

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, JANUARY 18, 2011**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, and Scott Hounsel, regular member, Johnnie Goins, regular members and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: Steve Harris, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, and Scott Hounsel, regular member, Johnnie Goins, regular members and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: Steve Harris, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist and Trena Law, Board Secretary

**10:25 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 18, 2011** docket.

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**1:01 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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A **November 16, 2010** public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: January 18, 2011**

**MOTION: Schweitzer**

I move **approval** of the Tuesday, **November 16, 2010** public hearing minutes as amended.

**SECONDED: Hounsel**

**AYES: 5** – Richmond, Schweitzer, Hounsel, Goins, Jackson

**NAYS: 0** -

**MOTION PASSED: 5- 0** (unanimously)

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**FILE NUMBER:** BDA 090-052

**BUILDING OFFICIAL'S REPORT:**

Application of Anthony J. Bandiera, Jr., represented by Ellen LaBate, for a special exception to the visual obstruction regulations at 2960 Anode Lane. This property is more fully described as Lot 5 in City Block E/6455 and is zoned CS which requires a 20 foot visibility triangle at drive approaches. The applicant proposes to construct and maintain items in required visibility triangles which will require a special exception.

**LOCATION:** 2960 Anode Lane

**APPLICANT:** Anthony J. Bandiera, Jr.  
Rrepresented by Ellen LaBate

**REQUEST:**

- A special exception to the visual obstruction regulations is requested in conjunction with maintaining a 7' 8" – 8' high chain link fence located in two 20' visibility triangles

on both sides of a driveway into the site from Anode Lane on a site that is currently developed with an office/warehouse use (Sigel's Warehouse).

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer supports the request in that the items in the 20' drive approach visibility triangles do not constitute a traffic hazard on the condition that the fence is maintained of open chain link material.

**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:**

- 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 has been submitted that show portion of a 7' 8" high chain link fence located in the 20' visibility triangles located on the both sides of a driveway into the site from Anode Lane.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: LI (Light Industrial)  
North: LI (Light Industrial)  
South: LI (Light Industrial)  
East: LI (Light Industrial)  
West: LI (Light Industrial)

**Land Use:**

The subject site is developed with an office/warehouse use (Sigel's Warehouse). The areas to the north, east, south, and west are developed with office/warehouse uses.

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

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

### **Timeline:**

March 17, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" which has been included as part of this case report.

March 18, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

November 5, 2010: The applicant submitted related documents (a site plan and an elevation that substituted from the plans submitted with the original application) which have been included as part of this case report.

December 15, 2010: 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 January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7<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.

January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

January 6, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "If approved, fence needs to be open (i.e. chain link, not solid)."

### **STAFF ANALYSIS:**

- The request focuses on maintaining a 7' 8" – 8' high chain link fence located in two 20' visibility triangles on both sides of a driveway into the site from Anode Lane on a site that is currently developed with an office/warehouse use (Sigel's Warehouse).
- The Sustainable Development and Construction Department Project Engineer has no objections to the request on the condition that the fence is of open chain link material.
- The applicant has the burden of proof in establishing that granting the request for a special exception to the visual obstruction regulations to maintain an open chain link fence in two 20' visibility triangles located on both sides of a driveway into the site from Anode Lane will not constitute a traffic hazard.

If the Board chooses to grant the request, and impose the submitted site plan and elevation as a condition, the item shown on these documents (an approximately 8' high open chain link fence) would be "excepted" into the 20' drive approach visibility triangles.

**BOARD OF ADJUSTMENT ACTION: January 18, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schweitzer**

I move that the Board of Adjustment grant application **BDA 090-052** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

**SECONDED: Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-003

**BUILDING OFFICIAL'S REPORT:**

Application of Masterplan Consultants for a variance to the landscape regulations at 3223 Lemmon Avenue. This property is more fully described as Lot 3A in City Block 1/ 973 and is zoned PD-174 which requires mandatory landscaping. The applicant proposes to construct and maintain a mixed use development and provide an alternate landscape plan which will require a variance.

**LOCATION:** 3223 Lemmon Avenue

**APPLICANT:** Masterplan Consultants

**REQUEST:**

- A variance to the landscape regulations is requested in conjunction with maintaining a mixed use development on an undeveloped subject site (Cityville Carlisle) and not fully meeting the landscape requirements of PD No. 174.

The applicant is returning with virtually the same plan/proposal/request that was granted on the subject site by Board of Adjustment Panel A in 2008 (BDA078-129). The applicant has re-filed a new application on the subject site with minor amendments made to the previously approved plan including removal of a few trees due to local utility conflicts, relocation of some pedestrian amenities, and changes to sidewalk appearance/materials.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition;

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City's Chief Arborist recommends approval of the request since application is merely a modification to a landscape variance (and related alternate landscape plan imposed as a condition) granted by Board of Adjustment Panel A on the subject site in 2008 (BDA078-129). The Chief Arborists has stated that the minor amendments made to the previously approved plan (removal of a few trees due to local utility conflicts, relocation of pedestrian amenities, and changes to sidewalk appearance/materials) are justified given changed site conditions during the construction that has occurred on the site and the applicant's interest in addressing specific concerns of the Friends of the Katy Trail.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (A) 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;
- (B) 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

(C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**GENERAL FACTS:**

- PD No. 174 states that landscaping must be provided in accordance with the requirements of PD No. 193, and that this district should be considered to be a GR subdistrict for landscape requirements, except that if off-street parking is reduced pursuant to the off-street parking standards of PD No. 174, landscaping must be provided in accordance with the special landscape and open space provisions in the landscaping provisions of PD No. 174. The applicant's submittal of a development plan with reduced off-street parking in 2008 requires that applicant to seek variance to the landscape requirements of PD No. 174.

The applicant has submitted a landscape plan of the subject site whereby, according to the City of Dallas Chief Arborist, relief is sought from specific landscape requirements of PD No. 174 and a previous Board-approved landscape plan (BDA078-129).

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment C). The memo stated the following:
  - The special exception request is triggered by the new construction within PD No. 174.
  - Deficiencies:
    - The current landscape plan varies from the requirements of PD No. 174 and what was approved by the Board in October 2008. The same conditions for variance apply.
    - The revised landscape plan varies from the current approved plan by: 1) the removal of a few trees due to local utility conflicts; 2) the relocation of some pedestrian amenities; and 3) changes to sidewalk appearance and materials.
  - Factors:
    - The relocation of landscape materials were made due to changing site conditions during construction. The sidewalk appearance was adjusted to cooperate with the Friends of the Katy Trail to address concerns to the trail.
    - The Chief Arborist considered only the comparison of the current Board-approved and revised landscape plans for this recommendation.
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  - Recommendation:
    - Approval of the revised submitted landscape plan.
- The site is sloped, is somewhat irregular in shape (approximately 416' on the north, approximately 294' on the south, approximately 245' on the east, and approximately 294' on the west) and approximately 2.3 acres in area. The subject site and the lot immediately west are the only two lots zoned PD No. 174.

- The applicant submitted additional information to staff regarding the request beyond what was submitted with the original application (see Attachments A and B). This information included the following:
  - a document entitled "Presentation Material;" and
  - a letter of support from the Friends of the Katy Trail.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 174 (Planned Development District)  
North: PD No. 193 (O-2 Subdistrict)  
South: PD No. 193 (MF-2 Subdistricts)  
East: PD No. 153 (Planned Development District)  
West: PD No. 174 (Planned Development District)

**Land Use:**

The subject site is developed with a mixed use project (Cityville Carlisle). The areas to the north and south are developed with multifamily uses; the area to the east is developed with retail and office uses; and the area immediately west is undeveloped.

**Zoning/BDA History:**

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| <p>1. BDA078-129, Property at 3223 Lemmon Avenue (the subject site)</p> | <p>On October 14, 2008, the Board of Adjustment Panel A granted a request for a variance to landscape regulations and imposed the submitted alternate landscape plan as a condition to the request. The case report stated that the request was made in conjunction in conjunction constructing and maintaining a mixed use development on an undeveloped subject site (Cityville Carlisle).</p> |
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**Timeline:**

- October 28, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 10, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

- December 15, 2010: 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 January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7<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.
- January 3, 2011 The applicant submitted additional information regarding the request (see Attachments A and B).
- January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- January 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D visibility requirements."
- January 7, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on maintaining a mixed use development on an undeveloped subject site (Cityville Carlisle), and not fully meeting the landscape requirements of PD No. 174.
- The applicant is seeking leniency to certain landscape requirements of PD No. 174, and more specifically, minor amendments from a variance and related landscape plan imposed as a condition to the variance granted on the site by Board of Adjustment Panel A in October of 2008 (BDA078-129).
- Given specific provisions of these landscape provisions of PD No. 174, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations as opposed to the more typical *special exception* to the landscape regulations.
- The City's Chief Arborist supports this request in that this application is merely a slight modification to the previously Board-approved landscape variance and related alternate landscape plan. The Chief Arborists has stated that the minor amendments

made to the previously approved 2008 alternate landscape plan (removal of a few trees due to local utility conflicts, relocation of pedestrian amenities, and changes to sidewalk appearance/materials) are justified given changed site conditions during the construction that has occurred on the site and the applicant's interest in addressing specific concerns of a neighboring association (Friends of the Katy Trail).

- The site is sloped, is somewhat irregular in shape (approximately 416' on the north, approximately 294' on the south, approximately 245' on the east, and approximately 294' on the west) and approximately 2.3 acres in area. The subject site and the lot immediately west are the only two lots zoned PD No. 174.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the landscape regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 174 zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 174 zoning classification.

If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be "varied" from full compliance to the landscape regulations of the PD No. 174.

**BOARD OF ADJUSTMENT ACTION: January 18, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-003** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted alternate landscape plan is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -  
MOTION PASSED: 5- 0 (unanimously)

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**FILE NUMBER:** BDA 101-009

**BUILDING OFFICIAL’S REPORT:**

Application of Rosalinda Trevino-Ortega, represented by William Ware, for variances to the front yard setback and off-street parking regulations, and for a special exception to the visual obstruction regulations at 1909 Park Row Avenue. This property is more fully described as Lot 11 in City Block 2/1124 and is zoned PD-595 MF(2)A which requires a front yard setback of 15 feet, off-street parking, and a 45 foot visibility triangle at street intersections. The applicant proposes to construct and maintain a structure and provide a 1-foot front yard setback, which will require a 14-foot variance to the front yard setback regulations, a 0 foot setback for off-street parking in the front yard setback which will require a 15-foot variance to the off-street parking regulations, and to construct and maintain a structure in a required visibility triangle which will require a special exception to the visual obstruction regulations.

**LOCATION:** 1909 Park Row Avenue

**APPLICANT:** Rosalinda Trevino-Ortega  
Represented by William Ware

**REQUESTS:**

- The following appeals have been made in this application on a site that is currently undeveloped:
  1. A variance to the front yard setback regulations of 14’ is requested in conjunction with constructing and maintaining a two-story, approximately 5,400 square foot multifamily structure (with a building footprint of approximately 2,900 square feet or 125’ x 23’), part of which would be located in the 15’ South Central Expressway service road front yard setback;
  2. A variance to the off-street parking regulations of 15’ is requested in conjunction with locating two of the proposed structure’s required off-street parking spaces in the 15’ South Central Expressway service road front yard setback; and
  3. A special exception to the visual obstruction regulations is requested in conjunction with locating and maintaining this proposed structure, part of which would be located in the 45’ visibility triangle at the intersection of Park Row Avenue and the South Central Expressway service road.

The applicant is returning with the same plan/proposal and nearly the exact same application granted in 2003 (BDA034-108) since the Dallas Development Code states that if the applicant fails to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board (which the applicant did not do), the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.

The applicant returns to the board with a re-filed application since he did not make application for either the building permit or the certificate of occupancy within the code-prescribed required time frame and since an added request has been applied for/identified that being a special exception to the visual obstruction regulations.

**STAFF RECOMMENDATION (variances):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- A literal enforcement with the front yard setback and parking regulations would result in unnecessary hardship largely due to the parcel's two front yard setbacks.
- This characteristic of the parcel precludes its development in a manner commensurate with the development upon other PD No. 595 (MF-2 Subdistrict) zoned lots that have one front yard setback.
- The condition requiring the applicant to comply with the submitted site plan would help assure that granting the variance would not be contrary to public interest since the plan would place restrictions on the area/location and size (length and width) of the encroachments into the front yard setback, which in this case is to allow for two parking spaces and for an area of a new structure in the front yard setback that would replace what had been in 2003 a dilapidated nonconforming structure in this setback.
- The front yard encroachment on this site would not violate an established setback of continuous existing homes/structures immediately to the north and south of the site.
- The proposed structure would be located between 15' – 24' from the Central Expressway service road curb line given the relatively wide right-of-way between the curb line and the front property line.

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

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The Sustainable Development and Construction Department Project Engineer supports the applicant's request for where a 40' visibility triangle would be provided whereby the small portion of the proposed structure in the 45' visibility triangle at the intersection of Park Row Avenue and the South Central Expressway service road would not constitute a traffic hazard.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor

area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (D) 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;
- (E) 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
- (F) 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.

### **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 variances):**

- Structures on lots zoned PD No. 595 (MF-2(A) Subdistrict) are required to provide a minimum front yard setback of 15'. Regardless of how the structure is proposed to function on the site, the site has two 15' front yard setbacks along both of its street frontages given that it is zoned MF-2 where any street frontage on the property is deemed a front yard.  
The Dallas Development Code states that in residential districts except MF-3(A) and MF-4(A), required off-street parking for residential uses must be located behind the required front building line.  
A site plan has been submitted denoting a structure that is 1' 6" into the South Central Expressway service road front property line (or 13' 6" into the 15' front yard setback), and two parking spaces that are as close as on the South Central Expressway service road front property line (or 15' into the 15' front yard setback). (No encroachment is proposed in the site's Park Row Avenue 15' front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, approximately 1,700 (or 60 percent) of the total approximately 2,900 square foot proposed building footprint is to be located in the site's South Central Expressway service road 15' front yard.
- According to DCAD records, the site has no improvements.
- The site is flat, rectangular in shape (50' x 177.5'), and 8,875 square feet in area. The site has two 15' front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural.

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

- 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 has been submitted that shows a portion of the proposed structure located in the 45' visibility triangle at the intersection of Park Row Avenue and the South Central Expressway service road.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 595 (MF-2 (A) Subdistrict)  
North: PD No. 595 (NC Subdistrict)  
South: PD No. 595 (MF-2 (A) Subdistrict)  
East: PD No. 595 (MF-2 (A) Subdistrict)  
West: PD No. 595 (MF-2 (A) Subdistrict)

**Land Use:**

The subject site is undeveloped. The area to the north is developed with a commercial use; the area to the east is developed as an overhead freeway (Central Expressway); and the areas to the south and west appear to be mostly vacant residential structures.

**Zoning/BDA History:**

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| <ol style="list-style-type: none"> <li>1. BDA034-108, Property at 1909 Park Row Avenue (the subject site)</li> </ol> | <p>On December 12, 2003, the Board of Adjustment Panel A denied a request for a fee reimbursement but granted a request for a variance to front yard setback regulations of 13' and to the off-street parking regulation, and imposed the following conditions: Compliance with the submitted site plan is required; and TXDOT must approve any ingress/egress point to or from the site from the Central Expressway Service Road. The case report stated that the the variance to the front yard setback regulations of 13' along the Central Expressway service road was requested in conjunction with constructing and maintaining a two-story 5,422 square foot multifamily structure (with a building footprint of approximately 120' x</p> |
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22'); and that the variance to the off-street parking regulations of 12' was requested in conjunction with locating one of the new multifamily structure's off-street parking spaces in the Central Expressway service road 15' front yard setback. (The report stated that the site was developed with a dilapidated, vacant structure that the applicant intended to demolish - a structure that appeared to be a nonconforming structure (i.e. located within the 15' Central Expressway service road front yard setback but built prior to either this setback provision or to annexation).

**Timeline:**

November 11, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 12, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

December 15, 2010: 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 January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7<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.

January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 7, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet stating that he could support a 40 x 40 foot visibility clip.

**STAFF ANALYSIS (related to variances):**

- These requests focus on reinstating front yard setback and an off-street parking variances granted by the Board of Adjustment Panel A in December of 2003 – a request that returns to the board given that: 1) the applicant did not apply for a building permit or certificate of occupancy within 180 days from the board’s favorable action, and 2) the applicant has applied for additional appeal in conjunction with this request, that being for a visual obstruction special exception that was overlooked and/or not applied for in 2003. (The site plan submitted in 2003 shows that the same amount of structure was located in the Park Row Avenue and the South Central Expressway service road intersection triangle as is in 2011).  
The re-filed application once again focuses on allowing approximately half of the a proposed structure and two of its required off-street parking spaces to be located in one of two of the site’s front yard setbacks. The proposed structure and the two off-street parking spaces are proposed to be located as close as on the site’s South Central Expressway service road front property line or as much as 15’ into the 15’ front yard setback). (No encroachment is proposed in the site’s Park Row Avenue 15’ front yard setback).
- According to DCAD records, the site has no improvements.
- The site is flat, rectangular in shape (50’ x 177.5’), and 8,875 square feet in area. The site has two 15’ front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the South Central Expressway service road front yard setback and off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 595 (MF-2(A)) zoning classification.
  - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same 595 (MF-2(A)) zoning classification.
- If the Board were to grant the variances, subject to the submitted site plan, only the portion of the proposed structure and the parking spaces shown on this plan would

varied into this setback – which in this case is an approximately 1,700 area of the total approximately 2,900 square foot proposed building footprint and two of its required 10 off-street parking spaces in the site’s South Central Expressway service road 15’ front yard setback.

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

- This request focuses on locating and maintaining a relatively small portion of a proposed two story multifamily structure in the 45’ visibility triangle at the intersection of Park Row Avenue and the South Central Expressway service road.
- A site plan has been submitted that shows that the applicant is providing a 40’ visibility triangle as opposed to the required 45’ visibility triangle at the Park Row Avenue and the South Central Expressway service road intersection.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet stating that he can support a 40’ visibility clip.
- The applicant has the burden of proof in establishing that granting the special exception to the visual obstruction regulations (to allow the a portion of the proposed multifamily structure in the 45’ Park Row Avenue and the South Central Expressway service road intersection triangle) will not constitute a traffic hazard.

If the Board chooses to grant this request, subject to compliance with the submitted site plan, the portion of the proposed multifamily structure shown on this plan would be “excepted” into the 45’ Park Row Avenue and the South Central Expressway service road intersection triangle.

**BOARD OF ADJUSTMENT ACTION: January 18, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-009** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 101-112

**BUILDING OFFICIAL’S REPORT:**

Application of Amy Berlin and Aaron Opsal, represented by Zone Systems Inc., for a special exception to the fence height regulations at 709 Kessler Woods Trail. This property is more fully described as Lot 24 in City Block 3A/4736 and is zoned PD-690 which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot high fence which will require a special exception of 4 feet.

LOCATION: 709 Kessler Woods Trail

APPLICANT: Amy Berlin and Aaron Opsal  
Represented by Zone Systems Inc.

**REQUEST:**

- A special exception to the fence height regulations of 4’ is requested in conjunction with maintaining an 8’ high galvanized chain link fence to be located in the one of the site’s two 25’ front yard setbacks on a site developed with a single family home – Stevens Village Drive.

**STAFF RECOMMENDATION:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**GENERAL FACTS:**

- The subject site is a property with two street frontages. The site/property runs from Kessler Woods Trail on the east to Stevens Village Drive on the west. Even though the Kessler Woods Trail frontage of the subject site functions as its front yard and the Stevens Village Drive frontage functions as its rear yard, the subject site has two 25’ front yard setbacks along both streets.  
The Dallas Development Code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, fences are governed by rear yard regulations.

On this particular property, the site has two front yard setbacks since access is not prohibited either of the street frontages. If access were prohibited along Stevens Village Drive, the applicant could maintain a 9' high fence by right without a need to apply to the board for a fence height special exception to maintain the requested 8' high fence.

- 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 a partial elevation indicating that the proposal in the 25' Stevens Village Drive front yard setback reaches a maximum height of 8'. (No fence is proposed to be constructed/maintained in the subject site's 25' Kessler Woods Trail front yard setback).

- The following additional information was gleaned from the submitted site plan:
  - The proposal located in the Stevens Village Drive front yard setback over 4' in height is approximately 18' in length parallel to the street.
  - The proposal is shown to be located on the site's Stevens Village Drive front property line or about 6' from the curb line.
- The submitted partial elevation includes a notation of "elevation @ 4' o.c."
- No single family home "fronts" to the proposed fence on the subject site since the property to the west is undeveloped.
- 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 a front yard setback.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 690 (Planned Development District)  
North: PD No. 690 (Planned Development District)  
South: PD No. 690 (Planned Development District)  
East: PD No. 690 (Planned Development District)  
West: PD No. 768 (Planned Development District)

### **Land Use:**

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

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

1. BDA101-113, Property 707  
Kessler Woods Trail (the lot

On January 18, 2011, the Board of Adjustment Panel A will consider a request

immediately south of the subject site)

for a special exception to the fence height regulations of 4' made in conjunction with constructing and maintaining an 8' high open chain link fence in the front yard setback on a site to be developed with a single family home.

2. BDA101-114, Property 705 Kessler Woods Trail (two lots south of the subject site)

On January 18, 2011, the Board of Adjustment Panel A will consider a request for a special exception to the fence height regulations of 4' made in conjunction with maintaining and/or constructing/maintaining an 8' high open chain link fence in front yard setbacks on a site to be developed with a single family home.

**Timeline:**

November 10, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 15, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

December 15, 2010: 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 January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7<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.

January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

January 6, 2001: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Must comply with all C.O.D visibility requirements.”

**STAFF ANALYSIS:**

- This request focuses on maintaining an 8’ high galvanized chain link fence to be located in the one of the site’s two 25’ front yard setbacks on a site developed with a single family home – Stevens Village Drive.
- The proposal that is the issue of this request is located on a site that has two front yard setbacks – one front yard setback on Kessler Woods Trail (where no fence is proposed); the other front yard setback on Stevens Village Drive (where the existing fence that is the issue of this request reaches 8’ in height).
- On this particular property, the site runs from one street to another and has double frontage since access is not prohibited on either frontage by plat or by the city. If the site’s Stevens Village Drive frontage was prohibited by plat or the City, the proposed fence would be governed by rear yard regulations and the applicant could maintain a 9’ high fence by right without a need to apply to the board for a fence height special exception to maintain the requested 8’ high fence.
- A site plan and a partial elevation has been submitted that documents the location, height, and material of the fence over 4’ in height in the Stevens Village Drive front yard setback. The site plan shows the fence to be approximately 18’ in length, to be located on the site’s front property line or about 6’ from the curb line; and the partial elevation shows the fence to be of galvanized chain link material with “eleagnus @ 4’ o.c.”
- No single family home “fronts” to the proposed fence on the subject site since the property to the west is undeveloped.
- 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 a front yard setback.
- As of January 10, 2011, no letters had been submitted in support or opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ (to maintain the 8’ high chain link fence in the site’s Stevens Village Drive front yard setback) does not adversely affect neighboring property.

Granting this special exception of 4’ with a condition imposed that the applicant complies with the submitted site plan and partial elevation would assure that the proposal exceeding 4’ in height in the Stevens Village Drive front yard setback would be maintained in the location and of the height and material as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: January 18, 2011**

**APPEARING IN FAVOR:** No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-112** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 101-113

**BUILDING OFFICIAL’S REPORT:**

Application of Nathan Johnson, represented by Zone Systems Inc., for a special exception to the fence height regulations at 707 Kessler Woods Trail. This property is more fully described as Lot 25 in City Block 3A/4736 and is zoned PD-690 which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot high fence which will require a special exception of 4 feet.

LOCATION: 707 Kessler Woods Trail

APPLICANT: Nathan Johnson  
Represented by Zone Systems Inc.

**REQUEST: REQUEST:**

- A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining an 8’ high galvanized chain link fence to be located in the one of the site’s two 25’ front yard setbacks on a site to be developed with a single family home – Stevens Village Drive.

**STAFF RECOMMENDATION:**

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

## **STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

## **GENERAL FACTS:**

- The subject site is a property with two street frontages. The site/property runs from Kessler Woods Trail on the east to Stevens Village Drive on the west. Even though the Kessler Woods Trail frontage of the subject site functions as its front yard and the Stevens Village Drive frontage functions as its rear yard, the subject site has two 25' front yard setbacks along both streets.  
The Dallas Development Code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, fences are governed by rear yard regulations.  
On this particular property, the site has two front yard setbacks since access is not prohibited either of the street frontages. If access were prohibited along Stevens Village Drive, the applicant could maintain a 9' high fence by right without a need to apply to the board for a fence height special exception to maintain the requested 8' high fence.
- 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 a partial elevation indicating that the proposal in the 25' Stevens Village Drive front yard setback reaches a maximum height of 8'. (No fence is proposed to be constructed/maintained in the subject site's 25' Kessler Woods Trail front yard setback).
- The following additional information was gleaned from the submitted site plan:
  - The proposal located in the Stevens Village Drive front yard setback over 4' in height is approximately 110' in length parallel to the street.
  - The proposal is shown to be located on the site's Stevens Village Drive front property line or about 6' from the curb line.
- The submitted partial elevation includes a notation of "eleagnus @ 4' o.c."
- No single family home "fronts" to the proposed fence on the subject site since the property to the west is undeveloped.
- 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 a front yard setback.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 690 (Planned Development District)  
North: PD No. 690 (Planned Development District)  
South: PD No. 690 (Planned Development District)  
East: PD No. 690 (Planned Development District)  
West: PD No. 768 (Planned Development District)

**Land Use:**

The subject site is proposed to be developed with a single family home. The areas to the north and east are developed with single family uses; the areas to the south and west are undeveloped.

**Zoning/BDA History:**

1. BDA101-112, Property 709 Kessler Woods Trail (the lot immediately north of the subject site)      On January 18, 2011, the Board of Adjustment Panel A will consider a request for a special exception to the fence height regulations of 4' made in conjunction with maintaining an 8' high open chain link fence in the front yard setback on a site developed with a single family home.
  
2. BDA101-114, Property 705 Kessler Woods Trail the lot immediately south of the subject site)      On January 18, 2011, the Board of Adjustment Panel A will consider a request for a special exception to the fence height regulations of 4' made in conjunction with maintaining and/or constructing/maintaining an 8' high open chain link fence in front yard setbacks on a site to be developed with a single family home.

**Timeline:**

- November 10, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- December 15, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- December 15, 2010: 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 January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7<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.

January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 6, 2001: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D visibility requirements."

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an 8' high galvanized chain link fence to be located in the one of the site's two 25' front yard setbacks on a site to be developed with a single family home – Stevens Village Drive.
- The proposal that is the issue of this request is located on a site that has two front yard setbacks – one front yard setback on Kessler Woods Trail (where no fence is proposed); the other front yard setback on Stevens Village Drive (where a fence that is the issue of this request is proposed to reach 8' in height).
- On this particular property, the site runs from one street to another and has double frontage since access is not prohibited on either frontage by plat or by the city. If the site's Stevens Village Drive frontage was prohibited by plat or the City, the proposed fence would be governed by rear yard regulations and the applicant could maintain a 9' high fence by right without a need to apply to the board for a fence height special exception to maintain the requested 8' high fence.
- A site plan and a partial elevation has been submitted that documents the location, height, and material of the fence over 4' in height in the Stevens Village Drive front yard setback. The site plan shows the fence to be approximately 110' in length, to be located on the site's front property line or about 6' from the curb line; and the partial elevation shows the fence to be of galvanized chain link material with "eleagnus @ 4' o.c."

- No single family home “fronts” to the proposed fence on the subject site since the property to the west is undeveloped.
- 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 a front yard setback.
- As of January 10, 2011, no letters had been submitted in support or opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ (to construct and maintain an 8’ high chain link fence in the site’s Stevens Village Drive front yard setback) does not adversely affect neighboring property.

Granting this special exception of 4’ with a condition imposed that the applicant complies with the submitted site plan and partial elevation would assure that the proposal exceeding 4’ in height in the Stevens Village Drive front yard setback would be constructed and maintained in the location and of the height and material as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: January 18, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-113** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 101-114

**BUILDING OFFICIAL’S REPORT:**

Application of Zeba Kamal, represented by Zone Systems Inc., for a special exception to the fence height regulations at 705 Kessler Woods Trail. This property is more fully described as Lot 26 in City Block 3A/4763 and is zoned PD-690 which limits the height

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

**LOCATION:** 705 Kessler Woods Trail

**APPLICANT:** Zeba Kamal  
Represented by Zone Systems Inc.

**REQUEST:**

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high galvanized chain link fence to be located in the site's Stevens Village Drive 25' front yard setback, and maintaining an existing 8' high galvanized chain link fence in the site's Stevens Forest Drive 25' front yard setback on a site to be developed with a single family home.

**STAFF RECOMMENDATION:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**GENERAL FACTS:**

- The subject site is a property with three street frontages. The site/property runs from Kessler Woods Trail on the east to Stevens Village Drive and Stevens Forest Drive on the west and south. Even though the Kessler Woods Trail frontage of the subject site functions as its front yard and the Stevens Village Drive and Stevens Forest Drive frontages function as its rear yards, the subject site has three 25' front yard setbacks along each street.

The Dallas Development Code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets. If access is prohibited on one frontage by plat or by the city, fences are governed by rear yard regulations.

On this particular property, the site has three front yard setbacks since access is not prohibited on any of the street frontages. If access were prohibited along Stevens Village Drive or Stevens Forest Drive, the applicant could maintain a 9' high fence by right without a need to apply to the board for a fence height special exception to maintain the requested 8' high fence.

- 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 a partial elevation indicating that the proposal in the 25’ Stevens Village Drive and Stevens Forest Drive front yard setbacks reaches a maximum height of 8’. (No fence is proposed to be constructed/maintained in the subject site’s 25’ Kessler Woods Trail front yard setback).
- The following additional information was gleaned from the submitted site plan:
  - The proposal located in the Stevens Village Drive and Stevens Forest Drive front yard setback over 4’ in height is approximately 145’ in length parallel to the streets.
  - The proposal is shown to be located on the site’s Stevens Village Drive and Stevens Forest Drive front property lines or about 6’ from the curb lines.
- The submitted partial elevation includes a notation of “eleagnus @ 4’ o.c.”
- No single family home “fronts” to the proposed fence on the subject site since the property to the west is undeveloped and the property to the south is developed with multifamily use.
- 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 a front yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD No. 690 (Planned Development District)
- North: PD No. 690 (Planned Development District)
- South: PD No. 830 (Planned Development District)
- East: PD No. 690 (Planned Development District)
- West: PD No. 768 (Planned Development District)

**Land Use:**

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

**Zoning/BDA History:**

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. BDA101-112, Property 709 Kessler Woods Trail (two lots north of the subject site)</li> </ol> | <p>On January 18, 2011, the Board of Adjustment Panel A will consider a request for a special exception to the fence height regulations of 4’ made in conjunction with</p> |
|--|--|

maintaining an 8' high open chain link fence in the front yard setback on a site developed with a single family home.

2. BDA101-113, Property 707 Kessler Woods Trail (the lot immediately north of the subject site)

On January 18, 2011, the Board of Adjustment Panel A will consider a request for a special exception to the fence height regulations of 4' made in conjunction with constructing and maintaining an 8' high open chain link fence in the front yard setback on a site to be developed with a single family home.

### **Timeline:**

November 10, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 15, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

December 15, 2010: 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 January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7<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.

January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

January 6, 2001: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D visibility requirements."

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an 8' high galvanized chain link fence to be located in the site's Stevens Village Drive 25' front yard setback, and maintaining an existing 8' high galvanized chain link fence in the site's Stevens Forest Drive 25' front yard setback on a site to be developed with a single family home.
- The proposal that is the issue of this request is located on a site that has three front yard setbacks – one front yard setback on Kessler Woods Trail (where no fence is proposed); the other two front yard setbacks on Stevens Village Drive and Stevens Forest Drive (where a fence that is the issue of this request is proposed to reach 8' in height).
- On this particular property, the site runs from one street to two others and has triple frontage since access is not prohibited any of the frontages by plat or by the city. If the site's Stevens Village Drive and Stevens Forest Drive frontages were prohibited by plat or the City, the proposed fence would be governed by rear yard regulations and the applicant could maintain a 9' high fence by right without a need to apply to the board for a fence height special exception to maintain the requested 8' high fence.
- A site plan and a partial elevation has been submitted that documents the location, height, and material of the fence over 4' in height in the Stevens Village Drive and Stevens Forest Drive front yard setbacks. The site plan shows the fence to be approximately 145' in length, to be located on the site's front property lines or about 6' from the curb lines; and the partial elevation shows the fence to be of galvanized chain link material with "eleagnus @ 4' o.c."
- No single family home "fronts" to the proposed fence on the subject site since the property to the west is undeveloped and the property to the south is developed with multifamily use.
- 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 a front yard setback.
- As of January 10, 2011, no letters had been submitted in support or opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (to construct and maintain an 8' chain link fence in the site's Stevens Village Drive front yard setback and to maintain an 8' high chain link fence in the site's Stevens Forest Drive front yard setback) does not adversely affect neighboring property.

Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and partial elevation would assure that the

proposal exceeding 4' in height in the Stevens Village Drive and Stevens Forest Drive front yard setbacks would be constructed/maintained and or maintained in the locations and of the height and material as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: January 18, 2011**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-114** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

**SECONDED: Goins**

**AYES:** 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 090-104

**BUILDING OFFICIAL’S REPORT:**

Application of Isidro Soto for a special exception to the side yard setback regulations at 3132 San Paula Avenue. This property is more fully described as Lot 7 in City Block K/7312 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a carport and provide a 1 foot setback which will require a special exception of 4 feet.

**LOCATION:** 3132 San Paula Avenue

**APPLICANT:** Isidro Soto

**REQUEST:**

- A special exception to the side yard setback regulations of 4’ is requested in conjunction with maintaining an existing carport\* that is accessory to a single family home, and is located in the required 5’ side yard setback on the west side of the property.

- \* Note that although a submitted floor plan/roof plan denotes “proposed carport,” the applicant provided testimony at the November 16<sup>th</sup> public hearing that the carport that is the issue in this request is existing with no plans for enlarging or modifying it.

### **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, the carport will not have a detrimental impact on surrounding properties.

### **STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

### **UPDATED GENERAL FACTS (January 2011):**

- The Board of Adjustment Panel A conducted a public hearing on this application on November 16, 2010, and delayed action until January 18<sup>th</sup> finding that the applicant had not complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site.
- A 5’ side yard setback is required in the R-7.5(A) zoning district. The applicant has submitted a revised site plan/survey plat to staff in December or 2010 (see Attachment A). The revised site plan/survey plat is (according to the Building Inspection Senior Plans Examiner/Development Code Specialist) a better representation of structures on the site than what was conveyed on the originally submitted site plan. The revised site plan/survey plat indicates a structure labeled “carport and storage addition” that is 1’ from the site’s western side property line or 4’ into the 5’ side yard setback.
- The following information was gleaned from the submitted revised site plan/survey plat:
  - The “carport and storage addition” structure is represented to be as much as 30’ in depth and as much as 54’ in length of which 120 square feet is located in the western side yard setback.

- The “carport and storage addition” structure is represented to be located at a point beginning behind what is noted on the revised plan as “one-story brick” that has 1,240 square feet.

**ORIGINAL GENERAL FACTS:**

- A 5’ side yard setback is required in the R-7.5(A) zoning district. The applicant had submitted a site plan, floor plan/roof plan and elevation/section indicating the location of the carport 1’ from the site’s western side property line or 4’ into the 5’ side yard setback.
- The following information was gleaned from the originally submitted site plan and submitted floor plan/roof plan:
  - The carport is represented to be 30’ in depth and approximately 44’ in length (approximately 1,300 square feet in total area) of which 120 square feet or approximately 1/10 is located in the western side yard setback.
  - The carport is represented to be located at a point beginning behind what is noted on the plans as either an “existing one-story brick house” or a “one story brick.”
- The following information was gleaned from the submitted elevation/section:
  - Represented to be from 8’ – 10’ in height, with “4 x 4 poles” of unspecified materials and “sheet metal roofing.”
- The subject site is 125’ x 60’ (or 7,500 square feet) in area.
- According to DCAD, the site is developed with the following:
  - a structure in “average” condition built in 1954 with 1,290 square feet of living area,
  - a 480 square foot detached garage.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of “carport” however Building Inspection interprets a “carport” to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a “carport”).
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

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

### **Land Use:**

The subject site is developed with a single family 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:**

- Sept. 17, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 21, 2010: The Board Administrator wrote the applicant a letter that conveyed the following information given that the Board Administrator determined in a telephone conversation that the applicant did not speak fluent English:
- the panel, public hearing date and location of his public hearing on his application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the code standard regarding the posting of the notification sign;
  - information related to the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
  - the November 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials; and
  - a general description of the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- (Note that this letter referenced a staff person who can provide assistance in Spanish).
- October 25, 2010: The Board Administrator spoke with the applicant's English speaking son-in-law regarding the following concerns:
- the panel, public hearing date and location of his public hearing on his father-in-law's application;
  - the nature of the request: maintenance of the existing carport in the side yard setback;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the code standard regarding the posting of the notification sign, and his discovery of no sign being posted on the site on his October 15<sup>th</sup> field visit.

November 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

November 16, 2010: The Board of Adjustment Panel A conducted a public hearing on this request and delayed until their January 18<sup>th</sup> public hearing.

November 22, 2010: The Board Administrator sent a letter to the applicant informing him of the public hearing date and the January 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

January 4, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised site plan/survey plat to the Board Administrator prepared by the applicant in December of 2010 (see Attachment A).

January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- This request focuses on maintaining an existing carport that is accessory to a single family home, and is located in the required 5' side yard setback on the west side of the property.
- A revised site plan/survey plat has been submitted indicating a "carport and storage addition" structure that is as much as 30' in depth and as much as 54' in length of which 120 square feet is located in the western side yard setback. The submitted elevation/section represents the carport to range in height from 8' – 10' in height with "4 x 4 poles" of unspecified materials and "sheet metal roofing."
- The applicant has the burden of proof in establishing the following:
  - That granting this special exception to the side yard setback regulations of 4' will not have a detrimental impact on surrounding properties.

- As of January 10<sup>th</sup>, eight letters had been submitted in support of the application and or two letters had been submitted in opposition.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be maintained (in this case) in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the carport may cause on the lot immediately west:
  1. Compliance with the submitted revised site plan/survey plat and elevation/section is required.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. All applicable building permits are obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.

If the Board chooses to grant this side yard special exception request, and impose the submitted revised site plan/survey plat and elevation/section as a condition, the applicant would only be provided exception for what has been applied for, in this case, exception for the carport structure in the required side yard setback as represented/shown on these plans.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2010**

APPEARING IN FAVOR: Isidro Soto, 3132 San Paula, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING AS TRANSLATOR: Claudia Ibarra, 1500 Marilla, Dallas, TX

**MOTION #1: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 090-104**, hold this matter under advisement until **January 18, 2011** because we find that the notification sign was not posted properly.

SECONDED: Harris

AYES: 4 – Richmond, Schweitzer, Harris, Hounsel

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2011**

APPEARING IN FAVOR: Isidro Soto, 3132 San Paula, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING AS TRANSLATOR: Claudia Ibarra, 1500 Marilla, Dallas, TX

**MOTION: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-104** on application of Isidro Soto, **grant** the request of this applicant to maintain a carport as a special exception to the minimum side yard requirements contained in the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will not have a detrimental impact on surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan/survey plat and elevation/section is required.
- The carport structure must remain open at all times.
- Lot-to-lot drainage is not permitted in conjunction with this proposal.
- All applicable building permits must be obtained.
- No item (other than a motor vehicle) may be stored in the carport.

**SECONDED: Hounsel**

**AYES:** 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 090-108

**BUILDING OFFICIAL’S REPORT:**

Application of Robert Baldwin for a special exception to the fence height regulations and for a variance to the front yard setback regulations at 6939 Oak Manor Drive. This property is more fully described as Lot 4 in City Block H/7462 and is zoned PD-381 which limits the height of a fence in the front yard to 4 feet and requires a front yard setback of 15 feet. The applicant proposes to construct/maintain an 8 foot high fence which will require a special exception to the fence height regulations of 4 feet, and to construct and maintain structures and provide a 0 foot front yard setback which will require a variance of 15 feet.

**LOCATION:** 6939 Oak Manor Drive

**APPLICANT:** Robert Baldwin

**UPDATED REQUESTS (JANUARY 2011):**

- 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 4’ is requested in conjunction with maintaining an 8’ high open iron picket fence with stone

columns, and modifying this fence by transitioning approximately 20' of its total 85' length from iron pickets to solid stone masonry "to match existing columns" – a fence currently located in one of the site's two 15' front yard setbacks (Preston Glen Drive).

2. A variance to the front yard setback regulations of 15' is requested in conjunction with constructing and maintaining a "pool" structure, part of which would be located in one of the site's two 15' front yard setbacks (Preston Glen Drive).

Note that no portion of the special exception or variance request is made in this application to construct/maintain a fence and/or structure in the site's Oak Manor Drive front yard setback.

#### **ORIGINAL REQUESTS (NOVEMBER 2010):**

- The following appeals were made in this application on a site that is currently developed with a single family home:
  - A special exception to the fence height regulations of 4' was requested in conjunction with maintaining an 8' high open iron picket fence with stone columns, and modifying this fence by transitioning approximately 20' of its total 85' length from iron pickets to solid stone masonry "to match existing columns" – a fence currently located in one of the site's two 15' front yard setbacks (Preston Glen Drive).
  - A variance to the front yard setback regulations of 15' was requested in conjunction with constructing and maintaining a "pool" structure and a "new fireplace feature" structure, part of which and/or all of which would be located in one of the site's two 15' front yard setbacks (Preston Glen Drive).

Note that no portion of the special exception or variance request was made in this application to construct/maintain a fence and/or structure in the site's Oak Manor Drive front yard setback.

#### **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.

#### **REVISED STAFF RECOMMENDATION (variance):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned PD No. 381 in that it is a corner lot with a restrictive area due to two front yard setbacks.

**ORIGINAL STAFF RECOMMENDATION (variance):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned PD No. 381 in that it is a corner lot with a restrictive area due to two front yard setbacks.

**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 VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (G) 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;
- (H) 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
- (I) 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.

**UPDATED GENERAL FACTS (fence height special exception):**

- The Board of Adjustment Panel A conducted a public hearing on this application on November 16, 2010, and delayed action until January 18<sup>th</sup> per the applicant's request (see Attachment B) to allow time for him to obtain approval of his fence and landscape plans related to his board of adjustment application from the Lake Forest HOA.
- The subject site is located at the southwest corner of Preston Glen Drive and Oak Manor Drive. Even though the Oak Manor Drive frontage of the subject site functions as its front yard and the Preston Glen Drive frontage functions as its side yard, the subject site has two 15' front yard setbacks along both streets. The site has a 15' front yard setback along Oak Manor 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), and a 15' front yard setback along Preston Glen Drive the longer of the two

frontages of this corner lot which would typically be regarded as a side yard where a 9' high fence could be maintained by right. The site's Preston Glen Drive frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots west of the site that front/are oriented northward onto Preston Glen Drive.

- 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/partial fence elevation document indicating that the existing fence/proposal in the 15' Preston Glen Drive front yard setback either reaches or is proposed to reach a maximum height of 8'. (No fence is proposed to be constructed and/or maintained in the subject site's 15' Oak Manor Drive front yard setback).

- The site plan indicates the location of the fence in the site's Preston Glen Drive front yard setback. The following additional information was gleaned from this site plan:
  - The proposal/existing fence is approximately 85' in length parallel to Preston Glen Drive and approximately 15' in length perpendicular to Preston Glen Drive on the east and west sides of the site in this front yard setback.
  - The proposal/existing fence is shown to be located on the Preston Glen Drive front property line or about 12' from the Preston Glen Drive pavement line.
- The proposal/existing fence is located on the site where four single family homes have direct/indirect frontage to the proposal/existing fence, none which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area and no other fences/walls above (or below) 4' in height along Preston Glen Drive or Oak Manor Drive.
- On October 29 and November 1, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- On November 29, 2010, the applicant submitted additional information beyond what was submitted with the original application and at the November 16<sup>th</sup> public hearing (see Attachment C). This information included a conditional support letter from the Lake Forest Community Association and a revised site plan/fence elevation document. According to the applicant, the only change made to what was shown on the originally submitted site plan/fence elevation was removal of the "new fireplace feature" structure that was proposed to be located in the Preston Glen Drive front yard setback.

#### **UPDATED GENERAL FACTS (variance):**

- The Board of Adjustment Panel A conducted a public hearing on this application on November 16, 2010, and delayed action until January 18<sup>th</sup> per the applicant's request (see Attachment B) to allow time for him to obtain approval of his fence and landscape plans related to his board of adjustment application from the Lake Forest HOA.

- Single family structures on lots zoned PD No. 381 (Subdistrict A) are required to provide a minimum front yard setback of 15', and a minimum 1' side yard setback on one side yard and a minimum 9' on the other side yard.
- The subject site is located at the southwest corner of Preston Glen Drive and Oak Manor Drive. Even though the Oak Manor Drive frontage of the subject site functions as its front yard and the Preston Glen Drive frontage functions as its side yard, the subject site has two 15' front yard setbacks along both streets. The site has a 15' front yard setback along Oak Manor 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), and a 15' front yard setback along Preston Glen Drive (the longer of the two frontages of this corner lot which would typically be regarded as a side yard). The site's Preston Glen Drive frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots west of the site that front/are oriented northward onto Preston Glen Drive. A revised scaled site plan/elevation document has been submitted denoting a "new pool" structure that is to be located approximately on the site's Preston Glen Drive front property line (or 15' into the 15' front yard setback). (No encroachment is proposed in the site's Oak Manor Drive 15' front yard setback). (Note that although the submitted site plan indicates what appears to be a portion of the existing single family home structure located in the site's 15' front yard setback along Preston Glen Drive, the application has only been made to construct and maintain pool structure in this required front yard setback).
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the proposed "new pool" structure to be located in the site's Preston Glen Drive 15' front yard setback is approximately 290 square feet in area or approximately 1/2 of the approximately 550 square foot "building"/pool footprint.
- According to DCAD records, the site is developed with the following:
  - a structure built in 2001 that is in "good" condition with 4,839 square feet of living area; and
  - a 666 square foot attached garage.
- The subject site is zoned PD No. 381 (Subdistrict A), is flat, is generally rectangular in shape (approximately 150' x 60'), and approximately 9,000 square feet in area. (Note that PD No. 381 states the "for applicable regulations not addressed in this article, the applicable 51A District Regulation for Subdistrict A is R-7.5(A)." Lots zoned R-7.5(A) lots are typically 7,500 square feet in area. This four-sided lot site has two 15' front yard setbacks; one 9' side yard setback; one 1' side yard setback. Most residentially-zoned lots have one front yard setback.
- On October 29 and November 1, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- On November 29, 2010, the applicant submitted additional information beyond what was submitted with the original application and at the November 16<sup>th</sup> public hearing (see Attachment C). This information included a conditional support letter from the Lake Forest Community Association and a revised site plan/fence elevation document. According to the applicant, the only change made to what was shown on

the originally submitted site plan/fence elevation was removal of the “new fireplace feature” structure that was proposed to be located in the Preston Glen Drive front yard setback.

**ORIGINAL GENERAL FACTS (fence height special exception):**

- The subject site is located at the southwest corner of Preston Glen Drive and Oak Manor Drive. Even though the Oak Manor Drive frontage of the subject site functions as its front yard and the Preston Glen Drive frontage functions as its side yard, the subject site has two 15’ front yard setbacks along both streets. The site has a 15’ front yard setback along Oak Manor 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), and a 15’ front yard setback along Preston Glen Drive the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 9’ high fence could be maintained by right. The site’s Preston Glen Drive frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots west of the site that front/are oriented northward onto Preston Glen Drive.
- 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 had submitted a site plan/partial fence elevation document indicating that the existing fence/proposal in the 15’ Preston Glen Drive front yard setback either reaches or is proposed to reach a maximum height of 8’. (No fence is proposed to be constructed and/or maintained in the subject site’s 15’ Oak Manor Drive front yard setback).
- The site plan indicated the location of the fence in the site’s Preston Glen Drive front yard setback. The following additional information was gleaned from this site plan:
  - The proposal/existing fence was approximately 85’ in length parallel to Preston Glen Drive and approximately 15’ in length perpendicular to Preston Glen Drive on the east and west sides of the site in this front yard setback.
  - The proposal/existing fence was shown to be located on the Preston Glen Drive front property line or about 12’ from the Preston Glen Drive pavement line.
- The proposal/existing fence was located on the site where four single family homes have direct/indirect frontage to the proposal/existing fence, none which have fences in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area and no other fences/walls above (or below) 4’ in height along Preston Glen Drive or Oak Manor Drive.
- On October 29 and November 1, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

**ORIGINAL GENERAL FACTS (variance):**

- Single family structures on lots zoned PD No. 381 (Subdistrict A) are required to provide a minimum front yard setback of 15', and a minimum 1' side yard setback on one side yard and a minimum 9' on the other side yard.
- The subject site is located at the southwest corner of Preston Glen Drive and Oak Manor Drive. Even though the Oak Manor Drive frontage of the subject site functions as its front yard and the Preston Glen Drive frontage functions as its side yard, the subject site has two 15' front yard setbacks along both streets. The site has a 15' front yard setback along Oak Manor 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), and a 15' front yard setback along Preston Glen Drive (the longer of the two frontages of this corner lot which would typically be regarded as a side yard). The site's Preston Glen Drive frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots west of the site that front/are oriented northward onto Preston Glen Drive. A scaled site plan/elevation document has been submitted denoting "new pool" and "new fireplace feature" structures that are located on the site's Preston Glen Drive front property line (or 15' into the 15' front yard setback). (No encroachment is proposed in the site's Oak Manor Drive 15' front yard setback). (Note that although the submitted site plan indicates what appears to be a portion of the existing single family home structure located in the site's 15' front yard setback along Preston Glen Drive, the application has only been made to construct and maintain pool and a fireplace structures in this required front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed "new pool" structure to be located in the site's Preston Glen Drive 15' front yard setback is approximately 290 square feet in area or approximately 1/2 of the approximately 550 square foot "building"/pool footprint; and the entire approximately 240 square foot "new fireplace feature" structure is located in this setback.
- According to DCAD records, the site is developed with the following:
  - a structure built in 2001 that is in "good" condition with 4,839 square feet of living area; and
  - a 666 square foot attached garage.
- The subject site is zoned PD No. 381 (Subdistrict A), is flat, is generally rectangular in shape (approximately 150' x 60'), and approximately 9,000 square feet in area. (Note that PD No. 381 states the "for applicable regulations not addressed in this article, the applicable 51A District Regulation for Subdistrict A is R-7.5(A)." Lots zoned R-7.5(A) lots are typically 7,500 square feet in area. This four-sided lot site has two 15' front yard setbacks; one 9' side yard setback; one 1' side yard setback. Most residentially-zoned lots have one front yard setback.
- On October 29 and November 1, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 381 (Planned Development District)  
North: PD No. 381 (Planned Development District)  
South: PD No. 381 (Planned Development District)  
East: PD No. 381 (Planned Development District)  
West: PD No. 381 (Planned Development District)

**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:**

- April 27, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 21, 2010: 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 November 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the November 5<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.
- October 29 & Nov. 1, 2010: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- November 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans

Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

- November 3, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Comply with all C.O.D visibility requirements.”
- November 16, 2010: The Board of Adjustment Panel A conducted a public hearing on this request and delayed action per the applicant’s request (see Attachment B) until their January 18<sup>th</sup> public hearing.
- November 22, 2010: The Board Administrator sent a letter to the applicant informing him of the public hearing date and the January 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials.
- November 29, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application and at the November 16<sup>th</sup> public hearing (see Attachment C).
- January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS (fence height special exception):**

- The request focuses on maintaining an 8’ high open iron picket fence with stone columns, and modifying this fence by transitioning approximately 20’ of its total 85’ length from iron pickets to solid stone masonry “to match existing columns” – a fence currently located in one of the site’s two 15’ front yard setbacks (Preston Glen Drive) on a site developed with a single family home.
- The existing fence/proposed wall that is the issue of this request is to be located on a site that has two front yard setbacks – one front yard setback on Oak Manor Drive (where no fence is existing over 4’ in height or proposed); the other front yard setback on Preston Glen Drive (where the existing fence/proposed wall is that is the issue of this request is or is to be located– a fence/wall that reaches or will reach 8’ at its highest point).

- Even though the site's Preston Glen Drive frontage functions as its side/rear yard, and is the longer of the two street frontages of the corner lot which is typically a side yard where a 9' high fence can be built by right, the site's Preston Glen Drive frontage is deemed a front yard nonetheless in order to maintain the continuity of the established front yard setbacks established by the lots west of the site that front/are oriented northward onto Preston Glen Drive.
- A scaled site plan/partial elevation document has been submitted documenting the location of the existing fence/proposed wall relative to the Preston Glen Drive property line/pavement line, the length of the proposal relative to the entire lot, and the existing/proposed building materials. The existing fence/proposed wall is shown to be located approximately on the Preston Glen Drive front property line or about 12' from the pavement line; shown to be about 85' long parallel to Preston Glen Drive and about 15' in length perpendicular to Preston Glen Drive on both sides of the site in this front yard setback.
- The proposal is located on the site where four single family homes "front" the existing fence/proposed wall, none which have fences in their front yard setbacks.
- No other fences were noted in a field visit of the site and surrounding area.
- As of January 10, 2011, one letter had been submitted in opposition to the application, and three letters had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the existing fence/proposed wall that would reach 8' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted revised site plan/partial elevation document would assure that the proposal would be maintained and modified in the location and of the height and materials as shown on this document.

**UPDATED STAFF ANALYSIS (variance):**

- This request focuses on constructing and maintaining a structure which would be located in one of the site's two 15' front yard setbacks (Preston Glen Drive) - a "pool" structure part of which would be located in this setback on a site developed with a single family home.  
The structure that is the issue of this revised request is to be located on a site that has two front yard setbacks – a site with one front yard setback on Oak Manor Drive (where no structure is proposed to be located in); the other front yard setback on Preston Glen Drive (where the proposed structure that is the issue of this request is to be located – a "pool" structure that is to be located as close as on the Preston Glen Drive front property line or as much as 15' into this 15' front yard setback)
- Even though the site's Preston Glen Drive frontage functions as its side/rear yard, and is the longer of the two street frontages of the corner lot which is typically a side yard where on this side of the site a 9' side yard setback is required, the site's Preston Glen Drive frontage is deemed a front yard nonetheless in order to maintain the continuity of the established front yard setbacks established by the lots west of the site that front/are oriented northward onto Preston Glen Drive.

- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the proposed “new pool” structure to be located in the site’s Preston Glen Drive 15’ front yard setback is approximately 290 square feet in area or approximately 1/2 of the approximately 550 square foot “building”/pool footprint.
- According to DCAD records, the site is developed with the following:
  - a structure built in 2001 that is in “good” condition with 4,839 square feet of living area; and
  - a 666 square foot attached garage.
- The subject site is zoned PD No. 381 (Subdistrict A), is flat, is generally rectangular in shape (approximately 150’ x 60’), and approximately 9,000 square feet in area. (Note that PD No. 381 states the “for applicable regulations not addressed in this article, the applicable 51A District Regulation for Subdistrict A is R-7.5(A).” Lots zoned R-7.5(A) lots are typically 7,500 square feet in area. This four-sided lot site has two 15’ front yard setbacks; one 9’ side yard setback; one 1’ side yard setback. Most residentially-zoned lots have one front yard setback.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the Preston Glen Drive front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 381 zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 381 zoning classification.
- If the Board were to grant the variance request, subject to the submitted revised site plan, the structure in the front yard setback would be limited to what is shown on this document and the structures in the setback specifically applied for– which in this case is a “pool” structure to be located as close as on the Preston Glen Drive front property line (or as much as 15’ into this 15’ front yard setback). The portion of the existing single family home structure that appears on the submitted site plan to be in the site’s 15’ front yard setback along Preston Glen Drive would not be varied since the applicant has made his request to only vary the proposed pool structure.

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2010**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 090-108**, hold this matter under advisement until **January 18, 2011**.

SECONDED: **Harris**

AYES: 4 – Richmond, Schweitzer, Harris, Hounsel

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2010**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 090-108**, hold this matter under advisement until **January 18, 2011**.

SECONDED: **Harris**

AYES: 4 – Richmond, Schweitzer, Harris, Hounsel

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2011**

APPEARING IN FAVOR: Robert Baldwin, 401 Exposition Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-108**, on application of Rob Baldwin, **grant** the request of this applicant to construct and maintain an eight-foot high fence as a special exception to the height requirement for fences contained 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 revised site plan/partial elevation document is required.

SECONDED: **Jackson**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-108**, on application of Robert Baldwin, **grant** the 15-foot variance to the minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Jackson**

I move to adjourn this meeting.

SECOND: **Goins**

AYES: 5– Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**1:26 P.M.** - Board Meeting adjourned for **January 18, 2011**.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

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BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.