

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL C
MONDAY, MARCH 14, 2005

Briefing:	11:00 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

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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3-14-2005

ZONING BOARD OF ADJUSTMENT, PANEL C
MONDAY, MARCH 14, 2005
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	11:00 A.M.
LUNCH		
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEM

	Approval of the Monday, February 14, 2005 Board of Adjustment Public Meeting Minutes	M1
Unassigned	3014 Kinmore Street REQUEST: Application of Ledell Brown to waive the filing fee to be submitted in conjunction with a potential board application	M2
Unassigned	3255 Kinmore Street REQUEST: Application of Leatha Butter to waive the filing fee to be submitted in conjunction with a potential board application	M3

HOLDOVER CASES

BDA 034-177	9863 Rockbrook Drive REQUEST: Application of Randall Goss, represented by Donald E. Godwin, Godwin Gruber, LLP, for variances to the front yard setback regulations RECOMMENDATION: Approval, subject to a condition	1
BDA 034-178	9863 Rockbrook Drive REQUEST: Application of Randall Goss, represented by Donald E. Godwin, Godwin Gruber, LLP, for a special exception to the fence regulations RECOMMENDATION: Approval, subject to a condition	2

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 C February 14, 2005 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment application

LOCATION: 3014 Kinmore Street

APPLICANT: Ledell Brown

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 waiver of a filing fee to be submitted in conjunction with a possible Board of Adjustment issue (see Attachment A). Although the letter mentions "attached documentation" in this letter, no other documentation was included in the correspondence.

Timeline:

February 1, 2005 The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).

February 22, 2005: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.

February 22, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the request (where his attendance is strongly encouraged);
- 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 March public hearing after all information/evidence and testimony presented by the applicant and all other interested parties.

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment application

LOCATION: 3255 Kinmore Street

APPLICANT: Leatha Butter

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 waiver of a filing fee to be submitted in conjunction with a possible Board of Adjustment issue, and an attachment that provided some information on her income and expenses (see Attachment A).

Timeline:

February 25, 2005 The applicant submitted a letter requesting a fee waiver for a Board of Adjustment application that may be requested at the address referenced above (see Attachment A).

February 25, 2005: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel A.

February 25, 2005: The Board Administrator wrote the applicant a letter that conveyed the following information:

- the public hearing date and panel that will consider the request (where her attendance is strongly encouraged);
- 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 March public hearing after all information/evidence and testimony presented by the applicant and all other interested parties.

FILE NUMBER: BDA 034-177

BUILDING OFFICIAL'S REPORT:

Application of Randall Goss, represented by Donald E. Godwin, Godwin Gruber, LLP, for a variance to the front yard setback regulations at 9863 Rockbrook Drive. This property is more fully described as Lot 32 in City Block 5543 and is zoned R-1ac (A) which requires a 40 foot front yard setback. The applicant proposes to maintain and construct structures on the site and provide a 17 foot front yard setback which would require a variance of 23 feet. Referred to 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: 9863 Rockbrook Drive

APPLICANT: Randall Goss
Represented by Donald E. Godwin, Godwin Gruber, LLP

SUMMARY:

- Variances to the front yard setback regulations of up to 23' are requested in conjunction with maintaining air conditioning units and an addition on a single family home that are located in the 40'-Meadowood Road front yard setback.
- The applicant is providing a 17'-front yard setback for the air conditioning units, and a 21.4'-front yard setback for the single family home addition, both of which are located in the 40'-Meadowood Road front yard setback.
- This case was first presented to the Board in June of 2004. The City Attorney's Office has recommended that this case be held under advisement since this time due to non-action by the Texas Supreme Court on a case (City of Dallas, Texas, et al. v. Doug Vanesko, et al.) that has similar issues to the applicant's requests for variances on the site (permit issued in error by a city employee).
- In November of 2004, the Board was informed that the status of the "Vanesko case" in the Texas Supreme Court was as follows:
 - 1) Appellants' (the Board, City, & Building Official) had submitted a brief on the merits of the appeal;
 - 2) Appellees' brief was due November 8, 2004 by 3pm;
 - 3) Appellants' reply brief was due by November 23, 2004;
 - 4) Only then was the Court expected to review all the material and decide whether it will hear the appeal. The City Attorney's Office expected but would not guarantee that the decision on whether to hear the appeal would be made by either December 2004 or January 2005.
- On January 18, 2005, the Assistant City Attorney involved with the "Vanesko case" mentioned above submitted a memo to the Board of Adjustment (see Attachment B). The memo stated that the Texas Supreme Court had granted the Petition for Review

submitted by the City, the Board, and the Building Official. The memo stated that the Court would hear oral argument in the City of Dallas, Texas, et al. v. Doug Vanesko, et al. appeal on February 15th, and that he did not expect the Court to issue an opinion until several months after oral argument.

- The only additional information that materialized from what was submitted in November of 2004 and February of 2005 was evidence from counsel to property owners who oppose the request (see Attachment C).
- On February, 3, 2005, the applicant's representative requested that the Board Administrator re-distribute his 23-section notebook of material on the matter (originally submitted in November of 2004) back to Board members at the February 14th briefing.
- On February 14, 2005, the Board of Adjustment heard testimony from the applicant and interested parties, and delayed action on this matter until March 14, 2005. The board encouraged the applicant and the neighbors who opposed the request to meet and determine if any resolution could be reached on the matters at hand.
- On February 18, 2005, the Board Administrator left a message with the applicant's representative informing him of the February 25th deadline to submit any additional evidence for staff to factor into their analysis and to incorporate into the board's docket.
- As of March 7, 2005, no additional information had been submitted to staff from either the applicant or the neighboring property owners.

STAFF RECOMMENDATION: Approval, subject to the submitted site/landscape plan and elevations.

The reason for the staff recommendation is the property hardship due to the two required 40' front yard setbacks.

ADDITIONAL FACTS (reported on June 21, 2004):

- Staff recommended approval of both variance requests, subject to the submitted proposed landscape plan. Staff made this recommendation for the following reasons:
 - The site differs from other parcels of land given that it has two front yard setbacks which reduces the applicant's buildable area by an additional 30' along the northern boundary of Meadowood Road as compared to a 10' setback that would be required if the Meadowood Road side of the site were a "side yard";
 - The site is restricted in its size at 0.87 acres in area in an R-1ac (A) zoning district where most of the lots in the zoning district (as shown in the applicant's submitted "Exhibit G") are either an acre in area or exceed an acre in area;
 - Requiring compliance with the submitted proposed landscape plan as a condition to the variances would act to buffer the structures that encroach in the front yard setback from the street; and at the same time would preserve the existing rural and green environment Meadowood Road;
 - The proposed landscape plan will ensure that granting the variance will not be contrary to interest since it will match the prevalent pattern of heavily landscaped homes that front onto in the immediate vicinity of the site.

- The site is flat, somewhat irregular in shape (about 154' on the northeast, 205' on the southeast, 227' on the southwest, and 215' on the northwest), and approximately 0.879 acres in area.
- According to DCAD records, the site is developed a single family home built in 1985 with 9,200 square feet of living area; a 400 square foot "porte cache"; a 1,190 square foot attached garage; and two cabanas: one 1,230 square feet in area, and the other 624 square feet.
- The subject site has two 40' front yard setbacks: one along Rockbrook Drive and another on Meadowood Road.
- Neither the existing home nor the proposed a/c units encroaches/will encroach into the site's *Rockbrook Drive* 40' front yard setback.
- The applicant has provided a series of documents (a letter, plans, copies of permits, photos, support letters, case history information, and maps) that further explains the request and why it should be granted (see Attachment A). Part of the applicant's information includes his account as to how the addition in the front yard setback is a result of an issued building permit and numerous inspections made by city staff.
- Staff's research regarding the permit and inspections issue showed the following:
 - In the past there was a policy in existence whereby an applicant could waive the site plan review for minor constructions by submitting an affidavit swearing to meet all regulations.
 - In the year 2000 this policy was changed and all applicants were required to get an approval of site plans before a construction permit was issued.
 - The 2002 site plans for this property are stamped as follows: "subject to field inspector's approval." This stamp in conjunction with a signed waiver traditionally means that the site plan review was waived.
 - Staff has been unable to locate a signed waiver of site plan review but at the same time staff was unable to locate a receipt for the payment of the site plan review fee.
 - Therefore, staff is unable to conclude whether a site plan review was done or was waived by the applicant.
 - In either case the on site building inspector should have caught the encroachment issue at the foundation inspection stage and the structure should never have been allowed to reach the current stage of building.

June 21, 2004 Public Hearing Notes:

- In addition to verbal testimony, the applicant's representative submitted a notebook of information to the board that included sections entitled "Power Point," "Exhibits," and "Green Tags" (see Attachment A).
- Given the applicant's contention that the structure on the site located in the front yard setback is a result of a permit erroneously issued by a city employee, an Assistant City Attorney submitted verbal testimony to the Board recommending that the Board delay action on this case until September of 2004 in hopes that the Texas Supreme Court will have taken action on the City's petition for review in *City of Dallas, et al v. Doug Venesko, et al.* (This court matter involves a Board of Adjustment case heard in 1999 where the applicant sought relief to the height regulations through a variance request to address his home that was constructed as

a result of an erroneously issued building permit. The board denied the applicant's request and the applicant, in turn, appealed the board decision to court where the court overturned the board's denial decision).

- The applicant and his representative established with the Building Inspection Development Code Specialist that the owner would be able to move into his home prior to the board's consideration on this matter if indeed, action on the variance request were to be delayed until September of 2004. The applicant (and his representative) promised that there would be no further finish-out work for the part of the home that is located within the 40' front yard setback, and that temporary air conditioning units would be placed outside the setback (rather than construct proposed permanent air conditioning units in the Meadowood Road front yard setback).
- The applicant and his representative stated that any building permits issued on the site not affected by the 40' front yard setback between the June hearing and the September hearing would not be introduced as evidence as to why a variance should be granted on the site if action on the request were to be delayed until September of 2004.
- The applicant, his representative, and the opposition who provided testimony at the hearing indicated their support in delaying action on this matter until September of 2004.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 ac (A)
North: R-1 ac (A)
South: R-1 ac (A)
East: R-1 ac (A)
West: R-1 ac (A)

Land Use:

The site is developed with a single family home. The area to the north is undeveloped; and the areas to the east, south, and west are developed with single-family homes.

Zoning/BDA History:

1. BDA034-178, 9863 Rockbrook Drive (the subject site) On June 21, 2004, the Board of Adjustment Panel C will consider a request for a special exception of 4 feet requested in conjunction with maintaining an existing fence/wall along Rockbrook Drive and constructing a new fence along Rockbrook Drive and Meadowood Road.
2. BDA023-138, 9863 Rockbrook Drive (the subject site) On April 19, 2004, the Board of Adjustment Panel C denied a request for a variance to

3. BDA88-063, 9844 Rockbrook Drive (the lot at the southeast corner of Rockbrook Drive and Meadowood Road)

the front yard setback regulations of 23 feet without prejudice. The staff had recommended that the board grant the request, subject to compliance with the submitted site plan. The case report states that variances to the front yard setback regulations were requested to maintain an approximately 700 square foot portion of a two-story single family home, and to add an a/c unit both either located or to be located in the Meadowood Road front yard setback. On May 10, 1988, the Board of Adjustment followed the staff recommendation and granted the appeals as requested for a variance to the front yard setback regulations of 30' and a "variance" to the fence regulations of 4 feet. The case report indicates that the front yard variance was requested for to maintain a swimming pool in the Meadowood Drive front yard setback, and an 8' high chain link fence.

4. BDA95-063, 9815 Rockbrook Drive (the lot located four lots south of the subject site)

On May 23, 1995, the Board of Adjustment followed the staff recommendation and denied a request for a variance to the height regulations of 3', granted a special exception to the single family regulations, and denied a request for a special exception to the fence height regulations of 7 feet. The case report indicated that the height variance was requested in conjunction with a home that would reach 53' in height, a special exception to the single family regulations for a home with an additional kitchen in a cabana, and a fence special exception to erect a 10' high open metal fence with 11' high masonry columns.

Timeline:

April 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 (see Attachment A).

May 14, 2004 The case was assigned to Board of Adjustment Panel C given the site's history with this panel and in order to comply with the Board's Rules of Procedure that state that "if a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

- May 14, 2004 The Board Administrator left a message with the applicant's representative requesting a return call to share information about the request.
- May 17, 2004: The applicant's representative met with the Board Administrator where the following information was discussed:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the May 26th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the June 21st public hearing after considering the staff recommendation that will be made at the June 2nd staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 25, 2004 The applicant submitted a series of documents (a letter, plans, copies of permits, photos, support letters, case history information, and maps) that further explained the request and why it should be granted (see Attachment A).
- June 2, 2004 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Staff Development Code Specialist, the Development Services Transportation Engineer, the Chief Arborist, and the Assistant City Attorney to the Board of Adjustment.
- June 9, 2004 The applicant submitted a revised site plan, a proposed landscape plan, and revised proposed fence elevations (see Attachment A).
- June 21, 2004 Panel C conducted a public hearing on the matters (see the "June 21, 2004 Pubic Hearing Notes" section of this case report for further details).
- August 27, 2004 The applicant submitted the following to staff (see Attachment A):
- A copy of a receipt and a letter the applicant describes it as "a receipt for a site plan review administered at the time the plans

were approved for the addition that the subject of the discussion in this matters.”

- A copy of a permit for the addition with the letter stating that “the site plan review is clearly indicative that the City of Dallas approved the addition before construction had started and is consistent with the green tags that were issued on the property and other approvals given to the applicant and/or his agents regarding construction.”

August 30, 2004 The applicant submitted a letter to staff (see Attachment A) documenting his position on delaying action on this matter with the understanding the City Attorney’s office will instruct the Board of Adjustment for an additional delay.

August 30, 2004 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Staff Development Code Specialist, the Development Services Transportation Engineer, and the Assistant City Attorney to the Board of Adjustment.

BASIS FOR A REQUEST 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.

CASE ANALYSIS:

Purpose/Intent of the front yard setback regulation: The front yard setback regulations for single family districts were intended to create a better urban design and allow for openness and a consistent pattern of development along the streets.

Approval of the requests will result in allowing existing home to remain on the site in its current configuration and to add an a/c unit in the front yard setback on the site. The proposed landscape plan will hide the encroachment behind a live screen similar to the neighboring properties along the street and will therefore maintain the country look of the neighborhood.

Denial of the requests will result in both the existing addition being torn down and the a/c units being relocated outside the front yard setback; or the applicant redesigning and reconstructing the addition outside the front yard setback; or the house not having an addition.

BOARD OF ADJUSTMENT ACTION: June 21, 2004

APPEARING IN FAVOR: Donald E. Godwin, 1201 Elm St., Suite 1700, Dallas, TX
Randall Goss, 10210 N. Central Expwy., Suite 500
Dallas, TX
Ray Martinez, 1201 Elm Street, Dallas, TX

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

APPEARING FOR THE CITY: Chris Bowers, 1500 Marilla, 7DN, Dallas, TX

MOTION: Isenberg

I move that the Board of Adjustment in Appeal No. **BDA 034-177**, hold this matter under advisement until **September 20, 2004**.

SECONDED: Neumann

AYES: 5 – Smith, Hines, Bach, Isenberg, Neumann

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: September 20, 2004

APPEARING IN FAVOR: Raymond Martinez, 1201 Elm St., Suite 1700, Dallas, TX

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

MOTION: Smith

I move that the Board of Adjustment in Appeal No. **BDA 034-177**, hold this matter under advisement until **November 15, 2004**.

SECONDED: Bach

AYES: 5 – Madrigal, Smith, Isenberg, Bach, Wise

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 15, 2004

2:08 P.M. Went into Executive Session

2:39 P.M. Executive Session Ends

APPEARING IN FAVOR: Raymond Martinez, 1201 Elm St., Suite 1700, Dallas, TX
Randall Goss, 9863 Rockbrook, Dallas, TX
William Solemeue, 4400 Williamsburg Rd., Dallas, TX
Hudson Lockett, 5737 Velasco, Dallas, TX
Nickey Oates, 4335 Lorraine, Dallas, TX

APPEARING IN OPPOSITION: Jonathan Vinson, 901 Main Street, Dallas, TX
Frank Trabold, 9908 Rockbrook, Dallas, TX
Jim Moore, 9938 Rockbrook, Dallas, TX
Will Rose, 4608 Meadowood, Dallas, TX
Marilyn Fulbright, 9945 Rockbrook, Dallas, TX
Bob Hamer, 4418 Beechwood Ln, Dallas, Tx

MOTION: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 034-177**, hold this matter under advisement until **February 14, 2005**.

SECONDED: **Neumann**

AYES: 4 – Madrigal, Smith, Neumann, Wise

NAYS: 0–

MOTION PASSED: 4 –0 (unanimously)

BOARD OF ADJUSTMENT ACTION: February 14, 2005

APPEARING IN FAVOR: Raymond Martinez, 1201 Elm St., Suite 1700, Dallas, TX
Randall Goss, 10210 N. Central Expwy., Suite 500
Dallas, TX
Hudson Lockett, 5735 Velasco, Dallas, TX
Nickey Oates, 4335 Lorraine, Dallas, TX

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

3:32 P.M.: Went into Executive Session

4:00 P.M.: Executive Session Ends

MOTION#1: **Wise**

I move that the Board of Adjustment in Appeal No. **BDA 034-177**, hold this matter under advisement until **June 13, 2005**.

SECONDED: **Gomez**

AYES: 2 – Wise, Gomez

NAYS: 3– Madrigal, Chortek, Neumann,

MOTION FAILED: 2 – 3

MOTION#2: **Neumann**

I move that the Board of Adjustment in Appeal No. **BDA 034-177**, hold this matter under advisement until **March 14, 2005**.

SECONDED: **Chortek**

AYES: 3 – Madrigal, Chortek, Neumann

NAYS: 3– Wise, Gomez

MOTION PASSED: 3 – 2

FILE NUMBER: BDA 034-178

BUILDING OFFICIAL'S REPORT:

Application of Randall Goss, represented by Donald E. Godwin, Godwin Gruber, LLP, for a special exception to the fence regulations at 9863 Rockbrook Drive. This property is more fully described as Lot 32 in City Block 5543 and is zoned R-1ac (A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in the required front yard setback which would require a special exception of 4 feet. Referred to 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: 9863 Rockbrook Drive

APPLICANT: Randall Goss
Represented by Donald E. Godwin, Godwin Gruber, LLP

SUMMARY:

- Special exceptions to the fence height regulations of up to 4' are requested in conjunction with:
 - constructing a 6'-high decorative wrought iron fence with 6'-6" high masonry columns, and 6'-high wrought iron entry gates in the required Rockbrook Drive and Meadowood Road front yard setbacks; and
 - maintaining a portion of an existing 8' high masonry wall in the Rockbrook Drive front yard setback.
- This case is related to the BDA 034-177 in that it has the same applicant and is located on the same site. This fence height special exception request was first presented along with the variance matter in BDA 034-177 to the Board in June of 2004. The applicant asked that the two cases be heard and considered together. As a result, this appeal has been delayed in June, September and November of 2004, and February of 2005.
- The City Attorney's Office has recommended that this case (and BDA 034-177) be held under advisement since June of 2004 due to non-action by the Texas Supreme Court on a case (City of Dallas, Texas, et al. v. Doug Vanesko, et al.) that has similar issues to the applicant's requests for variances on the site (permit issued in error by a city employee).
- In November of 2004, the Board was informed that the status of the "Vanesko case" in the Texas Supreme Court was as follows:
 1. Appellants' (the Board, City, & Building Official) had submitted a brief on the merits of the appeal;
 2. Appellees' brief was due November 8, 2004 by 3pm;
 3. Appellants' reply brief was due by November 23, 2004;

4. Only then was the Court expected to review all the material and decide whether it will hear the appeal. The City Attorney's Office expected but would not guarantee that the decision on whether to hear the appeal would be made by either December 2004 or January 2005.
- On January 18, 2005, the Assistant City Attorney involved with the "Vanesko case" mentioned above submitted a memo to the Board of Adjustment (see Attachment B). The memo stated that the Texas Supreme Court had granted the Petition for Review submitted by the City, the Board, and the Building Official. The memo stated that the Court would hear oral argument in the City of Dallas, Texas, et al. v. Doug Vanesko, et al. appeal on February 15th, and that he did not expect the Court to issue an opinion until several months after oral argument.
 - The only additional information that materialized from what was submitted in November of 2004 and February of 2005 was evidence from counsel to property owners who oppose the request (see Attachment C).
 - On February, 3, 2005, the applicant's representative requested that the Board Administrator re-distribute his 23-section notebook of material on the matter (originally submitted in November of 2004) back to Board members at the February 14th briefing.
 - On February 14, 2005, the Board of Adjustment heard testimony from the applicant and interested parties, and delayed action on this matter until March 14, 2005. The board encouraged the applicant and the neighbors who opposed the request to meet and determine if any resolution could be reached on the matters at hand.
 - On February 18, 2005, the Board Administrator left a message with the applicant's representative informing him of the February 25th deadline to submit any additional evidence for staff to factor into their analysis and to incorporate into the board's docket.
 - As of March 4, 2005, no additional information had been submitted to staff from either the applicant or the neighboring property owners.

STAFF RECOMMENDATION: Approval, subject to compliance with the submitted "proposed landscape plan" and "proposed elevations".

Staff concluded that the proposed fence, gates, and columns would not adversely affect neighboring property because:

- The "proposed landscape plan" documents existing landscape materials to be retained and proposed materials to be added on the site which reduces the fence's impact on neighboring properties, and the proposed landscaping is shown to be compatible with the characteristics of the surrounding neighborhood.

ADDITIONAL FACTS (reported on June 21, 2004):

- The proposed fence characteristics in the *Rockbrook Drive* 40' front yard setback are as follows:
 - About 200' in length;
 - Designed to run generally parallel to the street but with a small curve in the center of the site with a few graduated setbacks;

- Located approximately from 3' – 10' from the property line or about 20' – 27' from the pavement line;
- Located where about two single-family homes have direct/indirect frontage to the proposed fence, neither of which appear to have a fence located in their required front yards higher than 4' in height.
- A landscape plan has been proposed to screen the fence. The characteristics of this plan along Rockbrook Drive are as follows:
 - Existing Magnolia trees,
 - 6'- 8' 0" ht. evergreen screen planting in front of fence (Nellie R. Stevens);
 - New evergreen shrub planting 4' – 5' 0" ht. in front of wrought iron fence to allow filtered view to front of house;
 - Groundcover & low shrubs in front of screen planting;
 - Seasonal color & shrubs to frame main entry;
 - 6' 0" ht. wrought iron fence behind evergreen screen hedge.
- The proposed fence characteristics in the *Meadowood Road* 40' front yard setback are as follows:
 - About 150' in length;
 - Designed to run parallel to the street;
 - Located approximately 10' from the property line or about 25' from the pavement line;
 - Located where no single family home has direct frontage and about two single-family homes have indirect frontage to the proposed fence, none of which appear to have a fence located in their required front yards higher than 4' in height.
- The proposed landscape plan characteristics are along Meadowood Road are as follows:
 - add 6' – 8' 0" evergreen hedge along outside of wall along alley;
 - 6'- 0" masonry screen wall behind evergreen planting;
 - 6'- 8' 0" height evergreen screen planting along outside of fence (Nellie R. Stevens Holly);
 - 6' – 0" wrought iron fence behind screen planting;
 - 14' – 16' ht. evergreen trees behind fence to screen views of house (Savannah Holly);
 - Preserve existing Magnolia trees (evaluate on site);
 - 3' – 5' 0" shrub plantings @ corner of property;
 - Seasonal color or perennials.

June 21, 2004 Public Hearing Notes:

- Staff recommended approval of the request, subject to the submitted “proposed landscape plan” and “proposed elevations”. Staff made this recommendation since the “proposed landscape plan” documented existing landscape materials to be retained and proposed materials to be added on the site, which reduced the fence’s impact on neighboring properties, and the proposed landscaping shown was compatible with the characteristics of the surrounding neighborhood.
- In addition to verbal testimony, the applicant’s representative submitted a notebook of information to the board that included sections entitled “Power Point,” “Exhibits,” and “Green Tags” (see Attachment A).

- Given the applicant's contention that the structure on the site in the front yard setback (related to BDA034-177) is a result of a permit erroneously issued by a city employee, an Assistant City Attorney submitted verbal testimony to the board recommending that the Board delay action on this case until September of 2004 in hopes that the Texas Supreme Court will have taken action on the City's petition for review in City of Dallas, et al v. Doug Venesko, et al.
- The applicant and his representative requested that the board delay action on the fence special exception until September of 2004 to coincide with their action where they delayed considering the variance request on the site.
- In addition to verbal testimony, the opposition to this request submitted photographs of what they contended to be a wood fence being constructed in the Meadowbrook Road front yard setback that was higher than 4 feet. (These photographs will be available for review upon request at the briefing and public hearing).. The applicant and his representative stated they would immediately investigate this matter with the contractor on the site, and assured the board that any fence that was being constructed on the site would either be in (or be brought into) compliance with the fence regulations until the board's hearing in September of 2004.
- The applicant, his representative, and the opposition who provided testimony at the hearing indicated their support in delaying action on both the variance request related to BDA 034-177 and the fence special exception matter in this application until September of 2004.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A)
North: R-1ac (A)
South: R-1ac (A)
East: R-1ac (A)
West: R-1ac (A)

Land Use:

The site is developed with a single family home. The area to the north is undeveloped; and the areas to the east, south, and west are developed with single-family homes.

Zoning/BDA History:

1. BDA034-177, 9863 Rockbrook Drive (the subject site)

On June 21, 2004, the Board of Adjustment Panel C will consider a request for a variance to the front yard setback regulations of 23 feet to maintain an approximately 700 square foot portion of a two-story single family home, and to add an a/c unit both either located or to be located in the Meadowood Road front yard setback.

2. BDA023-138, 9863 Rockbrook Drive (the subject site)

On April 19, 2004, the Board of Adjustment Panel C denied a request for a variance to the front yard setback regulations of 23 feet without prejudice. The staff had recommended that the board grant the request, subject to compliance with the submitted site plan. The case report states that variances to the front yard setback regulations were requested to maintain an approximately 700 square foot portion of a two-story single family home, and to add an a/c unit both either located or to be located in the Meadowood Road front yard setback.
3. BDA88-063, 9844 Rockbrook Drive (the lot at the southeast corner of Rockbrook Drive and Meadowood Road)

On May 10, 1988, the Board of Adjustment followed the staff recommendation and granted the appeals as requested for a variance to the front yard setback regulations of 30' and a "variance" to the fence regulations of 4 feet. The case report indicates that the front yard variance was requested for to maintain a swimming pool in the Meadowood Drive front yard setback, and an 8' high chain link fence.
4. BDA95-063, 9815 Rockbrook Drive (the lot located four lots south of the subject site)

On May 23, 1995, the Board of Adjustment followed the staff recommendation and denied a request for a variance to the height regulations of 3', granted a special exception to the single family regulations, and denied a request for a special exception to the fence height regulations of 7 feet. The case report indicated that the height variance was requested in conjunction with a home that would reach 53' in height, a special exception to the single family regulations for a home with an additional kitchen in a cabana, and a fence special exception to erect a 10' high open metal fence with 11' high masonry columns.
5. BDA92-051, 9839 Rockbrook Drive (the lot located two lots southwest of the subject site)

On June 23, 1992, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence height regulations of 4' 4". The board imposed the following condition: That the gate and driveway meet all requirements of the visibility obstruction provided in the Dallas Development Code. The case report indicated that request was to maintain a wrought iron and chain link

fence with “an average height of 7 feet with a maximum height of 8’ 4”).

6. BDA012-139, 9908 Rockbrook Drive (the lot located at the northeast corner of Rockbrook Drive and Meadowood Road)

On February 26, 2002, the Board of Adjustment Panel A followed the staff recommendation and granted a request for a special exception to the fence height regulations of 2’ 6” and imposed the following conditions: Compliance with the submitted site/fence elevation plan and landscape plan is required; and the existing landscaping (hedge) shall remain in place along the entire length of the 6’ high vinyl coated (black) cyclone fence along Meadowood Road, or when needed must be replaced and retained with minimum 6’ height at maturity such that the entire length of the fence will not be visible from Meadowood Road. The case report states that the special exception was requested in conjunction with erecting a “6’ 0” high vinyl coated (black) cyclone fence” in the Meadowood Road front yard to replace a “6’ 6” high existing galvanized cyclone fence.” (The request did not include any proposed fence in the Rockbrook Drive front yard setback).

7. BDA989-191, 9662 Rockbrook Drive (the lot located three lots northeast of the subject site)

On April 20, 1999, the Board of Adjustment Panel B followed the staff recommendation and denied a request for a special exception to the fence height regulations of 6 feet. The case report indicated that request was to construct an 8’ high open metal fence, 8’, 8” high columns, and 10’ high open metal entry gates.

Timeline:

- April 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 (see Attachment A).

- May 14, 2004 The case was assigned to Board of Adjustment Panel C given the site's history with this panel and in order to comply with the Board's Rules of Procedure that state that "if a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 14, 2004 The Board Administrator left a message with the applicant's representative requesting a return call to share information about the request.
- May 17, 2004: The applicant's representative met with the Board Administrator where the following information was discussed:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the May 26th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the June 21st public hearing after considering the staff recommendation that will be made at the June 2nd staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- May 20, 2004: The Board Administrator conducted a field visit of the site and surrounding area and noted the following fences above four (4) feet high in the immediate area (approximately 500 feet in each direction from the site along Rockbrook Drive and Meadowood Road) which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
- Along Rockbrook Drive:
 - An approximately 6 high open wrought iron fence with 6.5' high brick columns and 10' high brick columns about 20' from the pavement line that is located two lots south of the site;
 - An approximately 6.5' high open metal fence behind significant landscaping that is located two lots southwest of the site (and a result of board action on BDA 92-051);
 - Along Meadowood Road:
 - An approximately 6' high open fences behind significant landscaping that is located immediately east (and a result of board action on BDA012-139).

May 25, 2004	The applicant submitted a series of documents (a letter, elevations, photos, support letters, case history information, and maps) that further explained the request and why it should be granted (see Attachment A).
June 2, 2004	The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Staff Development Code Specialist, the Development Services Transportation Engineer, the Chief Arborist, and the Assistant City Attorney to the Board of Adjustment.
June 4, 2004	The Board of Adjustment Chief Planner met with the applicant's representative where an agreement was made that if revised site and elevation plans were submitted, staff would support the fence special exception request.
June 9, 2004	The applicant submitted a revised site plan, a proposed landscape plan, and revised proposed fence elevations (see Attachment A).
June 21, 2004	Panel C conducted a public hearing on the matters (see the "June 21, 2004 Pubic Hearing Notes" section of this case report for further details).
August 27, 2004	The applicant submitted the following to staff (see Attachment A): <ul style="list-style-type: none"> - A copy of a receipt and a letter the applicant describes it as "a receipt for a site plan review administered at the time the plans were approved for the addition that the subject of the discussion in this matters." - A copy of a permit for the addition with the letter stating that "the site plan review is clearly indicative that the City of Dallas approved the addition before construction had started and is consistent with the green tags that were issued on the property and other approvals given to the applicant and/or his agents regarding construction."
August 30, 2004	The applicant submitted a letter to staff (see Attachment A) documenting his position on delaying action on this matter with the understanding the City Attorney's office will instruct the Board of Adjustment for an additional delay.
August 30, 2004	The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Staff Development Code Specialist, the

Development Services Transportation Engineer, and the Assistant City Attorney to the Board of Adjustment.

BASIS FOR REQUEST FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 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.

CASE ANALYSIS:

Purpose/Intent of the maximum 4' fence height regulations in single family zoning districts: The maximum fence height regulation of 4' in single family districts was intended to ensure a certain level of openness and continuity along the streets in single family neighborhoods.

Approval of the request will result in allowing a fence 2 feet higher than the allowed 4 feet. If the staff suggested conditions were to be imposed, the materials, location, and design of the fence above 4' in height would be restricted to specifically what is shown on the submitted fence elevations and landscape plan. In addition, the specific landscape materials would be required to be installed and maintained as long as there was a fence in the front yard higher than 4 feet. This condition would ensure that the fence would not be visible from the street and the existing country feel along streets in the neighborhood would be preserved.

Denial of the request will result in either the plans for the fence to be cancelled; the fence to be located in its proposed location but redesigned to reach a height not greater than 4 feet; or the fence to be erected at its proposed height but relocated at or behind the 40' front yard setback lines.

BOARD OF ADJUSTMENT ACTION: June 21, 2004

APPEARING IN FAVOR: Donald E. Godwin, 1201 Elm St., Suite 1700, Dallas, TX
Randall Goss, 10210 N. Central Expwy., Suite 500
Dallas, TX
Ray Martinez, 1201 Main St., Dallas, TX

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

APPEARING FOR THE CITY: Chris Bowers, 1500 Marilla, 7DN, Dallas, TX

MOTION: Bach

I move that the Board of Adjustment in Appeal No. **BDA 034-178**, hold this matter under advisement until **September 20, 2004**.

SECONDED: Wise

AYES: 5 – Smith, Hines, Bach, Isenberg, Neumann

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: September 20, 2004

APPEARING IN FAVOR: Raymond Martinez, 1201 Elm St., Suite 1700, Dallas,
TX

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

MOTION: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 034-178**, hold this matter under advisement until **November 15, 2004**.

SECONDED: **Bach**

AYES: 5 – Madrigal, Smith, Isenberg, Bach, Wise

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 15, 2004

APPEARING IN FAVOR: Raymond Martinez, 1201 Elm St., Suite 1700, Dallas,
TX

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

MOTION: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 034-178**, hold this matter under advisement until **February 14, 2005**.

SECONDED: **Neumann**

AYES: 4 – Madrigal, Smith, Neumann, Wise

NAYS: 0–

MOTION PASSED: 4 –0 (unanimously)

BOARD OF ADJUSTMENT ACTION: February 14, 2005

APPEARING IN FAVOR: Raymond Martinez, 1201 Elm St., Suite 1700, Dallas,
TX

Randall Goss, 10210 N. Central Expwy., Suite 500
Dallas, TX

Harold Leidner, 1601 Surveyor Blvd, Carrollton, TX

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

MOTION#1: **Chortek**

I move that the Board of Adjustment in Appeal No. **BDA 034-178**, hold this matter under advisement until **March 14, 2005**.

SECONDED: **Neumann**

AYES: 5 – Madrigal, Chortek, Neumann, Wise, Gomez

NAYS: 0 –

MOTION PASSED: 5 – 0 (Unanimously)