

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, FEBRUARY 16, 2005**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, regular member, Kathleen Cope, regular member, Samuel Gillespie, regular member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, regular member, Kathleen Cope, regular member, Samuel Gillespie, regular member and Dovie Jaffe, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT BRIEFING: T.J. Okwubanego, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Michael Sultan, Chief Arborist and Trena Law, Board Secretary

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

10:10 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's February 16, 2005 docket.

1:05 P.M.
The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B January 19, 2005 hearing minutes.

MOTION: Brannon

I move **approval** of the **Wednesday, January 19, 2005** Board of Adjustment Public Hearing minutes.

SECONDED: Jaffe

AYES: 5–Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 - None

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 045-115

REQUEST: To waive the two year limitation on a parking special exception that was deemed denied with prejudice

LOCATION: 3028-32 Bryan Street

APPLICANT: Dallas Cothrum of Masterplan

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
 - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
 - The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.

- The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outline in the code.
- The applicant submitted a letter to staff requesting that BDA 045-115 be placed on the miscellaneous agenda for consideration of a new hearing (see Attachment A).
- The applicant seeks a waiver of the two year time limitation on a special exception to the off-street parking regulations that was deemed denied with prejudice by Board of Adjustment Panel B on January 19, 2005. The parking special exception was requested in conjunction with constructing a 38-unit multifamily structure.

Timeline:

- January 19, 2005 It was determined that the Board of Adjustment Panel B denied a request for a special exception to the parking regulations of 11 spaces (BDA 045-115) with prejudice since a motion to grant this request failed by not having a concurring vote of 75% of the members. In addition, the board granted a request for a height variance of 4' for a roof pitch and railing (subject to a submitted site plan and elevation), and granted a special exception for the handicapped of 12' for an elevator tower (subject to compliance with the submitted site plan, and a revised elevation to be submitted to staff indicating a maximum 62'-high elevator tower, and a condition that this special exception be valid only for as long as the structure is needed to afford a handicapped person equal opportunity to use and enjoy a dwelling unit).
- January 24, 2005 The applicant submitted a letter requesting that BDA 045-115 be placed on the miscellaneous agenda for consideration of a new hearing (see Attachment A).
- January 27, 2005: The Board Administrator wrote the applicant a letter in response to his request (see Attachment B). This letter conveyed the following information regarding his request including:
- a copy of the January 25th decision letter of the board's action on BDA 045-115;
 - an explanation of the board's action based on draft minutes and the board's Working Rules of Procedure;
 - the public hearing date of the request to waive the two year time limitation;
 - 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; and

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

January 31, 2005 The applicant submitted another letter to staff on the matter at hand (see Attachment C).

BOARD OF ADJUSTMENT ACTION: February 16, 2005

APPEARING IN FAVOR: Willie Cothrum, 500 So. Ervay, Suite 112-B, Dallas, TX
James Reeder, 1925 Cedar Springs, #302, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Brannon

I move that the Board of Adjustment **grant** the request to waive the two year time limitation on a parking special exception that was denied with prejudice for the above referenced case.

SECONDED: Jaffe

AYES: 5—Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 – None

MOTION PASSED - 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 045-142

REQUEST: To reimburse the \$610.00 filing fee that was submitted in conjunction with a request for a special exception to the rear yard setback regulations to preserve a tree

LOCATION: 6423 Turner Way

APPLICANT: Joan and Bernard White

February 16, 2005 Public Hearing Notes:

- The Assistant City Attorney to the Board of Adjustment informed the board members that he had reviewed the Dallas Development Code provisions regarding fees for board of adjustment applications, and had interpreted that the board had no jurisdiction to consider this fee reimbursement request. The board's attorney made this conclusion based on the code provision that specifically states that the applicant may request reimbursement at the hearing on the matter. In this case, the matter at hand was a rear yard special exception that the board considered and acted upon one month earlier in January of 2005.

- The Board Administrator responded to the board's inquiry as to why this request had been placed on their agenda by informing them that he had placed similar requests on agendas in the past where the fee reimbursement request followed the matter at hand, most likely allowed in the past given a different interpretation of the code provision made by prior Assistant City Attorneys who had assisted the Board of Adjustment.

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waiver/s reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to staff requesting a reimbursement of the \$610.00 filing fee that was submitted in conjunction with a request for a special exception to the rear yard setback regulations to preserve a tree (see Attachment A). No other documentation has been submitted.
- The applicant seeks a reimbursement of the filing fee submitted in conjunction with a special exception that was denied by Board of Adjustment Panel B on January 19, 2005. The special exception was requested in conjunction with constructing a single family home on a site that was undeveloped.

Timeline:

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| January 19, 2005 | The Board of Adjustment Panel B denied a request for a special exception to the rear yard setback regulations to preserve a tree without prejudice (BDA 045-142). |
| January 27, 2005 | The applicant submitted a letter requesting reimbursement of the filing fee that was submitted for this special exception request (see Attachment A). |

January 27, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date of the request;
- 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; and
- the Board will take action on the matter at the February public hearing after all information/evidence and testimony presented by the applicant and all other interested parties.
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BOARD OF ADJUSTMENT ACTION: February 16, 2005

APPEARING IN FAVOR: Bernard H. White, P.O. Box 515792, Dallas, TX
Joan White, P.O. Box 515792, Dallas, TX

APPEARING IN OPPOSITION: No one

* **A motion was called for but not made since the Assistant City Attorney to the Board of Adjustment indicated that the board had no jurisdiction to consider this request.**

FILE NUMBER: BDA 045-154

BUILDING OFFICIAL'S REPORT:

Application of Raleigh F. Davis, Jr., represented by John W. Phipps for a variance to the front yard setback regulations at 700 Fabrication Street. This property is more fully described as Lots 1-3 in City Block 3/7267 and is zoned IR which requires a 15 foot front yard setback. The applicant proposes to maintain a structure and construct an addition, and provide a 0 foot front yard setback which would require a variance of 15 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: 700 Fabrication Street

APPLICANT: Raleigh F. Davis, Jr.
Represented by John W. Phipps

REQUESTS:

1. Variances to the front yard setback regulations of 15' are requested in conjunction with maintaining a part of an approximately 18,000 square foot commercial structure (Davis Metal Stamping, Inc.) that (according to the DCAD) was constructed in the 1953, and is located on the Topeka Street and Gilmer Street front yard property lines; and
2. Variances to the front yard setback regulations of 15' are requested in conjunction with constructing/aligning an approximately 4,200 square foot addition with the existing structure located on the Topeka Street and Gilmer Street front property lines.

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 site is flat, slightly irregular in shape (100' on the north, 395' on the east, 104' on the south, and 419' on the west), and approximately 1-acre in area. The site encompasses a whole city block, hence it has four, 15'-front yard setbacks. (The existing building and proposed addition are in compliance with the 15' front yard setbacks along Fabrication and Muncie Streets).
- According to DCAD records, the approximately 41,000 square foot site is development with "storage warehouse" structure built in 1953 with 14,600 square feet of area.
- A review of historic zoning maps in the Development Services Department was conducted that revealed that prior to the city-wide zoning transition program of 1989, the site and surrounding area was zoned I-2 (Industrial-2) which required no front yard setback.
- The existing structure does not comply with the current IR (Industrial Research) 15'-front yard setback since a portion of the existing structure is located on the site's eastern front property line along Topeka Street and on the site's western front property line along Gilmer Street. (These variance requests are needed only to remedy an existing *nonconforming structure*).

- The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant submitted information beyond what was submitted with the original application including photos of the site and surrounding area (that will be available upon request at the briefing and public hearing) and a letter to further explain the requests (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial research)
North: IR (Industrial research)
South: IR (Industrial research)
East: IR (Industrial research)
West: IR (Industrial research)

Land Use:

The subject site is developed with a commercial/industrial use (Davis Metal Stamping, Inc.). The areas to the north, east, and west are developed with commercial and light industrial uses; and the area to the south is a rail line.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 045-139, 620 Fabrication Street (the lot immediately east of the subject site) | <p>On January 19, 2005, the Board of Adjustment Panel B followed the staff recommendation and granted an application for variances to the front yard setback regulations and a special exception to the visibility obstruction regulations, subject to compliance with the submitted revised site plan. The case report states that these requests involved maintaining an existing commercial building located in the front yard setbacks, and constructing and maintaining an addition to align with the existing building in the front yard setbacks, and for the addition to be located in the visibility triangle at Muncie and Topeka Streets.</p> |
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Timeline:

- Dec. 15, 2004: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 21, 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 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 28th 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- January 26, 2005 The applicant information beyond what was submitted with the original application including photos of the site and surrounding area (that will be available upon request at the briefing and public hearing) and a letter to further explain the requests (see Attachment A).
- January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS (regarding the front yard variances to maintain the existing structure in the Gilmer Street and Topeka Street front yard setbacks):

- The attached plat map indicates a slightly irregularly-shaped lot.
- An aerial photograph of the area (see Attachment B) indicates no consistent pattern of development along either Topeka Street or Gilmer Street that adheres to/maintains the 15' front yard setback that was established when the site was rezoned in 1989 from I-2 zoning (that required no front yard setback) to IR zoning (that required a 15'-front yard setback).
- Granting these variances would:
 - allow the retention of a structure that has been located in the 15-foot front yard setbacks on Gilmer and Topeka Streets since the 1950's.
 - Granting these variances will allow the maintenance of the structure and change its classification as a *nonconforming structure* to a *conforming structure*.

STAFF ANALYSIS (regarding the front yard variance to construct an addition in the Gilmer Street and Topeka Street front yard setbacks):

- The attached plat map indicates a slightly irregularly-shaped lot.
- An aerial photograph of the area (see Attachment B) indicates no consistent pattern of development along either Topeka Street or Gilmer Street that adheres to/maintains the 15' front yard setback that was established when the site was rezoned in 1989 from I-2 zoning (that required no front yard setback) to IR zoning (that required a 15'-front yard setback).
- Granting these variances would allow an addition to align with (and not encroach beyond) the existing nonconforming structure.

BOARD OF ADJUSTMENT ACTION: February 16, 2005

APPEARING IN FAVOR: No one
APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment **grant** application **BDA 045-154** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Brannon
AYES: 5—Cox, Brannon, Cope, Gillespie, Jaffe
NAYS: 0 – None
MOTION PASSED - 5 – 0 (unanimously)

FILE NUMBER: BDA 045-131

BUILDING OFFICIAL'S REPORT:

Application of M. T. Akhavizadeh for a special exception to the fence regulations at 5831 Desco Drive. This property is more fully described as Lots 3-6 in City Block F/5614 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to erect a 6 foot fence in the front yard setback which would require a special exception of 2 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5831 Desco Drive

APPLICANT: M. T. Akhavizadeh

REQUESTS:

The following appeals have been made on a site recently developed with a single family home:

1. A special exception to the fence height regulations of 2' is requested in conjunction with constructing a 6'-high open metal tube fence with 6'-high columns and a 6'-high open iron tube entry gate in the 40' Desco Drive front yard setback.
2. A special exception to the fence height regulations of 2' is requested in conjunction with constructing a 6'-high cyclone fence in the 40' Watson Avenue front yard setback.

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 approximately 1.3-acre subject site is located near the middle of the 5800 block of Desco Drive and Watson Avenue. The rectangular-shaped site/lot has two, 40'-front yard setbacks since the site is a full "block-deep" (or about 330' in depth) with its northern edge along Watson Avenue and its southern edge along Desco Drive.
- A Desco Drive site plan has been submitted in conjunction with this appeal (see Attachment A). Although the site plan is labeled with a notation of "Scale of 3/32" = 1'-0", the measurements and dimensions on the plan do not correspond with this scale. (For example, the 26' distance noted on the plan between the street curb and the property line measures 15' using an actual 3/32 architect's scale). As a result,

accurate dimensions regarding the proposed fence cannot be determined. However, this plan makes the following notations:

- a “proposed fence” to be located parallel to Desco Drive with a recessed entryway;
- the “proposed fence” to run the entire length of the site along Desco Drive (which according to a scaled plat map is 180 ‘ in length);
- the “proposed fence” being off the property line;
- the property line being located 26’ from the street curb;
- landscape materials labeled as follows:
 - 14 “Red Tips & Oleanders”
 - 6 “Magnolia”
- A Desco Drive elevation plan has been submitted in conjunction with this appeal (see Attachment A). This elevation makes the following notations:
 - 6’-high columns;
 - 6’-high open fence comprised of 1 ½” sq. tubing”; and
 - A maximum 6’-high inverted arched entry gate comprised of the same type of “tubing” as the fence, and 2 ¼” molding cap.”
- The proposed fence along Desco Drive would be located on a site where one single family home would have direct frontage to the proposed fence, and one home would have indirect frontage.
- The Board Administrator conducted a field visit of the site and surrounding area along Desco Drive (from Douglas Avenue to Preston Road) and noted the following visible fences above four (4) feet high which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - A partial approximately 15’-long, 8’-high brick wall, and an entryway feature located at the southeast corner of Douglas and Desco with 8’-high entry columns (with decorative lamps atop) and 6.5’-high open wrought iron gates.
 - An entryway feature with 6.5’-high entry columns and a 6’-high open wrought iron gate located immediately east of the site.
 - An entryway feature with 9’-high columns (including decorative lamps) with 9’-high gates located about one lot east of the site.
- A “Watson St.” site plan has been submitted in conjunction with this appeal (see Attachment A). Although this site plan is labeled with a notation of “Scale of 3/32” = 1’-0”, it does not appear to be to this scale either. (For example, the 180’-wide distance taken from a scaled plat 68’-wide on the plan). This plan does not make a specific reference to a “property line” on the site, or any reference of a pavement line of Watson Avenue. As a result, accurate dimensions regarding this proposed fence cannot be determined. However, this plan makes the following notations:
 - “proposal to replace existing 4’ Cyclon fence with a 6’ Cyclon fence” to be located parallel to “Watson St.” with an “access gate” that refer to lines on the plan;
 - these same lines to run the entire length of the site along Watson Avenue (which according to a scaled plat map is 180 ‘ in length);
 - no distance can be given of the fence’s distance from a property line or a pavement line since these typical benchmarks are either not labeled or not on the submitted plan;
 - landscape materials labeled as follows:
 - Two cloud diagrams labeled as “Oleanders.”

- A “Watson St.” elevation plan has been submitted in conjunction with this appeal (see Attachment A). This elevation makes the following notations:
 - 6’-Proposed Cyclon Fence” with a notation indicating a 180’ -0”-wide distance; and
 - “Gate” with a notation indicating a 12’ -0” –wide distance.
- The proposed fence along Watson Avenue would be located on a site where one single family home would have direct frontage to the proposed fence.
- The Board Administrator conducted a field visit of the site and surrounding area along Watson Avenue (from Douglas Avenue to Preston Road) and noted the following visible fences above four (4) feet high which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - An 8’-high open chain link fence located immediately west of the site.
 - A 9’-high solid board fence located immediately east of the site.
 - A 6’-high solid board fence located two lots east of the site.
 - A 12’-high solid board fence located three lots east of the site.
 - An 8’-high solid board fence located four lots east of the site.
 (None of the fences mentioned above have recorded history with the Board of Adjustment since the mid-80s even though all appear to be located in the 40’ Watson Avenue front yard setback).
- The applicant submitted a series of photographs of other fences in the area that will be available upon request at the February 16th briefing and public hearing.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site has been recently 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. 23, 2004: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 20, 2004: 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 identifying where the fence above 4' high is to be located on the site (with the understanding that the edge of the site on Watson Avenue is a front yard in addition to the edge along Desco Drive);
 - 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 December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 27, 2004: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.
- January 4, 2005: The applicant submitted a letter requesting that the appeal be delayed until Panel B's next hearing scheduled for February 16, 2005. The letter stated that the delay would allow him to provide additional information.
- January 4, 2005: The Board Administrator wrote the applicant to acknowledge his request to delay the matter, and to request that any additional information or modifications to his proposal be made by January 27, 2005.

January 28, 2005 The applicant submitted a series of photographs of other fences in the area that will be available upon request at the February 16th briefing and public hearing.

January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- Accurate scaled site plans for the fence proposal along Desco Drive or Watson Avenue have not been submitted that document the following:
 - the dimensions of the site,
 - the site's property line;
 - the pavement line or curb line of the street;
 - the proposed fence line in relation to the site's property line;
 - the proposed fence line in relation to the site's curb line/pavement line;
 - the length of the proposed fence line.
- A scaled site plan with the information detailed above is a document that staff believes is a "necessary fact" that the applicant should minimally establish in order to warrant favorable action from the board. An accurate scaled site plan has usually been an important requisite document submitted in conjunction with fence height special exception appeals, typically viewed as a significant document used by the board in their assessment of whether the fence proposal will adversely affect neighboring property.
- Submittal of an accurate scaled site plan is in the applicant's best interest since it establishes that the fence is on the private property. It is at this basic point of clarification where it is established that the board has jurisdiction to consider fence height special exceptions for fences (as in this case) proposed to exceed 4' in height. An approved fence special exception would be futile if the fence was ever determined (either in a plan phase or after being built) at a later date to be located or to have been located in public right-of-way since the board does not have jurisdiction to consider fence special exceptions for fences in the public right-of-way.
- Submittal of an accurate scaled site plan has typically been important document for the board to understand how far the fence is from the property line. (A fence higher than 4' that is to be located 38' feet from a property line would most likely be deemed to have lesser impact than the same proposal that is to be located 1' away from a property line).

- Submittal of an accurate scaled site plan indicating the proposal's relative distance from projected curb/pavement lines is in the applicant's best interest since it provides documentation that a fence, column, and/or gate is located outside required visibility triangles at drive approaches. (It is beneficial to the applicant to have made this documentation before a fence, gate or columns is determined after construction that it is located in the required visibility triangles, and therefore needs to be relocated outside of the triangles, or that a special exception to the visibility obstruction regulations must be applied for and granted by the Board of Adjustment).
- An accurate scaled site plan has typically been an important document to understand how long the fence higher than 4' in the front yard is intended. (A 6'-high fence that is proposed to cross only a 20'-length of a 200'-long lot would most likely be deemed to have lesser impact than the same proposal that crosses the entire lot, and proceeds further on the "sides" of the lot in the 40'-front yard setback).
- Granting these special exceptions of 2' with conditions imposed that the applicant complies with the submitted site plans and submitted elevations would not provide assurance as to the length of the fences, nor the distance that the higher fences would be located from the site's two front property lines and/or pavement lines, nor that the fences, gates, and columns would be located outside of required visibility triangles at drive approaches.
- The proposed Watson Avenue and Desco Drive fences would be located immediately across from single family homes with no fences in their front yard setbacks.

BOARD OF ADJUSTMENT ACTION: February 16, 2005

APPEARING IN FAVOR: Ted Zadeh, 1225 Grenville, Dallas, TX
Gus Goldau, 4113 Buena Vista, Dallas, TX

APPEARING IN OPPOSITION: Amy McMahan, 3012 Canton St., Dallas, TX

MOTION: Jaffe

I move that the Board of Adjustment in **Appeal No. BDA 045-131**, on application of M.T. Akavizadeh, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Cope
AYES: 4– Brannon, Cope, Gillespie, Jaffe
NAYS: 1 – Cox
MOTION PASSED - 4 – 1

FILE NUMBER: BDA 045-137

BUILDING OFFICIAL'S REPORT:

Application of Frank Geis for a special exception to the tree preservation regulations at 7020 Scyene Road. This property is more fully described as 53 lots in City Blocks H/6118 & J/6118 and is zoned R 7.5 (A) which requires mitigation for every protected tree removed. The applicant proposes to construct a residential development and provide an alternate tree mitigation plan which would require a special exception to the tree preservation regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 7020 Scyene Road

APPLICANT: Frank Geis

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with completing the development of a 53-lot subdivision.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the tree preservation 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 Tree Preservation Regulations of the Dallas Development Code includes a division pertaining to tree preservation, removal, and replacement. This division applies to all property in the city except for:
 - (a) lots smaller than two acres in size that contain single family or duplex uses; and
 - (b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in this article X, as determined by the building official.

- The subject site is an approximately 9-acre tract of land that is proposed to be developed into a 53-lot single family subdivision. According to the applicant, 20 homes have been built and sold.
- The Dallas Development Code's Tree Preservation Regulations state the following with regard to the timing of replacement trees to be planted on a site:
 - (A) Except as otherwise provided in Subparagraphs (B) and (C), all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees.
 - (B) If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official may permit the property owner to plant the replacement trees during the six-month period.
 - (C) If the property owner provides the building official with a performance bond or a letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees, with the following restrictions:
 - (i) for single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
 - (ii) in all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.
- The applicant is proposing an alternate tree mitigation plan that does not fully comply with regulations mentioned above pertaining to the timing of replacement trees to be planted on the site.
- The applicant has submitted a letter beyond what was originally submitted with the application that further explains the request and why it should be granted (see Attachment A). The applicant makes the following points in this letter:
 - The 1st phase of residential development (the installation of infrastructure and utilities) can take anywhere from 6-8 months, which leaves 10-12 months to construct all the homes in a subdivision and to have all trees replanted with the homes in order to be in compliance with the ordinance.
 - Unless the residential development is of 20 homes or less, the 18-month time frame provided in the Tree Preservation Regulations is not a reasonable time frame.
 - The grading permit for this 53-lot development was issued on July 19, 2003.
 - The first phase of development was completed 7 months later with the first lots being ready for construction on January 30, 2004.
 - 20 homes have been built and 33 lots are under contract to a single homebuilder.
 - Full compliance with ordinance provisions related to the timing of replacement trees would require for all replacement trees to be planted on the site by December 10, 2004.
- The City of Dallas Chief Arborist stated that the applicant is proposing to extend the time allowed to complete the required tree mitigation to 18 months from the date of the board's action or 38 months from the date of the removal.

- The applicant has specifically stated of his intent “to fully adhere with the tree mitigation plan that has been agreed to by the City of Dallas and with Article X, Section 51A-10.100 with one exception: that being the timing aspect of replanting of the trees.”
- Specifically, the applicant has requested that the time limit to fulfill their obligations of the approved tree mitigation plan be extended “30 days following receipt of the “final” permit from the City of Dallas of the last home built in the subdivision, but in no event shall this extension period extend beyond 18 months from February 16, 2005.”
- Both the applicant and the City Chief Arborist have stated that the extension request is due to the applicant’s proposal to plant replacement trees on the site upon the completion of all of the 53 homes that are intended to be built on the site.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family residential 7,500 square feet)
North: CR-D-1 (Community retail, dry)
South: R-7.5 (A) (FP) (Single family residential 7,500 square feet, Flood plain)
East: R-7.5 (A) (Single family residential 7,500 square feet, Flood plain)
West: R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

The 8.7-acre subject site is partially developed with single family homes. (According to the applicant, 20 of the 53 homes have been built and sold). The area to the north is developed with commercial uses; the area to the east is developed with a park (Scyene Trail Park); and the areas to the south and west are developed with single family uses

Zoning/BDA History:

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

Timeline:

- Dec. 3, 2004: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 21, 2005: 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 28th 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

January, 26, 2005: The applicant's representative submitted a letter that further explained the scope and merits of this appeal beyond what was submitted with the original application (see Attachment A).

January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.

Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

STAFF ANALYSIS:

- Granting this request (subject to a condition that the applicant must fully comply with Article X: The Tree Preservation Regulations with the exception to timing of planting replacement trees on the site) would allow the applicant to plant replacement trees on the site after construction of homes on the site has been completed. Denying the applicant's request would result in the replacement trees to be planted on the site before and/or during the construction of the remaining 33 homes which, in turn, could jeopardize the livelihood of the replacement trees.

BOARD OF ADJUSTMENT ACTION: February 16, 2005

APPEARING IN FAVOR: Dayton Macatee, 4237 Unive, Dallas, TX

APPEARING IN OPPOSITION: Casie Pierce, 6047 Parkdale, Dallas, TX

MOTION#1: **Cope**

I move that the Board of Adjustment in **Appeal No. BDA 045-137**, on application of Frank Geis, **deny** the special exception to the tree preservation requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony presented to us, and the facts that we have determined show that strict compliance with the requirements of Article X will not unreasonably burden the use of the property and that the special exception will adversely affect neighboring property.

SECONDED: **Brannon**

AYES: 2–Brannon, Cope

NAYS: 3 – Cox, Gillespie, Jaffe

MOTION FAILED - 2 – 3

MOTION#2: **Gillespie**

I move that the Board of Adjustment in **Appeal No. BDA 045-137**, hold this matter under advisement until **March 16, 2005**.

SECONDED: **Brannon**

AYES: 5– Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 –

MOTION PASSED – 5-0 (Unanimously)

FILE NUMBER: BDA 045-153

BUILDING OFFICIAL'S REPORT:

Application of Knox Street Promenade, L.P. for a special exception to the landscape regulations at 4447 N. Central Expressway. This property is more fully described as lot 9A in City Block G/1533, and is zoned PD 193 (O-2 Subdistrict), which requires landscaping to be installed with new construction. The applicant proposes to construct a building and provide an alternate landscape plan which would require a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51-3.102(d) (3), of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 4447 N. Central Expressway

APPLICANT: Knox Street Promenade, L.P.

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit and CO (Certificate of Occupancy) for a part of an existing retail center (Knox Promenade).

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

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

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction.
- The applicant is proposing an alternate landscape plan that does not fully comply with the landscape regulations, specifically a landscape plan where the applicant is specifically requesting relief from sidewalk requirements along Armstrong Avenue.
- The City of Dallas Chief Arborist identified the following way in which the alternate landscape plan does not comply with the landscape regulations:
 - The applicant is required to provide a 6'-wide sidewalk between 5' and 12' from the back of curb.
The applicant is *proposing to retain* a 7'-wide sidewalk at the back of curb.
- The applicant submitted information beyond that what was submitted with the original application. This information included photos (which will be available for review at the briefing and public hearing), a revised landscape plan, a letter from the applicant that further explains the scope and merits of the appeal, and a related letter from TXDOT (Texas Department of Transportation) (see Attachment A).
- The applicant stated the following:
 - This appeal is to allow the sidewalk along Armstrong Avenue to remain in its present location adjacent to the curb instead of the required 5' back of curb.
 - The applicant did not relocate this sidewalk per the previously submitted landscape plan because it was the applicant's understanding that it was also included in the right of way restricted by TXDOT per a letter from TXDOT dated January 15, 2004, and provided to a City of Dallas arborist after the plan was approved.
 - The applicant asked if he could receive a letter from the City confirming no further action was necessary and was told not to expect a letter but that the sidewalk could remain in place.
 - It was not until the applicant was ready to apply for a final CO for the Knox Promenade project that they were informed that the small strip along Armstrong Avenue did not comply and was not "covered" by the TXDOT exclusion.

- In the first phase of Knox Park Village, TXDOT's jurisdiction did include Knox Street so the applicant thought that side streets like Armstrong Avenue would be included as well.
- The applicant contends that this request is in keeping with the spirit of PD No. 193 in that the request matches the other (north) side of Armstrong; the applicant has the "tree'ed" and landscaped buffer which is more attractive in its current location between the restaurant (Potbelly's) patio and the existing sidewalk; and the existing sidewalk is more functional in its current location relative to cars parked at the curb.
- The City of Dallas's arborist who is responsible for the sector of the city in which the site is located has commented that neither he nor to his knowledge, the Chief Arborist, ever indicated that the existing Armstrong sidewalk could remain as is and be approved at inspection. The city arborist commented that the TXDOT letter indicated that only the existing sidewalk within their right-of-way was in their control, and in response, the city arborist wrote a letter to the applicant which stated that both sidewalks (along Central Expressway and Armstrong Avenue) were still required to comply with PD 193 requirements regardless of what TXDOT said.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (0-2 Subdistrict) (Planned Development District, Office-2)
North: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
South: PD No. 193 (0-2 Subdistrict) (Planned Development District, Office-2)
East: MC-1 (Multiple Commercial -1)
West: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)

Land Use:

The approximately 27,000 square foot subject site is part of a larger area developed as a retail center (Knox Promenade). The areas to the north, south, and west are developed with retail and office uses; and the area to the east is a freeway (Central Expressway).

Zoning/BDA History:

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|---|---|
| <p>1. BDA 023-090, 4527 N. Central Expressway (the lot immediately north of the subject site)</p> | <p>On May 27, 2003, the Board of Adjustment Panel A followed the staff recommendation and granted an appeal for a landscape special exception requested in conjunction with obtaining a certificate of occupancy for a recently constructed retail/office structure (Knox Park Village). The board imposed a condition whereby the applicant had to fully comply with the submitted landscape plan.</p> |
|---|---|

Timeline:

- Dec. 30, 2004: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 21, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 21, 2005: 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 28th 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 February public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Jan. 27, 2005: The applicant submitted photos (which will be available for review at the briefing and public hearing), a revised landscape plan, a letter from the applicant that further explains the scope and merits of the appeal, and a related letter from the Texas Department of Transportation (see Attachment A).
- January 31, 2005: 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 Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; and the Assistant City Attorney to the Board.
- Although no review comments sheets (with comments) were submitted in conjunction with this application, the City of Dallas Chief Arborist submitted a memo regarding this appeal (see Attachment B).

STAFF ANALYSIS:

- The revised submitted landscape plan is only deficient from fully complying with the landscape regulations of PD No. 193 with regard to the location of the existing approximately 110'-long sidewalk along Armstrong Avenue.
- Granting this request (subject to a condition that the applicant complies with the submitted revised landscape plan) will result in allowing the site to deviate from the PD No. 193 landscape regulations in only one way: allowing the applicant to retain a sidewalk that is located at the back of the Armstrong Avenue curb rather than 5'-12' from the curb.

*****Board Member Sam Gillispie recused himself and did not listen to testimony or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: February 16, 2005

APPEARING IN FAVOR: Philip Brosseau, 4122 University, Dallas, TX

APPEARING IN OPPOSITION: Shelly Bergman, 4112 McKinney Ave., #3, Dallas, TX

MOTION#: **Cope**

I move that the Board of Adjustment in **Appeal No. BDA 045-153**, on application of Knox Street Promenade, LP, **deny** the relief requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that granting the application would compromise the spirit and intent of Section 26 of Ordinance Number 21859.

SECONDED: **Brannon**

AYES: 3– Cox, Brannon, Cope

NAYS: 1 –Jaffe

MOTION CARRIED - 3 –1

MOTION: **Brannon**

I move to adjourn this meeting.

SECONDED: **Jaffe**

AYES: 5 – Cox, Brannon, Cope, Gillespie, Jaffe

NAYS: 0 - None

MOTION PASSED: 5– 0 (Unanimously)

3:25 P.M. - Board Meeting adjourned for February 16, 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.