

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, FEBRUARY 15, 2006**

<b>Briefing:</b>	<b>10:30 A.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>
<b>Public Hearing:</b>	<b>1:00 P.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>

**Purpose:** To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

**\* All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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2-15-2006

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, FEBRUARY 15, 2006  
AGENDA

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BRIEFING/BUS TOUR	L1FN CONFERENCE CENTER AUDITORIUM	10:30A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Jennifer Hiromoto, Senior Planner**

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**MISCELLANEOUS ITEMS**

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Approval of the <b>Wednesday, January 18, 2006</b> Board of Adjustment Public Meeting Minutes	M1
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**UNCONSTESTED CASES**

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BDA 056-075	7320 Syracuse Drive <b>REQUEST:</b> Application of Ken Tanoury for a special exception to the fence regulations	1
BDA 056-076	8668 Langdale Circle <b>REQUEST:</b> Application of Lawrence Bonanno for a special exception to the fence regulations	2
BDA 056-078	6331 Desco Drive <b>REQUEST:</b> Application of Ed Simons for a variance to the rear yard setback regulations	3
BDA 056-083	7431 Coronado Avenue <b>REQUEST:</b> Application of Barbara Tennant represented by Baldwin Associates for a special exception to the landscape regulations	4

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**HOLDOVER COMPLIANCE CASE**

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BDA 056-C01	1802 Highland Road <b>REQUEST:</b> Application of Thirteen Homeowners Association, represented by Dolores G. Wolfe requesting a compliance date and discontinuance of a non-conforming manufactured home park use	6
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## EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B January 18, public hearing minutes.

**FILE NUMBER:** BDA 056-075

**BUILDING OFFICIAL'S REPORT:**

Application of Ken Tanoury for a special exception to the fence regulations at 7320 Syracuse Drive. This property is more fully described as Lot 7 in City Block S/5426 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 7 foot fence in the required front yard setback which would require a special exception of 3 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:** 7320 Syracuse Drive

**APPLICANT:** Ken Tanoury

**REQUEST:**

- A special exception to the fence height regulations of 3' is requested in conjunction with maintaining a 7' high solid cedar fence/wall in the 25' Syracuse Drive 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 following additional information was gleaned from the submitted scaled site plan:
  - The existing fence/wall located in the front yard setback is approximately 45' in length perpendicular to Syracuse Drive and approximately 10' in length perpendicular/diagonal to the street.
  - The existing fence/wall is located at a range of approximately 15' – 25' from the property line. (The distance of the fence from the pavement line could not be determined since the pavement line is not provided on the submitted site plan).
- The following additional information was gleaned from the originally submitted scaled elevation plan entitled "side of house view:"

- The existing fence/wall is 64' long, described as a "7 foot tall cedar side by side 6" picket fence with 4" trim at top."
- Four single family homes have direct/indirect frontage to the existing fence/wall, none of which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a 25' front yard setback in this block of Syracuse Drive.
- Building Inspection has no record of a fence permit issued on the subject site.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included photos of the fence on the site and the surrounding area, and two fence/wall elevations. One elevation is a revised elevation of the originally submitted "side of house view" previously mentioned and detailed in this case report. Landscape details were added on this revised elevation including 7, 3.5 gallon Indian Hawthornes at 2.5 feet on center, 8 3.5 gallon Azaleas at 5 feet on center, and 3, 3.5 gallon Indian Hawthornes at 4 feet on center. The other elevation is entitled "west side view" and details landscape materials to be maintained and/or added on the street side of this fence/wall including 3-4' tall Pampas Grass plants at 5 feet on center, "planned for spring" 2-4 foot tall Pampas Grass plants at 5 feet on center, and "current Bamboo plants and brush (neighbor's)."

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>North:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>South:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>East:</u>	R-7.5 (A) (Single family district 7,500 square feet)
<u>West:</u>	R-7.5 (A) (Single family district 7,500 square feet)

### **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:**

Nov. 28, 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. (Color photos of the fence on the site
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submitted with this application will be available for review at the briefing and public hearing).

Jan. 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

Jan. 19, 2006: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the January 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the February 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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; and the Assistant City Attorney to the Board.

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

Feb. 6, 2006 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- A scaled site plan has been submitted that documents the location of the existing fence/wall relative to the property line. The site plan also clearly shows the length of the existing fence/wall that is located in the front yard setback relative to the entire

lot. (About 55' of the 65' long solid cedar picket fence/wall is located in the Syracuse Drive front yard setback).

- Fence elevations have been submitted that document the height and materials of the existing fence/wall parallel and diagonal to Syracuse Road. The fence/wall is 7' in height and comprised of cedar side by side 6" pickets. The fence elevations also detail landscape materials either to be maintained or added on the street side of the existing fence/wall.
- Four single family homes have direct/indirect frontage to the existing fence/wall, none of which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a 25' front yard setback in this block of Syracuse Drive.
- As of February 6th, no letters had been submitted to staff in opposition to the special exception, and a petition has been submitted in support signed by 25 neighbors/owners.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' (whereby the existing fence/wall that exceeds 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 3' with conditions imposed that the applicant complies with the submitted site plan and fence/wall elevations would assure that the existing fence/wall is maintained as shown on these documents.



**FILE NUMBER:** BDA 056-076

**BUILDING OFFICIAL'S REPORT:**

Application of Lawrence Bonanno for a special exception to the fence regulations at 8668 Langdale Circle. This property is more fully described as Lot 7A in City Block 2/7082 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain an 8 foot 6 inch fence in the required front yard setback which would require a special exception of 4 feet 6 inches. 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:** 8668 Langdale Circle

**APPLICANT:** Lawrence Bonanno

**REQUEST:**

- A special exception to the fence height regulations of 4' 6" is requested in conjunction with maintaining an open iron picket fence, a solid cedar wood fence/wall, and two open metal gates in the 25' Langdale Circle front yard setback. The application and plans state that the existing fence, fence/wall, and gates range in height from 8.1' – 8.6' given grade changes on the site. The site is 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 following additional information was gleaned from the originally submitted site plan:
  - Three notations indicating the "metal fence" height to be 8.4', 8.1', and 8.6' in height.
  - The existing fence and gates total approximately 110 in length, and are parallel to Langdale Circle.

- The existing fence and gates are located approximately 5' from the property line or depending on which of two lines on the submitted site plan that may denote the pavement line, either 17' or 20' from the pavement line. (The Board Administrator spoke with the applicant on January 25, 2006 requesting clarification of these lines since depending on the location of the actual pavement line, the fence and gates may require relocation or a special exception to the visibility obstruction regulations. The applicant was made aware that if any component of the fence, gates, and or landscape materials are deemed to be in the visibility triangles at the drive approaches then the elements will be required to comply with the visibility obstruction regulations, or the applicant will be required to seek a special exception to these regulations from the Board of Adjustment with a new application and filing fee. The applicant submitted a revised site plan on February 6<sup>th</sup> that indicated that the fence was located outside the visibility triangles).
- The elevation originally submitted with the application depicted what appeared to be an open metal fence and gates but did not document their materials or heights.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - an amended scaled site plan that denotes an "iron metal fence" and a "cedar wood panel fence" located in the front yard setback (yet outside the visibility triangles) both ranging in height from 8.1' – 8.6' in height;
  - an amended elevation plan that denotes an "Iron metal fence w/ ½ inch pickets spaced 4" apart, length 158 ft, two solar powered gates. Height 8 ft to 8' 6". Wood fence is board on board stained cedar/capped. Length 61 ft. Height 8 ft. Is on a 4 ½" concrete curb."
  - A copy of an invoice from a landscape company that provides a list of landscape materials and prices; and
  - A copy of an invoice from a contractor detailing cost and labor of a fence constructed on the site.
- Neither a site plan with landscape materials nor a landscape plan has been submitted in conjunction with the application.
- There is no single family home that has direct frontage to the existing fence given its location on the subject site, the curvature of Langdale Circle (where the house immediately across from the subject site faces the lot to the west of the subject site), and the lots to the south of the site that are oriented to face either east or west.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- Building Inspection has no record of a fence permit issued on the subject site.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5 (A) (Single family district 7,500 square feet)  
North: R-7.5 (A) (Single family district 7,500 square feet)  
South: R-7.5 (A) (Single family district 7,500 square feet)

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

### **Land Use:**

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

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

1. BDA 056-001, 8668 Langdale Circle (the subject site) On November 16, 2005, the Board of Adjustment Panel B denied a request for a special exception to the fence height regulations of 4.5' without prejudice. The case report states that the request was made in conjunction with maintaining an open metal fence and two open metal gates in the Langdale Circle front yard setback.

### **Timeline:**

- Dec. 13, 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.
- Jan. 18, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- Jan. 19, 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 January 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the February 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently

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

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

Jan. 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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; and the Assistant City Attorney to the Board.

On February, 6, 2006, the Development Services Senior Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting: “The site plan, detail shows: 1) at south end, fence and gate (scaled) 17’ from curb; 2) at north end, fence/gate (scaled) varies from 17’ to 22’. 20’ is required.” (Note that on February 6, 2006, the applicant submitted a revised site plan that indicated that the existing fence was located outside the visibility triangles).

Feb. 6, 2006 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- A revised scaled site plan has been submitted that documents the location of the existing open iron fence, solid cedar wood fence/wall, and open iron gates relative to the property line and pavement line. The site plan shows the length of the existing fence, fence/wall, and gates relative to the lot as well as the heights of the fence, fence/wall, and gates all ranging from 8.1’ -8.6’ (given changes in grade on the site).
- A revised elevation plan has been submitted that documents the maximum height of the fence, fence/wall, and gates (8’ 6”). The revised elevation plan also documents the building materials of the fence and gates (iron pickets) and fence/wall (board-on-board stained cedar) located in the front yard setback.
- There is no single family home that has direct frontage to the existing fence given its location on the subject site, the curvature of Langdale Circle (where the house immediately across from the subject site faces the lot to the west of the subject site), and the lots to the south of the site that are oriented to face either east or west.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4’ in height and located in a front yard setback.
- As of February 6th, no letters have been submitted either in support or 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' 6" (whereby the existing fence, fence/wall, and gates that exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with conditions imposed that the applicant complies with the submitted revised site plan and revised elevation would assure that the existing open iron fence, solid wood fence/wall, and open iron gates are maintained as shown on these documents.

**FILE NUMBER:** BDA 056-078

**BUILDING OFFICIAL'S REPORT:**

Application of Ed Simons for a variance to the rear yard setback regulations at 6331 Desco Drive. This property is more fully described as Lot 11 in City Block D/5486 and is zoned R-10(A) which requires rear yard setback of 3 feet. The applicant proposes to construct an addition and provide a 0 foot rear yard setback which would require a variance of 3 feet. 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:** 6331 Desco Drive

**APPLICANT:** Ed Simons

**REQUEST:**

- A variance to the rear yard setback regulations of 3' is requested in conjunction with constructing and maintaining a one-story garage/storage building on a site developed with a single family home and detached garage.

**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 Dallas Development Code states the following with regard to "rear yard provisions for residential districts:"

- "In a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required."
- The Building Inspection Development Code Specialist has commented that the City interprets that a rear yard setback be provided from the edge of the alley easement line on lots where there is an existing alley that is conveyed as an easement verses conveyed as a fee simple alley.
- The applicant has submitted a site plan that denotes a "10'-0" easement per plat" in the rear of the property where an alley exists. The alley on the north side of this site is conveyed through an easement rather than being conveyed as a "fee simple alley." A portion of what is described on the site plan as the "new one-story detached structure" is located in this 10' alley easement.
- The site plan indicates that the proposed structure is approximately 1,250 square feet in area. The site plan indicates that the proposed structure is comprised of a 33' x 23' 4" structure that appears to be a garage and a 23' 7" x 20' 9" structure attached that is unlabeled as to its function/use. It appears from a review of the submitted plan that the proposed garage/storage room is located on the alley easement line.
- An existing detached garage is located on the subject site. The submitted "demolition plan" indicates that the existing garage is approximately 552 square feet (or 23' x 24') in area. It appears from a review of the submitted plan that the existing garage is located on the alley easement line.
- The applicant has forwarded a plat map and an email to the Board Administrator on January 25, 2006 (see Attachment A). This email provided the following information in response to questions posed to him by the Board Administrator:
  - The Building Official thinks that the setback should be measured from the alley easement line rather than the property line which in this case is the center of the alley.
  - The Building Official thinks that the intent of the Dallas Development Code was to get a 3' setback from the alley whether it's an easement or a fee simple alley.
  - The structure is less than 15' in height.
  - The original garage was built before there was any setback required for a rear yard accessory structure (until the 80's). The existing structure is grandfathered.
  - The paving is about the same distance from the proposed structure if the alley was 15' instead of 20 (maybe 6 inches closer).
  - There is a 75' deep front yard building line and a 10' easement which leaves limited space for a lot with so much depth.
- As of February 6, 2006, the Building Inspection Development Code Specialist was in the process of investigating whether the existing garage structure would be deemed a nonconforming structure.
- Assuming that the existing garage structure is a nonconforming structure (a structure that does not conform to the code regulations other than use but that was lawfully constructed under the regulations in force at the time of construction) and that the proposed garage is to be of the exact same size and in the same location, a variance would be required to construct the structure since the code states that the right to rebuild the nonconforming structure ceases if it is destroyed by the intentional act of the owner or the owner's agent.

- The subject site is flat, rectangular in shape (187.5' x 100'), and 18,750 square feet in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
- A plat map has been submitted that documents a platted front building line of 75' and a 10' easement in the rear of the site.
- DCAD records indicate that the site is developed with the following:
  - a structure in "very good" condition built in 1952 with 5,187 square feet of living space;
  - a 528 square foot "ob enc garage;" and
  - a 400 square foot detached garage.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site is developed as 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:**

- Dec. 28, 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.
- Jan. 18, 2006: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Jan. 19, 2006: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the



applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the January 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the February 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Jan. 25, 2006      The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).

Jan. 30, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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; 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 (187.5' x 100'), and 18,750 square feet in area.
- The site is zoned R-10(A) where lots are typically 10,000 square feet in area.
- The site is developed with a single family home and a detached garage. According to information in an email from the applicant's representative, the original garage structure is "grandfathered" and "conforming," and "The paving is about in the same distance from the proposed structure if the alley was 15 feet instead of 20. Maybe 6 inches closer."
- According to calculations taken from the submitted site plan/demolition plan the proposed garage/storage room would be about 1,250 square feet in area which is about 700 feet larger and 9 feet longer than the existing garage.
- According to the submitted site/demolition plan, the existing garage and the proposed garage/storage room are located on the edge of the 10' alley easement line.
- The applicant has the burden of proof in establishing the following related to the rear yard variance request:

- That granting the variance to the rear yard setback regulations of 3' to construct a new approximately 1,250 square foot, 33'-long garage/storage building 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 rear yard setback regulations of 3' requested to construct and maintain a new approximately 1,250 square foot, 33'-long garage/storage building 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-10 (A) zoning classification.
- The variance to the rear yard setback regulations of 3' requested to construct and maintain a new garage/storage building 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 R-10 (A) zoning classification.
- If the Board were to grant the rear yard variance request of 3', imposing a condition whereby the applicant must comply with the submitted site plan, the result would be a 0' rear yard setback from the alley easement line where the garage/storage room could be located 3' into the 3' rear yard setback.
- Approximately 130 square feet of the proposed approximately 1,250 square foot garage/storage room would be "varied" into the site's rear yard setback if the Board were to grant the request and impose compliance with the submitted site plan as a condition to the request.

**FILE NUMBER:** BDA 056-083

**BUILDING OFFICIAL'S REPORT:**

Application of Barbara Tennant represented by Baldwin Associates for a special exception to the landscape regulations at 7431 Coronado Avenue. This property is more fully described as a tract of land in part of City Blocks 2698 and 2699 and is zoned MF-2(A) which requires landscaping to be provided with new construction. The applicant proposes to construct single family homes in shared access developments 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:** 7431 Coronado Avenue

**APPLICANT:** Barbara Tennant  
Represented by Baldwin Associates

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with developing a 5.6 acre site with a total of 80 single family townhomes. (59 of the townhomes will be located in two shared access developments (SAD) that will "front" Coronado Avenue while the remaining 21 townhomes will "front" a new public cul-de-sac).

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

## **GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- 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.
- The Dallas Development Code defines a “shared access area” as follows:
  - “That portion of a shared access development that fronts on a public or private street and provides access to individual lots within the shared access development.”
- The Dallas Development Code describes the purpose of “shared access development” as follows:
  - “Traditional single family lots front onto a street and have a rectangular shape. New developments have been platted with a minimal frontage on a street, and have access to the street from a shared driveway. This section is designed to address the issues specific to these non-traditional lots.”
- According to a document submitted by the applicant’s representative, the landscape requirements of the SAD require 2 trees per lot for a total of 160 trees to be planted in the front yard of each unit. The representative states that the geometry of the site and the resulting land plan do not allow for front yards that are large enough to contain so many trees. (The SAD proposed on the subject site with 33 units has approximately 290 linear feet of frontage where 66 trees would be required to be located. The other SAD proposed on the subject site with 26 units has approximately 445 linear feet of frontage where 52 trees would be required to be located). However, the representative states that the submitted alternate landscape plan provides more street trees than would be required if this were a multifamily development.
- On February 1, 2006, 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 Article X (The Landscape Regulations), more specifically, relief from the required number of site trees for a shared access development.
  - The special exception request is triggered by new construction.
  - Deficiencies:
    1. The applicant is required to provide two, 2” diameter site trees for each lot, and provide one, 2” diameter site tree for each lot anywhere else within the shared access development (240 site trees would be required for this site).  
The applicant is proposing to provide 32 site trees within the front yard of the shared access development and 87 site trees throughout the rest of the development for a total of 119 trees.
  - Factors for consideration:
    - As one multifamily lot, this development would require 11, 3” diameter street trees and 62, 2” diameter site trees (a combined total of 73 trees).

- As a residential development tract in PD 193 (which is the same as a shared access development), the requirements would include 22, 3.5” diameter street trees and 62, 2” diameter site trees (a combined total of 84 trees).
- There is a proposed change to the development code that would address this very situation.
- The City Plan Commission did approve changing the requirements for a shared access development to resemble closely those of a residential development tract in PD 193. This amendment still needs approval of the City Council.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MF-2 (A)(Multifamily)  
North: CR (Community retail)  
South: MF-2 (A)(Multifamily)  
East: MF-2 (A)(Multifamily)  
West: MF-2 (A)(Multifamily)

**Land Use:**

The 5.6 acre subject site is undeveloped. The areas to the north, south, and west are developed with multifamily uses; and the area to the east is undeveloped.

**Zoning/BDA History:**

1. BDA 034-190, 7416 Coronado Avenue (the lots approximately 500 feet northwest of the subject site)

On August 16, 2004, Board of Adjustment Panel C granted a request for a special exception to the landscape regulations, imposing the following condition: Compliance with the submitted revised “Optional Proposed Trees and Landscaping” plan dated 8-16-04 is required. The case report states the request was made to develop a shared access development for 19 single family homes on a site that was undeveloped; and that the applicant was seeking relief from the site tree requirement by providing 23 of the required 57 site trees.

**Timeline:**

Dec. 28, 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.

- Jan. 18, 2006: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Jan. 19, 2006: The Board Administrator left a message with the applicant's representative that shared the following information:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the January 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
  - the February 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 30, 2006: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Feb. 1, 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 deficient in meeting the number of site trees required for a shared access development.

- The Chief Arborist has provided information that indicates that the 119 site trees proposed to be provided on this site developed as two shared access developments containing 80 single family lots would result in 46 more trees than what would be required to be provided if the site were to be developed as one multifamily lot, and 35 more trees than what would be required if the lot were located in PD 193 as a residential development tract.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations (i.e. providing the required 240 site trees on the 80 lots within the two shared access developments) will unreasonably burden the use of the property (in this case, a site that is undeveloped and approximately 5.6 acres in area).
  - The special exception (whereby 119 of the required 240 site trees are to be provided) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site could be developed with 80 single family townhomes, and would be “excepted” from the full provision of site trees where 119 of the required 240 site trees would be provided.

**FILE NUMBER:** BDA 056C-01

**BUILDING OFFICIAL'S REPORT:**

Application of Thirteen Homeowners Association, represented by Dolores G. Wolfe requesting a compliance date and discontinuance of a non-conforming manufactured home park use located at 1802 Highland Road. This property is more fully described as a tract of land in City Block 7028 and is zoned R-7.5 (A) which does not permit a manufactured home park use. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (4) of the Dallas Development Code, as amended, which states the power of the Board to bring about the discontinuance of a nonconforming use.

**LOCATION:** 1802 Highland Road

**APPLICANT:** Thirteen Homeowners Association  
Represented by Dolores G. Wolfe

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming manufactured home park use.

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

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

(1) Amortization of nonconforming uses.

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

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



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

**GENERAL FACTS:**

- Building Inspection states that the manufactured home park use on the subject site became nonconforming on July 22, 1952. This conclusion was reached by research conducted by the Building Inspection Development Code Specialist who found that this “House Trailer Park” was annexed into the City of Dallas on July 22, 1952. In addition, the code specialist found that at that time, the property was zoned for single family uses only and then later zoned R-7.5 which did not allow for “House Trailer Parks” therefore it was granted a nonconforming status.
- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The subject site is zoned R-7.5(A).
- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining a change in zoning to MH(A) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site’s existing R-7.5(A) zoning classification. Uses permitted by right in this zoning district include crop production use, temporary construction or sales office use, public park, playground, or golf course use, or single family use.
- The Board of Adjustment found at the December 14<sup>th</sup> public hearing that continued operation of the nonconforming manufactured home park use would have an adverse effect on nearby properties, and set a hearing date of February 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.
- Prior to the December 14, 2005 public hearing on this appeal, the applicant had submitted information beyond what was submitted with the original application which was entitled as “Attachment A”. The Board of Adjustment conducted a public hearing on this matter on December 14, 2005, where the applicant and the attorney representing the owner of the subject site submitted additional evidence and letters regarding the appeal. (This and all other information submitted prior to or at the December 14<sup>th</sup> public hearing has been retained in the case file and is available for review upon request).
- On January 31, 2006, a copy of the owner’s objections and responses to the City of Dallas’ Subpoena Duces Tecum and Interrogatories; and “Documents Bates labeled SC 00001 – SC 00149” was submitted to the Board Administrator (see Attachment B).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: R-7.5(A) (Single family district 7,500 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

### **Land Use:**

The site is currently developed with a manufactured home park use. The areas to the north, east, south, and west appear to be undeveloped tracts of land.

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

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

### **Timeline:**

- Dec. 14, 2005      The Board of Adjustment conducted a public hearing on this appeal and determined that continued operation of the nonconforming manufactured home park use would have an adverse effect on nearby properties, and set a hearing date of February 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.
- Jan. 10. 2006      A subpoena duces tecum and interrogatories document was sent to the owner of the subject site and his attorney.
- Jan. 30, 2006:      The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the 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; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Jan. 31, 2006      A copy of the owner's objections and responses to the City of Dallas' Subpoena Duces Tecum and Interrogatories; and "Documents Bates labeled SC 00001 – SC 00149" was submitted to the Board Administrator (see Attachment B).

### **STAFF ANALYSIS:**

- The manufactured home park use on the subject site is a nonconforming use, and became nonconforming on July 22, 1952.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

- On December 14, 2005, the Board of Adjustment determined at their public hearing that continued operation of the nonconforming manufactured home park use would have an adverse effect on nearby properties, and set a hearing date of February 15, 2006 for the purpose of establishing a compliance date for this nonconforming use.
- On January 31, 2006, a copy of the owner's objections and responses to the City of Dallas' Subpoena Duces Tecum and Interrogatories; and "Documents Bates labeled SC 00001 – SC 00149" was submitted to the Board Administrator (see Attachment B).
- The purpose of the Board of Adjustment's February 15<sup>th</sup> hearing will be to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.
- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
  - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
  - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - Any return on investment since inception of the use, including net income and depreciation.
  - The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

**BOARD OF ADJUSTMENT ACTION: November 16, 2005**

- \* Due to an administrative error, the board lacked jurisdiction to hear this case and it was therefore held over to December 14, 2005.

**BOARD OF ADJUSTMENT ACTION: December 14, 2005**

**APPEARING IN FAVOR:**

Delores Wolfe, 2125 Ash Grove Way, Dallas, TX  
 Vicki Martin, 8230 Claremont, Dallas, TX  
 John Vanbuskirk, 2450 Wildoar Dr., Dallas, TX  
 Norton Rosentrial, 8438 San Benito Way, Dallas, TX 75218  
 Susan Walker, 5820 Gardendale Dr., Dallas, TX  
 Richard Murray, 1740 Glenlivet, Dallas, TX 75218  
 Bill Forester, 8163 Santa Fe Drive, Dallas, TX

APPEARING IN OPPOSITION:

Mark Josephs, 5808 Glendora Ave., Dallas, TX  
Steve Crossett, 530 Dragon, Austin, TX 78734  
Marty Ray, 8166 Barbaree, Dallas, TX 75228  
Jack Lougheed, 1802 Highland Rd, #35, Dallas,  
Susan Graham, 1802 Highland Rd #7, Dallas, TX  
Antonia Rodriguez, 1802 Highland Rd #33,  
Dallas,  
Dwane C McCowner, 1802 Highland RD #40,  
Dallas, TX  
Tracy Shook, 1802 Highland RD #17, Dallas, TX  
Evelyn Rangel, 1802 Highland RD #5, Dallas, TX  
Bill Ashe, 1802 Highland RD #44, Dallas, TX  
Julia Hernandez, 1802 Highland RD #43, Dallas  
Kenneth Belrend, 1802 Highland Rd #19, Dallas  
Willie Ramirez, 1802 Highland RD #48, Dallas,  
Lola Boshier, 8223 Barbaree Blvd, Dallas, TX  
Benito Laredo, 1802 Highland Rd, Dallas, TX

MOTION: **Brannon**

I move that the Board of Adjustment in Appeal No. **BDA 056-C01**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use **will** have an adverse effect on nearby properties, and set a hearing date of **February 15, 2006** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: **Beikman**

AYES: 5—Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED: 5 – 0 (Unanimously)