

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, COUNCIL CHAMBERS
MONDAY, DECEMBER 12, 2005**

MEMBERS PRESENT AT BRIEFING: Frank Madrigal, Vice-Chair, David Chortek, regular member, Sharon Boyd, regular member, Joel Maten, regular member, and Scott Griggs, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Frank Madrigal, Vice-Chair, David Chortek, regular member, Sharon Boyd, regular member, Joel Maten, regular member, and Scott Griggs, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Claire Swann, Asst. City Attorney, Donnie Moore, Chief Planner, Jennifer Hiromoto, Senior Planner, Danny Sipes, Development Code Specialist, Chau Nguyen, Traffic Engineer, Michael Sultan, Chief Arborist, and Trena Law, Board Secretary

10:13 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **December 12, 2005** docket.

1:37 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C November 14, 2005 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

MOTION: Chortek

I move approval of the Monday, November 14, 2005, Board of Adjustment Public Hearing minutes.

SECONDED: Boyd

AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-058

BUILDING OFFICIAL’S REPORT:

Application of Behringer Harvard 4245 Central L.P., represented by Masterplan, for a variance to the front yard setback regulations at 4245 N. Central Expressway. This property is more fully described as Lot 9-A in City Block A/1525 and is zoned PD-193 O-2 which requires a front yard setback of 20 feet. The applicant proposes to construct an addition and provide a 15 foot front yard setback which would require a variance of 5 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: 4245 N. Central Expressway

APPLICANT: Behringer Harvard 4245 Central L.P.
Represented by Masterplan

REQUEST:

- A variance to the front yard setback regulations of 5’ is requested in conjunction with constructing and maintaining an ATM (automatic teller machine) and an AHD (after

hour depository) with canopy (20' x 5') in the site's Lee Street 20'-front yard setback. The site is currently developed with an office.

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 front yard setback in the PD No. 193 (HC Subdistrict) is 20 feet.
- The applicant has submitted a site plan that denotes kiosks and a canopy that are proposed to be located in the site's Lee Street 20' front yard setback, whereby the canopy would be located as close as 15' from the site's Lee Street front property line.
- The site plan denotes an existing office with two covered "existing drive-in teller lanes" that run west to east, and a "new drive-in ATM and AHD lane" that would run east to west. The proposed kiosks and canopy in this new drive-in lane (and in the Lee Street 20' front yard setback) are the nature of the request before the board.
- The site is zoned PD No. 193 (O-2 Subdistrict), is flat, virtually rectangular in shape (approximately 182' x 145'), and approximately 0.7 acres in area.
- The subject site has two front yard setbacks since it is located on a corner (at N. Central Expressway and Lee Street) in a non-residential zoning district.
- Note that any frontage a lot has to a street in a nonresidential district is considered a "front yard." All corner lots located in a nonresidential zoning district have two front yard setbacks as all lots in a nonresidential zoning district that encompass an entire block have four front yard setbacks. The street frontage for corner lots in *residential* zoning districts may be "front yards" (which in some residential zoning districts reach up to 40') or "side yards" (which can range from 5' – 10') depending on the longer of the corner lot's two street frontages, and the continuity of established setbacks along street frontage. The subject site's Lee Street frontage (where the encroachment is proposed) would be deemed a "front yard" if the site were in a residential zoning district.
- DCAD states that the site is developed with an office building that is 90,294 square feet in area built in 1985.

- Although the application states that “when N. Central was widened TXDOT took some of the lot”, no specific information has been submitted as to the amount of the taking by TXDOT, the location of the taking by TXDOT, or whether the taking by TXDOT pre-dated the construction of the structure on the site in 1985.
- The submitted plat map of the subject site and surrounding area indicates, however, that the Lee Street right-of-way between the alley on the west side of the site and Central Expressway on the east side of the site is 50’ wide when the Lee Street right-of-way from the alley on the west side of the site further westward towards McKinney Avenue and beyond is 45’ wide whereby the lots immediately west of the site are 5’ wider/longer than the subject site.
- The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A and B). This information included the following:
 - letters that provides further details about this request and why it should be granted;
 - copies of the previously submitted application, plat, site plan and elevation;
 - copies of setback tables from the Dallas Development Code; and
 - photos of the site and surrounding area .
 (Note that the letters mentioned above only make mention of a variance need “to install an Automatic Teller Machine (ATM) covered by a canopy.” The letters do not mention the need for the variance for the AHD that was referenced on the application).

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 193 O-2 (Planned Development District, Office)
- North: PD No. 193 O-2 (Planned Development District, Office)
- South: PD No. 193 O-2 (Planned Development District, Office)
- East: PD No. 556 (Planned Development District)
- West: PD No. 193 MF-2 (Planned Development District, Multifamily)

Land Use:

The subject site is developed with an office tower. The area to the north is developed with office uses, the area to the east is North Central Expressway; the area to the south is developed with the Milam Elementary School; and the area to west is developed with residential uses.

Zoning/BDA History:

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

Timeline:

- October 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Nov. 18, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Nov. 23, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A).
- Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Dec. 2, 2005 The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- The site is zoned PD No. 193 (O-2 Subdistrict), is flat, virtually rectangular in shape (approximately 182' x 145'), and approximately 0.7 acres in area. The submitted plat map of the subject site and surrounding area indicates that the Lee Street right-of-way between the alley on the west side of the site and Central Expressway on the east side of the site is 50' wide when the Lee Street right-of-way from the alley on the west side of the site further westward towards McKinney Avenue and beyond is 45' wide. The lots immediately west of the site are 5' wider/longer than the subject site.
- The subject site has two front yard setbacks as any corner lot located in a nonresidential zoning district.
- The application mentions "when N. Central was widened TXDOT took some of the lot." However, no specific information has been submitted as to the amount of the taking by TXDOT, the location of the taking by TXDOT, or whether the taking by TXDOT pre-dated the construction of the structure on the site in 1985.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 5' to construct and maintain an ATM and an AHD with canopy (20' x 5') 15' away from the site's Lee Street front property line will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the front yard setback regulations of 5' to construct and maintain an ATM and an AHD with canopy (20' x 5') 15' from the site's Lee Street front property line is necessary to permit development of the subject site (that is developed with an office with two existing drive-in teller lanes, and is flat, virtually rectangular in shape, and approximately 0.7 acres in area with 5' less width than other lots to the west where the Lee Street right of way width is 45' in width) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (O-2 Subdistrict) zoning classification.
 - The variance to the front yard setback regulations of 5' requested to construct and maintain portions of ATM and AHD kiosks with canopy (a 3rd drive-in lane on the site) 15' away from the site's Lee Street front property line would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (O-2 Subdistrict) zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the result would be a 15' front yard setback on Lee Street where portions of ATM and AHD kiosks and a canopy would be allowed to encroach into the Lee Street 20' front yard setback.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chortek

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the properties and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and are consistent with the general purpose and intent of the Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.

SECONDED: Maten

AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-059

BUILDING OFFICIAL’S REPORT:

Application of Merriman Association for a variance to the height regulations at 3210 Carlisle Street. This property is more fully described as Lots 1-9 in City Block 13/969 and is zoned PD-193 which limits the height of a structure to 36 feet. The applicant proposes to construct a building and provide a height of 42 feet which would require a variance of 6 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: 3210 Carlisle Street

APPLICANT: Merriman Association

REQUEST:

- A variance to the height regulations of 6’ is requested in conjunction with constructing multiple-family residential buildings.

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:

- PD 193 MF-2(A) zoning limits the height of single-family and other structures to 36' in height.
- The site is sloped, rectangular in shape (560' x 155'), and approximately 86,800 square feet in area.
- The revised site plan submitted indicates the specific buildings that are requesting to exceed 36' in height.
- Elevations submitted indicate the portion of the proposed building which would exceed 36' in height.
- DCAD records indicate that the site is developed with an apartment building in average condition that was built in 1966 and has 73,417 square feet of floor area. (The building has since been demolished as observed on the site visit.)

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 MF-2 subdistrict (Multiple-family residential)
North: PD 193 O-2 subdistrict (Office) and PD 193 PDS 8 (Residential subdistrict with MF-3 multiple-family uses)
South: PD 193 MF-2 subdistrict (Multiple-family residential)
East: PD 193 MF-2 subdistrict (Multiple-family residential)
West: PD 193 MF-2 and O-2 subdistricts (Multiple-family residential and Office)

Land Use:

The subject site is undeveloped. The area to the north, south, and east are developed with multiple family uses. The area to the west is developed with an office.

Zoning/BDA History:

1. BDA 045-274
3210 Carlisle Street
On August 15, 2005, the Board of Adjustment granted a special exception to the landscape regulations is requested in conjunction with constructing 63 townhomes on a site developed with a multifamily residential use. The board imposed the following conditions for the special exception: (1)

The tree planting zone will be expanded to an area between 2.5 feet and 18 feet along Carlisle and Bowen Street; (2) the tree planting zone will be expanded to an area between 2.5 feet and 30 feet along Hall Street; (3) the sidewalk will be allowed to be located at the curb when necessary to preserve existing trees; (4) if and when an existing tree is removed or damaged, the applicant will follow the spirit and intent of PD 193 which means that the tree density will be 1 every 25 feet; and (5) all landscaping as shown on submitted landscaping plan must be completed prior to the final building inspection of the last unit or within two years from the Board's action.

2. BDA 93-114
3210 Carlisle Street

On June 22, 1993, the Board of Adjustment granted requests for special exceptions to the fence height and visibility obstruction regulations in conjunction with constructing a 6'-high fence in the front yard and in the visibility triangles. The board imposed the following conditions to the fence height special exception: that the "exit only" signs be placed on each side of the fence adjacent to the gate, and that the drive be used for an exit only. The board imposed the following conditions to the visibility obstruction regulations: that no landscaping exceeding a height of two feet above the street curb elevation be planted in the visibility triangle in front of or behind gate and fence.

Timeline:

October 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

Nov. 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 December 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Development Services Transportation Engineer, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

December 1, 2005 The applicant submitted a revised site plan showing the exact location and height variances requested per building. (see Attachment A)

December 2, 2005 The applicant submitted a letter explaining the request. (see Attachment B)

STAFF ANALYSIS:

- The plat map indicates the request site is approximately 86,800 square feet.
- PD 193 allows for certain portions of buildings, including mechanical rooms, to exceed the maximum height by 12' when the subdistrict limits the height to 36'.
- Mechanical rooms are shown on the elevations and are not the portions of the buildings seeking a height variance. The elevations B and D show that mechanical rooms would exceed the 48' on some dwelling units if the variance is granted.
- The revised site plan submitted on December 1, 2005 shows the location of the seven buildings seeking a height variance and provides a table showing the specific height variance requested per building:
 1. Buildings A, E, and H are requesting a 2' height variance;
 2. Buildings C and D are requesting a 3' height variance;
 3. Building K is requesting a 5' height variance;

- 4. Building B is requesting a 6' height variance; and,
- 5. Buildings F, G, J and L are not requesting a height variance.
- The applicant has the burden of proof in establishing the following:
 - That granting the height variance of 6' 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 height variance of 6' is necessary to permit development of the subject site (that is sloped, rectangular in shape (560' x 155'), and approximately 86,800 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 MF-2 zoning classification.
 - The height variance of 6' would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 MF-2 zoning classification.
- If the Board were to grant the height variance of 6 feet (or 14% higher than what is permitted in PD No. 193 MF-2), subject to the submitted site plan and elevations, multiple-family structures would be allowed to exceed 36 feet in height and be constructed to a maximum height of 42 feet notwithstanding the additional 12' height for mechanical rooms.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 056-059**, hold this matter under advisement until **February 13, 2006**.

SECONDED: **Chortk**

AYES: 5— Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0—

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-044

BUILDING OFFICIAL'S REPORT:

Application of Julie Lynch, represented by D.C. Broadstone II, for a special exception to the fence height regulations at 5514 Royal Lane. This property is more fully described as part of Lot 7 in City Block A/5518 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 9 inch

fence in the required front yard setback which would require a special exception of 4 feet 9 inches. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5514 Royal Lane

APPLICANT: Julie Lynch
Represented by D.C. Broadstone II

December 12, 2005 Public Hearing Notes:

- The applicant's representative submitted a revised site plan with landscape materials at the public hearing. The applicant's representative established that the only amendment to this plan was removing landscape materials that had been located in the drive approach visibility triangle.

REQUEST:

- A special exception to the fence height regulations of 4' 9" is requested in conjunction with constructing and maintaining the following in the 40' Royal Lane front yard setback on a site that is developed with a single family home:
 - primarily a 6' 7 1/4" high stucco over masonry wall with 7' high columns*; and
 - an 8' 7 1/4" high solid wood gate.
- * The full fence elevation indicates four "cut-outs" that are approximately 14'-long wall panels. These "cut-out" panels are 7' 7 1/4" high and are flanked by 8' high columns. In addition, an "8' high iron picket fence" is proposed to be located in the Royal Lane 40' front yard setback oriented *perpendicular* to Royal Lane.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The following additional information was gleaned from the submitted "site plan:"
 - The wall is to be approximately 200' in length oriented at a slight diagonal to Royal Lane (ranging at a distance of 18' – 39' from the Royal Lane front property line. (The distance of the wall from the pavement line cannot be determined since the site plan does not denote the pavement line).
 - The gate is to be located approximately 39' from the property line.

- A separate plan has been submitted that denotes the following landscape materials to be placed on the street side of the proposed wall:
 - 69 azalea encores*
 - 10 tropical palms
 - one 17" Oak, one 18" Oak, and one 20" Oak
 - * Some of the azalea encores on this plan appear to be located in the two, 20' visibility triangles at the drive approach, however, if the azaleas are maintained at a height not to exceed 2.5 feet, they will not violate the visibility obstruction regulations.
- One single family home would have direct frontage to the proposed wall but this home is separated by a six-lane thoroughfare with parkway, and has an approximately 5' high solid brick wall that runs parallel to the Royal Lane access road.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences that appeared to be above 4' in height and located in a 40' front yard setback in this block of Royal Lane:
 - a combination solid/open wrought iron fence that is approximately 7' high immediately west of the site (and what appears to be the result of board action made in conjunction with BDA 956-247); and
 - a combination solid/open wrought iron fence that is approximately 7' high two lots west of the site (with no recorded board of adjustment history).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA 956-247, 5426 Royal Lane (the lot immediately west of the subject site) | <p>On October 21, 1996, the Board of Adjustment Panel C granted a request to the fence height special regulations of 1' 2". The board imposed the following conditions with the request: compliance with the submitted site/landscape and elevation plan is required. The case report states the request was made to complete and maintain a maximum 5' high combination solid brick and</p> |
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open metal fence with 5' 2" high columns, and that although the fence appears to be higher than 5', the fence was technically measured from the inside grade which resulted in a maximum fence/column height of only 5' 2". (The way in which a fence is measured was amended in the Dallas Development Code in 1998 whereby the height of a fence in single family and duplex districts is now measured to the top of the fence to the level of the ground inside and outside of any fence and is the greater of these two measurements).

Timeline:

- Undated The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the 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;
 - that a site plan with landscape materials has been submitted that may or may not (depending on the height of the landscape materials at the drive approach) violate the City's visibility obstruction regulations;
 - the November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the December public hearing after considering the information/evidence and

testimony presented to them by the applicant and all other interested parties.

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site plan/elevation has been submitted that documents the locations of the proposed solid wall (parallel to Royal Lane) and fence (perpendicular to Royal Lane), columns, and gate relative to the property line. The site plan also clearly shows the length of the proposed wall and fence relative to the entire lot. (The site plan does not document the proximity of the proposed wall to the Royal Lane pavement line).
- A scaled partial elevation has been submitted that documents the height of the proposed wall which ranges in height from 6' 7 ¼" – 7' 7 ¼", columns which range in height from 7' – 8', and an entry gate (8' 7 ¼"). The elevation also documents the building materials of the wall (stucco over masonry) and gate (wood).
- No elevation has been submitted that documents the "8' high iron picket fence" noted on the site plan that is located in the 40' front yard setback perpendicular to Royal Lane.
- An additional site plan has been submitted that denotes landscape materials to be located on the street side of the proposed wall. This additional site plan does not denote the "8' high iron picket fence" noted on the site plan that is located in the 40' front yard setback perpendicular to Royal Lane. The additional site plan denotes landscape materials at the drive approach that may or may not (depending on the height of the Azalea Encores) violate the City's visibility obstruction regulations.
- The proposal would be located immediately across from one single family home that is separated by a six-lane thoroughfare with parkway, and has an approximately 5' high solid brick wall that runs parallel to the Royal Lane access road.
- As of December 5th, no letters had been submitted to staff either in support or in opposition to the proposed fence.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the wall, columns, fence, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 9" with conditions imposed that the applicant complies with the submitted site plan/elevation, fence elevation, and site plan with landscape materials would assure that the proposed wall, fence, columns, and gate are constructed and maintained as shown on these documents.

- Granting this fence height special exception request subject to the documents mentioned above does not provide any relief to the applicant pertaining to the City's visibility obstruction regulations.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: DC Broadstone, 2230 Country Valley Rd., Garland, TX

APPEARING IN OPPOSITION: No one

MOTION: Chortek

I move that the Board of Adjustment in Appeal No. **BDA 056-044**, on application of Julie Lynch, **grant** the request of this applicant to construct an 8 foot 9 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/elevation, fence elevation, and site plan with landscape materials dated 12/12/05 is required.

SECONDED: Maten

AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-052

BUILDING OFFICIAL'S REPORT:

Application of Thomas H. Payne, represented by Ed Simons of Masterplan, for a variance to the parking regulations and a special exception to the landscape regulations at 6147 Sherry Lane. This property is more fully described as Lot 6 in City Block 4/5624 and is zoned PD-314 which requires parking and landscaping to be provided with new construction. The applicant proposes to construct a building and provide 14 of the required 32 parking spaces and to provide an alternate landscape plan. This would require a variance of 18 parking spaces to the parking regulations and a special exception to the landscape regulations. Referred to the Board of Adjustment in accordance with Section 51A-10.110, and 51A-3.102(d) (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and grant variances.

LOCATION: 6147 Sherry Lane

APPLICANT: Thomas H. Payne

December 12, 2005 Public Hearing Notes:

- The applicant's representative submitted a revised site plan to the board that reduced and redesigned the proposed building on the subject site from what was originally submitted.

REQUESTS:

- The following appeals were originally made in this application:
 1. a variance to the off-street parking regulations of 18 spaces (or 56% of the required off-street parking); and
 2. a special exception to the landscape regulations.

Both appeals were requested in conjunction with constructing and maintaining a two-story retail use (Dee & Hattie's Specialty Cleaners) with 6,340 square feet on a site that is currently developed with a vacant one-story retail structure.

However, on December 2nd, the applicant's representative submitted a letter stating that "We propose constructing a new 5,600 square foot building and provide 14 parking spaces" (see Attachment B). As a result, it appears that the parking special exception request of 18 spaces where 14 of the 32 required spaces were to be provided has been amended to a request of 14 spaces where 14 of the 28 required spaces are to be provided. (Note that no site plan has been submitted that conveys the reduced 5,600 square foot structure).

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

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

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

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

GENERAL FACTS (related to the parking variance):

- The Dallas Development Code requires that the following parking requirements for uses in the proposed use on the site:
 - 1 space is required for every 200 square feet of retail use.The applicant was proposing to construct a two-story, 6,340 square foot retail use (custom dry cleaner), and provide 14 (or 44%) of the required 32 spaces. However, the applicant's representative submitted a letter indicating a revised proposal to construct a 5,600 square foot retail use and provided 14 (or 50%) of the required 28 spaces.
- The site is zoned PD No. 314, is flat, rectangular in shape (145' x 60'), and approximately 2,700 square feet in area.
- DCAD states that the site is developed with a "retail strip" that is 3,600 square feet in area built in 1959.
- The submitted site plan (and original application) indicates that 18 parking spaces are provided on the site and 32 spaces are required. However, the Building Official's report (and amended application) indicated that **14** of the required 32 spaces are provided.
- The submitted site plan indicates a first floor with 1,675 square feet and a second floor with no square footages noted.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a letter that provided the following points related to the parking variance request:
 - The existing building that the dry cleaners occupies is too small, and rather than construct a significant addition to a building that occupies a lot with contaminated soil, the client wants to demolish the existing building, remove the contaminated soil and construct a new building.
 - The existing building is 3,600 square feet which requires 18 spaces. It has 4 spaces that can be counted to the requirement and 14 delta credits which will be lost when the building is intentionally destroyed.
 - A new 5,600 square foot building is proposed with 14 spaces.

- The applicant hopes that the board can see that the need to remove contaminated soil caused the applicant to lose the 14 delta credits on the site and therefore strict enforcement would result in an unreasonable burden.

GENERAL FACTS (related to the landscape special exception):

- The Dallas Development Code requires full compliance with the Landscape Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The requirements that the applicant is seeking the special exception from are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- On November 30, 2005, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A). The memo stated the following:
 - The applicant is requesting relief from the landscape requirements in PD No. 314, more specifically, relief from the site tree and street tree requirements.
 - The special exception request is triggered by new construction.
 - Deficiencies:
 1. The applicant is required to provide one 2" diameter site tree for each 4,000 square feet of lot area with a minimum of 4 trees (4 trees would be required for this site).
The applicant is proposing to provide no site trees.
 2. The applicant is required to provide one 3" diameter street tree for each 50' of street frontage (either 4 including Kate as street frontage or 1 only counting Sherry required for this site).
The applicant is proposing no street trees.
 - Factors for consideration:
 - Currently there is no room to provide any landscaping. With the demolition of the existing building, the site clean up and the new building, there still appears to be little opportunity for providing landscaping. The raised planters proposed for the front of the building along Sherry maximize the landscape potential for this site. The enhanced/permeable vehicular paving brings the site as close to complying with the landscape requirements of PD 314 (Article X) as physically possible. By this plan, the site does not meet the requirement to provide 2 design standards.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included a letter that provided the following points related to the landscape special exception request:
 - Due to the odd configuration of the paving and parking for Sherry Lane, the applicant does not have opportunities to provided the required landscaping. Head-in parking is located where street trees and parking lot screening would normally go. The Kate frontage is actually used as an alley and has no parkway that would be outside the visibility corner clips. Planters will be provided where possible or whatever additional landscaping the arborist thinks is possible.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 314 (Planned Development District)
North: PD No. 314 (Planned Development District)
South: PD No. 314 (Planned Development District)
East: PD No. 314 (Planned Development District)
West: PD No. 314 (Planned Development District)

Land Use:

The subject site is developed with a vacant retail structure. The areas to the north, east, south, and west are developed with a mix of office and retail 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:

- October 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2005: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and

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

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

Nov. 30, 2005 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the special exception to the landscape regulations (see Attachment A).

Dec. 1, 2005 The Development Services Senior Engineer forwarded a review comment sheet marked “no comments” with the following additional comment: “Due to insufficient info.”

Dec. 2, 2005 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS (related to the parking variance):

- The site is zoned PD No. 314, is flat, rectangular in shape (145’ x 60’), approximately 2,700 square feet in area, and developed with a 3,600 square foot retail strip.
- Originally 44 percent of the required off-street parking spaces were proposed to be provided in conjunction with constructing and maintaining a two- story retail use (with 6,340 square feet) on a site that is currently developed with a vacant retail structure.
- However, on December 2, 2005, the applicant’s representative submitted a letter stating that the new building had been reduced by almost 800 square feet. As a result 50 percent of the required off-street parking spaces is proposed to be provided in conjunction with constructing and maintaining a 5,600 square foot retail structure on a site that is currently developed with a vacant 3,600 square foot retail structure.
- If the parking requirement for a retail use is 1 space for every 200 square feet and the applicant can provide 14 spaces (according to the Building Official’s report and the amended application), then the site could be developed with a 2,800 square foot retail use without varying the off-street parking regulations. (The site plan denotes that the first floor of the proposed retail use is 1,675 square feet in area).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 14 parking spaces 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 parking variance of 14 parking spaces required for a 5,600 square foot retail structure (reduced from a two-story 6,340 square foot retail structure) is necessary to permit development of the subject site (that is developed with a 3,600 square foot retail strip, and is flat, rectangular in shape (145' x 60'), and approximately 2,700 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 314 zoning classification.
- The parking variance of 14 spaces would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 314 zoning classification.
- Granting this request, subject to the submitted site plan would place certain limitations on the proposed building footprint, however, would document that **18** parking spaces are provided on the site when (according to the Building Official's report and amended application) only 14 of the required 32 parking spaces are being provided. The board may feel the need to request an amended site plan from the applicant that indicates the location of where 14 parking spaces are to be provided on the site and documentation of a 5,600 square foot structure (as opposed to a 6,340 square foot retail structure).
- The Development Services Senior Engineer has provided a review comment sheet marked "no comments due to insufficient info."

STAFF ANALYSIS (related to the landscape regulations):

- An alternate landscape plan has not been submitted with this request. A site plan has been submitted (that does not reflect the reduction of square footage of the proposed use) that the City of Dallas Chief Arborist states is deficient in meeting the site tree, street tree, and design standard requirements of the landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations (i.e. providing 4 site trees, either 1 or 4 street trees, and two design standards) will unreasonably burden the use of the property (in this case, a proposed 5,600 square foot retail structure/use);
 - The special exception (that would provide 0 of the required 2 design standards, 0 of 4 required site trees, and 0 of either 1 or 4 required street trees) will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted site plan, the site could be developed with the proposed retail use and would be "excepted" from the site tree, street tree and design standards requirements of the landscape regulations.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR:

Ed Simons, 900 Jackson St., #640, Dallas, TX
 Thomas H. Payne, 1735 Oak Mount Pl, Dallas, TX

APPEARING IN OPPOSITION: Jane Williams, 2025 Millcreek, Arlington, TX 76016
Michael Kurilecz, 5907 Lupton Dr., Dallas, TX

MOTION#1: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 056-052**, on application of Thomas H. Payne, **grant** a variance of 18 parking spaces to the parking regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Chortek

AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION#2: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 056-052**, on application of Thomas H. Payne, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and testimony shows that strict compliance with the requirements will unreasonably burden the use of the property; the special exceptions will not adversely affect neighboring property; and the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Maten

AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-053

BUILDING OFFICIAL’S REPORT:

Application of Deshazo Tang & Associates for a special exception to the parking regulations at 8383 (aka 8333) Douglas Ave. This property is more fully described as a tract of land in City Block 2/5625 and is zoned PD 314 which requires parking to be provided with new construction. The applicant proposes to construct a building and provide 1,009 of the required 1,297 parking spaces which would require a special exception of 288 spaces. Referred to the Board of Adjustment in accordance with

Section 51A-4.311 (a) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 8383 (aka 8333) Douglas Ave

APPLICANT: Deshazo Tang & Associates

December 12, 2005 Public Hearing Notes:

- The applicant submitted additional information as to why the request should be granted on the site.

REQUEST:

- A special exception to the off-street parking regulations of 288 spaces (or 22% of the required off-street parking) is requested in conjunction with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant. The applicant proposes to provide 1,009 (or 78%) of the total required 1,297 off-street parking spaces on a site currently developed with an approximately 278,000 square foot office tower.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.

- (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
 - 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following parking requirements for the existing/proposed uses on the subject site:
 - 1 space is required for every 333 square feet of office use.
 - 1 space is required for every 100 square feet of restaurant use.
 The applicant is proposing to construct a new office with 126,000 square feet and a new restaurant with 8,500 square feet on a site developed with an existing office with 277,500 square feet. The applicant is proposing to provide 1,009 of the required 1,297 spaces.
- On December 2, 2005, the applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided a more detailed account as to why the request should be granted.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 314 (Planned Development District)
North: PD No. 314 (Planned Development District)
South: PD No. 314 (Planned Development District)
East: PD No. 314 (Planned Development District)
West: PD No. 314 (Planned Development District)

Land Use:

The subject site is developed with an office tower. The areas to the north, east, south, and west are developed with office 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:

October 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

Nov. 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the

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

- Dec. 1, 2005 The Development Services Senior Engineer submitted an unmarked review comment sheet with the following comments:
- "Based on Table 3 of the revised parking analysis dated 11/30/2005, and the 10/11/2005 parking analysis submitted with the application, the exception of 288 parking spaces or 22.2% appears excessive."
- Dec. 2, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- 78 percent of the required off-street parking spaces are proposed to be provided in conjunction with constructing a new 126,000 square foot office tower and 8,500 square foot restaurant on a site developed with an approximately 278,000 square foot office tower.
- Granting this request, subject to the condition that the special exception of 288 spaces automatically and immediately terminates if and when the office and restaurant uses on the site are changed or discontinued, would allow development of the office and restaurant on the site.
- The applicant has the burden of proof in establishing the following:
 - that the parking demand generated by the proposed office and restaurant uses does not warrant the number of off-street parking spaces required, and
 - the special exception of 288 spaces (or 22% of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer made the following comments on this request:
 - "Based on Table 3 of the revised parking analysis dated 11/30/2005, and the 10/11/2005 parking analysis submitted with the application, the exception of 288 parking spaces or 22.2% appears excessive."

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: John DeShazo, 12142 Elysian Ct, Dallas, TX
 Jeff Montgomery, 5854 Burgundy Rd., Dallas, TX

APPEARING IN OPPOSITION: Fran Powell, 15660 N Dallas Pkwy, Dallas, TX
 Steve Bronner, 9230 Club Glen, Dallas, TX

MOTION#1: Griggs

I move that the Board of Adjustment, in Appeal No. **BDA 056-053**, on application of Deshazo Tang & Associates Inc., **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development code by 288 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does don't warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the office and restaurant use on the site is changed or discontinued.

SECONDED: No one

*Motion failed for lack of a second.

MOTION#2: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 056-053**, hold this matter under advisement until **February 13, 2006**.

SECONDED: Maten

AYES: 4– Madrigal, Chortek, Boyd, Maten,

NAYS: 1– Griggs

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 056-054

BUILDING OFFICIAL’S REPORT:

Application of Jose L. Gonzalez for a special exception to the fence regulations at 10777 Strait Lane. This property is more fully described as Lot 7A in City Block 3/5522 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 9.3 foot high fence in the front yard which would require a special exception of 5.3 feet. Referred to the Board of Adjustment in accordance with Section 51A-4.602 (a) (6) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 10777 Strait Lane

APPLICANT: Jose L. Gonzalez

REQUEST:

- A special exception to the fence height regulations of 5.3' is requested in conjunction with (according to an attachment submitted with this application) constructing a front yard fence as follows:
 - "Special exception of 5' 3" to construct columns on the left wing of the fence and 4' 5" to construct the wrought iron/stucco fence;
 - Special exception of 4.95' to construct columns in the middle section of the fence and 3.67' to construct the wrought iron/stucco fence; and
 - Special exception of 4.67' to construct columns on the right section of the fence and 3.38' to construct the wrought iron/stucco fence."

The applicant has informed the Board Administrator that this request is to maintain the existing stucco wall and columns in the 40' Strait Lane front yard setback, and to add an open wrought iron picket fence atop the existing stucco wall. An elevation has been submitted that indicates a wrought iron fence and/or stucco wall ranging in height from 7.38' – 8.5' with columns ranging in height from 8.6' – 9.3'.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The following additional information was gleaned from the originally submitted "site plan:"
 - The fence/wall in the site's Strait Lane 40' front yard setback is noted at 330' in length. (Distances from the pavement line and property line could not be determined given that the scale on the site plan at 1" = 16' 0" did not correlate with dimensions called out on the site plan. A note of "40'-0" Building Line on the site plan actually scales at 1" = 16' 0" to be 30').
 - The existing gates on the site plan are shown to be located at/or behind the 40' setback line therefore would not be part of the special exception request.

The Board Administrator informed the applicant of the discrepancy on the site plan on November 21st.
- On December 2, 2005, the applicant submitted a scaled site plan indicating that the fence/wall ranges from distances of 0 - 40' from the property line or 14' - 54' from the Strait Lane pavement line. (The existing gates are shown on this plan at/behind the 40' front yard setback line). The revised site plan also provides the following notations:
 - "The Royal Lane fence is not part of this application for a special exception. The Royal fence as currently constructed received a special exception on April 21, 2003 under BDA#023-067. It is the intent of this applicant to maintain the Royal Lane fence as approved under BDA#023-067;"

- references to landscape materials including “new boxwood hedges, new flowering accent trees, and existing planting.”
- The following additional information was gleaned from the submitted “elevation plan:”
 - Fence/wall heights are specified in 3 different sections: a southern section, a center section, and a northern section.
 - The following notes are made to describe the fence/wall in the site’s southern section: “Maximum column height this section = 9.3’, maximum wrought iron fence, and/or stucco wall height = 8.5’ ”
 - The following notes are made to describe the fence/wall in the site’s center section: “Maximum column height this section = 8.95’, maximum wrought iron fence, and/or stucco wall height = 7.67’ “
 - The following notes are made to describe the fence/wall in the site’s northern section: “Maximum column height this section = 8.67’, maximum wrought iron fence and/or stucco wall = 7.38’ “
 - Other notes on this elevation plan include the following: Existing trees (of which 9 are shown in an elevation and plan form), new accent trees (of which 3 are shown in elevation and plan form), new boxwood hedge patterns, existing planting.
- Two single family homes would have direct/indirect frontage to the existing/proposed fence/wall, one of which has an approximately 6’ high open metal fence behind landscaping, the other which has an approximately 4’ high wood lattice fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fences that appeared to be above 4’ in height and located in a 40’ front yard setback in this block of Strait Lane:
 - a 6’ high open metal fence screened with landscaping with 6.5’ high stone columns, and a 8’ high entry gate with 11’ high entry columns immediately east of the site;
 - a 6.5’ high open wrought iron fence behind significant landscaping with a 6.5’ high open metal entry gate two lots southeast of the site (and what appears to be the result of board action made in conjunction with BDA 990-344); and
 - a 7’ high open metal fence with solid masonry columns three lots southeast of the site (and what appears to be the result of board action made in conjunction with BDA 001-172).
- The applicant submitted information beyond what was submitted with the original application. This information included a scaled site plan and the following additional information (see Attachment A). This information included a cover letter and notebook that was divided into the following sections:
 - Pictures of the Oats’ property;
 - Proposed fence design;
 - Large colored map;
 - Neighborhood fence demographics list;
 - Market value information;
 - Criminal activity reports;
 - Letter explaining basis for request and addressing opposition concerns (will supplement);
 - Legal authority; and
 - Warranty deed.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 023- 103, 10777 Strait Lane
(the subject site)

On August 18, 2003, the Board of Adjustment Panel C denied a request for a special exception to the fence height regulations of 4' 11.5" with prejudice. The case report states that this request was made to maintain generally a 7' 3" high solid stucco wall with approximately 9' high stucco columns. (This decision was appealed to District Court. On August 15, 2005, the owners and the City of Dallas filed a "Joint Notice of Nonsuit Without Prejudice" in which both parties hereby dismissed their suit and related counterclaims without prejudice).
2. BDA 023-067, 10777 Strait Lane
(the subject site)

On April 21, 2003, the Board of Adjustment Panel C granted a request for a special exception to the fence regulations of 3' 8" along Royal Lane, needed in conjunction with maintaining a 6' 5" high solid stucco wall with 7' 8" high stucco columns (subject to compliance with the submitted site plan, landscape plan, and fence elevations) and denied a request for a special exception to the fence regulations of 5' along Strait Lane without prejudice (needed generally to maintain an existing fence/wall along Strait Lane).
3. BDA 84-286, 10777 Strait Lane
(the subject site)

On October 23, 1984, the Board of Adjustment took the following actions: "grant a fence variance as noted: along

4. BDA 990 -344, 10710 Strait Lane
(two lots southeast of the site)

Strait Lane: a 7' wrought iron fence with brick columns (per elevation on Strait Lane side) with 7' 8" brick columns with 4 entry columns with an 8' height (12' to 18" of brick with wrought iron on top). Along Royal Lane: a 7' solid brick in configuration of the exhibit A as marked with landscaping as noted. The board denied the variance requested in the side yard for light on tennis court."

On October 10, 2000, the Board of Adjustment Panel C followed the staff recommendation and granted a request for a special exception to the fence regulations of 2.5', needed in conjunction with constructing and maintaining an open wrought iron fence with 6.5' high masonry columns and a 6.5' high open metal entry gate. The Board imposed the following conditions: the fence must not exceed 6.5' in height, and must be made of open wrought-iron material; and compliance with the submitted site/landscape plan is required.

5. BDA 001-172, 10660 Strait Lane
(three lots southeast of the site)

On March 27, 2001, the Board of Adjustment Panel A followed the staff recommendation and granted a request for a special exception to the fence regulations of 6', needed in conjunction with constructing and maintaining a maximum 7' high combination open fence with solid masonry base and a 10' high PVC-coated metal tennis court fence, and a special exception to allow a 2nd electrical meter on a site.

6. BDA 034-126, 10735 Strait Lane
(the lot immediately south of the subject site)

On February 24, 2004, the Board of Adjustment Panel C denied a request for a special exception to the fence regulations of 2' 6" without prejudice. The case report states that the request was made in conjunction with constructing and maintaining a 5' 6" high open wrought iron fence with 6' 6" high stone columns and 6' 6" high arched entry gates.

7. BDA 023-142, 10735 Strait Lane
(the lot immediately south of the subject
site)

On November 17, 2003, the Board of Adjustment Panel C denied a request for a special exception to the fence regulations of 3' 11" without prejudice. The case report states that the request was made in conjunction with constructing and maintaining a 6' high open wrought iron fence with 7' high columns and 7' 11' high entry gates.

Timeline:

October 28, 2005 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Nov. 17, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

Nov. 18, 2005: The Board Administrator left a message with the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December

public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

Dec. 1, 2005 The Development Services Senior Engineer forwarded a review comment sheet marked "has no objections if certain conditions are met" with the following additional comment: "The proposed fence on the Strait Ln. front yard setback must be outside the 45' x 45' intersection visibility triangle." (Note that the Board Administrator has reviewed the scaled site plan submitted on December 2nd and found that the fence appears to be located outside the required Royal Lane/Strait Lane intersection triangle).

Dec. 2, 2005 The applicant submitted information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- A revised scaled site plan has submitted that documents the locations of the existing/proposed fence/wall, columns and gate relative to the property line and pavement line. (The existing gates on the site exceed 4' in height but are not part of the special exception request since they are located at/behind the 40' front yard setback line). The site plan shows the length of the existing/proposed fence/wall relative to the lot.
- A scaled elevation has not been submitted that documents the height of the existing/proposed fence/wall. However, the submitted elevation does specify fence/wall heights (that range from 7.38' – 8.5') and column heights (that range from 8.6' – 9.3'), and materials of the proposal (stucco and wrought iron).
- The existing/proposed fence/wall on the subject site is located where one single family home has direct frontage (with an approximately 6' high open metal fence behind landscaping) and another single family home with indirect frontage (with an approximately 4' high wood lattice fence).
- As of December 5th, no letters had been submitted to staff either in support or in opposition to the proposed special exception.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence/wall and columns that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 5.3' with conditions imposed that the applicant complies with the submitted revised site plan and submitted elevation would assure that the existing/proposed fence/wall and columns are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: Jose Gonzalez, 1201 Elm St., Dallas, TX
Cathy Oats, 10777 Strait Ln., Dallas, TX
Alan Schroder, 10433 Strait Ln., Dallas, TX

APPEARING IN OPPOSITION: Jamie R. Welton, 3102 Oak Lawn, Ste 777, Dallas, TX
Lauren Dykema, 10730 Strait Ln., Dallas, TX
Jack Lubben, 10455 Strait Ln., Dallas, TX
Robert Wilson, 10621 Strait Ln., Dallas, TX

MOTION: Maten

I move that the Board of Adjustment in Appeal No. **BDA 056-054**, on application of Jose L. Gonzalez, **grant** the request of this applicant to maintain a 9 foot 3 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and elevation is required.

SECONDED: Boyd

AYES: 4– Madrigal, Chortek, Boyd, Maten,

NAYS: 1–Griggs

MOTION PASSED: 4 – 1

4:09 P.M. Break

4:15 P.M. Resumed

FILE NUMBER: BDA 056-055

BUILDING OFFICIAL’S REPORT:

Application of James Williams, represented by Michael Coker, Coker Co., for a variance to the rear yard setback regulations at 1125 E. Red Bird Lane. This property is more fully described as Lot 1 in City Block 6905 and is zoned CR which requires a 20 foot rear yard setback. The applicant proposes to maintain an addition and provide a 2 foot rear yard setback which would require a variance of 18 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: 1125 E. Red Bird Lane

APPLICANT: James Williams

REQUEST:

- A variance to the rear yard setback regulations of 18' is requested in conjunction with maintaining the following in the site's 20' rear yard setback:
 1. a portion of an approximately 13,500 square foot church structure (Beth Eden Baptist Church);
 2. an approximately 870 square foot (62' x 14') equipment storage/dry goods storage/food pantry addition on the church); and
 3. a 144 square foot (9' x 16') "lawn mower shed."

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 rear yard setback in the CR zoning district is 20' where adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district. (There is no minimum side yard setback in all other cases.)
- The applicant has submitted a site plan that denotes a portion of the main church structure, an addition, and lawn mower shed that are located in the site's 20' rear yard setback, whereby the addition is located as close as 2' from the site's rear property line. (Note that a 15' wide alley easement separates the subject site from the property to the north and west zoned R-7.5(A).
- The site is zoned CR, is flat, pentagonal in shape, and according to the submitted plat, 1.715 acres in area.
- The plat of the subject site indicates a 10' easement that runs the length of the western and northern side/rear of the site. Therefore in order to obtain a building permit for the addition and the lawn mower shed, the applicant will need: 1) a variance to the rear yard setback regulations; and 2) written proof from the agent or owner of the easement that they agree to allow these structures on their easement.

- DCAD records indicate that the site is developed with a 13,522 square foot “church building” built in 1987.
- Building Inspection has found no record of a permit (either applied for or issued) for the addition or the shed on the site, and has found a permit issued for the main church structure on the site that indicated the provision of the required 20’ setback from the rear property line.
- On November 23, 2005, a letter was forwarded to the Building Inspection Development Code Specialist that designated a new case representative (Michael R. Coker Company) and enclosed an illustration detailing the location of the addition to the church and the detached storage unit (see Attachment A).
- On December 2, 2005, the applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a letter that provided the following points related to the request:
 - It is evident upon review of the submitted plans and after a field visit that a portion of the church (containing the Fellowship Hall and adjoining room, Kitchen and Finance Office) is located within the 20 foot rear yard setback.
 - The request is for a variance to the rear yard setback regulations to allow an addition, a portable storage building, and a portion of the main building to remain as they are today.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed as a church (Beth Eden Baptist Church). The areas to the north and west are developed with single family uses; the areas to the east and south are developed with retail uses.

Zoning/BDA History:

- | | |
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| <ol style="list-style-type: none"> 1. BDA 034-183, 1125 E. Red Bird Lane (the subject site) | <p>On August 16, 2004, the Board of Adjustment Panel C denied a request for a variance to the rear yard setback regulations of 18’ with prejudice. The case report states that this request was made to maintain an approximately 850 square foot addition made to a church several years ago and to maintain a detached</p> |
|--|--|

2. Miscellaneous Item Request No. 2, 1125 E. Red Bird Lane (the subject site)

storage building. The portion of the existing church that is part of the variance request in BDA056-055 was not part of the variance request at that time given that a site plan had been submitted in conjunction with BDA034-183 that noted a 20.3' distance between the rear property line and the church structure. (This decision was appealed to District Court. On September 28, 2005, the City Attorney's Office informed the Board Administrator that the applicant's district court appeal had been dismissed). On October 17, 2005, the Board of Adjustment Panel C granted the applicant's request to waive the two year time limitation on a rear yard variance that was denied with prejudice on August, 16, 2004.

Timeline:

- Nov. 1, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2005: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- Nov. 18, 2005: The applicant's current representative contacted the Board Administrator, and the following matters were 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 23, 2005 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

Dec. 2, 2005 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- The site is zoned CR, is flat, pentagonal in shape, and according to the submitted plat, 1.715 acres in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the rear yard setback regulations of 18’ to maintain a portion of a church structure, an addition, and storage shed as close as 2’ from the rear property line (or in the 20’ rear yard setback) will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the rear yard setback regulations of 18’ to maintain a portion of a church structure, an addition, and storage shed as close as 2’ from the site’s rear property line (or in the 20’ rear yard setback) is necessary to permit development of the subject site (that is developed with a church, and is flat, pentagonal in shape, and approximately 1.7 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
 - The variance to the rear yard setback regulations of 18’ requested to maintain a portion of a church structure, an addition, and storage shed as close as 2’ from

the rear property line (or in the 20' rear yard setback) would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.

- If the Board were to grant the rear yard variance request of 18', imposing a condition whereby the applicant must comply with the submitted site plan and elevations, the result would be a 2' rear yard setback where the following structures could remain encroaching into the 20' rear yard setback:
 - a portion of an existing 13,500 square foot church structure (an area that is approximately 376 square foot area (or 92' x 4');
 - the entire 870 square foot addition to the church; and
 - the entire 144 square foot (9' x 16') "lawn mower shed."
- If the variance is approved, the applicant will have obtained one of two things the City would require in order for the church, the addition, and the lawn mower shed to be issued a building permit: a variance. But in addition to the variance, the applicant would also be required to obtain written proof of acceptance from the agent or owner(s) of the easement (which, according to the applicant's representative, was/is Southwestern Bell Telephone and Dallas Power and Light) that the addition and lawn mower shed are partially located over.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: Michael Coker, 2700 Swiss Ave., Dallas, TX
James Williams, 5327 Dazzle Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chortek**

I move that the Board of Adjustment, in Appeal No. **BDA 056-055**, on application of Beth Eden Baptist Church, **grant** the 18 foot variance to the rear yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevations is required.

SECONDED: **Boyd**

AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 056-056

BUILDING OFFICIAL'S REPORT:

Application of Adam T. Howells, represented by Norman Alston, for a variance to the front yard setback regulations at 6616 Avalon Avenue. This property is more fully described as Lot 2 in City Block L/2797 and is zoned CD-2 which requires a 60 foot front yard setback. The applicant proposes to construct an addition and provide a 30 foot 11 inch front yard setback which would require a variance of 29 feet, 1 inch. 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: 6616 Avalon Avenue

APPLICANT: Adam T. Howells
Represented by Norman Alston

December 12, 2005 Public Hearing Notes:

- The applicant's representative submitted a revised site plan to the board that reduced and redesigned the proposed addition on the subject site from what was originally submitted.

REQUEST:

- A variance to the front yard setback regulations of 29'1" is requested in conjunction with constructing a porch and deck addition.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- A 60'-front yard setback is required in the CD-2 Lakewood Conservation district Tract III.

- The site is flat, rectangular in shape (60.5' x 130.5'), and approximately 7,895 square feet in area.
- A typical lot size in the CD-2 zoning district is 7,500 square feet for single family structures.
- A site plan has been submitted that indicates the area of the addition to be located in the 60'-front yard setback is approximately 340 square feet. The structures proposed in the front setback include a 6' x 7' covered porch and 56' 7" of deck railing.
- The existing single family residence is encroaching into the front yard setback as shown on the site plan.
- DCAD records indicate that the site is developed with a single family residence in average condition that was built in 1940 and has 1,912 square feet of living area.

BACKGROUND INFORMATION:

Zoning:

Site: CD-2 (Lakewood Conservation District)
North: CD-2 (Lakewood Conservation District)
South: CD-2 (Lakewood Conservation District)
East: CD-2 (Lakewood Conservation District)
West: CD-2 (Lakewood Conservation District)

Land Use:

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

Zoning/BDA History:

- | | |
|--------------------------------------|--|
| 1. BDA 056-021
6602 Avalon Avenue | On November 16, 2005, the Board of Adjustment granted a request for variance to the front yard setback regulations of 37 feet along Cambria Boulevard and a variance to the side yard setback regulations of 6 feet in conjunction with constructing a garage. |
|--------------------------------------|--|

Timeline:

- October 28, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- Nov. 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 December 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
 - that additional evidence submitted past this date should be brought to the public hearing, and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Development Services Transportation Engineer, Senior Planner Hiromoto, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The plat map indicates the request site is approximately 7,895 square feet.
- It appears from aerial photos that none of the homes located on the south side of Avalon Avenue near the request site meet the 60' front setback.
- The conservation district planner for CD-2 reviewed the elevations for compliance with the architectural standards of the conservation district prior to this variance application.
- If the Board were to grant the request, imposing a condition whereby the applicant must comply with the submitted site plan, the amount of additional encroachment into the front yard setback would be limited in this case to an area of approximately 340 square feet.
- The applicant has the burden of proof in establishing the following:

- That granting the variance of 29'1" to the front yard setback 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 front yard setback variance of 29'1" is necessary to permit development of the subject site (that is flat, rectangular in shape (60.5' x 130.5'), and approximately 2,700 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD-2 zoning classification.
- The front yard setback variance of 29'1" would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD-2 zoning classification.
- Granting this variance would allow an approximately a 6' x 7' covered porch and 56' 7" deck railing to encroach 29'1" into the 60' front yard setback.

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: Norman Alston, 506 Monte Vista, Dallas, TX 75223

APPEARING IN OPPOSITION: No one

MOTION: Boyd

I move that the Board of Adjustment, in Appeal No. **BDA 056-056**, on application of Adam T. Howells, **grant** the 29 foot, 1 inch variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised site plan is required.

SECONDED: Chortek

AYES: 4– Madrigal, Chortek, Boyd, Maten

NAYS: 1– Griggs

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 056-057

BUILDING OFFICIAL'S REPORT:

Application of Rob Baldwin for a variance to the parking regulations at 6324 Prospect Avenue. This property is more fully described as a tract of land in City block 2232 and is zoned PD 281 which requires parking to be provided for retail uses. The applicant proposes to maintain a retail use and provide 15 of the required 23 parking spaces

which would require a variance of 8 parking spaces. 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: 6324 Prospect Avenue

APPLICANT: Rob Baldwin

REQUEST:

- A variance to the off-street parking regulations of 8 spaces (or 35% of the required off-street parking) is requested in conjunction with retaining a Certificate of Occupancy for a 4,600 square foot retail use (X-10 Cellars). The applicant proposes to provide 15 (or 65%) of the total required 23 off-street parking spaces.

STANDARD FOR A VARIANCE:

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

GENERAL FACTS:

- The Dallas Development Code requires that the following parking requirements for uses in the proposed use on the site:
 - 1 space is required for every 200 square feet of retail use.
 - 1 space is required for every 100 square feet of restaurant use.The applicant is proposing to retain a retail use (winery) that, according to the applicant's representative's account, is approximately 4,600 square feet in area, and to provide 15 of the required 23 spaces.
- The site is zoned PD No. 281, is virtually flat, somewhat irregular in shape, and approximately 14,200 square feet in area.
- DCAD records indicate that the subject site is developed with an "office building" that has 5,306 square feet of area that was built in 1945. (This square footage from DCAD differs from the approximate square footage the applicant's representative has conveyed at 4,600 square feet).

- The applicant's representative has submitted two site plans of the subject site. One plan serves to document that the City-approved site plan conveying 15 parking spaces that were thought to fulfill the parking requirement in April of 2005, the other plan that conveys 18 spaces (4 of which cannot be recognized by the City since they are accessed immediately off of Prospect Avenue). Neither plan appears to convey the stripped parking space arrangement as observed in an informal field survey of the site conducted by the Board of Adjustment Administrator and the Board of Adjustment Chief Planner on December 2, 2005.
- The applicant's representative has submitted a copy of a City-approved stamped site plan (dated 4/1/05), and a letter that provides details about the request and why it should be granted (see Attachment A). The letter provides the following background information:
 - The subject property is located in the Center Core Subdistrict of the Lakewood Planned Development District.
 - The winery on the site was determined by the City to be a retail use where the City originally determined only required 15 off-street parking spaces.
 - The applicant applied for and obtained a building permit and invested thousands of dollars into the finish out of the structure on the site that was built in 1945.
 - Upon further review of the PD ordinance, the City discovered a mistake was made when calculating the required off-street parking for the use.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 281 (Planned Development District)
North: PD No. 281 (Planned Development District)
South: PD No. 281 (Planned Development District)
East: PD No. 281 (Planned Development District)
West: PD No. 281 (Planned Development District)

Land Use:

The subject site is developed with a retail use (X-10 Cellars). The areas to the north and south are developed with office uses; the area to the east is developed with retail use, the area to the west is developed with residential uses.

Zoning/BDA History:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. BDA 034-189, 2021 Abrams Parkway (two lots southeast of the subject site) | <p>On September 21, 2004, the Board of Adjustment Panel A granted a request for a special exception to the parking regulations of 1 space. The board imposed the following condition with this request: The special exception of 1 space shall automatically and immediately terminate if and when the restaurant,</p> |
|--|--|

office, and retail uses on the site are changed or discontinued. The case report states that this request was made to transition retail use space to restaurant use space in an existing strip shopping center.

Timeline:

- October 31, 2005: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Nov. 17, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Nov. 18, 2005: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the 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 November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
 - the December 2nd deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the December public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Nov. 23, 2005 The applicant’s representative submitted information beyond what was submitted with the original application (see Attachment A).
- Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of

Adjustment Senior Planner; and the Assistant City Attorney to the Board.

- Dec. 1, 2005 The Development Services Senior Engineer submitted a review comment sheet and made the following comments:
1. "Site plan shows 14 parking spaces for a variance of 9.
 2. Access to the 5 parking spaces (at the southeast corner of the site) requires mutual agreement.
 3. Request appears reasonable."

STAFF ANALYSIS:

- The site is zoned PD No. 281, is virtually flat, somewhat irregular in shape, and approximately 14,200 square feet in area.
- 65 percent of the required off-street parking spaces are proposed to be provided in conjunction with retaining a structure with 4,600 square feet of retail use.
- If the parking requirement for a retail use is 1 space for every 200 square feet and the applicant can provide 15 spaces (according to the Building Official's report and the application), then the structure on the site (that is either 4,600 square feet per the applicant or 5,306 square feet per DCAD) could be retained with a 3,000 square foot retail use (with the remaining portion of the structure vacant) without varying the off-street parking regulations.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance of 8 parking spaces 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 parking variance of 8 parking spaces requested in conjunction with retaining a Certificate of Occupancy for a structure with 4,600 square feet of retail use is necessary to permit development of the subject site (that is virtually flat, somewhat irregular in shape, and approximately 14,200 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 281 zoning classification.
 - The parking variance of 8 spaces would not to be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 281 zoning classification.
- Granting this request, subject to a site plan would place certain limitations on the proposed building footprint on the site but as of December 2nd, 2005, there is not a site plan that conveys the location of the required parking spaces on the subject site.
- The Development Services Transportation Engineer made the following comments on this request:
 1. "Site plan shows 14 parking spaces for a variance of 9.
 2. Access to the 5 parking spaces (at the southeast corner of the site) requires mutual agreement.

3. Request appears reasonable.”

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR: Rob Baldwin, 6035 Vanderbilt Ave., Dallas, TX
Robert Wilson, 5027 Creighton Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chortek**

I move that the Board of Adjustment, in Appeal No. **BDA 056-057**, on application of Rob Baldwin, **grant** the variance of 8 parking spaces to the parking regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Maten**

AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 045- 215

BUILDING OFFICIAL’S REPORT:

Application of James R. Schnurr, Winstead Sechrest & Minick P.C., for a special exception to the fence height and the front yard setback regulations at 9039 Briarwood Lane. This property is more fully described as Lot 1 in City Block 2/5575 and is zoned R-1 Ac (A) which limits the height of a fence in the front yard to 4 feet and requires a 40 foot front yard setback. The applicant proposes to construct an 11 foot fence in the required front yard which will require a special exception of 7 feet and to construct a guardhouse in the required front yard and provide a 3 foot setback which will require a variance of 37 feet. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) and (10) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions and variances.

LOCATION: 9039 Briarwood Lane

APPLICANT: James R. Schnurr, Winstead Sechrest & Minick P.C

REQUEST:

- The following appeals were originally made in this application:

1. A special exception to the fence height regulations of 7 feet was requested in conjunction with constructing the following in the 40'-Shadywood Lane and Briarwood Lane front yard setbacks on a site developed with a single family home:
 - a 9'-high open wrought iron fence,
 - a 9'-high stone wall, and
 - two, 9'-high solid wood gates with 10.5'-high columns.
 (This fence would replace a 7'-high open iron fence that exists on the site).
2. A variance to the front yard setback regulations of 37' was requested in conjunction with constructing an approximately 48 square foot, 12'-high "guard house" in the 40'-Briarwood Lane front yard setback.

However, the applicant's representative forwarded a letter to the Board Administrator on October 20th stating that the applicant had "agreed to eliminate the requested guard house in the required front yard along Briarwood" and additionally "agreed to reduce the fence and gate height to eight feet (8') with one foot six inch (1'6") caps on supporting gate columns. (See Attachment B for a copy of the applicant's representative's letter and amended site plan and elevations).

Given the letter and revised plans mentioned above and the Board of Adjustment's November 14th action on the variance request (denied without prejudice), the only appeal left for the board's consideration in this application is for a special exception to the fence height regulations of 5' 6". This special exception is requested in conjunction with constructing the following in the 40'-Shadywood Lane and Briarwood Lane front yard setbacks on a site developed with a single family home:

- an 8'-high open wrought iron fence (reduced from the 9' that was originally requested),
 - an 8'-high stone wall (reduced from 9' that was originally requested), and
 - two, 8'-high solid wood gates with 9.5'-high columns (reduced from 9'-high solid wood gates with 10.5' high columns that were originally requested).
- (This applicant's representative states that the proposed fence and wall would replace a 7'-high open iron fence that exists on the site).

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 (related to the fence height special exception):

- 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 originally submitted site plan made the following notations:
 - The proposed fence is to be located parallel to Shadywood Lane and Briarwood Lane with two recessed vehicular entryways;

- The proposed 9'-high open iron fence is shown to be approximately 325 feet long along Shadywood Lane and approximately 300 feet long along Briarwood Lane;
- The proposed 9'-high solid stone wall is shown to be approximately 62' long at the intersection of Shadywood Lane and Briarwood Lane, 40' long at the Shadywood Lane entryway; and approximately 60' long at the Briarwood Lane entryway; and
- The proposed fence and stone wall are shown to be located on the property lines and approximately 16' from the Shadywood Lane and Briarwood Lane pavement lines.
- The originally submitted elevation plan made the following notations:
 - An elevation indicating 9'-high "conceptual open iron fence section;"
 - An elevation indicating two 9'-high "solid wood gates" with 10.5'-high entry gate columns;
 - An elevation indicating a 9'-high solid wall (materials not specified).
- A "9039 Briarwood Landscape Plan" was submitted in conjunction with the application that detailed the landscape materials to be located adjacent to the proposed fence and wall.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following which appeared to be located in the front yard setbacks. (Note that these locations and dimensions are approximations):
 - A 6'-high open metal fence with 7' high brick columns east of the site;
 - A 6'-high open metal fence two lots southwest of the site.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - A letter that explained in further detail why the request should be granted; and
 - Photos of the site and surrounding area.

In addition, the applicant has submitted two letters of support of the requests on the site which will be presented to the board at the briefing/public hearing.
- An amended site plan was submitted on October 20th (see Attachment B). This plan made the following notations:
 - The proposed fence is to be located parallel to Shadywood Lane and Briarwood Lane with two recessed vehicular entryways;
 - The proposed 8'-high open iron fence is shown to be approximately 352 feet long along Shadywood Lane and approximately 300 feet long along Briarwood Lane;
 - The proposed 8'-high solid stone wall is noted to be approximately 40' long (reduced from a notation made on the originally submitted plan at approximately 62' in length) at the intersection of Shadywood Lane and Briarwood Lane, 40' long at the Shadywood Lane entryway; and approximately 60' long at the Briarwood Lane entryway; and
 - The proposed fence and stone wall are shown to be located on the property lines and approximately 16' from the Shadywood Lane and Briarwood Lane pavement lines.
- An amended elevation plan was submitted on October 20th (see Attachment B). This plan made the following notations:
 - An elevation indicating 8'-high "conceptual open iron fence section" (reduced from 9')

- An elevation indicating two 8'-high "solid wood gates" with 9.5'-high entry gate columns (reduced from 9' high gates with 10.5'-high columns);
- An elevation indicating an 8'-high solid wall (materials not specified) that was reduced from 9' in height).
- A revised "9039 Briarwood Landscape Plan" was submitted on October 20th (see Attachment B). This plan only revised the heights of the proposed fence and walls on the site. The landscape materials shown to be located adjacent to the proposed fence and wall are the same as shown on the originally submitted landscape plan.
- On November 14, 2005, the Board of Adjustment conducted a hearing on this matter and delayed action on this appeal to December 12, 2005.
- As of December 5th, no additional information has been submitted to staff on this appeal.

GENERAL FACTS (related to the front yard variance):

- A 40'-front yard setback is required in the R-1(A) zoning district.
- The site/lot has two, 40'-front yard setbacks, one along Shadywood Lane, the other along Briarwood Lane.
- A variance had been requested to construct a "guard house" to be located 3' from the site's front property line on Briarwood Lane. No structure was proposed to be located in the Shadywood Lane-front yard setback.
- However, on October 20, 2005, the applicant's representative forwarded a letter to the Board Administrator stating that the applicant has agreed to eliminate the requested guard house in the required front yard setback. (The applicant is unable to officially withdraw this variance request given this case's "holdover" status however staff suggests that this variance request be given the closest equivalent action: denial without prejudice).
- On November 14, 2005, the Board of Adjustment conducted a public hearing on this matter and denied this appeal without prejudice.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 95-036, 9039 Briarwood Lane (the subject site)

On March 28, 1995, the Board of Adjustment granted a request for a special exception to fence height regulations of 3' 9", subject to the following conditions: 1) Compliance with the submitted site plan, landscape plan, and elevation is required; 2) compliance with the provision that no protected trees (8 inch caliper or greater) can be removed without a permit. The case report states that the request was made in conjunction with constructing approximately 825 linear feet of a 7' 3" open metal fence with metal posts located approximately 7' on center along Briarwood Lane and Shadywood Lane; and an approximately 50 linear foot 7' 6" solid stone fence along Shadywood Lane.

2. BDA 89-047, 9039 Briarwood Lane (the subject site)

On June 13, 1989, the Board of Adjustment Panel A denied a request to erect a 7' 9" fence without prejudice. It appears from information within the case file that the fence was to be constructed of open metal cyclone material.

3. BDA 034-162, 4618 Shadywood Lane (the lot northwest of the subject site)

On May 18, 2004, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6', subject to the submitted site plan and elevation. The case report states that the request was made to construct a 7.5'-high solid wood fence with 8'-high wood columns and a 8'-high wood gate with 10'-high entry columns in the Northwest Highway front yard setback.

Timeline:

July 15, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 15, 2005: The Board Administrator contacted the applicant's representative and shared the following information:

- the public hearing date and panel that will consider the application;

- the criteria/standard that the board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 25th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the August public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

July 25, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

July 27, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board. No review comment sheets with comments were submitted in conjunction with this application.

August 15, 2005: The Board of Adjustment conducted a public hearing on this matter and held this matter until November 14th per the request of applicant's representative and opposing property owners.

October 20, 2005 The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B).

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

Nov. 14, 2005 The Board of Adjustment conducted a public hearing on this application and denied the variance request without prejudice, and delayed action on the fence height special exception until December 13, 2005.

Nov. 18, 2005: The Board Administrator wrote the applicant's representative a letter that conveyed the following information:

- that the board denied the variance request without prejudice, and delayed action on the fence height special exception until December 12th;
- the November 23rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket; and
- the December 2nd deadline to submit additional evidence to be incorporated into the Board's docket materials.

Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS (related to the fence height special exception):

- A revised scaled site plan and landscape plan has been submitted that documents the location of the proposed fence, wall, gates, and columns relative to their proximity to the property line and pavement line. The site plan also shows the length of the proposed fence and wall relative to the lot.
- A revised elevation has been submitted that documents the height of the proposed fence and wall (8'), entry gates (8') and entry gate columns (9.5'), and the building materials (open iron fence, solid wood gates).
- The proposed fence and wall are to be constructed of durable material (open iron and stone).
- As of December 2nd, 10 letters have been submitted to staff in support of the proposed fence and wall, and 7 letters have been submitted in opposition.
- As of December 5th, no additional information has been submitted to staff on this appeal.

- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gates that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 5' 6" with conditions imposed that the applicant complies with the submitted revised site plan, revised landscape plan and revised elevation would assure that the proposed fence, gates, and wall are constructed and maintained as shown on these documents.

STAFF ANALYSIS (related to the front yard variance request):

- A variance had been requested to construct a “guard house” to be located 3' from the site’s front property line on Briarwood Lane. No structure was proposed to be located in the Shadywood Lane-front yard setback.
- However, on October 20, 2005, the applicant’s representative forwarded a letter to the Board Administrator stating that the applicant has agreed to eliminate the requested guard house in the required front yard setback.
- The applicant was unable to officially withdraw this variance request given this case’s “holdover” status however staff suggested that this variance request be given the closest equivalent action: denial without prejudice.
- On November 14, 2005, the Board of Adjustment denied this request without prejudice.

BOARD OF ADJUSTMENT ACTION: August 15, 2005

APPEARING IN FAVOR: Jimmy Schnurr, 5400 Renaissance Tower, 1201 Elm St., Dallas, TX
Ron Gaswirth, 1601 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: John Evans, 9030 Briarwood, Dallas, TX
LaRue Henry, 4803 Shadywood Ln, Dallas, TX
Susan Echt, 4737 Shadywood Ln., Dallas, TX
Katharine Felder, 4722 Shadywood Ln., Dallas, TX
Janet Stone, 4922 W NW Highway, Dallas, TX

MOTION: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 045-215** hold this matter under advisement until **November 14, 2005**.

SECONDED: **Wise**

AYES: 4 – Madrigal, Smith, Wise, Gomez

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 14, 2005

APPEARING IN FAVOR: Kirk Williams, 5400 Renaissance Tower, 1201 Elm St., Dallas, TX
John Evans, 9030 Briarwood, Dallas, TX
Reena Blumerfeld, 4703 Cherokee Trail, Dallas, TX
Denny Landers, 4501 Cherokee Trail, Dallas, TX

APPEARING IN OPPOSITION: Katherine Felder, 4722 Shadywood, Dallas, TX
LaRue Henry, 4803 Shadywood Ln, Dallas, TX
Susan T. Ecnt, 4757 Shadywood Ln, Dallas, TX

Break: 5:15 P.M.
Resumed: 5:10 P.M.

MOTION #1: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 045-215**, on application of James R. Schnurr, Winstead Sechrest & Minick PC, **deny** the 37 foot variance to the front yard setback regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant. 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 and elevation is required

SECONDED: **Wise**
AYES: 4 – Madrigal, Smith, Chortek, Wise
NAYS: 0 –
MOTION PASSED: 4 –0

MOTION #2: **Smith**

I move that the Board of Adjustment in Appeal No. **BDA 045-215**, on application of James R. Schnurr, Winstead Sechrest & Minick PC, **grant** the request of the applicant to construct a 7 foot 3 inch open wrought iron fence along Shadywood and Briarwood Lane consistent with the 1995 ruling of the Board of Adjustment or the 2005 site plan, in addition a 7 foot 3 inch high stone wall and along NW Highway and two 8 foot high solid wood gates with 9 feet 5 inch high columns on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and elevation from 1995 or 2005 is required but should be limited to no larger than 7 feet 3 inches.

SECONDED: **Wise**
AYES: 3 – Madrigal, Smith, Wise
NAYS: 1 – Chortek,
MOTION FAILED: 3 –1

***Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

MOTION #3: **Chortek**

I move that the Board of Adjustment in Appeal No. **BDA 045-215**, on application of James R. Schnurr, Winstead Sechrest & Minick PC, **grant** the request of this applicant to construct a 9 foot 6 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan and revised fence elevation is required.

SECONDED: Madrigal

AYES: 3 – Madrigal, Chortek, Wise

NAYS: 1 – Smith,

MOTION FAILED: 3 –1

***Since the motion to grant did not get four concurring votes, the motion failed and is therefore deemed denied with prejudice.**

MOTION #4: Chortek

I move that the Board of Adjustment in Appeal No. **BDA 045-215**, hold this matter under advisement until **December 12, 2005**.

SECONDED: Wise

AYES: 3 – Madrigal, Chortek, Wise

NAYS: 1 – Smith,

MOTION PASSED: 3 –1

BOARD OF ADJUSTMENT ACTION: December 12, 2005

APPEARING IN FAVOR:

Kirk Williams, 5400 Renaissance Tower, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Chortek

I move that the Board of Adjustment in Appeal No. **BDA 045-215**, on application of James R. Schnurr, Winstead Sechrest & Minick PC, **grant** the request of this applicant to construct a 9 foot 6 inch fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan, revised landscape plan and revised fence elevation is required.

SECONDED: Boyd
AYES: 5– Madrigal, Chortek, Boyd, Maten, Griggs
NAYS: 0–
MOTION PASSED: 5 – 0 (unanimously)

MOTION: Chortek

I move to adjourn this meeting.

SECONDED: Boyd
AYES: 5 – Madrigal, Chortek, Boyd, Maten, Griggs
NAYS: 0 - None
MOTION PASSED: 5 – 0 (Unanimously)

5:12 P. M. - Board Meeting adjourned for **December 12, 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.