

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, JANUARY 19, 2011**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

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

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 19, 2011 docket.**

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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B November 17, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011

MOTION: Duarte

I move approval of the **Wednesday, November 17, 2010** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-110

BUILDING OFFICIAL'S REPORT:

Application of Rob Baldwin for a special exception to the fence height regulations at 4863 Nashwood Lane. This property is more fully described as Lot 16 in City Block E/6394 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 5-foot 6-inch high fence which will require a special exception of 1-foot 6-inches.

LOCATION: 4863 Nashwood Lane

APPLICANT: Rob Baldwin

REQUEST:

- A special exception to the fence height regulations of to 1' 6" is requested in conjunction with constructing and maintaining a 5' 2" high open wrought iron fence with 5' 6" high brick columns to be located in the site's 40' required front yard on a site developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is located at the northwest corner of Nashwood Lane and Drujon Lane. Regardless of how the Nashwood Lane frontage of the subject site functions as its front yard and the Drujon Lane frontage functions as its side yard, the subject site has only one front yard setback which in this case is Drujon Lane the shorter of the two frontages which is always deemed a front yard on a corner lot in a single family zoning district.
- 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/elevation document indicating that the proposal in the 40' Drujon Lane required front yard reaches a maximum height of 5' 6".
- The following additional information was gleaned from the submitted revised site plan/elevation:
 - The proposal located in the Drujon Lane required front yard over 4' in height is approximately 80' in length parallel to the street and approximately 40' in length *perpendicular* to Drujon Lane on the north and south sides of the site in the required front yard.
 - The proposal is shown to be located on the site's Drujon Lane front property line or 12' from the curb line.
- No single family home "fronts" to the proposed fence on the subject site since the home on the lot immediately east across Drujon Lane fronts southward onto Nashwood Lane as does the home on the subject site.
- 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.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request and a revised site plan/elevation document.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16,000 square feet)

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

Land Use:

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

Zoning/BDA History:

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

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 B.

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 7th 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 to the Board Administrator beyond what was submitted with the original application (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 constructing and maintaining a 5' 2" high open wrought iron fence with 5' 6" high brick columns to be located in the site's 40' required front yard on a site developed with a single family home.
- The subject site is located at the northwest corner of Nashwood Lane and Drujon Lane. Regardless of how the Nashwood Lane frontage of the subject site functions as its front yard and the Drujon Lane frontage where the proposal that is the nature of this request is located functions as its side yard, the subject site has only one front yard setback which in this case is Drujon Lane the shorter of the two frontages which is always deemed a front yard on a corner lot in a single family zoning district.
- The submitted revised site plan/elevation documents the location, height, and material of the fence over 4' in height in the Drujon Lane required front yard. The site plan shows the fence to be approximately 80' in length parallel to Drujon Lane and approximately 40' in length *perpendicular* to Drujon Lane on the north and south sides of the site in the required front yard; and to be located on the site's Drujon Lane front property line or 12' from the curb line. The elevation shows that the proposed fence to be a 5' 2" high open wrought iron fence with 5' 6" high brick columns.
- No single family home "fronts" to the proposed fence on the subject site since the home on the lot immediately east across Drujon Lane fronts southward onto Nashwood Lane as does the home on the subject site.
- 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 required front yard.
- As of January 10, 2011, 21 letters had been submitted in support of the proposal, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 1' 6" (whereby the proposal would reach a maximum of 6' 6" in height in the site's Drujon Lane required front yard) will not adversely affect neighboring property.
- Granting this special exception of 14' 6" with a condition imposed that the applicant complies with the submitted revised site plan/elevation would assure that the proposal exceeding 4' in height in the Drujon Lane required front yard would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment grant application **BDA 101-110** 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/elevation is required.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-111

BUILDING OFFICIAL’S REPORT:

Application of Rob Baldwin for a special exception to the fence height regulations at 4219 Park Lane. This property is more fully described as Lot 2A in City Block E/5547 and is zoned R-10(A) 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: 4219 Park Lane

APPLICANT: Rob Baldwin

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining a 7’ 6” wrought iron entry gate with flanking 8’ high brick entry gate columns/ 5’ 5” high, 1’ 6” long brick “wing walls” in the site’s 30’ front yard setback on a site currently developed with a single family home. (The submitted site plan notes that the existing entry columns on the site are to be removed).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan/elevation indicating an entry column/gate proposal in the site's front yard setback that would reach a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - The entry gate/column proposal is shown to be approximately 19' in length across the driveway.
 - The fence proposal is shown to be located approximately on property line and approximately 20' from the pavement line.
- The proposed entry column/gate feature would be located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4' in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (generally 500 feet east and west of the site) and noted one other fence that appeared to be located in a front yard setback and higher than 4' in height: a 6' high open metal fence with 6' high columns located two lots east of the subject site that appears to be a result of a special exception granted by the Board of Adjustment in 2001: BDA001-205.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district 10,000)
North: R-10(A) (Single family district 10,000)
South: R-10(A) (Single family district 10,000)
East: R-10(A) (Single family district 10,000)
West: R-10(A) (Single family district 10,000)

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. BDA001-205, Property at 4241 On May 15, 2001, the Board of Adjustment

Park Lane (two lots immediately east of the subject site)

Panel B granted a request for a special exception to fence height regulations to maintain an open metal scalloped fence ranging in height from 5.5-6 feet in height with 6' high stucco and cast stone columns on the property, and imposed the following conditions to the request: 1) compliance with the submitted revised site/landscape plan is required, and 2) a revised fence elevation plan to be submitted to the Board Administrator is required indicating an open metal scalloped fence ranging in height from 5.5-6 feet in height with 6' high stucco and cast stone columns. The case report stated that the request was made in conjunction with constructing and maintaining an open iron painted scalloped fence ranging in heights from 6' to 6' 7"; 7' high stucco and cast stone columns in the front yard setback along Park Lane.

Timeline:

- August 5, 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 B.
- 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 7th 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 to the Board Administrator beyond what was submitted with the original application (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.

January 6, 2011: The Sustainable Development 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:

- The request focuses on constructing and maintaining a 7' 6" wrought iron entry gate with flanking 8' high brick entry gate columns/ 5' 5" high, 1' 6" long brick "wing walls" in the site's 30' front yard setback on a site currently developed with a single family home.
- A site plan/elevation has been submitted indicating a column/gate proposal that reaches a maximum height of 8'. The site plan indicates that the proposal is about 19' in length parallel to the street, and is approximately on the property line or about 20' from the pavement line. The elevation shows that the proposal is a 7' 6" high wrought iron entry gate with flanking 8' high brick entry gate columns/ 5' 5" high, 1' 6" long brick "wing walls."
- The proposed entry column/gate feature would be located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4' in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (generally 500 feet east and west of the site) and noted one other fence that appeared to be located in a front yard setback and higher than 4' in height: a 6' high open metal fence with 6' high columns located two lots east of the subject site that appears to be a result of a special exception granted by the Board of Adjustment in 2001: BDA001-205.
- As of January 10, 2011, one letter had been submitted to staff in support of the application and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal 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 site plan/elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment grant application **BDA 101-111** 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/elevation is required.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-115

BUILDING OFFICIAL’S REPORT:

Application of Brent A. Stone for a special exception to the fence height regulations at 4408 Irvin Simmons Drive. This property is more fully described as Lot 1 in City Block 8/5504 and is zoned R-1/2ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8-foot high fence which will require a special exception of 4 feet.

LOCATION: 4408 Irvin Simmons Drive

APPLICANT: Brent A. Stone

REQUEST:

- A special exception to the fence height regulations of to 4’ is requested in conjunction with constructing and maintaining an 8’ high board on board fence/wall and gate to be located in one of the site’s required front yard on a site developed with a single family home – Bushire 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 located at the southeast corner of Irvin Simmons Drive and Bushire Drive. Even though the Irvin Simmons Drive frontage of the subject site functions as its front yard and the Bushire Drive frontage functions as its side/rear yard, the subject site has required front yards along both streets. The site has a 50' platted required front yard along Irvin Simmons Drive (the shorter of the two frontages which is always deemed a front yard on a corner lot in a single family zoning district), and a 20' platted required front yard along Bushire 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 Bushire Drive frontage is deemed a front yard regardless of its function in order to maintain the continuity of the required front yard established by the one lot immediately south of the site between Irvin Simmons Drive and Royal Lane that fronts/is oriented westward onto Bushire 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 and elevations indicating that the proposal in the 20' Bushire Drive required front yard reaches a maximum height of 8'. (No fence is proposed to be constructed/maintained in the subject site's 40' Irvin Simmons Drive front yard setback).
- The following additional information was gleaned from the submitted site plan:
 - The proposal located in the Bushire Drive required front yard over 4' in height is approximately 50' in length parallel to the street and approximately 10' in length *perpendicular* to Bushire Drive on the north side of the site in the required front yard and approximately 16' in length *perpendicular* to Bushire Drive on the south side of the site in the required front yard.
 - The proposal is shown to be located as close as 4' from the Bushire Drive front property line or as close as 15' from the curb line.
- No single family home "fronts" to the proposed fence on the subject site since the two lots immediately west of the site on Bushire Drive front either north on Irvin Simmons Drive or south on Glenaire Drive.
- 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. One approximately 8' high solid board fence and one approximately 6' high solid brick fence were noted on the two lots immediately west of the site along Bushire Drive – however, the Bushire Drive frontage on these two corner lots is a side yard since there is no intervening lot between them where a 9' high fence is allowed by right.

BACKGROUND INFORMATION:

Zoning:

- Site: R-1/2ac(A) (Single family district ½ acre)
- North: R-1/2ac(A) (Single family district ½ acre)
- South: R-16(A) (Single family district 16,000 square feet)

East: R-1/2ac(A) (Single family district ½ acre)
West: R-16(A) (Single family district 16,000 square feet)

Land Use:

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

November 4, 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 B.

December 20, 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 7th 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 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 board on board fence/wall and gate to be located in one of the site's required front yard on a site developed with a single family home – Bushire Drive.
- The proposal that is the issue of this request is located on a site that has two required front yards – one required front yard on Irvin Simmons Drive (the site's front yard setback that functions as its front yard where no fence is proposed); the other required front yard on Bushire Drive (the site's front yard setback that functions as its side/rear yard where proposed fence that is the issue of this request would reach 8' at its highest point).
- Regardless of the way the subject site's Bushire Drive frontage functions as the site's side/rear yard, this Bushire Drive frontage is technically deemed a required front yard in order to maintain the continuity of the established required front yard established by one lot immediately south of the site between Irvin Simmons Drive and Royal Lane that fronts/is oriented westward onto Bushire Drive.
- The submitted site plan and elevations document the location, height, and material of the fence over 4' in height in the Bushire Drive required front yard. The site plan shows the fence to be approximately 50' in length parallel to Bushire Drive and approximately 16' in length *perpendicular* to Bushire Drive on the south side of the site in the required front yard; and to be located as close as 4' from the site's Bushire Drive front property line or as close as 15' from the curb line. The elevations show that the proposed fence to be board on board.
- No single family home "fronts" to the proposed fence on the subject site since the two lots immediately west of the site on Bushire Drive front either north on Irvin Simmons Drive or south on Glenaire Drive.
- 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. One approximately 8' high solid board fence and one approximately 6' high solid brick fence were noted on the two lots immediately west of the site along Bushire Drive – however, the Bushire Drive frontage on these two corner lots is a side yard since there is no intervening lot between them where a 9' high fence is allowed by right
- As of January 10, 2011, no letters had been submitted in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal would reach a maximum of 8' in height in the site's Bushire Drive required front yard) will 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 elevations would assure that the proposal exceeding 4' in height in the Bushire Drive required front yard would be constructed and maintained in the location and of the height and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment grant application **BDA 101-115** 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 elevations is required.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-117

BUILDING OFFICIAL’S REPORT:

Application of Britton Banowsky for a special exception to the fence height regulations at 7111 Fisher Road. This property is more fully described as Lot 2A in City Block 4404 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 high fence which will require a special exception of 2 feet.

LOCATION: 7111 Fisher Road

APPLICANT: Britton Banowsky

REQUEST:

- A special exception to the fence height regulations of 2’ is requested in conjunction with constructing and maintaining a 6’ high cedar and galvanized wire grid fence with 6’ high stone columns and a 6’ high solid wood gate in the site’s 40’ front yard setback on a site currently being developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan/elevation indicating a fence/column/gate proposal in the site's front yard setback that would reach a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is shown to be approximately 140' in length parallel to the street and as much as approximately 35' in length perpendicular to the street on the northwest and southeast sides of the site in the front yard setback.
 - The fence proposal is shown to be located at a range of 0' – 25' from the property line or approximately 15' - 40' from the pavement line.
- The proposal would be located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4' in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Fisher Road (generally 500 feet northwest and southeast of the site) and noted no other fences that appeared to be located in a front yard setback and higher than 4' in height.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- October 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.
- December 15, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- 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 7th 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 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:

- The request focuses on constructing and maintaining a 6' high cedar and galvanized wire grid fence with 6' high stone columns and a 6' high solid wood gate in the site's 40' front yard setback on a site currently being developed with a single family home.
- A site plan/elevation has been submitted indicating a fence/column/gate proposal that reaches a maximum height of 6'. The site plan indicates that the proposal is about 140' in length parallel to the street and as much as 35' in length perpendicular to the street on the northwest and southeast sides of the site in the front yard setback; is located at a range of approximately 0' – 25' from the property line or approximately 15' – 40' from the pavement line. The elevation shows that the proposal is a 6' high cedar and galvanized wire grid fence with 6' high stone columns and a 6' high solid wood gate.
- The proposal would be located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4' in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Fisher Road (generally 500 feet northwest and southeast of the site) and

noted no other fences that appeared to be located in a front yard setback and higher than 4' in height.

- As of January 10, 2011, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 6' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan/elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment grant application **BDA 101-117** 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/elevation is required.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-118

BUILDING OFFICIAL’S REPORT:

Application of Si Il Kim for a special exception to the parking regulations at 10550 Walnut Street. This property is more fully described as Lot 3 in City Block 8445 and is zoned CR which requires parking to be provided. The applicant proposes to construct/maintain a structure for a personal service use, restaurant without drive-in service use, and general merchandise or food store less than 3500 square foot use and provide 110 of the required 146 parking spaces which will require a special exception of 36 spaces.

LOCATION: 10550 Walnut Street

APPLICANT: Si Il Kim

January 19, 2011 Public Hearing Notes:

- The Board Administrator circulated a January 14th email from the applicant's representative (see Attachment A). This email requested a postponement of action on the application until February 16th to allow the applicant additional time to substantiate his parking reduction request.

REQUEST:

- A special exception to the off-street parking regulations of 36 parking spaces (or a 25 percent reduction of the required off-street parking) is requested in conjunction with leasing vacant square footage/space within an existing approximately 24,000 square foot retail strip center with certain uses, and providing 110 of the required 146 off-street parking spaces.

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development Department Project Engineer recommends that this request be denied since there has not been adequate information provided by the applicant to justify the requested parking reduction.
- The applicant has not substantiated how the parking demand generated by the existing/proposed general merchandise, personal service, and restaurant uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:
 - General merchandise or food store 3,500 square feet or less: 1 space for 200 square feet of floor area.
 - Personal service use: 1 space per 200 square feet of floor area.
 - Restaurant without drive-in service use: 1 space per 200 square feet of floor area
 The applicant proposes to provide 110 (or 75 percent) of the required 146 off-street parking spaces in conjunction with the site being leased/maintained with a combination of the uses mentioned above.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: City of Garland
South: CR (Community Retail)
East: CR (Community Retail)
West: PD No. 255 (Planned Development)

Land Use:

The subject site is developed as a retail strip center. The areas to the north, east, and west are developed with retail uses; and the area to the south is developed with multifamily 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:

- November 22, 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 B.
- December 17, 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 7th 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 and Construction Department Project Engineer submitted a review comment sheet marked

“Recommends that this be denied” with the following comments:
“Inadequate information was provided to justify the requested parking reduction.”

STAFF ANALYSIS:

- This request focuses on leasing vacant square footage/space within an existing approximately 24,000 square foot retail strip center with certain uses, and providing 110 (or 75 percent) of the required 146 off-street parking spaces.
- The applicant has stated that there are no proposed plans to increase the size of center, and that while there are three vacant premises on the site the property has enough parking spaces to serve the whole shopping center.
- The Sustainable Development Department Project Engineer recommends that this application be denied since there has not been adequate information provided by the applicant to justify the requested parking reduction.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing/proposed uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 36 spaces (or a 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 36 spaces shall automatically and immediately terminate if and when the general merchandise or food store 3,500 square feet or less, personal service, and/or restaurant without drive-in service uses are changed or discontinued, the applicant would be allowed to develop/lease/maintain the site with these specific uses and provide only 110 of the 146 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 101-118**, hold this matter under advisement until **February 16, 2011**.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Agnich

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

1:05 P.M. - Board Meeting adjourned for.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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