

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, MAY 21, 2014**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, David Wilson, regular member, Paula Leone, regular member, Scott Hounsel, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, David Wilson, regular member, Paula Leone, regular member, Scott Hounsel, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Danielle Jeminez, Current Planner, Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Ali Hatefi, Engineer, Danielle Jeminez, Current Planner, Trena Law, Board Secretary

11:09 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 21, 2014 docket.**

1:09 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 B April 23, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2014

MOTION: Leone

I move approval of the **Wednesday, April 23, 2014** Board of Adjustment Public Hearing minutes.

SECONDED: Hounsel

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Hounsel

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-046

BUILDING OFFICIAL'S REPORT: Application of Colleen Hayes, represented by Andrew Luter, for a special exception to the fence height regulations at 4664 Meadowood Road. This property is more fully described as Lot 2, Block 5543, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 10 foot high fence, which will require a 6 foot special exception to the fence height regulations.

LOCATION: 4664 Meadowood Road

**APPLICANT: Colleen Hayes
 Represented by Andrew Luter**

REQUEST:

A special exception to the fence height regulations of 6' is made to construct and maintain a fence in the site's 40' front yard setback on a site that is being developed with a single family home – a 6' 9" high open wrought iron picket fence with 8' high stone/masonry columns, and 8' 6" high open iron entry gate with 10' high stone columns flanked by two, approximately 7' high, approximately 20' long curved solid stone wing walls.

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.

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.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 001-250, Property at 4666 Meadowood Road (the lot immediately west of the subject site) On September 11, 2001, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' and imposed the submitted revised site/landscape plan and fence elevation as a condition to this request. The case report stated that the request was made to construct and maintain a 6' high wrought iron fence with 6.5' high stone columns and two 7' high wrought iron gates along Meadowood Road.
2. BDA 967-295, Property at 4650 Meadowood Road (two lots south of the site) On September 15, 1997, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 6', needed in conjunction with constructing and maintaining a maximum 10' high open metal entry gate.

3. BDA 101-077, Property at 4645 Meadowood Road (two lots southwest of the subject site)

On September 21, 2011, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' and imposed the submitted site plan/elevation as a condition to the request. The case report stated that the request was made to construct and maintain a "5' 6"±" - "6' 0"±" high open ornamental iron fence with 7' high cast stone columns and two 11' high open metal gates/cast stone entry columns in the site's 40' front yard setback on a lot developed with a single family home.

4. BDA 067-011, Property at 4674 Meadowood Road (two lots north of the subject site)

On May 18, 2009, the Board of Adjustment Panel C granted a request for a variance to the side yard setback regulations of 6' 6", a special exception to the fence height regulations of 2' 7", and special exceptions to the visual obstruction regulations. The Board imposed the following conditions to the fence height special exception: Compliance with the submitted revised site plan and revised partial elevation is required; and that the applicant shall replat the property before applying for a building permit. The Board imposed the following conditions to the side yard variance: Compliance with the submitted revised site plan is required; and that the applicant shall replat the property before applying for a building permit. The Board imposed the following conditions to the visual obstruction special exception: Compliance with the submitted revised site plan and revised partial elevation is required; that the applicant shall replat the property before applying for a building permit; and landscape materials located in any/all visibility triangles on the site must be brought into/maintained in compliance with the City's visual obstruction regulations. The case report stated that the requests were made to maintain a portion of a single family home in the side yard setback, to maintain a 30-year old open wrought iron fence and gate

ranging in height from 5' 3" – 6' 7", and to maintain portions of this fence in the four 20' visibility triangles at the two drive approaches.

Timeline:

January 26, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 14, 2014: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 30th deadline to submit additional evidence for staff to factor into their analysis; and the May 9th 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.

May 6, 2014 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a fence in the site's 40' front yard setback on a site that is being developed with a single family home – a 6' 9" high open wrought iron picket fence with 8' high stone/masonry columns, and 8' 6" high open iron entry gate with 10' high stone columns flanked by two, approximately 7' high, approximately 20' long curved solid stone wing walls.
- The Dallas Development Code 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 elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 10’.
- The following additional information was gleaned from the submitted site plan/elevation:
 - The proposal in the front yard setback is represented as being approximately 110’ in length parallel to the street with a recessed entryway.
 - The proposed fence is represented as being located approximately 10’ from the property line or about 20’ from the pavement line. (The proposed gate is represented as being located approximately 30’ from the property line or about 40’ from the pavement line)
- The proposal would be located on the site where one lot would have direct frontage, a lot which has an approximately 6’ high wrought iron fence with 6.5’ high stone columns in its front yard setback – a fence that appears to be a result of a previously Board-approved fence height special exception in 2001 (BDA 001-250).
- The Board Administrator conducted a field visit of the site and surrounding area and noted a number of other fences that appeared to be above 4’ in height and located in a front yard setback. Details of these fences characteristics and locations are provided in the “Zoning/BDA History” section of this case report.
- As of May 12, 2014, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6’ will not adversely affect neighboring property.
- Granting this special exception of 6’ with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require the proposal exceeding 4’ in height in the front yard setback to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2014

APPEARING IN FAVOR: Andrew Luter, 2611 State St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment, in request **No. BDA 134-046**, on application of Colleen Hayes, **grant** the request to construct and maintain a 10-foot high fence in the property’s front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Gillespie

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Hounsel

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-048

BUILDING OFFICIAL’S REPORT: Application of Raymond Detullio, represented by Audra Buckley, for a special exception to the tree preservation regulations at 6430 Gaston Avenue (aka: 1912 Abrams Road). This property is more fully described as an unplatted 118.9 acre parcel in Blocks 2771 - 2774, and is zoned PD 517, which requires which mandatory tree mitigation. The applicant proposes to remove trees on the site and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

LOCATION: 6430 Gaston Avenue (aka: 1912 Abrams Road)

APPLICANT: Raymond Detullio
Represented by Audra Buckley

REQUEST:

A special exception to the tree preservation regulations is requested due to the removal of trees on a site developed as a “country club with private membership” use (Lakewood Country Club), and not fully complying with the Article X: Tree Preservation Regulations of the Dallas Development Code.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

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

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While the Chief Arborist concludes among other things that granting the special exception would not adversely affect neighboring property since many existing trees and an extensive amount of open spaces remain on the 119 acre property, he recommends denial of the request since he has not determined that it is “impracticable or imprudent” to plant replant replacement trees on the property based on the apparent amount of open space available on the property.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 517 (Planned Development)
<u>North:</u>	CD 2 (Conservation District)
<u>South:</u>	CD 6, MF-2(A), & PD 281 (Conservation District, Multifamily, Planned Development)
<u>East:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>West:</u>	MF-2(A), & PD 281 (Multifamily, Planned Development)

Land Use:

The subject site is developed as a “country club with private membership” use (Lakewood Country Club). The areas to the north and east appear to be mostly developed with single family uses; and the areas to the south and west appear to be developed with a mix of residential and nonresidential 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:

- March 24, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 14, 2014: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the April 30th deadline to submit additional evidence for staff to factor into their analysis;

and the May 9th 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.

April 30, 2014: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 6, 2014 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

May 12, 2014: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on not adhering to tree preservation regulation related to quantity of replacement trees that were removed on the site developed as a "country club with private membership" use (Lakewood Country Club). The applicant is requesting relief from the tree preservation regulations of 200 caliper inches where only 237 inches are to be mitigated of 437 inches of trees to be removed on the site.
- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement division of Article X applies to all property in the city except for: 1) lots smaller than two acres in size that contain single-family or duplex uses; and 2) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the article, as determined by the building official.
- The Tree Preservation Regulations of the Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with among other things quantity - the total caliper of replacement trees must equal or exceed the total caliper of protected trees removed or seriously injured.
- The Tree Preservation Regulations of the Dallas Development Code states that a property owner can comply with tree preservation regulations by mitigating the removed trees if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the

responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured, in any of the alternative methods provided for in Article X: donating trees to the Park Department, planting replacement trees on other property within one mile of the tree removal property, making payment into the Reforestation Fund, and/or granting a conservation easement area.

- The City of Dallas Chief Arborist had submitted a memo regarding this request to the Board Administrator (see Attachment B). The memo stated among other things how the request is triggered by the fact that the 119-acre country club is conducting renovations of a private golf course, and that a tree removal was permitted in conjunction with the renovation work on site.
- The City of Dallas Chief Arborist's memo identifies that the deficiency in this case is that the applicant has removed 437 inches from 25 protected trees under permit which required full mitigation. The proposed plan replaces 237 inches (54.2 percent) to be planted on the removal property. The amount is 200 inches short of full mitigation, and there is no proposal for completing all tree replacement on the property or, consequently, through the alternate methods of mitigation provided under Article X.
- The City of Dallas Chief Arborist's memo lists several factors for consideration some of which include the following:
 - Upon removing protected trees from a property, under permit, an owner must replace trees on the property equal to, or exceeding, the amount of protected inches removed. If it is determined to be "impracticable or imprudent" to replace the trees onto the property "due to inhospitable soil conditions or inadequate spaces," the owner shall comply with one or more alternative methods of mitigation listed in Section 51A-10.135: donating trees to the Park Department, planting replacement trees on other property within one mile of the tree removal property, making payment into the Reforestation Fund, and/or granting a conservation easement area.
 - When considering the relief the applicant seeks for compliance with Section 51A-10.134, or consequently, 51A-10.135, the board is determining that:
 - (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
 - (2) the special exception will not adversely affect neighboring property; and
 - (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.In determining whether to grant a special exception, the Board shall consider the following factors:
 - the extent to which there is residential adjacency;
 - the topography of the site;
 - the extent to which landscaping exists for which no credit is given under this article; and
 - the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.
 - An additional number of trees were removed that were dead or otherwise not protected under Article X.
 - There is no request to extend the timing of tree replacement.
 - The purpose of Article X is, in part, "to encourage the preservation of large trees which, once removed, can be replaced only after generations.

- The Chief Arborist recommends denial of the request. The Arborist notes that he has not determined it is “impracticable or imprudent” to plant replant replacement trees on the property based on the apparent amount of open space available on the property and the prevalent maintenance available for the property. Therefore, the request before the Board is for relief of the requirements of Section 51A-10.134 regarding the replacement of trees on the property. It is of the Arborist’s opinion that the special exception would not adversely affect neighboring property since many existing trees and an extensive amount of open spaces remain on the 119 acre property. However, based on the factor of land area, the Arborist has not determined how compliance with the regulations will place an unreasonable burden on the use of the property.
- The applicant has the burden of proof in establishing the following:
 1. Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
 2. The special exception will not adversely affect neighboring property.

***Member Sam Gillespie recused himself and did not hear or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: MAY 21, 2014

APPEARING IN FAVOR: Audra Buckley, 416 S. Ervay, Dallas, TX

APPEARING IN OPPOSITION: Clifford Horsak, 2204 Brendenwood, Dallas, TX
Sherry Duffer, 6804 Coronado Ave., Dallas, TX

1:32 P.M.: Break

1:42 P.M.: Resumed

MOTION: **Wilson**

I move that the Board of Adjustment, in request **No. BDA 134-048**, on application of Raymond Detullio, **deny** the requested special exception to the landscape regulations **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements of Article X of the Dallas Development code will not unreasonably burden the use of the property or the special exception will adversely affect neighboring property.

SECONDED: **Leone**

AYES: 5– Reynolds, Wilson, Leone, Hounsel, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-049

BUILDING OFFICIAL'S REPORT: Application of Nancy Rodriguez for a special exception to the fence height regulations at 8216 Inwood Road. This property is more fully described as Lot 24, Block 5674, and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain a 6 foot 6 inch high fence, which will require a 2 foot 6 inch special exception to the fence height regulations.

LOCATION: 8216 Inwood Road

APPLICANT: Nancy Rodriguez

REQUEST:

A request for a special exception to the fence height regulations of 2' 6" is made to construct and maintain a 6' high open iron fence and gate with 6' 6" high stucco columns in the 35' front yard setback on a site that is developed with a single family home/use.

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.

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.

BACKGROUND INFORMATION:

Zoning:

- Site: R-16(A) (Single family district 16,000 square feet)
- North: R-16(A) (Single family district 16,000 square feet)
- South: R-16(A) (Single family district 16,000 square feet)
- East: R-7.5(A) (Single family district 7,500 square feet)
- West: R-16(A) (Single family district 16,000 square feet)

Land Use:

The subject site is developed with a single family home. The areas to the north, south, east, 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:

February 26, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 14, 2014: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 30th deadline to submit additional evidence for staff to factor into their analysis; and the May 9th 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.

May 6, 2014 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' high open iron fence and gate with 6' 6" high stucco columns in the 35' front yard setback on a site that is developed with a single family home/use.
- The Dallas Development Code 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 partial elevation of the proposal in the front yard setback that reaches a maximum height of 6' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 140' in length parallel to the Inwood Road with a recessed entry way.
 - The fence proposal is represented as being located approximately 10' from the property line or about 14' from the pavement line. (The gate proposal is represented as being located approximately 20' from the property line or about 24' from the pavement line).
 - A row of 18 Nellie R. Stevens Holly (48" height) are denoted on the inside of the proposed fence.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other visible fences above 4 feet high which appeared to be located in a front yard setback.
- Two home fronts the proposal – neither with fences in their front yards.
- As of May 12th, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 6" will not adversely affect neighboring property.
- Granting this special exception of 2' 6" with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents

BOARD OF ADJUSTMENT ACTION: MAY 21, 2014

APPEARING IN FAVOR: Nancy Rodriguez, 4349 W. NW Highway, Dallas, TX

APPEARING IN OPPOSITION: Karen Sitterle, 8219 Chadbourne Rd., Dallas, TX

MOTION: Gillespie

I move that the Board of Adjustment, in Appeal **No. BDA 134-049**, on application of Nancy Rodriguez, **deny** the special exception requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Hounsel

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 134-050

BUILDING OFFICIAL’S REPORT: Application of Nancy Rodriguez for a special exception to the fence height regulations at 5322 Falls Road. This property is more fully described as part of Lot 1 and part of Lot 2, Block 3/5604, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations.

LOCATION: 5322 Falls Road

APPLICANT: Nancy Rodriguez

REQUEST:

A request for a special exception to the fence height regulations of 4’ is made to construct and maintain an approximately 7’ 6” high open iron fence and gate with 8’ high stucco columns in the 40’ front yard setback on a site that is being developed with a single family home/use.

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.

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.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 090-070, Property at 5306 Falls Road (the lot immediately west of the subject site)

On June 16, 2010, the Board of Adjustment Panel B granted requests for special exceptions to the fence height regulations of 4' 6" and imposed the submitted revised site plan/elevation document dated 6-10-10 as a condition. The case report stated that the requests were made in conjunction with constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) in the site's Falls Road front yard setback, and an alternating 8' high solid masonry or stone fence wall with an 8' high wrought iron fence in the site's Meadowbrook Drive front yard setback.

2. BDA 089-106, Property at 5405 Falls Road (two lots northeast of the subject site)

On September 14, 2009, the Board of Adjustment Panel C granted a request for special exception to the fence height regulations of 4' 10" and imposed the submitted site plan and elevation as a condition. The case report stated that the request was made in conjunction with constructing and maintaining the following in the site's 40' front yard setback on a site being developed with a single family home: a 5' 4" high open ornamental iron fence with 5' 8" high brick columns; and a 6' 6" high iron gate flanked by two, 8' 10" high brick entry columns and solid brick entry wing walls (each about 12' in length) ranging in height

from 6' 2" – 7' 2".

3. BDA 067-028, Property at 55432 Falls Road (two lots east of the subject site)

On February 13, 2007, the Board of Adjustment Panel A granted special exceptions to the fence height of 4' and visibility obstruction regulations and imposed the following conditions: 1) Compliance with the submitted revised scaled site plan and revised scaled elevation is required; and 2) The fence must be set back 20 feet from the edge of the existing pavement line. The case report stated that the fence height special exception was made in conjunction with constructing and maintaining the following in the site's 40' front yard setback along Hollow Way Road: An approximately 150' long, 6' high open wrought iron fence and entry gate with 8' stone columns parallel to Hollow Way Road; and An approximately 40' long, 6' high chain link fence perpendicular to Hollow Way Road on the south side of the site; and that the special exception to the visibility obstruction regulations was requested in conjunction with constructing and maintaining two 8' high stone columns and possibly landscape materials in the site's two, 20' drive approach visibility triangles into the site from Hollow Way Road. The site was being developed with a single family home.

Timeline:

February 26, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 14, 2014: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 30th deadline to submit additional evidence for staff to factor into their analysis; and the May 9th 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.

May 6, 2014 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 7’ 6” high open iron fence and gate with 8’ high stucco columns in the 40’ front yard setback on a site that is being developed with a single family home/use.
- The Dallas Development Code 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 full site plan and a partial site plan/full elevation of the proposal in the front yard setback that reaches a maximum height of 8’.
- The following additional information was gleaned from the submitted partial site plan:
 - The proposal is represented as being approximately 150’ in length parallel to the Falls Road with a recessed entry way, and approximately 40’ in length perpendicular to the street on the east and west sides of the site in the front yard setback.
 - The fence proposal is represented as being located approximately on the property line or about 18’ from the pavement line. (The gate proposal is represented as being located approximately 9’ from the property line or about 27’ from the pavement line).
 - Landscape materials (Nellie R. Stevens Holly, Dwarf Burford Holly, Dwarf Variegated Pittosporum, George Tabor Azalea, and Liriope) are denoted on the street side of the proposed fence, most of which is located in the public right-of-way.

- The Board Administrator conducted a field visit of the site and surrounding area and noted two other visible fences above 4 feet high which appeared to be located in a front yard setback. One of the noted fences is immediately west of the subject site, and the other is two lots northeast of the site. Both fences appear to be results of special exceptions granted by the Board – see the “Zoning/BDA History” section of this case report for further details.
- Two home fronts the proposal – neither with fences in their front yards.
- As of May 12th, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ will not adversely affect neighboring property.
- Granting this special exception of 4’ with a condition imposed that the applicant complies with the submitted full site plan and partial site plan/full elevation would require the proposal exceeding 4’ in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 21, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment grant application **BDA 134-050** 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Leone**

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Hounsel

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Leone**

AYES: 5– Reynolds, Wilson, Leone, Hounsel, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

2:26 P.M. Board Meeting adjourned for **May 21, 2014**

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.