

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, APRIL 15, 2009**

<b>Briefing:</b>	<b>10:30 A.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>
<b>Public Hearing:</b>	<b>1:00 P.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>

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

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

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

tl  
04-15-2009

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, APRIL 15, 2009  
AGENDA

---

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	10:30 A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

---

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

---

**MISCELLANEOUS ITEM**

---

Approval of the <b>Wednesday, March 18, 2009</b> Board of Adjustment Public Hearing Minutes	M1
--	----

---

**UNCONSTESTED CASES**

---

BDA 089-039	6503 Blue Valley Lane <b>REQUEST:</b> Application of Bruce M. Shapard, represented by Peter Poulos, for a special exception to the fence height regulations	1
BDA 089-044	4278 S. Crest Haven Road <b>REQUEST:</b> Application of Francesco Farris for special exceptions to the fence height and visual obstruction regulations	2
BDA 089-051	515 N. St. Paul Street & 608 N. St. Paul Street <b>REQUEST:</b> Application of Jonathan Vinson of Jackson Walker, LLP, for special exceptions to the pedestrian skybridge regulations	3

---

**REGULAR CASES**

---

BDA 089-038(K)	114 N. Edgefield Avenue <b>REQUEST:</b> Application of Christopher G. Roberts for a variance to the off-street parking regulations	4
----------------	--	---

BDA 089-043

150 W. Ann Arbor Avenue

5

**REQUEST:** Application of Glen Oaks Homeowners' Association, represented by Carolyn Arnold, to require compliance of a nonconforming use

## 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 B March 18, 2009 public hearing minutes.

**FILE NUMBER:** BDA 089-039

**BUILDING OFFICIAL'S REPORT:**

Application of Bruce M. Shapard, represented by Peter Poulos, for a special exception to the fence height regulations at 6503 Blue Valley Lane. This property is more fully described as Lot 4 in City Block 19/2970 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, 1 3/4 inch fence in a required front yard setback which will require a special exception of 4 feet, 1 3/4 inches.

**LOCATION:** 6503 Blue Valley Lane

**APPLICANT:** Bruce M. Shapard  
Represented by Peter Poulos

**REQUEST:**

- A special exception to the fence height regulations of 4' 1 3/4" is requested in conjunction with maintaining a 97 3/4" (or 8' 1 3/4") high, approximately 8' long (parallel to the street) solid wood fence/wall (surrounding an 81 3/4" or 6' 9 3/4") high pedestrian gate) in the site's 25' front yard setback 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 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/ "plot plan" and two elevation documents (south and west elevations) indicating what appears to be the existing fence/wall/pedestrian gate that is located in the site's 25 front yard setback and according to the

application and elevation reaches a maximum height of 97  $\frac{3}{4}$ " (or 8' 1  $\frac{3}{4}$ "). (The site plan does not technically denote the fence line but does show X's that appears to indicate the location of the fence observed in the Board Administrator's field visit – the X's on this plan are shown in a line along the site's south side and a line perpendicular to this line immediately west of this line with no X's shown abutting the eastern side property line).

- The following additional information was gleaned from the submitted site/ "plot plan" and elevations:
  - The proposal/existing fence/wall/pedestrian gate appears to be approximately 8' in length parallel to Blue Valley Lane, and approximately 22' in length perpendicular to Blue Valley Lane.
  - The proposal/existing fence/wall/pedestrian gate appears to be shown located approximately 3' away from the Blue Valley front property line (or approximately 7' – 9' from the Blue Valley pavement line).
- The submitted site/ "plot plan" and plat indicates that the proposal/existing fence is located over a "6' drainage easement." (The Board Administrator informed the applicant's representative that the Dallas Development Code states that a fence may not be located within an easement without having the prior written approval by the agencies having interest in the easement, that the applicant/owner would be required to have the written approval from these agencies before the City could issue a fence permit in the location shown on this submitted site/ "plot plan"; and that the board does not have any authority to address this "fence over easement" issue in conjunction with considering/granting his request for a special exception to the fence height regulations).
- The Board Administrator forwarded a copy of the City's visual obstruction regulations to the applicant's representative in an attempt to make sure that his fence on the site was completely covered / addressed by the board of adjustment at one public hearing, particularly since the City could not determine whether the *location* of his fence on his property was in compliance with these regulations. The applicant's representative was informed that location of his fence on his property was required to be in compliance with the visual obstruction regulations as it pertains to the driveway on his site (which staff determined from his site plan was not an issue) AND from his neighbor's driveway to the east (which may or may not be an issue depending on the location of his fence in relation to his neighbor's driveway). The applicant's representative was encouraged to review the visual obstruction regulations and if he determined that his fence was located in the required 20' visibility triangle originating from his neighbor's driveway, his options would be to: 1) reduce the height of the fence in the visibility triangle to 2.5 feet; 2) to remove any portion of the fence from the required visibility triangle, or 3) to add an additional special exception request to his application for the board's consideration (i.e. a special exception to the visual obstruction regulations in addition to his requested special exception to the fence height regulations). The Board Administrator conveyed to the applicant's representative that if the application had not been amended with Building Inspection on/before March 30<sup>th</sup>, an assumption would be made that he had assessed that the location of his fence was in compliance with the visual obstruction regulations, and that the only issue needed before the board was its height over 4' in the required 25' front yard setback.

- The proposal/existing fence/wall/pedestrian gate is located near the end of a cul-de-sac where two single family homes have frontage.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences/walls which appeared to be located in a front yard setback above 4' in height.

**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:**

- Feb. 16, 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 B.
- 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 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 3<sup>rd</sup> 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."

### **STAFF ANALYSIS:**

- The request focuses on what appears to be the maintenance of existing 8' 1 ¾" high, approximately 8' long fence/wall located in the site's 25 front yard setback.
- A site / "plot plan" has been submitted that does not technically denote a fence line but shows X's in what appears the location of the fence observed in the Board Administrator's field visit. The X's on this plan are shown in a line along the site's south side and a line perpendicular to this line immediately west of this line. (No X's are shown abutting the eastern side property line). The proposal/existing fence/wall/pedestrian gate appears to be approximately 8' in length parallel to Blue Valley Lane, and approximately 22' in length perpendicular to Blue Valley Lane. The proposal/existing fence/wall/pedestrian gate appears to be shown located approximately 3' away from the Blue Valley front property line (or approximately 7' – 9' from the Blue Valley pavement line).
- The existing fence that appears to be the issue in this application appears to be located over an existing easement to which the applicant will be required to obtain written approval by the agencies having interest in the easement before the City could issue a fence permit in the location shown on this site plan. The applicant has been informed of this, and that the board does not have any authority to address this "fence over easement" issue in conjunction with considering/granting a request for a special exception to the fence height regulations.
- Staff cannot determine from the submitted site/ "plot plan" whether the fence that appears to be the issue in this application is located in the 20' visibility triangle at the drive approach on the property immediately to the east. The applicant's representative has been made aware of the City's visual obstruction regulations, and has been made aware of how his requested fence height special exception will not provide any relief from fully complying with the visual obstruction regulations.
- The proposal/existing fence/wall/pedestrian gate is located near the end of a cul-de-sac where two single family homes have frontage.
- No other fences/walls which appeared to be located in a front yard setback above 4' in height were noted in the Board Administrator's field visit of the site and surrounding area.
- As of April 6, 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 exception to the fence height regulations (whereby the proposal reaches 8' 1 ¾" in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 1 ¾" with a condition imposed that the applicant complies elevations would help assure that the proposal would be maintained of the

heights and materials as shown on these documents. Staff suggests that the Board determine from the applicant at the public hearing whether that the "X's" shown on the submitted site/plot plan" delineate the location of the existing fence. This determination would allow staff to label/amend the submitted plan accordingly and limit the location of any fence above 4' in height in the front yard setback to the location as shown on an amended site plan that clearly denotes the location of the fence in the front yard setback over 4' in height.

- Granting this fence height special exception request would not provide any exception to the matter of any fence/item located over an easement nor provide any exception to the City's visual obstruction regulations since the applicant has not made application to address any such issue.

**FILE NUMBER:** BDA 089-044

**BUILDING OFFICIAL'S REPORT:**

Application of Francesco Farris for special exceptions to the fence height and visual obstruction regulations at 4278 S. Crest Haven Road. This property is more fully described as Lot 8 in City Block B/4991 and is zoned R-7.5(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 maintain a 7 foot, 1 inch fence in a required front yard setback which will require a 3 foot, 1 inch special exception to the fence regulations, and to maintain items in required visibility obstruction triangles which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 4278 S. Crest Haven Road

**APPLICANT:** Francesco Farris

**REQUESTS:**

- The following appeals have been made in this application on a site that is currently developed with a single family home:
  1. A special exception to the fence height regulations of 3' 1" is requested in conjunction with maintaining a 6' high solid cedar wood fence, an approximately 4' 6" high pedestrian gate, and a 7' 1" high archway over the pedestrian gate located in the site's 25' front yard setback.
  2. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining a portion of a 4' and 6' high solid cedar wood fence located in the two 20' visibility triangles at the drive approach into the site from S. Crest Haven Road.

**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.

**STAFF RECOMMENDATION (visual obstruction special exception):**

Approval of the requests, subject to the following condition:

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

Rationale:

- The City's Development Services Senior Engineer has no objections to the requests.

- The existing fence (as shown on the submitted site plan and elevation document) in the two 20' drive approach visibility triangles on the subject site does 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.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

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

**GENERAL FACTS (related to the fence height special exceptions):**

- 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 applicant has submitted a site plan and an elevation document indicating that the proposal in the 25' front yard setback reaches a maximum height of 7' 1".
- The following additional information was gleaned from the submitted site plan and elevation document:
  - The existing fence located in the front yard setback over 4' in height is approximately 25' in length *perpendicular* to the street on the north and south "sides" of the site in the front yard setback.
  - The only portion of the proposal in the front yard setback over 4' in height parallel to the street is an approximately 2' 6" wide, approximately 4' 6" high cedar wood gate with a 7' 1" high archway. (The submitted elevation document denotes that the existing fence that runs parallel to Crest Haven Road across the site is 4' in height – a height that is permitted by the Dallas Development Code).
  - The pedestrian gate is located approximately on the front property line.
- Two single family homes have frontage to the existing fence and gate on the subject site neither of which have fences in their front yard.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in the front yard setback.

**GENERAL FACTS (related to the visual obstruction special exceptions):**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
- between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A site plan and an elevation document have been submitted that show portions of the 4' and 6' high solid cedar wood fence located in the site's two 20' visibility triangles at the drive approach into the site from S. Crest Haven Road.

- The Board Administrator informed the applicant on the issue pertaining to the location of his fence on his property being required to be in compliance with the visual obstruction regulations as it pertains to the driveway on his site (which he has made application for) AND from his neighbor's driveway to the south (which may or may not be an issue depending on the location of his fence in relation to his neighbor's driveway). The applicant was encouraged to review the visual obstruction regulations and if he determined that his fence was located in the required 20' visibility triangle originating from his neighbor's driveway, his options would be to: 1) reduce the height of the fence in this visibility triangle to 2.5 feet; 2) to remove any portion of the fence from this required visibility triangle, or 3) to add a 3<sup>rd</sup> visual obstruction special exception request to his application for the board to consider in addition to considering the location of his fence located in the two drive approach visibility triangles on his property. The Board Administrator conveyed to the applicant that if an added triangle request was not conveyed in additional correspondence by April 3rd, an assumption would be made that he had assessed that the location of his fence was in compliance with the visual obstruction regulations with regard to the drive approach triangle originating from the neighboring property owner's driveway immediately south of the subject site.

**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 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:**

- Feb. 23, 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 B.
- 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 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 3<sup>rd</sup> 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 Development Services Senior Engineer forwarded a Review Comment Sheet marked “Has no objections.”

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

- This request focuses on maintaining a 6’ high solid cedar wood fence, an approximately 4’ 6” high pedestrian gate, and a 7’ 1” high archway over the pedestrian gate located in the site’s 25’ front yard setback.
- A site plan has been submitted documenting that the existing fence located in the front yard setback over 4’ in height is approximately 25’ in length *perpendicular* to the street on the north and south “sides” of the site in the front yard setback, and that the only portion of the proposal in the front yard setback over 4’ in height *parallel* to the street is an approximately 2’ 6” wide, approximately 4’ 6” high cedar wood gate with a 7’ 1” high archway. (The submitted elevation document denotes that the existing fence that runs parallel to Crest Haven Road across the site is 4’ in height – a height that is permitted by the Dallas Development Code).
- An elevation document has been submitted that denotes that materials of the fence/gate to be solid cedar wood.

- Two single family homes have frontage to the existing fence and gate on the subject site neither of which have fences in their front yard.
- No other fences above four (4) feet high which appeared to be located in the front yard setback were noted in a field visit conducted by the Board Administrator of the site and surrounding area.
- As of April 6, 2009, a no letters had been submitted in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 1" (whereby the existing solid cedar wood fence that reaches 6' in height and the existing archway over a pedestrian gate that reaches 7' 1") will not adversely affect neighboring property.
- Granting this special exception of 3' 1" with a condition imposed that the applicant complies with the submitted site plan and elevation document would assure that the existing fence/gate exceeding 4' in height would be maintained in the location and of the height and material as shown on these documents.
- Note that if the board were to grant this request and impose the submitted site plan and elevation document as conditions, and deny the requests for special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the fence in the triangles would not be "excepted."

**STAFF ANALYSIS (related to the visual obstruction special exceptions):**

- These requests focus on maintaining a portion of a 4' and 6' high solid cedar wood fence located in the two 20' visibility triangles at the drive approach into the site from S. Crest Haven Road. About a 10' length of the 6' high solid wood fence is located in the northern drive approach visibility triangle and about a 21' length of the 4' high solid wood fence is located in the southern drive approach visibility triangle (about 11' in length parallel to Crest Haven Road and about 10' in length perpendicular to Crest Haven Road).
- The Development Services Senior Engineer submitted a Review Comment Sheet marked "Has no objections."
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing the maintenance of a portion of the existing 4' and 6' high solid wood fence in the two 20' drive approach visibility triangles on the subject site will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the submitted site plan and elevation document, the existing 4' and 6' high solid wood fence would be "excepted" into these visibility triangles on the subject site.
- Granting these requests would not provide any exception to any fence/item that may be located in a drive approach visibility triangle originating from the driveway on the property immediately south of the subject site since the applicant has not made application to address this specific matter.

**FILE NUMBER:** BDA 089-051

**BUILDING OFFICIAL'S REPORT:**

Application of Jonathan Vinson of Jackson Walker, LLP, for special exceptions to the pedestrian skybridge regulations at 515 N. St. Paul Street & 608 N. St. Paul Street. These properties are more fully described as Lot 2 in City Block 240 and a 1.3064 acre tract in City Block 1/243 and are zoned CA-1(A) which requires that pedestrian skybridges not be located within 300 feet of an historic overlay district and that pedestrian skybridges with a length of less than 150 feet must have an interior passageway no greater than 20 feet in width. The applicant proposes to construct a pedestrian skybridge located 166 feet from an historic overlay district which will require a 134 foot special exception to the minimum distance regulations, and to construct a pedestrian skybridge with an interior passageway of 21 feet in width which will require a 1 foot special exception to the maximum interior width regulations.

**LOCATION:** 515 N. St. Paul Street & 608 N. St. Paul Street

**APPLICANT:** Jonathan Vinson of Jackson Walker, LLP

**REQUESTS:**

- Special exceptions to the pedestrian skybridge regulations are requested in conjunction with:
  1. locating a proposed pedestrian skybridge over St. Paul Street 166' from a historic overlay district -The Downtown US Post Office (134' closer than the required 300' distance), and
  2. constructing this skybridge with an interior passageway of 21' (or 1' wider than the 20' width allowed by code).

The proposed skybridge would connect a proposed new sanctuary use to a proposed new children's education building. The site is currently developed with a church use (First Baptist Church of Dallas) on the southwest side of St. Paul Street and a surface parking lot on the northeast side of St. Paul Street.

**STANDARD FOR A SPECIAL EXCEPTION TO THE PEDESTRIAN SKYBRIDGE STANDARDS:**

The board may grant a special exception to the pedestrian skybridge standards contained in the Dallas Development Code if the board finds that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the properties;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the special exception will not be contrary to the public interest.

## **GENERAL FACTS:**

- The Dallas Development Code provides 19 mandatory pedestrian skybridge standards.  
The applicant is seeking special exceptions from two of these 19 mandatory provisions:
  1. Pedestrian skybridges must not be located within 300 feet of an historic overlay district.  
The applicant has submitted a site plan indicating that the proposed skybridge over St. Paul Street would be located 166.67' from Historic District No. 23 (in this case, the Downtown US Post Office) or approximately 134' closer than permitted by the code.
  2. If the pedestrian skybridge has a length of less than 150 feet, the interior passageway must not be less than 10 feet and no greater than 20 feet.  
The applicant has submitted a site plan indicating that the proposed skybridge over St. Paul Street is approximately 63' in length and the Building Official's report states that its interior passageway is 21' wide.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter that provided additional details about the requests; and
  - a document that included "color perspectives showing the proposed new sanctuary and skybridge."

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	CA-1(A) (Central Area)
<u>North:</u>	CA-1(A) (Central Area)
<u>South:</u>	CA-1(A) (Central Area)
<u>East:</u>	CA-1(A) (Central Area)
<u>West:</u>	CA-1(A) (Central Area)

### **Land Use:**

The subject site is currently developed with a church use (First Baptist Church of Dallas) and on the southwest side of St. Paul Street and a surface parking lot on the northeast side of St. Paul Street. The areas to the north and east are developed with office uses; and the areas to the immediate south and west are developed with church-related uses.

### **Zoning/BDA History:**

1. 1707 San Jacinto Street (the subject site)

On April 6, 2009, the City of Dallas Landmark Commission recommended the following: "Approve as submitted with the finding of fact the proposed skybridge will not have an

2. Z089-173, 1707 San Jacinto Street (the subject site)

adverse affect on the US Post Office historic overaly.”

A request for an SUP (Specific Use Permit) for a pedestrian skybridge will be scheduled for a City Plan Commission public hearing after the Board of Adjustment has taken action on a request for a special exception to the pedestrian skybridge standards on April 15, 2009.

**Timeline:**

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

March 19, 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 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 6<sup>th</sup> 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 30, 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.

No review comment sheets with comments were submitted in conjunction with this application, however the Historic Preservation Senior Planner forwarded an email to the Board Administrator on April 6<sup>th</sup> requesting that the following information be relayed to the Board of Adjustment: “Regarding First Baptist Church pending Board of Adjustment action, motion by Landmark Commission dated 4/6/09 is as follows: “Approve as submitted with the finding of fact the proposed skybridge will not have an adverse affect on the US Post Office historic overlay.”

April 6, 2009

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

**STAFF ANALYSIS:**

- Special exception requests to the pedestrian skybridge standards have been made to allow a proposed skybridge to deviate from two of 19 mandatory pedestrian skybridge standards provided in the Dallas Development Code:
  1. The proposed skybridge would be located 166' from an historic overlay district (in this case, the Downtown US Post Office) when a 300' distance is required; and
  2. The proposed skybridge would have an interior passageway of 21' when a maximum 20' wide interior passageway is required.
- According to applicant's representative locating the skybridge 300' from the historic overlay district to the south would require it to be close to an entire city block farther north (an unusable location for the skybridge); and having the skybridge with a 20' wide interior passageway would impede pedestrian traffic within it.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements (i.e. providing a skybridge with an interior passageway of 20' and located 300' distance from the historic overlay district) will unreasonably burden the use of either of the properties (in this case, a proposed skybridge that would connect a proposed new sanctuary use to a proposed new children's education building);
  - The special exceptions (allowing a skybridge to have an interior passageway of 21' that is 1' wider than allowed by right, and to be located 134' into the required 300' distance requirement from an historic overlay district) will not adversely affect neighboring property; and
  - The special exceptions (allowing a skybridge to have an interior passageway of 21' that is 1' wider than allowed by right, and to be located 134' into the required 300' distance requirement from an historic overlay district) will not be contrary to the public interest.
- On April 6, 2009, the City of Dallas Landmark Commission concluded that the proposed skybridge would not have an adverse affect on the US Post Office historic overlay.
- The applicant will be required to obtain an SUP (Specific Use Permit) from the City Council in order to construct the skybridge on the subject site.
- If the Board were to grant these special exception requests (and if City Council were to approve an SUP for a pedestrian skybridge), the skybridge could be constructed with an interior passageway of 21', and be located as close as 166' from the US Post Office historic overlay district.

**FILE NUMBER:** BDA 089-038(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Christopher G. Roberts for a variance to the off-street parking regulations at 114 N. Edgefield Avenue. This property is more fully described as Lot 5 in City Block 26/3279 and is zoned PD-87, which requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a single family residential accessory structure with a rear yard setback of 0 feet which will require a variance of 20 feet.

**LOCATION:** 114 N. Edgefield Avenue

**APPLICANT:** Christopher G. Roberts

**REQUEST:**

- A variance to the off street parking regulation to construct and maintain an enclosed parking structure.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant has not substantiated how this property that is flat and rectangular in shape is different from other parcels of land in the PD-87 zoning.
- The applicant has not provided evidence that this property cannot be developed in a manner commensurate with other parcels of land in the same PD-87 zoning.

**STANDARD FOR A VARIANCE TO THE OFF-STREET PARKING REGULATIONS:**

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 site is developed with a single family structure and accessory structures.
- The applicant is seeking a variance to the off-street parking requirement of 20 feet for enclosed parking spaces and will provide a 0 foot setback
- The Dallas Development Code requires a 20 foot setback for off-street parking.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 87 Tract 1 (Single family residential)  
North: PD 87 Tract 1 (Single family residential)  
South: PD 87 Tract 1 (Single family residential)  
East: PD 87 Tract 1 (Single family residential)  
West: PD 87 Tract 1 (Single family residential)

**Land Use:**

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

**Zoning/BDA History:**

There is no case history for this site or sites in the immediate area.

**Timeline:**

February 11, 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 randomly assigned this case to Board of Adjustment Panel B.

March 24, 2009: The Board of Adjustment's Senior Planner contacted the applicant 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 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the April 3<sup>rd</sup> 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 30, 2009: The applicant's representative submitted a letter to the Board for its consideration (see attachment A).

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 Development Services Department Current Planning Division Assistant Director, 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.

April 2, 2009 The Development Services Senior Engineer submitted a comment sheet marked "no objections" (see attachment B)

### **STAFF ANALYSIS:**

- The subject site is developed with a single family structure and accessory structures.
- According to DCAD the site is developed in 1928 with a 2,030 square foot home and is in "good" condition. DCAD listed two accessory structures a pool and a detached garage.
- The site is located in Planned Development District No. 87 that requires residential structures to provide a 20 foot setback for enclosed parking.
- The applicant is seeking a variance to the off-street parking requirement of 20 feet and will provide a 0 foot setback.
- The applicant received a conditional approval from the Landmark Commission for the appropriateness of the design and materials of the garage. The approval states that the applicant must obtain approval from the Board of Adjustment for a variance to the setback requirement for an enclosed parking space.
- The applicant submitted a site plan that illustrates a parcel of land that is 150' x 50' (7,500 square feet), a gunite pool that is 17.5' x27.5' (481 square feet) and a frame garage that is 16' x 16' (256 square feet). The submitted site plans notes the

removal of the “garage door from west side of garage to east side of garage” and the installation of a “16’ x 7” electronic garage door on the east side of the garage.

- The applicant has the burden of proof in establishing that the enclosed parking space that is 0 feet from the property line, requiring a 20 foot variance is necessary to develop this parcel of land that differs from other parcels of land in the same PD-87 zoning by being of such 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 PD-87 zoning; and the variance is not granted to relieve a self-created or personal hardship.
- If the Board grants the variance to the off-street parking regulations, staff recommends imposing the submitted site plan as a condition.

**FILE NUMBER:** BDA 089-043

**BUILDING OFFICIAL'S REPORT:**

Application of Glen Oaks Homeowners' Association, represented by Carolyn Arnold, to require compliance of a nonconforming use at 150 W. Ann Arbor Avenue. This property is more fully described as Lot 2 in City Block B/5992 and is zoned RR which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming hotel or motel use.

**LOCATION:** 150 W. Ann Arbor Avenue

**APPLICANT:** Glen Oaks Homeowners' Association  
Represented by Carolyn Arnold

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming (according to DCAD) 33-unit motel use (Sunbelt Motel) on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
  - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
  - (iii) The manner in which the use is being conducted.
  - (iv) The hours of operation of the use.
  - (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
    - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
    - (cc) Any return on investment since inception of the use, including net income and depreciation.
    - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

**GENERAL FACTS:**

- City records indicate the following:
  - On August 10, 1984, a motel certificate of occupancy was issued on property zoned SC (Shopping Center) with a hotel or motel use allowed by right.
  - On September 30, 1987, Ordinance No. 19700 was passed which required an SUP for a hotel or motel use in SC zoning with fewer than 50 rooms or fewer than 4 stories.
  - On July 18, 1989, Ordinance No. 20314 was passed which rezoned all property within the City of Dallas including the subject site which was rezoned from SC (Shopping Center) to RR (Regional Retail). RR zoning required an SUP for a motel with less than 80 rooms.
  - On November 12, 2003, Ordinance No. 25435 was passed which required an SUP for motel that has 60 or fewer guest rooms regardless of district.
- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The subject site is zoned RR (Regional Retail) that permits a “hotel or motel” use that has 60 or fewer guest rooms by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for “hotel or motel” use in Section 51A-4.205 (1):
  - “Hotel or motel.”
    - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
    - (B) Districts permitted:
      - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
      - (ii) By SUP only in the CR district.
      - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
      - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site’s existing RR (Regional Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- On April 3, 2009, the applicant submitted information to the Board Administrator on this application (see Attachment A). This attachment included a cover sheet that was entitled “Crime Records, 1/1/05 - 3/18/09, 150 W. Ann Arbor, Non-conforming use, For case file, April 2009 Docket, Zoning BDA, Panel B.”

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: RR (Regional Retail)  
North: RR (Regional Retail)  
South: RR (Regional Retail)  
East: RR (Regional Retail)  
West: RR (Regional Retail)

### **Land Use:**

The site is currently developed with a 33-unit motel use (Sunbelt Motel). The areas to the immediate north and west are surface parking lots; and the areas to the immediate east and south are developed with a commercial 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:**

- Feb. 25, 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 B.
- March 23, 2009: The Board Administrator wrote/sent the owner of the site (Bipan B. Patel) a letter (with a copy to the applicant's representative) that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
  - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
  - a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));
  - a copy of the section of the Dallas Development Code that provides the purpose and main use permitted set forth for "regional retail (RR)" districts (Section 51A-4.122 (c));
  - a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for "hotel or motel" use (Section 51A-4.205(1));

- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the date, time, and location of the briefing/public hearing, and provided a deadline of April 3rd to submit any information that would be incorporated into the board’s docket.

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 3, 2009 The applicant submitted additional information on this application (see Attachment A).

**STAFF ANALYSIS:**

- The 33-unit motel use (Sunbelt Motel) on the subject site is a nonconforming use. According to city records, the motel use first became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700, again on July 18, 1989, when the City Council passed Ordinance No. 20314; and again on November 12, 2003, when the City Council passed Ordinance No. 25435.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site’s existing RR (Regional Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- The applicant has the burden of proof in establishing the following:

- Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment's April 15<sup>th</sup> public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.