

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, SEPTEMBER 20, 2011**

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

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossum, Asst. Director, 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, Scott Hounsel, regular member, Johnnie Goins, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

**11:02 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 20, 2011** docket.

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**1:00 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A **August 16, 2011** public hearing minutes as amended.

**BOARD OF ADJUSTMENT ACTION: September 20, 2011**

**MOTION: Hounsel**

I move **approval** of the Tuesday, **August 16, 2011** public hearing minutes.

**SECONDED: Schweitzer**

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

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 101-076**

**BUILDING OFFICIAL’S REPORT:**

Application of Peter Pathos, represented by James Davis, for a special exception to the fence height regulations and for a special exception to the visual obstruction regulations at 5946 Park Lane. This property is more fully described as Lot 2 in City Block A/5615 and is zoned R-1ac(A), which limits the height of a fence in the front yard to four feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct a 6 foot 6 inch will require a special exception to the fence height regulations of 2 feet 6 inches, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION: 5946 Park Lane**

**APPLICANT: Peter Pathos  
Represented by James Davis**

**REQUESTS:**

- The following appeals have been made in this application on a site that is developed with a single family home:
  1. a special exception to the fence height regulations of 2’ 6” is requested in conjunction with constructing and maintaining primarily a 6’ high open iron fence with 6’ 6” high stone columns/iron entry gate to be located in the front yard setback; and
  2. a special exception to the visual obstruction regulations is requested in conjunction with maintaining portions of an existing solid cedar fence/wall and two 8’ 6” high brick columns in the 45 foot visibility triangle at the intersection of Park Lane and Preston Road.

- \* Note that a 6' high wood fence is proposed to be constructed/maintained in the site's front yard setback *perpendicular* to Park Lane along the western boundary of the subject site. Additionally note that an existing approximately 8' high wood with 8' 6" high brick columns is proposed to be maintained on the site in the front yard setback perpendicular to Park Lane on the *eastern* boundary – fence/columns that appear to have been a result of a previous board-approved fence height special exception in November of 2005: BDA 056-205.

**STAFF RECOMMENDATION (fence height special exceptions):**

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

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

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to this request with the condition that the applicant complies with the submitted site plan and elevation. (Note that the submitted site plan provides an approximately 41' visibility triangle).
- The applicant has substantiated that the location of the items in the 45' visibility triangle at the intersection of Park Lane and Preston Road do not constitute a traffic hazard.

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

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

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

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

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

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than nine feet above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

The applicant has submitted site plan and partial elevation document indicating that the proposal in the required front yard setback reaches a maximum height of 8' 6".

- The following additional information was gleaned from the submitted site plan:
  - The 6' high open iron fence is approximately 150 feet in length parallel to the street, and the 6' high wood fence is approximately 29 feet in length perpendicular to Park Lane on the west side of the site in the front yard setback.
  - The proposed fence is shown to be located approximately on the front property line or about 11' from the pavement line.
  - The proposed gate is shown to be located approximately 9' from the front property line or about 20' from the projected pavement line.
- One single family home "fronts" to the proposal on the subject site. This home does not have a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area (an area about 500 feet west of the subject site) and noted no other fences above 4' high which appeared to be located in a front yard setback.

### **GENERAL FACTS (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 on properties in all zoning districts except central area districts, the Deep Ellum/Near Eastside District, State-Thomas Special Purpose District, and 20-foot visibility triangles at drive approaches on properties in all zoning districts); and
  - between two and a half and eight 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 partial elevation has been submitted that denotes a portion of an "existing wood fence" and what appears to be two columns in 45' visibility triangle at the intersection of Park Lane and Preston Road. Note that this request appears to be made in conjunction with maintaining fence/columns that were part of a Board of Adjustment application filed and approved in November of 2005: BDA 056-020. A review of plans submitted in conjunction with this 2005 appeal for merely a fence height special exception to locate and maintain an approximately 8' high cedar fence wall in the site's Park Lane front yard setback perpendicular to Park Lane show these plans were represented with notations of "45 foot view clip from corner point of origin" would be provided – but did not, hence the request for a special exception to the visual obstruction regulations in this application in order to maintain existing portions of this fence/columns in the 45 foot Park Lane/Preston Road intersection visibility triangle.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: R-1ac(A) (Single family district 1 acre)  
North: R-1ac(A) (Single family district 1 acre)  
South: R-1ac(A) (Single family district 1 acre)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-1ac(A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 056-020, Property at 5946 Park Lane (the subject site) On November 15, 2005, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 4' 6" and imposed the submitted site plan and elevation as a condition to the request. The case report stated that the request was made in conjunction with constructing and maintaining an approximately 8' 2" high rough cedar wall with 8' 6" high brick columns in the front yard setback perpendicular to Park Lane.

**Timeline:**

- June 17, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 12, 2011: 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."
- August 18, 2011: 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<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.

June 23, 2011: 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 7, 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: "No objection to fence height. Will provide minimum 40 x 40 feet visibility triangle." (Note that the submitted site plan provides an approximately 41' visibility triangle).

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

- This request focuses on with constructing and maintaining primarily a 6' high open iron fence with 6' 6" high stone columns/iron entry gate to be located in the front yard setback on a site developed with a single family home.
- The submitted site plan and partial elevation documents the location, height, and materials of the fence over four feet in height in the required front yard. The site plan shows the proposal to be approximately 150' in length parallel to the street and approximately 29' in length perpendicular to the street on the west side of the site, and approximately on the front property line or about 11' from the pavement line. (The gate is shown to be about 9' from the front property line or about 20' from the projected pavement line). The partial elevation denotes that the fence is to be 6' in height with 6' 6" high columns and gate.

- One single family home “fronts” to the proposal on the subject site. This home does not have a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area (an area about 500 feet west of the subject site) and noted no other fences above four feet high which appeared to be located in a front yard setback.
- As of September 12, 2011, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2’ 6” will not adversely affect neighboring property.
- Granting this special exception of 2’ 6” with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require that the proposal exceeding 4’ in height in the required front yard would be constructed and maintained in the location and of the heights and materials as shown on these documents.
- Note that if the board were to grant this request and impose the submitted site plan and partial elevation as a condition, but the request for the special exception to the visual obstruction regulations, notations would be made of such action on the submitted plan whereby the location of the items in the visibility triangle would not be “excepted.”

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

- The request for a special exception to the visual obstruction regulations focuses on maintaining portions of an existing solid cedar fence/wall and two 8’ 6” high brick columns in the 45’ visibility triangle at the intersection of Park Lane and Preston Road.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting: “No objection to fence height. Will provide minimum 40 x 40 feet visibility triangle.” (Note that the submitted site plan provides an approximately 41 foot visibility triangle).”
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to maintain portions of an existing solid cedar fence/wall and two 8’ 6” high brick columns in the 45’ visibility triangle at the intersection of Park Lane and Preston Road will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted site plan and partial elevation, the items shown on these documents would be “excepted” into the 45 foot Park Lane/Preston Road intersection visibility triangle.
- Note that if the board were to grant this request and impose the submitted site plan and partial elevation as a condition, but deny the request for a special exception to the fence height regulations, notations would be made of such action on the submitted plans whereby any fence in a front yard setback higher than four feet not previously granted by the board in a previous application would not be “excepted.”

**BOARD OF ADJUSTMENT ACTION: September 20, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-076** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Goins**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 101-078

**BUILDING OFFICIAL’S REPORT:**

Application of Larry Dullye for a special exception to the fence height regulations at 4361 W. Lawther Drive. This property is more fully described as a part of Tract 12 in City Block 4409 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6-foot 9-inch high fence, which will require a special exception of 2 feet 9 inches.

LOCATION: 4361 W. Lawther Drive

APPLICANT: Larry Dullye

REQUEST:

- A special exception to the fence height regulations of 2’ 6” is requested in conjunction with constructing and maintaining a 5’ – 5’ 5” high open wrought iron fence with one 6’ 6” high masonry post in the site’s 40’ front yard setback on a lot developed with a single family home.
- \* Note that although the Building Official’s Report prepared with the original application conveys a special exception request of 2’ 9”, the applicant’s subsequent submittal of a revised site plan and revised elevation denoting a proposal with a maximum height of 6’ 6” creates a need for a special exception request of 2’ 6”.



**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code states that a 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 revised site plan and revised elevation (see Attachment A) indicating that the proposal in the required front yard setback reaches a maximum height of 6’ 6”.
- The following additional information was gleaned from the submitted revised site plan:
  - The proposal in the front yard setback totals approximately 65’ in length parallel/curved to the street.
  - The proposed fence is shown to be located at a range of approximately 15’ – 40’ from the front property line or at a range of 26’ – 51’ from the projected pavement line.
- No single family home “fronts” to the proposal on the subject site since the property immediately across W. Lawther Road is White Rock Lake.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500’ north and south of the subject site) and noted the one other fence above four (4) feet high which appeared to be located in a front yard setback- an approximately 5’ high open wrought iron fence with approximately 5.5’ high columns and an approximately 7.5’ high gate immediately south of the subject site that appears to be the result of a granted fence height special exception from May of 2001 – BDA 001-204.

**BACKGROUND INFORMATION:**

**Zoning:**

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

West: R-1ac(A) (Single family district 1 acre)

**Land Use:**

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

**Zoning/BDA History:**

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|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. BDA 001-204, Property at 4353 West Lawther Road ( the lot immediately south of subject site) | On May 25, 2001, the Board of Adjustment Panel A granted a special exception to the fence height regulations to maintain an 8' fence on the property and imposed the following condition to the request: Compliance with the submitted site plan and revised elevation is required (a revised elevation noting an 8' maximum height of an open metal gate on the site). The case report stated that the special exception to the fence height regulations of 4' was requested in conjunction with constructing and maintaining an approximately 5' high open wrought iron fence with 5' 6" high columns and 7' 6" high entry columns. |
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**Timeline:**

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| June 17, 2011:   | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| August 12, 2011: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| August 18, 2011: | The Board Administrator emailed the applicant the following information: <ul style="list-style-type: none"><li>• an attachment that provided the public hearing date and panel that will consider the application; the September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;</li><li>• the criteria/standard that the board will use in their decision to approve or deny the request; and</li><li>• the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.</li></ul> |

August 26, 2011: The applicant submitted additional information beyond what was submitted with the original application (Attachment A).

September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 7, 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."

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 5' – 5' 5" high open wrought iron fence with one 6' 6" high masonry post in the site's 40' front yard setback on a lot developed with a single family home.
- The submitted revised site plan and revised elevation notes the location, height, and materials of the fence over 4' in height in the required front yard setback. The site plan indicates that the proposal in the front yard setback is about 65' in length parallel/curved to the street, and approximately 15' – 40' from the site's front property line or about 26' – 51' from the projected pavement line.
- No single family home "fronts" to the proposal on the subject site since the property immediately across W. Lawther Road is White Rock Lake.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500' north and south of the subject site) and noted the one other fence above four (4) feet high which appeared to be located in a front yard setback- an approximately 5' high open wrought iron fence with approximately 5.5' high columns and an approximately 7.5' high gate immediately south of the subject site that appears to be the result of a granted fence height special exception from May of 2001 – BDA 001-204.
- As of September 12, 2011, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 6" will not adversely affect neighboring property.
- Granting this special exception of 2' 6" with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would provide assurance that the proposal exceeding 4' in height in the front yard setback would

be maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: September 20, 2011**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-078** 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 revised site plan and revised 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 101-082

**BUILDING OFFICIAL'S REPORT:**

Application of Al Cron for a special exception to the screening regulations and for a special exception to the tree preservation regulations at 3930 Duncanville Road. This property is more fully described as Lot 1A in City Block1/8018 and is zoned IR which requires minimum 6-foot high screening and requires tree mitigation. The applicant proposes to construct and maintain an outside storage use and provide no screening, which will require a special exception to the screening regulations, and to construct a structure and provide a tree mitigation plan, which will require a special exception to the tree preservation regulations.

**LOCATION:** 3930 Duncanville Road

**APPLICANT:** Al Cron

**REQUESTS:**

- The following appeals have been made in this application on a site developed with a “home improvement center, lumber, brick or building materials sales yard” use (Boise Cascade Building Materials Distribution):
  1. A special exception to the required screening regulations is requested in conjunction with obtaining a new CO (Certificate of Occupancy) for an “outside storage” use, and not providing 6’ high brick, stone, concrete masonry, stucco, concrete, or wood screening that is required for this specific use on IR zoned properties; and
  2. A special exception to the tree preservation regulations is requested in conjunction with constructing and maintaining an approximately 77,000 square foot warehouse and an approximately 16,000 square foot office on a site developed with (according to the submitted site plan) an approximately 24,000 square foot warehouse, an approximately 10,000 square foot “pavilion,” and an approximately 45,000 square foot “pavilion,” and not fully mitigating protected trees (in this case, eastern red cedar trees) removed/to be removed on a site.

**STAFF RECOMMENDATION (screening special exception):**

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

**STAFF RECOMMENDATION (tree preservation special exception):**

Approval

Rationale:

- The applicant has substantiated how strict compliance with the requirements of the Landscape and Tree Preservation Regulations will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.
- The City’s Chief Arborist recommends approval of this request in that the applicant’s request in this case is only for exemption to mitigate for the eastern red cedar trees removed and/or to be removed on the site.

**STANDARD FOR A SPECIAL EXCEPTION TO REQUIRED SCREENING REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the required screening when in the opinion of the board, the special exception will not adversely affect neighboring property, except that the board may not grant a special exception to the height requirements for screening around off-street parking.

**STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

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

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

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

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

**GENERAL FACTS (screening special exception):**

- The subject site is currently developed as a nonresidential use (Boise Cascade Building Materials Distribution) that currently has a CO (Certificate of Occupancy) for a “home improvement center, lumber, brick, or building materials sales yard” use. The special exception to the required screening regulations is triggered in part by Boise Cascade Building Materials proposing to increase the amount of outside storage on the property which requires them to make an application for a new CO for an “outside storage” use - a use that unlike “home improvement center, lumber, brick or building materials sales yard” requires screening around it.
- Note that the code allows a “home improvement center, lumber, brick, or building materials sales yard” use to have no more than 25 percent of the lot to be collectively occupied by accessory outside sales, accessory outside display of merchandise, and accessory outside storage. The code places no restriction of these functions for “outside storage” use.
- The subject site is zoned IR (Industrial Research). The applicant is seeking a new CO (Certificate of Occupancy) for an “outside storage” use on the property where the Dallas Development Code states that this use is permitted by right in CS, industrial, and central area districts. Screening required in CS, LI, IR, and central area districts.”
- The Dallas Development Code states that “required screening” must be not less than 6’ in height and must be constructed of brick, stone, or concrete masonry, stucco, concrete, or wood; earthen berm planted with turf grass or ground cover recommended for local use by the director of parks and recreation; evergreen plant materials recommended for local use by the director of parks and recreation; or any combination of these.  
The applicant has requested that “the Board waive (sic) the 6’ high screening requirement for outside storage, and allow a fence that has zero height.”

**GENERAL FACTS (tree preservation special exception):**

- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement Regulations apply to all property in the city except for: a) lots smaller than two acres in size that contain single family or duplex uses; and b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the provisions set forth in Chapter 51A.
- The Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with the following requirements:
  1. Quantity. The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured.
  2. Species. A replacement tree must be one of the specific “approved replacement trees” listed, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.
  3. Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by the code as an “alternate method of compliance with tree replacement requirements.” Replacement trees may not be planted within a visibility triangle, a water course, or an existing or proposed street or alley.
  4. Minimum size. A replacement tree must have a caliper of at least two inches.
  5. Timing. Except as otherwise provided in the code, all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees. If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official shall permit the property owner to plant the replacement trees during the six-month period. If the property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:
    - For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
    - In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.
 A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the tree preservation regulations.
- The Dallas Development Code provides the following “alternate methods of compliance with tree replacement requirements” if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the “tree removal property”):
  1. Donate the replacement tree to the city’s park and recreation department.

2. Plant the replacement tree on other property in the city that is within one mile of the tree removal property.
  3. Make a payment into the Reforestation Fund.
  4. Grant a conservation easement to the city.
- The applicant has stated on his application that “our expansion on the property requires us to remove 63 trees of which 20 are Cedar Elms and the balance are Bois D’Ark, Hawthorne, Oak, and Pecan. Since the Cedar trees simply grew up on the property that was not previously managed beyond the termination of its likely farmstead or ranching ancestry, I request that the Board waive the mitigation requirement for the Cedar Trees.”
  - The City of Dallas Chief Arborist submitted a memo to the Board Administrator (see Attachment A). The memo stated the following:
    - The applicant is seeking a special exception to the tree mitigation regulations of Article X, specifically from Section 51A-10.134 pertaining to Replacement of Removed or Seriously Injured Trees.
    - Trigger:  
New construction and expansion of paved outside storage area.
    - Deficiencies:  
The applicant proposed to remove 63 protected trees for their development expansion. This would result in the sum of 661 caliper inches of protected tree removal. The applicant has requested in the application to be exempted from mitigation requirements for the 20 protected eastern red cedar trees which have been measured to 232 caliper inches. The other 43 trees are protected deciduous trees generally ranging from 8 – 12 inches with the largest being a 30” oak.  
Reducing for the 232 inches from the 20 protected eastern red cedar trees would leave 429 inches (65 percent) remaining to be mitigated per Article X.
    - Factors:
      - The project has been permitted and an Article X landscape plan has been approved.
      - As indicated by their permit, the applicant proposes to complete all mitigation beyond what is exempted with this request. The plan review has indicated they would replace 84 inches on the property (12.7 percent) as a function of their landscaping. Article X allows for alternative methods of mitigation.
      - The large majority of trees on the property in the development area that were removed for construction were “non-protected” (not subject to mitigation) eastern red cedar trees under 12 inches as defined under Article X through Council amendment in 2003.
    - Recommendation
      - Approval of the reduction of the eastern red cedar trees from the mitigation requirement.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: IR (Industrial Research)



North: IR (Industrial Research)  
South: IR (Industrial Research)  
East: MF-1(A) (Multifamily)  
West: IR (Industrial Research)

### **Land Use:**

The site is currently developed with a “home improvement center, lumber, brick or building materials sales yard” use (Boise Cascade Building Materials Distribution). The areas to the north, south, east, and west appear to be either undeveloped or developed with 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:**

June 27, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 12, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 18, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<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.

September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 7, 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."

September 12, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request for a special exception to the tree preservation regulations (see Attachment A).

**STAFF ANALYSIS (screening special exception):**

- This request focuses on not providing 6' high brick, stone, concrete masonry, stucco, concrete, or wood screening that is required for the proposed "outside storage" use on the property that is currently developed with a "home improvement center, lumber, brick or building materials sales yard" use (Boise Cascade Building Materials Distribution.)
- This request is triggered in part by Boise Cascade Building Materials proposing to increase the amount of outside storage on the property which requires them to make an application for a new CO for an "outside storage" use - a use that unlike "home improvement center, lumber, brick or building materials sales yard" requires screening around it.
- As of September 12, 2011, one letter had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the screening regulations will not adversely affect neighboring property.
- Granting this special exception would allow the proposed "open storage" use without the required 6' high screening of brick/stone/concrete masonry, stucco, concrete, or wood; earthen berm; evergreen plant materials; or any combination of these.

**STAFF ANALYSIS (tree preservation special exception):**

- The request focuses on not fully mitigating protected trees (in this case, eastern red cedar trees) removed/to be removed on a site in conjunction in part with constructing and maintaining an approximately 77,000 square foot warehouse and an approximately 16,000 square foot office on a site developed with (according to the submitted site plan) an approximately 24,000 square foot warehouse, an approximately 10,000 square foot "pavilion," and an approximately 45,000 square foot "pavilion."
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.

- The City of Dallas Chief Arborist recommends approval of the request since the only exemption sought from the Tree Preservation Regulations is for eastern red cedar trees removed and/or to be removed on the subject site.
- If the Board were to grant this request, the site would be “excepted” from full compliance to the Tree Preservation Regulations of the Dallas Development Code, in this case, an exception/exemption from mitigating eastern red cedar trees removed and/or to be removed on the site.

**BOARD OF ADJUSTMENT ACTION: September 20, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-082** 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 tree survey is required.

**SECONDED: Goins**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**MOTION: Goins**

I move to adjourn this meeting.

**SECOND: Jackson**

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

**NAYS: 0** -

**MOTION PASSED: 5– 0** (unanimously)

**1:07 P.M.** - Board Meeting adjourned for **September 20, 2011.**

\_\_\_\_\_  
CHAIRPERSON

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

\_\_\_\_\_  
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.