

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
MONDAY, OCTOBER 20, 2014**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular 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, Danielle Jimenez, Planner, Donna Moorman, Chief Planner

STAFF PRESENT AT HEARING: Steve Long, Board Administrator and Acting Board Secretary, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Danielle Jimenez, Planner, and Donna Moorman, Chief Planner

12:00 Noon The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 20, 2014** docket.

1:05 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

Approval of the Board of Adjustment Panel B September 15, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: October 20, 2014

MOTION: Schulte

I move approval of Panel C’s 2015 Public Hearing Calendar.

SECONDED: Beikman

AYES: 5 – Bruce, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-097

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin for a special exception to the fence height regulations at 9008 Briarwood Lane. This property is more fully described as part of Lots 8 & 9, Block 5/5578, 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 and maintain a 6 foot 10 inch high fence, which will require a 2 foot 10 inch special exception to the fence height regulations.

LOCATION: 9008 Briarwood Lane

APPLICANT: Robert Baldwin

October 20, 2014 Public Hearing Notes:

- The applicant and neighboring property owners submitted additional written documentation to the Board at the public hearing.

REQUESTS:

Requests for special exceptions to the fence height regulations of 2’ 10” are made to replace an existing fence (which according to the applicant exceeds 4’ in height) with the following on a site developed with a single family home:

- In the Briarwood Lane front yard setback: a 5’ 3” high open metal fence with 6’ 1” high limestone columns parallel to this street, with an entryway that includes a 6’ 10” high open metal gate with 6’ 5” high limestone entry columns and two, approximately 15’ long, 5’ 3” high solid limestone veneer wing walls.

- In the Seneca Drive front yard setback: a 5' 3" high open metal fence with 6' 1" high limestone columns parallel to this street, with an entryway that includes a 6' 3" high open metal gate with two, approximately 25' long, 5' 3" – 6' high solid limestone veneer 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 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 090-076, Property at 9009 Briarwood Lane (the subject site)

On September 13, 2010, the Board of Adjustment Panel C granted a request for a special exception to the single family use development standard regulations, and imposed the following condition: The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

The case report states that the request was made in conjunction with constructing and maintaining a two-story "dwelling unit"/"cabin" structure with an approximately 600 square foot (approximately 30' x 20') building footprint on a site being developed with a dwelling unit/single family home structure that has (according to DCAD) approximately 15,000 square feet of living area.

2. BDA 090-081, Property at 9054 Briarwood Lane (two lots north of the subject site)

On August 17, 2010, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 5' 6", and imposed the following condition: compliance with the submitted site plan and revised fence elevation is required.

The case report states that the request was made in conjunction with maintaining 9' 6" high existing brick columns, and replacing an existing open wrought iron fence with (according to the applicant) a slightly higher 8' 3" high board on board cedar fence/wall in one of the site's two 40' front yard setbacks: Northwest Highway.

3. BDA 045-215, Property at 9039 Briarwood Lane (two lots northwest of the subject site) On December 12, 2005, the Board of Adjustment Panel C granted a request for a special exception to fence height regulations of 7', subject to the following condition: compliance with the submitted revised site plan, revised landscape plan and revised fence elevation is required. The case report states that the request was made in conjunction with constructing the following in the 40'-Shadywood Lane and Briarwood Lane front yard setbacks on a site developed with a single family home: a 9'-high open wrought iron fence, a 9'-high stone wall, and two, 9'-high solid wood gates with 10.5'-high columns – a fence that would replace a 7'-high open iron fence that existed on the site.
4. BDA 95-036, Property at 9039 Briarwood Lane (two lots northwest of the subject site) On March 28, 1995, the Board of Adjustment granted a request for a special exception to fence height regulations of 3' 9", subject to the following conditions: 1) Compliance with the submitted site plan, landscape plan, and elevation is required; 2) compliance with the provision that no protected trees (8 inch caliper or greater) can be removed without a permit. The case report states that the request was made in conjunction with constructing approximately 825 linear feet of a 7' 3" open metal fence with metal posts located approximately 7' on center along Briarwood Lane and Shadywood Lane; and an approximately 50 linear foot 7' 6" solid stone fence along Shadywood Lane.

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on replacing an existing fence that according to the applicant exceeds 4' in height in the two front yard setbacks with the following on a site located at the north corner of Briarwood Lane and Seneca Drive and developed with a single family home:
 - in the Briarwood Lane front yard setback: a 5' 3" high open metal fence with 6' 1" high limestone columns parallel to this street, with an entryway that includes a 6'

- 10" high open metal gate with 6' 5" high limestone entry columns and two, approximately 15' long, 5' 3" high solid limestone wing walls; and
- in the Seneca Drive front yard setback: a 5' 3" high open metal fence with 6' 1" high limestone columns parallel to this street, with an entryway that includes a 6' 3" high open metal gate with two, approximately 25' long, 5' 3" – 6' high solid limestone 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 site is located at the north corner of Briarwood Lane and Seneca Drive. The site has a 40' front yard setback along Seneca Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a 40' front yard setback along Briarwood Lane, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 9' high fence is allowed by right. But the site's Briarwood Lane frontage is a side yard treated as a front yard setback nonetheless to maintain the continuity of the front yard setback established by the lots developed with single family homes northwest of the site that front/are oriented southwestward towards Briarwood Lane.
 - The applicant has submitted a revised site plan/elevation of the proposal in the front yard setbacks that reaches a maximum height of 6' 10".
 - The following additional information was gleaned from the submitted site plan:
 - Along Briarwood Lane: the fence is approximately 280' in length, approximately on the property line, and approximately 15' from the pavement line.
 - Along Seneca Drive: the fence is approximately 240' in length, approximately on the property line, and approximately 12' from the pavement line.
 - There are two single family homes west of the subject site that have direct frontage to the proposal on Briarwood, neither of which have fences in their front yards; and two single family homes south of the subject site that would have direct frontage to the proposal on Seneca Drive, one of which has a fence in its front yard setback that appears in places to exceed 4' in height with no recorded history with the Board of Adjustment, and the other with no fence in its front yard.
 - The Board Administrator conducted a field visit of the site and surrounding area (approximately 300' north and south on Briarwood, and approximately 300' east on Seneca Drive). Other than the fence described and noted above south of the subject site, on Seneca Drive, one other fence was noted in a front yard setback higher than 4' - an approximately 9' high open wrought iron fence screened with extensive landscaping fence located two lots northwest of the subject site on Briarwood Lane that appears to be a result of a fence height special exception request granted by the Board of Adjustment in 2005: BDA 045-215 (see the "Zoning/BDA History" section of this case report for additional details).
 - As of October 13, 2014, 4 letters had been submitted in support of the requests had been submitted, and 9 letters had been submitted in opposition.
 - The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 2' 10" will not adversely affect neighboring property.

- Granting these special exceptions of 2' 10" with a condition imposed that the applicant complies with the submitted revised site plan/elevation would require the proposal exceeding 4' in height in the front yard setbacks to be constructed and maintained in the location and of the heights and materials as shown on this document.

Timeline:

- July 23, 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.
- September 9, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- September 10, 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 10th 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 requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- September 26, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- October 3, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- October 7, 2014: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report to the Board Administrator (see Attachment C).
- October 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Department Project 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.

October 10, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment D).

BOARD OF ADJUSTMENT ACTION: October 20, 2014

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm #B, Dallas, TX

APPEARING IN OPPOSITION: Jonathan Vinson, 901 Main Street, Dallas, TX
Peter O'Donnell, 4929 Seneca Drive, Dallas, TX
La Rue Henry, 4803 Shadywood, Dallas, TX
Pat White, 4714 Wildwood Road, Dallas, TX
Jennifer Alexander, 4811 Bluffview, Dallas, TX
Joe Werner, 4400 Bluffview, Dallas, TX
Tucean Webb, 8925 Briarwood, Dallas, TX
Will Montgomery, 901 Main Street, Suite 6000, Dallas, TX
John Beckert, 4920 Seneca, Dallas, TX
Carl Schwalm, 4807 Bluffview Boulevard, Dallas, TX

MOTION: Schulte

I move that the Board of Adjustment grant application **BDA 134-097**, on application of Robert Baldwin **deny** the special exception to the fence height regulations **with prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Beikman

AYES: 3 – Richardson, Schulte, Beikman

NAYS: 2 – Coulter, Carreon,

MOTION PASSED: 3 – 2

MOTION: Schulte

I move to adjourn this meeting.

SECONDED: Beikman

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

2:00 P. M. - Board Meeting adjourned for **October 20, 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.