

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, MARCH 17, 2009**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Ellen Taft regular member, and Steve Harris, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Ellen Taft regular member, and Steve Harris, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

10:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 17, 2009** docket.

1:00 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 A January 20, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2009

MOTION: Harris

I move **approval** of the Tuesday, **January 20, 2009** public hearing minutes.

SECONDED: Taft

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-027

BUILDING OFFICIAL'S REPORT:

Application of Alicia Tuttle for a special exception to the fence height regulations at 6423 Malcolm Drive. This property is more fully described as Lot 16 in City Block A/2974 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 11 foot fence in a required front yard setback which will require a special exception of 7 feet.

LOCATION: 6423 Malcolm Drive

APPLICANT: Alicia Tuttle

REQUEST:

- A special exception to the fence height regulations of up to 7' is requested in conjunction with replacing an approximately 30 year-old, 45' long, 6' high solid wood fence atop an approximately 3' high retaining wall with an approximately 65' long, 8' high cedar board-on-board fence/wall to be located atop a 6" - 3' high treated wood

retaining wall in the site's 15' front yard setback along Malcolm Circle on a site being developed with a single family home.

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 subject site is located at the corner of Malcolm Drive and Malcolm Circle. Even though the Malcolm Drive side of the site functions as the site's front yard and the Malcolm Circle side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a 25' front yard setback along Malcolm Drive given that this frontage is the shorter of the two street frontages, and a 15' front yard setback along Malcolm Circle given the platted building line on this site and that the continuity of the established setback must be maintained on this street since houses face Malcolm Circle immediately north of the subject site.

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 applicant has submitted a site plan and a document with several partial elevations indicating a fence/wall proposal that would be located in the site's Malcolm Circle front yard setback and would reach a maximum height of 11'. (No fence is proposed to be located in the site's Malcolm Drive front yard setback).

- A site plan has been submitted that indicates the location of the proposal in the Malcolm Circle front yard setback. The following additional information was gleaned from this site plan:
 - The proposal would be approximately 65' in length parallel to Malcolm Circle, and approximately 14' in length perpendicular to Malcolm Circle on the south, and approximately 14' in length perpendicular to Malcolm Circle on the north.
 - The proposed fence/wall is shown to be located approximately 1' away from the Malcolm Circle front property line (or approximately 14' from the Malcolm Circle pavement line).
- The proposal would be located where no single family home on the site would have direct frontage since the house on the lot immediately across the Malcolm Circle is oriented south to Malcolm Drive.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fence/wall beyond that described above which appeared to be located in the front yard setback above 4' in height.
- On March 5, 2009, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a document that provides additional details about the request; and
 - a petition signed by seven neighbors/owners in support of the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 1 acre)
North: R-7.5 (A) (Single family district 1 acre)
South: R-7.5 (A) (Single family district 1 acre)
East: R-7.5 (A) (Single family district 1 acre)
West: R-7.5 (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:

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

Timeline:

- Jan. 28, 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.
- Feb. 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 20, 2009: The Board Administrator contacted the applicant and shared the following information via email:
 - an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, the Board of Adjustment Chief Planner, the Building Inspection 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

March 5, 2009: The applicant forwarded additional information to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- The request focuses on replacing an approximately 30 year-old, 45’ long, 6’ high solid wood fence atop an approximately 3’ high retaining wall with a new fence that would be approximately 2’ higher and 20’ longer (an approximately 65’ long, 8’ high cedar board-on-board fence/wall to be located atop a 6” - 3’ high treated wood retaining wall) in one of the site’s two front yard setbacks - Malcolm Circle. According to the applicants/current owners, the existing fence that is planned for replacement was on the site when they acquired the property in 2004.
- A scaled site plan and a document with several partial elevations have been submitted documenting the location of the replacement fence/wall relative to its proximity to the Malcolm Circle front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building material. The replacement fence/wall is shown to be located approximately 1’ from the Malcolm Circle front property line or about 14’ from the pavement line. The proposal is about 65’ long parallel to Malcolm Circle and about 14’ long perpendicular on the north and south “sides” of the site in front yard setback.
- Although the existing 30 year old fence appears to be located in the 20’ visibility triangle at the intersection of Malcolm Circle and the alley from a field visit conducted by the Board Administrator, the submitted site plan shows that the replacement fence would be angled at this location and in compliance with the city’s visual obstruction regulations.
- The proposed replacement fence/wall would be located on the site where no single family home would have direct frontage since the house on the lot immediately across Malcolm Circle is oriented south to Malcolm Drive

- No other fence/walls were noted in the immediate area that appeared to be located in the front yard setback above 4' in height.
- As of March 9, 2009, no letters had been submitted to staff in opposition to the proposal, and one petition signed by 7 owners/neighbors had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 11' in height) will not adversely affect neighboring property.
- Granting this special exception of up to 7' with a condition imposed that the applicant complies with the submitted site plan and document with several partial elevations would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 089-027** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Taft**

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-035(K)

BUILDING OFFICIAL'S REPORT:

Application of Devinee King for a special exception to the fence height regulations at 1535 Oates Drive. This property is more fully described as Lot 3 in City Block 7398 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 and maintain a 6 foot, 2 inch fence in a required front yard setback which will require a special exception of 2 feet, 2 inches.

LOCATION: 1535 Oates Drive

APPLICANT: Devinee King

REQUEST:

A special exception to the fence height regulations of 2 feet and 2 inches requested in conjunction with constructing and maintaining a fence in the site's 25 foot front yard setback.

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 subject property is developed with a single family structure.
- This property is zoned R-7.5(A) and has a 25 front yard setback.
- The applicant is proposing to maintain an open iron fence in the front yard setback.
- 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. And a person shall not erect or maintain a fence in a required yard more than nine feet above grade.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

On November 18, 2008, the Board of Adjustment, Panel A granted a fee waiver for an application fee in conjunction with this request.

Timeline:

January 1, 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.

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

February 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 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the March 6th 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 March public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March 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.

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed open fence and gate relative to their proximity to the property line.
- A scaled elevation has been submitted that illustrates the 6' 2" iron fence.
- The proposed fence runs approximately 124 linear feet along Oates Drive.
- During the site visit the senior planner observed other fences (of varying heights) in the immediate area.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (the open iron fence that is proposed to exceed 4' in height) will not adversely affect neighboring property.
- Should the Board vote to grant the special exception to the fence height regulation, staff recommends the site plan and elevation as conditions of approval.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 089-035** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Taft**

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-036

BUILDING OFFICIAL’S REPORT:

Application of Tiofilo Benitez for a special exception to the fence height regulations at 4815 Colonial Avenue. This property is more fully described as Lot 11 in City Block 4/2119 and is zoned PD 595 (D(A)) which limits the height of a fence in the front yard to

4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 4815 Colonial Avenue

APPLICANT: Tiofilo Benitez

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining a 6' high wood fence/wall atop a 2' high concrete retaining wall and an 8' high wood door/gate in the site's 25 front yard setback along Garden Drive on a site developed with a single family home.

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 subject site is located at the corner of Colonial Avenue and Garden Drive. Even though the Colonial Avenue side of the site appears to function as the site's front yard and the Garden Drive side appears to function as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Colonial Avenue given that this frontage is the shorter of the two street frontages, and a front yard setback along Garden Drive given that the continuity of the established setback must be maintained on this street since houses face Garden Drive immediately southwest of the subject site.

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 applicant has submitted a site plan and a partial elevation document indicating a fence/wall/gate proposal that exceeds 4' in height and located in the site's Garden Drive front yard setback – a proposal that would reach a maximum height of 8'.

Although no fence higher than 4' is proposed to be located in the site's Colonial Avenue front yard setback, it appears that a "new metal fence 4'-0" H." denoted on the site plan is located in the 45' Colonial Avenue/Garden Drive intersection visibility

triangle. The Board Administrator has informed the applicant the City would not be able to issue a permit for this 4' high fence as shown on the site plan unless it is either relocated outside the visibility triangle or left in the triangle but reduced to a height of 30" or less. The Board Administrator also explained the option of leaving the proposed 4' high fence in the visibility triangle, and seeking/making an additional board application for a special exception to the visual obstruction regulations. (As of March 9, 2009, the applicant had not made an application for a special exception to the visual obstruction regulations or submitted a revised plan that showed the fence on the site to be in compliance with these regulations).

- A site plan has been submitted that indicates the location of the proposal exceeding 4' in height in the Garden Drive front yard setback. The following additional information was gleaned from this site plan:
 - The proposal would be approximately 75' in length parallel to Garden Drive, and approximately 20' in length perpendicular to Garden Drive on the north, and approximately 25' in length perpendicular to Garden Drive on the south.
 - The proposed fence/wall is shown to be located approximately on Garden Drive front property line (or approximately 10' from the Garden Drive pavement line).
 - The proposed wood door/gate is shown to be located approximately 10' from the Garden Drive front property line (or approximately 20' from the Garden Drive pavement line).
- The proposal would be located on the site where no single family home would have direct frontage since the duplex on the lot immediately across Garden Drive is oriented northeastward to Colonial Avenue.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fence/walls which appeared to be located in a front yard setback above 4' in height.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595 (D) (Planned Development, Duplex)
North: PD No. 595 (D) (Planned Development, Duplex)
South: PD No. 595 (D) (Planned Development, Duplex)
East: PD No. 595 (D) (Planned Development, Duplex)
West: PD No. 595 (D) (Planned Development, Duplex)

Land Use:

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

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:

Jan. 30, 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.

Feb. 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Feb. 20, 2009: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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.”

The Board Administrator also made the applicant aware of the fact that his application was currently only for a fence height special exception even though his submitted site plan shows a 4’ high fence located in the required visibility triangle at Colonial Avenue and Garden Drive. The Board Administrator informed the applicant that a fence in this location and of this height would require an additional special exception request to the City’s visual obstruction regulations in order for it to be legally erected at this height in this triangle; and explained his options regarding this issue as: 1) reduce the height of the fence in the triangle to 2.5 feet; 2) remove the fence from the visibility triangle, or 3) leave the fence as shown on the plan and add an additional request to the application (i.e. a special exception to the visual obstruction regulations). The applicant was advised that any additional request or amendments to his original application should be directed to Todd Duerksen in Building Inspection no later than Monday, March 2nd in order for the application to remain as scheduled for March 17th. (As of March 9, 2009, the applicant had not made an application for a special exception to the visual obstruction regulations or submitted a revised plan that showed the site to be in compliance with these regulations).

March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public

hearings. Review team members in attendance included: the Assistant Building Official, the Board of Adjustment Chief Planner, the Building Inspection 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 6' high wood fence/wall atop a 2' high concrete retaining wall and an 8' high wood door/gate in the site's 25 front yard setback along Garden Drive on a site developed with a single family home.
- A scaled site plan and partial elevation document have been submitted denoting the location of the proposed fence/wall/gate relative to their proximity to the Garden Drive front property line and pavement line, the lengths of the proposal relative to the entire lot, and the proposed building materials. The fence is shown to be located on the Garden Drive front property line or about 10' from the pavement line. The proposed wood fence is about 75' long parallel to Garden Drive and about 20' -25' long perpendicular to the street on the north and south "sides" of the site in the front yard setback.
- The proposal would be located on the site where no single family home would have direct frontage since the duplex on the lot immediately across Garden Drive is oriented northeastward to Colonial Avenue.
- No other fence/walls were noted in the immediate area which appeared to be located in a front yard setback above 4' in height.
- As of March 9, 2009, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 8' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.
- Granting the applicant's request for a special exception to the fence height regulations would not provide any relief from the City's visual obstruction regulations regardless of what is shown on the submitted site plan – that being in this case a 4' high metal fence located in the 45' visibility triangle at the intersection of Colonial Avenue and Garden Drive since the applicant has not made a separate visual obstruction special exception application to the board to address this fence at this height in this location.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Harris

I move that the Board of Adjustment grant application **BDA 089-036** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Taft

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-032

BUILDING OFFICIAL’S REPORT:

Application of Steven E. Stoner, P.E., for a special exception to the parking regulations at 606 N. Washington Avenue. This property is more fully described as Lot 1A in City Block D/788 and is zoned MU-3 which requires parking to be provided. The applicant proposes to construct a structure for medical clinic or ambulatory surgical center use and provide 306 of the required 360 parking spaces which will require a special exception of 54 spaces (15% reduction).

LOCATION: 606 N. Washington Avenue

APPLICANT: Steven E. Stoner, P.E

March 17, 2009 Public Hearing Notes:

- The applicant submitted additional written documentation at the public hearing.
- The Development Services Senior Engineer stated that he supported the applicant’s request given what was provided in the newly submitted documentation.

REQUEST:

- A special exception to the off-street parking regulations of 54 parking spaces (or a 15% reduction of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 72,000 square foot “medical clinic or ambulatory surgical center” use (Washington Medical Plaza) on an undeveloped site and providing 306 of the required 360 parking spaces.

STAFF RECOMMENDATION:

Denial

Rationale:

- The Development Services Senior Engineer recommends that this request be denied since the submitted parking analysis is not sufficient since it only compared the ITE Parking Demand (across the U.S.) data with the rate required by the Dallas Development Code. The Senior Engineer concluded that the applicant should have submitted an analysis that provided data of comparable development in/around the City of Dallas to support the requested special exception.

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 off-street parking requirements:
 - Medical clinic or ambulatory surgical center: 1 space per 200 square feet of floor area.

The application materials and Building Official’s Report state that 306 (or 85 percent) of the required 360 spaces are proposed to be provided.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use) (Deed Restricted)
North: PD No. 749 (Planned Development District)
South: PD No. 749 (Planned Development District)
East: PD No. 749 (Planned Development District)
West: PD No. 749 (Planned Development District)

Land Use:

The subject site is undeveloped. The area to the north is developed with office use; the areas to the east and south are developed with surface parking lots, and the area to the west is developed with a parking garage.

Zoning/BDA History:

1. Z045-132, Washington Avenue and Worth Street, north corner (the subject site)
On June 21, 2006, the City Council created an ordinance authorizing an MU-3 zoning district on property previously zoned an LO-3-D district. On June 28, 2006, the City Council authorized acceptance of a deed restriction instrument submitted in conjunction with the change in zoning – deed restrictions that prohibited certain uses on the property; and established certain front yard setback, floor areas, height, landscape, and parking provisions on the site.
(Note that the applicant informed the Board Administrator on February 24, 2009 that his request to the board of adjustment for a special exception to the parking regulations does not violate these deed restrictions).

Timeline:

- January 29, 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.
- Feb. 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Feb. 20, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public

hearings. Review team members in attendance included: the Assistant Building Official, the Board of Adjustment Chief Planner, the Building Inspection 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

March 5, 2009

The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "The parking analysis dated 30 Jan 2009 is not sufficient when it only compared the ITE Parking Demand (across the U.S.) data with the rate required by the Dallas Development Code. An analysis is needed that gives data of comparable development in/around City of Dallas to support the requested special exception."

STAFF ANALYSIS:

- This request focuses on the applicant's proposal to construct/maintain an approximately 72,000 square foot "medical clinic or ambulatory surgical center" use (Washington Medical Plaza) on an undeveloped site where 306 (or 85 percent) of the required 360 spaces will be provided.
- According to the applicant, the code requirement for this use at 360 spaces is excessive since parking demand data published by the Institute of Transportation Engineers (ITE) indicates that the peak parking demand for the proposed 72,000 square foot medical center is 254 spaces or 52 spaces less than the 306 spaces that is proposed to be provided by the applicant.
- The Development Services Senior Engineer has recommended that this request be denied since "parking analysis dated 30 Jan 2009 is not sufficient when it only compared the ITE Parking Demand (across the U.S.) data with the rate required by the Dallas Development Code." The Senior Engineer states that an analysis is needed that gives data of comparable development in/around the City of Dallas to support the requested special exception.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the "medical clinic or ambulatory surgical center use" does not warrant the number of off-street parking spaces required, and
 - The special exception of 54 spaces (or a 15 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 54 spaces automatically and immediately terminates if and when the "medical clinic or ambulatory surgical center" use is changed or discontinued, the applicant would be allowed to develop the site with this specific use and with 305 of the 360 off-street parking spaces required by the code.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2009

APPEARING IN FAVOR: Steve Stoner, 400 S. Houston St., Suite 330, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move that the Board of Adjustment, in Appeal No. **BDA 089-032**, on application of Steve E. Stoner, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 54 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 not 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 medical clinic or ambulatory surgical center use on the site is changed or discontinued.

SECONDED: Gabriel

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-034

BUILDING OFFICIAL’S REPORT:

Application of Mark Tomason for a variance to the front yard setback regulations and for a variance to the side yard setback regulations at 1920 N. Fitzhugh Avenue. This property is more fully described as part of Lots 4 & 5 in City Block 2/692 and is zoned MF-2(A) which requires a 15 foot front yard setback and requires a 10 foot side yard setback. The applicant proposes to construct a structure and provide a 5 foot front yard setback which will require a variance of 10 feet to the front yard setback regulations, and a 0 foot side yard setback which will require a variance of 10 feet to the side yard setback regulations.

LOCATION: 1920 N. Fitzhugh Avenue

APPLICANT: Mark Tomason

REQUESTS:

- The following appeals have been made in this application in conjunction with constructing and maintaining a 3-story, 4-unit multifamily development with an approximately 3,000 square foot building footprint on a site that is undeveloped:
 1. A variance to the front yard setback regulations of 10' to address a portion of the proposed structure in the site's 15' front yard setback along Fitzhugh Avenue; and
 2. A variance to the side yard setback regulations of 10' to address a portion of the proposed structure in the site's 10' side yard setback along the northeast side of the site.

STAFF RECOMMENDATION:

Denial of both variance requests

Rationale:

- The applicant had not substantiated how the site's restrictive area at nearly 5,900 square feet in area, its shape (rectangular – 90' x 65') and/or its slope (flat) preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification.
- Full compliance with the front and side yard setbacks would allow the site to be developed with a reasonably/commensurately sized, 3-unit (as opposed to the proposed 4-unit) multifamily development.

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 subject site is located at the east corner of N. Fitzhugh Avenue and Chambers Street and is zoned MF-2(A). As a result, the site has two 15' front yard setbacks

along both of these streets and two 10' side yard setbacks along the other two sides of the rectangular-shaped lot.

- The minimum front yard setback on an MF-2(A) zoned lot is 15 feet. The applicant has submitted a site plan indicating the proposed structure located 5' 3" from the front property line along Fitzhugh Avenue (and 17' from the front property line along Chambers Street), and an application that requests a 10' front yard variance (implying a 5' setback from the front property line). The Building Officials' Report states that the applicant is providing a 5' front yard setback. Depending on the slight discrepancy between the notation on the site plan and from what is requested on the application and conveyed in the Building Official's Report, the structure is proposed to be either 9' 9" or a 10' into one of the site's two 15' front yard setbacks – that being the Fitzhugh Avenue front yard setback.
- The minimum side yard setback on an MF-2(A) zoned lot is 10 feet. The applicant has submitted a site plan and an application both of which indicate the proposed structure located 0' from the side property line along the site's northeast side (and 10' from the side property line along the southeastern side of the site). The structure is proposed to be 10' into one of the site's two 10' side yard setbacks – that being the northeastern 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 15' Fitzhugh Avenue front yard setback is 350 square feet (or approximately 12 percent) of the 3,000 square foot building footprint.
- 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 10' northeastern side yard setback is 350 square feet (or approximately 12 percent) of the 3,000 square foot building footprint.
- According to calculations taken by the Board Administrator from the site plan, an approximately 2,600 square foot area (or 44 percent of the lot) is left for development on the approximately 5,900 square foot subject site once setbacks have been accounted for. If the site were not on a corner and had one front yard setback, two side yard setbacks, and one rear yard setback, an approximately 2,900 square foot area (or 50 percent of the lot) would be left for development on the approximately 5,900 square foot lot.
- The site is flat, rectangular in shape (approximately 90' in length and 65' in width) and approximately 5,850 square feet in area. The site is zoned MF-2(A). The site has two front yard setbacks and two side yard setbacks.
- DCAD records indicate no improvements on the site.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily)
North: MF-2(A) (Multifamily)
South: MF-2(A) (Multifamily)

East: MF-2(A) (Multifamily)
West: MF-2(A) (Multifamily)

Land Use:

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

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:

Jan. 30, 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.

Feb. 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

Feb. 23, 2009: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the March 2nd deadline to submit additional evidence for staff to factor into their analysis; and the March 6th 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 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, the Board of Adjustment Chief Planner, the Building Inspection 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The requests for variances to the front and side yard setback regulations are made in conjunction with a 3-story, 4-unit multifamily development with an approximately 3,000 square foot building footprint on a site that is undeveloped.
- The submitted site plan indicates that the area of the proposed structure to be located in the site's 15' Fitzhugh Avenue front yard setback is 350 square feet (or approximately 12 percent) of the 3,000 square foot building footprint; and that the area of the proposed structure to be located in the site's 10' northeastern side yard setback is 350 square feet (or approximately 12 percent) of the 3,000 square foot building footprint.
- The submitted site plan indicates that an approximately 2,600 square foot area (or 44 percent of the lot) is left for development on the approximately 5,900 square foot subject site once setbacks have been accounted for. It appears that if the site were not on a corner and had *one* front yard setback, two side yard setbacks, and one rear yard setback, an approximately 2,900 square foot area (or 50 percent of the lot) would be left for development on the approximately 5,900 square foot lot.
- The site is flat, rectangular in shape (approximately 90' in length and 65' in width) and approximately 5,850 square feet in area. The site is zoned MF-2(A). The site has two front yard setbacks and two side yard setbacks.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front and rear 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 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 MF-2(A) (Multifamily) zoning classification.
 - The variances 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 MF-2(A) (Multifamily) zoning classification.
- If the Board were to grant the front and side yard variances of 10', 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 9' 9" into the 15' front yard setback along Fitzhugh Avenue and 10' into the 10' side yard setback along the northeast side of the subject site.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION #1: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-034**, on application of Mark Tomason, **deny** the front yard setback variance requested by this applicant **without** prejudice, because our evaluation of the property and the 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.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-034**, on application of Mark Tomason, **deny** the side yard setback variance requested by this applicant **without** prejudice, because our evaluation of the property and the 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.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Taft, Harris

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Taft**

I move to adjourn this meeting.

SECONDED: **Gabriel**

AYES: 5– Richmond, Gabriel, Schweitzer, Harris, Taft

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:30 P.M. - Board Meeting adjourned for **March 17, 2009**.

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.