

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, APRIL 14, 2009

Briefing: 10:30 A.M.
Public Hearing: 1:00 P.M.

5/E/S
COUNCIL CHAMBERS

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

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

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

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04-14-2009

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, APRIL 14, 2009
AGENDA

BRIEFING	5/E/S	10:30 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Kyra Blackston, Senior Planner

MISCELLANEOUS ITEM

Approval of the Tuesday, March 17, 2009 Board of Adjustment Public Hearing Minutes	M1
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UNCONTESTED CASES

BDA 089-040(K)	117 S. Jester Avenue REQUEST: Application of Eric Rodriguez, represented by Construction Concepts, Inc. for a special exception to the fence height regulations	1
BDA 089-041	11528 Harry Hines Boulevard REQUEST: Application of Rajinder Singh for a variance to the landscape regulations	2
BDA 089-042(K)	4907 Brookview Drive REQUEST: Application of Steven Hild for a special exception to provide an additional electrical meter	3
BDA 089-046	5531 Matalee Avenue REQUEST: Application of Bob and Mary Beth Bourgeois, represented by Roberto Castanheira, for variances to the side yard setback regulations	4

REGULAR CASE

BDA 089-052(K)

1826 Sanger Avenue

5

REQUEST: Application of David Moynihan for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A March 17, 2009 public hearing minutes.

FILE NUMBER: BDA 089-040(K)

BUILDING OFFICIAL'S REPORT:

Application of Eric Rodriguez, represented by Construction Concepts, Inc. for a special exception to the fence height regulations at 117 S. Jester Avenue. This property is more fully described as Lots 15, 16, & 17 in City Block 13/4165 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot, 4 inch fence in a required front yard setback which will require a special exception of 4 feet, 4 inches.

LOCATION: 117 S. Jester Avenue

APPLICANT: Eric Rodriguez
Represented by Construction Concepts, Inc.

REQUEST:

Special exception to the fence height regulations in conjunction with constructing and maintaining a fence in the property's front yard setback that is 8 feet and 4 inches in height.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

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 site is zoned R 7.5(A) and requires a 25 front yard setback.
- The applicant proposes to maintain an 8 foot 4 inch high fence.
- The submitted site plan indicated the fence will not be in the 20 foot visibility obstruction triangle.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures.

Zoning/BDA History:

There is no zoning or Board of Adjustment case history for this site or properties in the immediate area.

Timeline:

February 10, 2009: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

March 24, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:

- the public hearing date and panel that will consider the application;
- the criteria and 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 March 30th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the April 3rd 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 April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The property is developed with a single family structure. This property is located at the end of dead-end street.
- The applicant proposes to maintain an existing solid board on board fence and an open wrought iron fence. The submitted site plans indicate no portion of the fence will be located in the visibility triangles for the drive approach.
- The proposed fence is 8 foot 4 inches in height and runs approximately 45 feet parallel to the front property line and 25 feet perpendicular to the front property line.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

FILE NUMBER: BDA 089-041

BUILDING OFFICIAL'S REPORT:

Application of Rajinder Singh for a variance to the landscape regulations at 11528 Harry Hines Boulevard. This property is more fully described as Lot 1A in City Block A/6613 and is zoned PD-498 which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan which will require a variance.

LOCATION: 11528 Harry Hines Boulevard

APPLICANT: Rajinder Singh

REQUEST:

- A variance to the landscape regulations is requested in conjunction with obtaining a final CO (Certificate of Occupancy) and building permit on a site developed as a wholesale/retail strip center (Trident International Plaza).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The landscape on the subject site must comply with Planned Development No. 498 landscape requirements with the exception of Section 51P-498.110(c), sidewalks.

Rationale:

- The City's Chief Arborist recommends approval of the request, subject to the condition mentioned above whereby the applicant would be required to fully comply with all PD No. 498 landscape requirements except for the sidewalk provision along Denton Drive.
- The east side of the subject site is bounded by Denton Drive – a street that is currently not improved (no curbs, gutters, or sidewalks) and is encumbered with an existing drainage ditch that runs parallel to it along the subject site and the properties to the north and south. This site characteristic creates hardship on the subject site precluding the applicant from providing the required five-foot-wide concrete sidewalk to be located four feet in back of and parallel to the projected or existing street curb, and be placed within the public right-of-way.
- Granting the variance in this case, subject to the condition mentioned above, would not be contrary to public interest since the site would only be allowed landscape leniency that would result in a similar net effect found on other properties north and south of the subject site.

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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is not 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 is necessary to permit development of a specific parcel of land that 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 with the same zoning; and the variance is not 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 with the same zoning.

GENERAL FACTS:

- PD No. 498 states that the following with regard to application of landscaping: 1) Front yard strip landscaping and sidewalk provisions become applicable to a lot when application is made for a building permit for construction work that: increases the number of stories in a building on the building site; increases by more than 25 percent or 5,000 square feet, whichever is less, the combined floor area of all buildings on the building site; or increases nonpermeable coverage on the lot by more than 1,000 square feet. 2) All other landscaping required in this section must be provided pursuant to Section 51A-10.121, "Application of Division."
The applicant has submitted one plan in conjunction with the application (an "Asbuilt Survey") although the application makes reference to "an alternate landscape plan." According to the City of Dallas Chief Arborist, the landscape leniency sought in this case must be requested as a *variance* to the landscape regulations as opposed to the more typically sought special exception since the applicant is seeking relief from specific landscape requirements of PD No. 498.
The Chief Arborist states that the applicant is seeking relief from Section 51P-498.110 (c), pertaining to sidewalks. (This ordinance provision specifically states the following: "A five-foot-wide concrete sidewalk, located four feet in back of and parallel to the projected or existing street curb, must be placed within the public right-of-way. An existing five-foot-wide concrete sidewalk located within the street right-of-way fulfills this requirement.")
- 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 a variance to the landscape requirements of PD No. 498, more specifically, relief from the provision pertaining to sidewalks.
 - The special exception request is triggered by new construction on the site.
 - Deficiency:

1. The sidewalk is not placed as required per PD No. 498 landscape requirements along the Denton Drive frontage. A sidewalk was constructed along Harry Hines Boulevard during state highway improvements by TXDoT.

Factors for consideration:

- Upon staff's latest field inspection, the property owner was in compliance with all other facets of the landscape provisions per PD No. 498, per the staff approved landscape plan for construction.
- A "five-foot-wide concrete sidewalk, located four feet in back of and parallel to the projected or existing street curb" would be conflictive with an existing drainage "ditch" along Denton Drive. Denton Drive is currently not improved and maintaining the current drainage configuration would be consistent with other nearby properties
- The arborist recommends approval subject to the following condition: The landscape must comply with Planned Development 498 landscape requirements with the exception of 498.110 (c), sidewalks.
- The site is flat, is parallelogram in shape (approximately 786' x 343') and approximately 6.2 acres in area. The subject site is zoned PD No. 498. The plat map indicates a 25' drainage easement on the north side of the site and a DP & L easement on the east side of the site.
- According to DCAD records, the property is developed with a 143,580 square foot "retail strip" constructed in 2005.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 498 (Planned Development)
<u>North:</u>	PD No. 498 (Planned Development)
<u>South:</u>	PD No. 498 (Planned Development)
<u>East:</u>	IM (Industrial Manufacturing)
<u>West:</u>	PD No. 498 (Planned Development)

Land Use:

The subject site is developed as a wholesale/retail strip center (Trident International Plaza). The areas to the north, east, south, and west are developed with commercial/warehouse 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:

- Feb. 24, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 20, 2009: The Board Administrator contacted the applicant and shared the following information via phone and email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- The Historic Preservation Senior Engineer submitted a Review Comment Sheet marked "Has no objections."
- April 7, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the variance to the landscape regulations (see Attachment A).

STAFF ANALYSIS:

- This request focuses on obtaining a final CO (Certificate of Occupancy) and building permit on a site developed as a wholesale/retail strip center (Trident International Plaza).
- The applicant is seeking leniency to certain landscape requirements of PD No. 498, and given specific provisions of these landscape provisions, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations as opposed to the more typical *special exception* to the landscape regulations.
- The City's Chief Arborist has determined that the property owner is in compliance with all facets of the PD No. 498 landscape requirements with the exception of providing the required five-foot-wide concrete sidewalk to be located four feet in back of and parallel to the projected or existing street curb, and be placed within the public right-of-way (in this case) along Denton Drive.

- The City of Dallas Chief Arborist recommends that the variance request be granted with a condition imposed that the landscape must comply with Planned Development No. 498 landscape requirements with the exception of Section 51P-498.110 (c), sidewalks.
- The site is flat, is parallelogram in shape (approximately 786' x 343') and approximately 6.2 acres in area. The subject site is zoned PD No. 498. The plat map indicates a 25' drainage easement on the north side of the site and a DP & L easement on the east side of the site.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the landscape regulations requested in conjunction with obtaining a final CO (Certificate of Occupancy) and building permit on a site developed as a wholesale/retail strip center that would be deficient of providing the required sidewalk along Denton Drive 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 498 zoning classification.
 - The variance 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 PD No. 498 zoning classification.
- If the Board were to grant this request and impose a condition that the applicant must comply with Planned Development No. 498 landscape requirements with the exception of Section 51P-498.110(c), sidewalks, the site would only be "varied" from this one specific provision of the landscape regulations of the PD No. 498: the required sidewalk along Denton Drive.

FILE NUMBER: BDA 089-042(K)

BUILDING OFFICIAL'S REPORT:

Application of Steven Hild for a special exception to provide an additional electrical meter at 4907 Brookview Drive. This property is more fully described as part of Lots 2 & 3 in City Block 11/5584 and is zoned R-1ac(A), which requires that a single family dwelling use in a single family, duplex, or townhouse district may be supplied by not more than one electrical utility service and metered by not more than one electrical meter. The applicant proposes to construct and maintain a single family dwelling in a single family, duplex, or townhouse district and have more than one electrical utility service or more than one electrical meter, which will require a special exception.

LOCATION: 4907 Brookview Drive

APPLICANT: Steven Hild

REQUEST:

A special exception to the single family use regulations to add a second electrical service (meter) is requested in conjunction with the construction and maintenance of a single family structure.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the electrical service for single family use regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.112(a)(8) of the Dallas Development Code states that the board may grant a special exception to authorize more than one electrical utility service and more than one electrical meter on a lot in the R-1ac(A) district when, in the opinion of the board the special exception will:

- (1) not be contrary to the public interest;
- (2) not adversely affect neighboring properties; and
- (3) not be used to conduct a use not permitted in this district

GENERAL FACTS:

- The subject site is developed with a single family structure and an accessory structure.
- The site currently has an electric meter on the accessory use.
- The applicant is proposing to construct and maintain a single family structure and accessory use and provide more than one electrical meter.
- The Dallas Development Code states that in the R1ac(A) zoning a single family use may be supplied by not more than one electrical utility service, and not metered by more than one electrical meter.

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 structure and accessory structure. The surrounding properties to the north, south, east and west are developed with single family structures.

Zoning/BDA History:

There is no zoning history or Board of Adjustment history for this site or properties in the immediate area.

Timeline:

February 25, 2009 The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

March 24, 2009: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via letter:

- the public hearing date and panel that will consider the application;
- the criteria and 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 March 30th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the April 3rd 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 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 April public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: 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.

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed electric meter and the structures on the site.
- The site plan illustrates that the proposed additional electric meter will be located approximately 155 feet from the main service utility pole and approximately 110 feet from the existing electric meter on the site.
- The applicant proposes to use the additional electric meter for a new two story main dwelling and maintain the current electric meter for the one story accessory building.
- The applicant has the burden of proof in establishing that the special exception to the single family zoning use regulations (allowing for an additional electric meter) will not adversely affect neighboring property and will not be used to conduct a use not permitted in this district.

FILE NUMBER: BDA 089-046

BUILDING OFFICIAL'S REPORT:

Application of Bob and Mary Beth Bourgeois, represented by Roberto Castanheira, for a variance to the side yard setback regulations at 5531 Matalee Avenue. This property is more fully described as part of Lot D in City Block L-M/2917 and is zoned D(A) which requires a side yard setback of 5 feet. The applicant proposes to construct a structure and provide a 3 foot side yard setback which will require a variance of 2 feet.

LOCATION: 5531 Matalee Avenue

APPLICANT: Bob and Mary Beth Bourgeois
Represented by Roberto Castanheira

REQUESTS:

- Variances to the side yard setback regulations of 2' are requested in conjunction with constructing and maintaining a two-story duplex structure with an approximately 3,400 square foot building footprint where portions of the structure are located in the site's two, 5' side yard setbacks on a site currently developed with a one-story single family home.

STAFF RECOMMENDATION:

Approval of both variance requests, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is restricted in its developable area and is different from other parcels of land given its size and irregular shape. The applicant's representative has submitted documents showing: 1) how the subject site is of a lesser width than other lots on the blockface and the adjacent blockface (50' wide versus 55' wide); and 2) how an orthogonal lot (a lot with the typical four right angles) of the same 50' width as the subject site would allow the proposed building footprint without encroaching into the required 5' side yard setbacks. The width and irregular shape of the subject site creates hardship on the lot and prohibits the applicant's ability to construct and maintain a duplex structure in compliance with the side yard setbacks.

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 for structures accessory to single family uses, height, minimum sidewalks, off-

street parking or off-street loading, or landscape regulations provided that the variance is not 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 is necessary to permit development of a specific parcel of land that 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 with the same zoning; and the variance is not 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 with the same zoning.

GENERAL FACTS:

- The minimum side yard setback on an D(A) (Duplex) zoned lot is 5 feet. The applicant has submitted a site plan indicating that the proposed structure is located 3' from the site's western side property line (or 2' into the 5' side yard setback) and 3' 1" from the site's eastern side property line (or 1' 11" into the 5' side yard setback).
- According to calculations taken by the Board Administrator from the site plan, the area of the proposed structure to be located in the site's western and eastern 5' side yard setbacks totals approximately 108 square feet (or 3 percent) of the approximately 3,400 square foot building footprint. The areas of the structure in the setbacks for each unit is shown on submitted floor plans to be a portion of each of the 17' 6" wide garages for each unit on the first floor, and portions of the master suites and closets on the second floor.
- The site is flat, parallelogram in shape (approximately 154' in length and 50' in width) and approximately 7,700 square feet in area. The site is zoned D(A).
- DCAD records indicate that the site is developed with the following:
 - a single family home in "fair" condition built in 1946 with 1,276 square feet of living area;
 - a 285 square foot detached garage;
 - a 750 square foot detached servants quarters; and
 - a 465 square foot storage building.
- On April 1, 2009, the applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a plat map of the site and the surrounding area indicating that 7 of the 11 lots in the same blockface are at least 55' wide (where the site is 50' wide), and that 12 of the 12 lots on the adjacent blockface are at least 55' wide.
 - a site plan/graphic representation of how the proposed home on the site could be built at a 2' 2" wider width if the subject site were on a 50' wide orthogonal (relating to or composed of right angles) property as found immediately north of the subject site.

BACKGROUND INFORMATION:

Zoning:

Site: D(A) (Duplex)
North: D(A) (Duplex)
South: D(A) (Duplex)
East: D(A) (Duplex)
West: D(A) (Duplex)

Land Use:

The subject site is developed with a single family use. The areas to the north, south, east, and west appear to be developed with single family and duplex 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:

- Feb. 26, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 20, 2009: The Board Administrator contacted the applicant's representative and shared the following information via phone and email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Historic Preservation Senior Engineer submitted a Review Comment Sheet marked "Has no objections."

April 2, 2009: The applicant's representative forwarded additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- The requests for variances to the side yard setback regulations are made in conjunction with constructing and maintaining a 2-story, duplex with an approximately 3,400 square foot building footprint on a site that is developed with a single family home.
- The submitted site plan indicates that the area of the proposed structure to be located in the site's two 5' side yard setbacks is 108 square feet (or approximately 3 percent) of the 3,400 square foot building footprint.
- The site is flat, a parallelogram in shape (approximately 154' in length and 50' in width) and approximately 7,700 square feet in area. The site is zoned D(A). The subject site is atypical in that it is not orthogonal or a lot that is comprised of right angles.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations 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 variances to the side yard setback regulations are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same D(A) (Duplex) zoning classification.
 - The variances to the side yard setback regulations 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 D(A) (Duplex) zoning classification.
- If the Board were to grant the side yard variances of 2', imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into these setbacks would be limited to what is shown on the submitted plan which in this case is a structure that would be located 2' into the 5' side yard setbacks.

FILE NUMBER: BDA 089-052(K)

BUILDING OFFICIAL'S REPORT:

Application of David Moynihan for a special exception to the fence height regulations and for a special exception to the visibility obstruction regulations at 1826 Sanger Avenue. This property is more fully described as Lot 18 in City Block G/874 and is zoned PD 595 (MF-2(A)), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 10 foot fence in a required front yard setback which will require a special exception of 6 feet to the fence regulations and to construct and maintain a fence in a required visibility obstruction triangle which will require a special exception to the visibility obstruction regulations.

LOCATION: 1826 Sanger Avenue

APPLICANT: David Moynihan

REQUESTS:

Special exceptions to the visibility obstruction regulations and a special exception the fence height regulations are requested in conjunction with constructing and maintaining a 10 foot tall fence in a required front yard setback and in required 20 foot visibility triangle at the drive approach.

STAFF RECOMMENDATION (visibility obstruction):

Denial of the 20' x 20' driveway visibility obstruction to the drive approach.

Rationale:

The Development Services Senior Engineer has reviewed the request and recommends denial of the 20' x 20' driveway visibility triangle. (see attachment A).

STAFF RECOMMENDATION (fence height special exception):

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

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 property is zoned PD 595 (MF-2(A)) which requires a front yard setback of 15' for single family residential structures.
- The property is located on the corner of Sanger Ave and Riggs St.
- The applicant's request includes an existing fence that runs parallel to the northern (front) property line on Sanger Ave and the eastern property line along Riggs Street and in the visibility triangles at the drive approach on Riggs Street.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The site is zoned PDP 595 MF-2(A) that requires a visibility triangle of 20' at driveway approaches.

BACKGROUND INFORMATION:

Zoning:

Site: PD 595 [MF-2(A)] (multifamily sub district).
North: PD 595 (RS-C) Tract 1 (Regional Service Commercial)
South: PD 595 [MF-2(A)] (multifamily sub district)
East: PD 595 (RS-C) Tract 1 (Regional Service Commercial)
West: PD 595 (RS-C) Tract 1 (Regional Service Commercial)

Land Use:

The subject site is developed with a single family structure. The properties to the south and west are undeveloped. The properties to the north and east are developed with non-residential structures.

Zoning/BDA History:

Z045-149. PD 595 was established by Ordinance No. 24726, passed by the Dallas City Council on September 26, 2001. (Ord. 24726)

Timeline:

- February 27, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 20, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- March 24, 2009: The Board Senior Planner mailed the applicant a letter that contained the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and 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 March 30th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the April 3rd 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 April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- March 31, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- April 2, 2009 The Development Services Senior Engineer submitted a comment sheet (see attachment A).

STAFF ANALYSIS:

- The subject site is developed with a single family structure. This property is on a corner lot and has frontage on Sanger Avenue and Riggs Street.
- According to DCAD this 1,607 square foot single family structure was constructed in 2008 and is listed in "excellent" condition.

- The applicant proposes to maintain a 10 foot high solid fence in the Sanger Ave. front yard which would require a special exception of 6 feet and 10 foot high solid fence in the side yard of Riggs Road that would require a special exception of 1 foot.
- The applicant proposes to maintain an existing fence and gate in the 20' visibility triangles at the driveway approach.
- The City's Senior Engineer reviewed the site plans and has recommended denial of the special exception to the visibility triangle at the drive approach at of the property.
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board where grant the special exception to the visibility obstruction regulations, it may impose compliance with submitted site plan and elevation. If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan as a condition.