with constructing a single family home on a site that is undeveloped. (Up until immediately after the March 15th public hearing when the applicant's representative revised the application, variances to the front and rear yard setback regulations of 4' had been requested).

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:

- On March 15, 2005, the Board of Adjustment Panel A conducted a hearing on the requests. The following information was submitted at this public hearing:
 - A March 15, 2005 letter from the applicant's representative further explaining the requests and why they should be granted and photos of the site and surrounding area (see Attachment B);
 - Support letters and opposition letters from neighboring property owners (which will be available for review at the March 30th briefing and public hearing).
- On March 15, 2005, the Board of Adjustment Panel A delayed action on this application until a specially called hearing that would be held on March 30, 2005. This would allow time for the applicant and those opposing the requests to meet and possibly reach some sort of resolution on the matters at hand.
- On March 17, 2005, the applicant's representative sent a letter to the Board Administrator (see Attachment C). This letter documented amendments he made to the application immediately after the March 15th hearing where the applicant would be requesting as much as an 8'-front yard variance and as much as a 5'-rear yard variance. The applicant's representative stated the maximum requests in both instances would give his client "sufficient flexibility to try to work through these issues."
- An 8'-front yard setback is required in the PD No. 225 zoning district.
- Although the application has been amended to allow the board to consider an 8' variance to the front yard setback regulations, there has been no revised site plan submitted as of March 23rd that indicates any portion of a structure located on the front property line. The submitted site plan shows the proposed single family home located 4' from the site's Colby Street front property line.
- A 5'-rear yard setback is required in the PD No. 225 zoning district.
- Although the application has been amended to allow the board to consider a 5' variance to the rear yard setback regulations, there has been no revised site plan submitted as of March 23rd that indicates any portion of the structure on the rear property line. The submitted site plan shows the proposed single family home located 1' away from the site's rear property line on the northern edge of the site.

- There was a discrepancy between the amount of variance to the rear yard setback regulations that the applicant had originally requested and the amount of variance to the rear yard setback regulations that was amended by the applicant and shown on the submitted site plan. The applicant had originally requested a variance of 5' to the rear yard setback regulations in order to allow the structure to be located on the rear property line, however, the applicant had amended this request in his February 24th correspondence which reflected the building footprint's location on submitted site plan that is 1' off of the rear property line.
- Although the applicant had submitted an elevation of the proposed single family home to be constructed on the site, the applicant's representative had informed the Board Administrator that he did not want the board to impose this submitted elevation as a condition to the variances since the site is in a City historic district and an elevation of any structure in this district must be approved by the Landmark Commission.
- The site is flat, rectangular in shape (70' x 30'), and approximately 2,100 square feet in area. A final plat of the subject site has not been achieved. The subject site is half of an existing platted lot. The other half of the existing platted lot is the 70' x 30' subject site of BDA 045-164 that is located immediately east of the subject site..
- The submitted site plan indicates that the building footprint of the proposed single family structure is approximately 1,240 square feet (or 59' x 21') in area. If the single family home were to be 3-stories high as indicated on the submitted site plan, the total area of the home would be about 3,700 square feet.
- According to the submitted site plan, the area of the proposed single family structure located in the 8' front yard setback is for a portion of its porch. The "entry porch" in the 8'-front yard setback is dimensioned at approximately 60 square feet (or 15' x 4') in area. The applicant's representative states that the State-Thomas Historic Overlay District requires the front entry porch as an architectural feature under the preservation criteria, and that the intrusion of this structure into the setback has been deemed necessary for Landmark Commission approval where a parallel Certificate of Appropriateness application was denied by the Landmark Commission in February of 2005, and a subsequent C.A. application will be considered on April 4, 2005 (see the Zoning/BDA History of this case report for further details) for the lot immediately east of the subject site located at 2201 Boll Street.
- According to the submitted site plan, the area of the proposed single family structure located in the 5' rear yard setback is approximately 236 square feet (or 59' x 4') in area.
- The applicant has not submitted an elevation that they are willing to have the board impose as a condition with approval of the variances. However, there is documentation on the submitted site plan that indicates that the 1,239 square foot building footprint is multiplied by 3, suggesting that the structure is proposed to be 3 stories high and 3,717 square feet in area. Since a variance to the maximum height regulations has not been requested, the applicant must adhere to the maximum height allowed in the Historic District Transition Zone of 48 feet.

- The applicant submitted information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests (see Attachment A).
- City staff became aware of a meeting to be held on March 22nd between the applicant and interested parties. On March 22nd, the Board Administrator emailed the applicant, a person who spoke in opposition to the requests at the March 15th hearing, and the Vice-President of the Friends of State Thomas. The administrator requested that they submit any documentation of their understanding of things that were agreed upon or things that were left unresolved by noon, March 23rd.
- By noon, March 23rd, no additional information had been submitted from the applicant's representative or the opposition to the requests. The Vice-President of the Friends of State Thomas emailed documentation of the issues discussed at the March 22nd meeting (see Attachment D).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 225, H-26 (Planned Development District 225, Historic District 26)
North: No. 225, H-26 (Planned Development District 225, Historic District 26)
South: No. 225 (Planned Development District 225)
East: No. 225 (Planned Development District 225)
West: No. 225, H-26 (Planned Development District 225, Historic District 26)

Land Use:

The subject site is undeveloped. The areas to the north and west are developed with what appears to be single family attached uses; the area to the east is undeveloped; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

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|---|--|
| 1. BDA 045-164, 2201 Boll Street (the lot immediately east of the subject site) | On March 15, 2005, the Board of Adjustment Panel A will consider variances to the front yard and rear yard setback regulations of 4'. The appeals are requested in conjunction with constructing a single family home. |
| 2. CA045-296, 2201 Boll Street (the lot immediately east of the subject site) | On February 7, 2005, the City of Dallas Landmark Commission denied a Certificate of Appropriateness for the construction of single family home without prejudice. The commission included as part of their motion a statement that said "Be it resolved that this Commission recommends to the Board of Adjustment that a variance be considered |

3. BDA 001-223, 2613, 2617, and 2619 Colby Street (the lot immediately west of the subject site)

only for architectural elements of bay windows and porch. The site is not unlike other sites within the State-Thomas Historic District or the Transition Zones for that district. The intent and purpose of historic districts is to preserve and protect the street scape of that neighborhood. Any further variance from the very minimal required setback would in fact be detrimental to the District and the intent of the Historic District.” On June 19, 2001, the Board of Adjustment Panel B granted requests for variances to the front and rear yard setback regulations and a special exception to the landscape regulations, subject to the submittal of revised plans related to the variances, and subject to the submitted landscape plan related to the landscape special exception. The case report indicates that the appeals were requested in conjunction with constructing eight, 3-story single family attached homes on the site.

Timeline:

- February 8, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 18, 2005: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the February 25th deadline to submit additional evidence for staff to factor into their analysis;

- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 24, 2005 The applicant information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests including photos of the site and surrounding area (see Attachment A).

February 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the City of Dallas Chief Arborist; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The site is not sloped and not irregularly-shaped.
- The site is 70' x 30' (or 2,100 square feet) in area, and a review of the submitted plat map indicates other lots in the area that are larger and smaller than the subject site. Technically, the subject site can not be deemed as a separate lot in its current configuration since a final plat has not been achieved.
- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 59' x 21' and with a maximum height of 48' where the only encroachment into the front yard setback would be a 60 square foot porch that is located 4' into the 8' front yard setback.
- If the Board were to grant the rear yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 59' x 21' and with a maximum height of 48' where the encroachment into the rear yard setback is a 236 square foot area that is located 4' into the 5' rear yard setback.
- In addition to obtaining variances to the front and rear yard setback regulations from the Board of Adjustment, the applicant will be required to obtain a Certificate of Appropriateness from the City of Dallas Landmark Commission, and a final plat from the City of Dallas City Plan Commission before the proposed single family home can be constructed on the site.

BOARD OF ADJUSTMENT ACTION: March 15, 2005

APPEARING IN FAVOR: Tracy Glover, 8403 Midway Road, Dallas, TX
Craig Melde, 3415 University Blvd, Dallas, TX

APPEARING IN OPPOSITION: Jim Fite, 2205-C Boll Street, Dallas, TX
Petey Parker Fite, 2205-C Boll Street, Dallas, TX
Roger Cortez, 2205-A, Boll Street, Dallas, TX
Judy Smith Hearst, 2512 Thomas Ave., Dallas, TX
Andrew Kasnek, 2702 McKinney, Dallas, TX

MOTION: Hill

I move that the Board of Adjustment in **Appeal No. BDA 045-163**, hold this matter under advisement for a special meeting to be held on **March 30, 2005**.

SECONDED: Johnson

AYES: 5 – White, Hill, Johnson, Gabriel, Beikman

NAYS: 0–

MOTION PASSED: 5–0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: March 30, 2005

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX
Craig Melde, 3415 University Blvd, Dallas, TX

APPEARING IN OPPOSITION: Louis Cole, 504 Harvest Glen, Dallas, TX
Judy Smith Hearst, 2512 Thomas Ave., Dallas, TX
Jim Fite, 2205-C Boll Street, Dallas, TX
Roger Cortez, 2205-A, Boll Street, Dallas, TX

MOTION#1: Hill

I move that the Board of Adjustment in **Appeal No. BDA 045-163**, on application of TGC-Colby/Boll Partners, **grant** the variance to the front yard regulations because our evaluation of the property and the testimony shows that the physical character of the property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required;
- Applicant must receive the Dallas Development Code-required written concurrence of all persons (including the Applicant's and/or the owner of the area of request) who own property abutting the area proposed to be abandoned, and must submit a complete application to the City of Dallas, Department of

Development Services, Real Estate Division, pursuant to the procedure specified in Sec. 2-26.2 of the Dallas City Code, for the abandonment of a portion of the City-owned right-of-way lying between Colby Street and the front yard property line of the area of request, such portion of the right-of-way requested to be abandoned to be at least eight feet in depth, and contiguous to and traversing the entire front yard of the area of request, such Application for abandonment to be submitted to the City no later than the date of submission of an Application for a Building Permit for the area of request;

- Applicant must not, at any time thereafter, voluntarily withdraw such abandonment application, and must pursue approval thereof diligently to the best of the applicant's ability, subject, as required by applicable law, to city council approval;
- Upon approval by the city council of such abandonment application, or sooner if possible, the applicant must then request amendment of the Preliminary Plat of the area of request to include the abandoned right-of-way to the area of request as part of the platted lot;
- Those affected by the application for variance have approved the revised site plan dated 3/23/05 and landscape plan dated 3/28/05;
- Architectural plans for structures to be constructed shall be in general conformity with the architectural styles of existing structures in the neighborhood;
- Applicant shall not create additional water run-off in such a way as to adversely affect any abutting property and shall construct appropriate screening devices to shield from view utility and h/v/a/c installations, including those on the roof of the structures to be built by applicant;
- Applicant shall design a green type wall for the back wall of the property and shall install plants to ensure that a green wall persists;
- Applicant will install plants appropriate in size and type to the back yard of each property and consistent with landscaping in the area;
- Any fences to be installed will be consistent with fences, in type and construction, in the area;
- Applicant agrees to replace any plants located on abutting property which are damaged during construction with plants of like type and size; and
- Applicant and homeowner agree to execute a side letter agreeing to pursue abandonment of the right-of-way within 10 days from this hearing.

SECONDED: Johnson

AYES: 5 – White, Hill, Johnson, Gabriel, Beikman

NAYS: 0–

MOTION PASSED: 5–0 (Unanimously)

MOTION #2: Beikman

I move that the Board of Adjustment in **Appeal No. BDA 045-163**, on application of TGC-Colby/Boll Partners, **deny** the variance to the rear yard setback regulations 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: Gabriel

AYES: 5 – White, Hill, Johnson, Gabriel, Beikman

NAYS: 0–

MOTION PASSED: 5–0 (Unanimously)

Break: 12:30

Resumed: 12:41

FILE NUMBER: BDA 045-164

BUILDING OFFICIAL'S REPORT:

Application of TGC-Colby/Boll Partners, represented by Jackson Walker LLP, for variances to the front yard and rear yard setback regulations at 2201 Boll Street. This property is more fully described as Lot 5B in City Block F/564 and is zoned PD 225 H-26 which requires an 8 foot front yard setback and a 5 foot rear yard setback. The applicant proposes to construct a single family dwelling and provide a 4 foot front yard setback and a 0 foot rear yard setback which would require a variance of 4 feet to the front yard and 5 feet to the rear yard setback regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 2201 Boll Street

APPLICANT: Jackson Walker LLP

March 30, 2005 Public Hearing Notes:

- The following information was submitted at the public hearing:
 - A list of proposed conditions, a landscape plan, and a revised site plan were submitted by the applicant's representative.
 - Photos, exhibits, and a list of conditions were submitted by the opposition's attorney.
- The applicant's representative established that the revised plans removed his client's previous request for a rear yard variance.
- A consensus was reached during the public hearing between the applicant and those who had originally opposed the variance requests prior to the public hearing. The consensus involved a list of terms/conditions that the parties requested that the board impose in conjunction with the variance to the front yard setback regulations.

AMENED REQUESTS:

- A variance to the front yard setback regulations of 8' and a variance to the rear yard setback regulations of 5' are requested in conjunction with constructing a single family home on a site that is undeveloped. (Up until immediately after the March 15th public hearing when the applicant's representative revised the application, variances to the front and rear yard setback regulations of 4' had been requested).

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:

March 15, 2005 Public Hearing Notes:

- On March 15, 2005, the Board of Adjustment Panel A conducted a hearing on the requests. The following information was submitted at the public hearing:
 - A March 15, 2005 letter from the applicant's representative further explaining the requests and why they should be granted and photos of the site and surrounding area;
 - Support letters and opposition letters from neighboring property owners (which will be available for review at the March 30th briefing and public hearing).
- On March 15, 2005, the Board of Adjustment Panel A delayed action on this application until a specially called hearing that would be held on March 30, 2005. This would allow time for the applicant and those opposing the requests to meet and possibly reach some sort of resolution on the matters at hand, as well as allow time for staff to re-notice this application and convey the correct property address at 2201 Boll Street.
- On March 17, 2005, the applicant's representative sent a letter to the Board Administrator (see Attachment C). This letter documented amendments he made to

the application immediately after the March 15th hearing where the applicant would be requesting as much as an 8'-front yard variance and as much as a 5'-rear yard variance. The applicant's representative stated the maximum requests in both instances would give his client "sufficient flexibility to try to work through these issues."

- An 8'-front yard setback is required in the PD No. 225 zoning district.
- Although the application has been amended to consider an 8' variance to the front yard setback regulations, there has been no revised site plan submitted as of March 23rd that indicates any portion of a structure located on the front property line. The submitted site plan shows the proposed single family home located 4' from the site's Colby Street front property line along the southern edge of the site.
- Although the City and the applicant's representative had originally deemed that there was an additional front yard variance need for the portion of the proposed structure that is to be located 5' 6" from the site's eastern property line along Boll Street, on March 8, 2005, Building Inspection staff informed the Board Administrator that they had reinvestigated provisions set forth in PD No. 225 and deemed that the eastern edge of the site along Boll Street would be considered a "corner side yard." The setback provisions for the proposed home on this eastern edge of the site would be held to a corner side yard setback "that is within five percent of the average setback of all main buildings on the same blockface."
- On March 8 2005, the Board Administrator relayed Building Inspection staff's revised interpretation to the applicant's representative, and encouraged him to be able to establish at the March 15th public hearing that the proposed building footprint was in compliance with the corner side yard setback provisions.
- A 5'-rear yard setback is required in the PD No. 225 zoning district.
- Although the application has been amended to allow the board to consider a 5' variance to the rear yard setback regulations, there has been no revised site plan submitted as of March 23rd that indicates any portion of the structure on the rear property line. The submitted site plan shows the proposed single family home located 1' away from the site's rear property line on the northern edge of the site.
- There was a discrepancy between the amount of variance to the rear yard setback regulations that the applicant had originally requested and the amount of variance to the rear yard setback regulations that was amended by the applicant and shown on the submitted site plan. The applicant had originally requested a variance of 5' to the rear yard setback regulations in order to allow the structure to be located on the rear property line, however, the applicant amended this request in his February 24th correspondence which reflected the building footprint's location on submitted site plan that is 1' off of the rear property line.
- Although the applicant had submitted an elevation of the proposed single family home to be constructed on the site, the applicant's representative had informed the Board Administrator that he did not want the board to impose this submitted elevation as a condition to the variances since the site is in a City historic district and an elevation of any structure in this district must be approved by the Landmark Commission.

- The site is flat, rectangular in shape (70' x 30'), and approximately 2,100 square feet in area. A final plat of the subject site has not been achieved. The subject site is half of an existing platted lot. The other half of the existing platted lot is the 70' x 30' subject site of BDA 045-163 that is located immediately west of the subject site.
- The submitted site plan indicates that the building footprint of the proposed single family structure is approximately 1,260 square feet (or 60' x 21') in area. If the single family home were to be 3-stories high as indicated on the submitted site plan, the total area of the home would be about 3,800 square feet.
- According to the submitted site plan, the area of the proposed single family structure located in the 8' front yard setback along Colby Street is for a portion of its porch. The "entry porch" in the 8'-front yard setback is dimensioned at approximately 60 square feet (or 15' x 4') in area. The applicant's representative states that the State-Thomas Historic Overlay District requires the front entry porch as an architectural feature under the preservation criteria, and that the intrusion of this structure into the setback has been deemed necessary for Landmark Commission approval where a parallel Certificate of Appropriateness application was denied by the Landmark Commission in February of 2005, and a subsequent C.A. application will be considered on April 4, 2005 (see the Zoning/BDA History of this case report for further details) .
- According to the submitted site plan, the area of the proposed single family structure located in the 5' rear yard setback is approximately 240 square feet (or 60' x 4') in area.
- The applicant has not submitted an elevation that they are willing to have the board impose as a condition with approval of the variances. However, there is documentation on the submitted site plan that indicates that the 1,260 square foot building footprint is multiplied by 3, suggesting that the structure is proposed to be 3 stories high and 3,780 square feet in area. Since a variance to the maximum height regulations has not been requested, the applicant must adhere to the maximum height allowed in the Historic District Transition Zone of 48 feet.
- On March 8, 2005, Building Inspection staff informed the Board Administrator that the address of the subject site had been erroneously identified on the application and in the Building Official's Report as property located at 2210 Boll Street when it was determined that the site should have been correctly addressed at 2201 Boll Street. The Board Administrator reviewed the notice that was made in the newspaper and sent to property owners and established the following:
 - The "property owner notice" was correctly sent to those property owners within a 200' radius from the actual lot that is the "subject site" located at 2201 Boll Street;
 - The "news notice" and "property owner notice" had conveyed the correct legal description of the subject site "being property more fully described as Lot 5B in City Block F/564."
- The applicant submitted information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests (see Attachment A).
- City staff became aware of a meeting to be held on March 22nd between the applicant and interested parties. On March 22nd, the Board Administrator emailed the

applicant, a person who spoke in opposition to the requests at the March 15th hearing, and the Vice President of the Friends of State Thomas. The administrator requested that they submit any documentation of their understanding of things that were agreed upon or things that were left unresolved by noon, March 23rd.

- By noon, March 23rd, no additional information had been submitted from the applicant's representative or the opposition to the requests. The Vice-President of the Friends of State Thomas emailed documentation of the issues discussed at the March 22nd meeting (see Attachment D).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 225, H-26 (Planned Development District 225, Historic District 26)
North: No. 225, H-26 (Planned Development District 225, Historic District 26)
South: No. 225 (Planned Development District 225)
East: No. 225 (Planned Development District 225)
West: No. 225, H-26 (Planned Development District 225, Historic District 26)

Land Use:

The subject site is undeveloped. The area to the north is developed with what appears to be single family attached uses; the area to the east and west are undeveloped; and the area to the south is developed with multifamily uses.

Zoning/BDA History:

1. BDA 045-163, 2635 Colby Street (the lot immediately west of the subject site) On March 15, 2005, the Board of Adjustment Panel A will consider variances to the front and rear yard setback regulations of 4'. The appeals are requested in conjunction with constructing a single family home.
2. CA045-296, 2201 Boll Street (the subject site) On February 7, 2005, the City of Dallas Landmark Commission denied a Certificate of Appropriateness for the construction of single family home without prejudice. The commission included as part of their motion a statement that said "Be it resolved that this Commission recommends to the Board of Adjustment that a variance be considered only for architectural elements of bay windows and porch. The site is not unlike other sites within the State-Thomas Historic District or the Transition Zones for that district. The intent and purpose of historic

3. BDA 001-223, 2613, 2617, and 2619 Colby Street (the site two lots immediately west of the subject site)

districts is to preserve and protect the street scape of that neighborhood. Any further variance from the very minimal required setback would in fact be detrimental to the District and the intent of the Historic District.” On June 19, 2001, the Board of Adjustment Panel B granted requests for variances to the front and rear yard setback regulations and a special exception to the landscape regulations, subject to the submittal of revised plans related to the variances, and subject to the submitted landscape plan related to the landscape special exception. The case report indicates that the appeals were requested in conjunction with constructing eight, 3-story single family attached homes on the site.

Timeline:

- February 9, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 18, 2005: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the February 25th deadline to submit additional evidence for staff to factor into their analysis;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 24, 2005 The applicant information beyond what was submitted with the original application. This information was a letter that further explained the scope and merits of the requests including photos of the site and surrounding area (see Attachment A).

February 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the City of Dallas Chief Arborist; and the Assistant City Attorney to the Board.

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

March 8, 2005 The Board Administrator was informed of the following information by Building Inspection staff:

- The address of the site on the original application and in the Building Official's Report at "2210 Boll Street" was incorrect. The correct address of the site is 2201 Boll Street.
- The interpretation of the yard requirements originally made with the application whereby the site had a rear yard setback on the north, front yard setbacks on the east and south, and a side yard setback on the west was incorrect. The correct interpretation of the site's yard requirements is that the site has a rear yard setback on the north, a "corner side yard" setback on the east, a front yard setback on the south, and a side yard setback on the west.

March 8, 2005 The Board Administrator contacted the applicant's representative and informed him of the information relayed to him by Building Inspection staff.

STAFF ANALYSIS:

- The site is not sloped and not irregularly-shaped.
- The site is 70' x 30' (or 2,100 square feet) in area, and a review of the submitted plat map indicates other lots in the area that are larger and smaller than the subject site. Technically, the subject site can not be deemed as a separate lot in its current configuration since a final plat has not been achieved.
- Given the recent yard interpretation of the site made by Building Inspection staff, the applicant should establish at the March 15th public hearing that the building footprint shown on the submitted site plan complies with the corner side yard setback provision set forth in PD No. 225 whereby the structure is within five percent of the

average setback of all main buildings on the same blockface.” If the proposed structure does not comply, then the applicant should amend plans accordingly, or request that the board delay action on the application until a side yard variance is applied for, paid for, and noticed appropriately.

- If the Board were to grant the front yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 60’ x 21’ and with a maximum height of 48’ where the only encroachment into the front yard setback would be a 60 square foot porch that is located 4’ into the 8’ front yard setback.
- If the Board were to grant the rear yard variance request, subject to the submitted site plan, the site could be developed with a structure with an overall building footprint of 60’ x 21’ and with a maximum height of 48’ where the encroachment into the rear yard setback is a 240 square foot area that is located 4’ into the 5’ rear yard setback.
- In addition to obtaining variances to the front and rear yard setback regulations from the Board of Adjustment, the applicant will be required to obtain a Certificate of Appropriateness from the City of Dallas Landmark Commission, and a final plat from the City of Dallas City Plan Commission before the proposed single family home can be constructed on the site.

BOARD OF ADJUSTMENT ACTION: March 15, 2005

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street,

APPEARING IN OPPOSITION: Jim Fite, 2205-C Boll Street, Dallas, TX

MOTION: Hill

I move that the Board of Adjustment in **Appeal No. BDA 045-164**, hold this matter under advisement for a special meeting to be held on **March 30, 2005**.

SECONDED: Johnson

AYES: 5 – White, Hill, Johnson, Gabriel, Beikman

NAYS: 0–

MOTION PASSED: 5–0 (Unanimously)

BOARD OF ADJUSTMENT ACTION: March 30, 2005

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX

APPEARING IN OPPOSITION: Louis Cole, 504 Harvest Glen, Dallas, TX

MOTION#1: Hill

I move that the Board of Adjustment in **Appeal No. BDA 045-164**, on application of TGC-Colby/Boll Partners, **grant** the variance to the front yard regulations because our

evaluation of the property and the testimony shows that the physical character of the property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required;
- Applicant must receive the Dallas Development Code-required written concurrence of all persons (including the Applicant's and/or the owner of the area of request) who own property abutting the area proposed to be abandoned, and must submit a complete application to the City of Dallas, Department of Development Services, Real Estate Division, pursuant to the procedure specified in Sec. 2-26.2 of the Dallas City Code, for the abandonment of a portion of the City-owned right-of-way lying between Colby Street and the front yard property line of the area of request, such portion of the right-of-way requested to be abandoned to be at least eight feet in depth, and contiguous to and traversing the entire front yard of the area of request, such Application for abandonment to be submitted to the City no later than the date of submission of an Application for a Building Permit for the area of request;
- Applicant must not, at any time thereafter, voluntarily withdraw such abandonment application, and must pursue approval thereof diligently to the best of the applicant's ability, subject, as required by applicable law, to city council approval;
- Upon approval by the city council of such abandonment application, or sooner if possible, the applicant must then request amendment of the Preliminary Plat of the area of request to include the abandoned right-of-way to the area of request as part of the platted lot;
- Those affected by the application for variance have approved the revised site plan dated 3/23/05 and landscape plan dated 3/28/05;
- Architectural plans for structures to be constructed shall be in general conformity with the architectural styles of existing structures in the neighborhood;
- Applicant shall not create additional water run-off in such a way as to adversely affect any abutting property and shall construct appropriate screening devices to shield from view utility and h/v/a/c installations, including those on the roof of the structures to be built by applicant;
- Applicant shall design a green type wall for the back wall of the property and shall install plants to ensure that a green wall persists;
- Applicant will install plants appropriate in size and type to the back yard of each property and consistent with landscaping in the area;
- Any fences to be installed will be consistent with fences, in type and construction, in the area;
- Applicant agrees to replace any plants located on abutting property which are damaged during construction with plants of like type and size; and
- Applicant and homeowner agree to execute a side letter agreeing to pursue abandonment of the right-of-way within 10 days from this hearing.

SECONDED: Johnson

AYES: 5 – White, Hill, Johnson, Gabriel, Beikman

NAYS: 0–

MOTION PASSED: 5–0 (Unanimously)

MOTION #2: Beikman

I move that the Board of Adjustment in **Appeal No. BDA 045-164**, on application of TGC-Colby/Boll Partners, **deny** the variance to the rear yard setback regulations 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: Gabriel
AYES: 5 – White, Hill, Johnson, Gabriel, Beikman
NAYS: 0–
MOTION PASSED: 5–0 (Unanimously)

MOTION: Hill

I move to adjourn this meeting.

SECONDED: Johnson
AYES: 5 – White, Hill, Johnson, Gabriel, Beikman
NAYS: 0 -
MOTION PASSED: 5 – 0 (Unanimously)

1:10 P.M. - Board Meeting adjourned for March 30, 2005.

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.