

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, MAY 18, 2011**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair Christian Chernock, regular member, David Wilson, regular member and Paula Leone, regular 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 Paula Leone, regular 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, Phil Erwin, Chief Arborist, Tammy Palomino, Asst. City attorney 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, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

11:09 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 18, 2011 docket.**

1:05P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B April 20, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 18, 2011

MOTION: Leone

I move approval of the **Wednesday, April 20, 2011** Board of Adjustment Public Hearing minutes.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 101-032

REQUEST: To reimburse the filing fee submitted in conjunction with a request for a special exception to the tree preservation regulations – BDA 101-032

LOCATION: 7255 W. Camp Wisdom Road

APPLICANT: Greg Pruett, President of Pioneer Bible Translators

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
- If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
- In making this determination, the board may require the production of financial documents.

Timeline:

March 30, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" – BDA 101-032, and related documents to this application. (See Attachment A for the materials submitted in conjunction with this application – an application that included a request for a reimbursement of the filing fee which in this case was \$2,350.00).

April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 21, 2011: The Board Administrator emailed the applicant information related to the application and related fee reimbursement request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: MAY 18, 2011

APPEARING IN FAVOR: Greg Pruitt, 7255 Camp Wisdom, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 101-032** grant the request to **reimburse** the filing fee submitted in conjunction with a special exception to the tree preservation regulations.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-032

BUILDING OFFICIAL'S REPORT:

Application of Gregg Pruitt for a special exception to the tree preservation regulations at 7255 W. Camp Wisdom Road. This property is more fully described as Lot 1 in City

Block A/ 8598 and is zoned LO-1, which requires mandatory tree mitigation. The applicant proposes to construct a structure and provide an alternate tree preservation plan which will require a special exception.

LOCATION: 7255 W. Camp Wisdom Road

APPLICANT: Gregg Pruet

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with not fully mitigating protected trees removed/to be removed on a site being developed with (according to the application) a 10,000 square foot institutional use (Pioneer Bible Translators).

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted landscape plan is required.
2. Compliance with Section 51A-10.108, General Maintenance, is required.
3. All development must comply with the minimum landscape standards of Article X, as amended. A landscape plan for construction must include a complete tabulation of provided and remaining mitigation as of the date of permit review.
4. Protected trees within the 'Area of next phase of development', per plan, may be removed with permit.
5. All other trees are subject to removal based on approval of the Building Official, per the conditions of Section 51A-10.132(e), Decision of the Building Official, or as necessary for purposes listed in Section 51A-10.140(b), Defense to Prosecution.
6. All trees to be mitigated up to 1,600 caliper inches are not subject to Section 51A-10.134 for 'timing.' All additional mitigation is subject to Article X requirements.

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 with the imposition of the conditions mentioned above, based upon among other things how the applicant proposes to compensate for mitigation by:
 - 1) a reduced carbon footprint by the introduction of an environmentally- valuable HVAC system on the site that includes geothermal heat exchange technology and general green building improvements; and
 - 2) the protection and stewardship of over 13 acres of the 22-acre site as open space and woodland – an area that the applicant is not technically able to designate as a "conservation easement" (an "alternate method of tree mitigation" provided in Article X) given that this area is an escarpment zone.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

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

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

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

GENERAL FACTS:

- 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 “PBT is removing 1,600 caliper inches of trees out of an estimated 15,000 on the lot to build 10,000 square feet of institutional use building in 2 phases. We proposed to mitigate 1,600 caliper inches by installing thirty 300 ft. deep geothermal heat exchange wells for an environmentally valuable HVAC system. This will have no impact on our neighbors. Since 12 of 22 acres remain forested further tree mitigation would unreasonably burden the use of the property.”
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:
 - The applicant is seeking a special exception to Sections 51A-10.134 pertaining to replacement (mitigation) of removed trees and 51A-10.135 being alternate methods of tree replacement. The applicant requests the special exception to provide the following:
 1. tree mitigation resolution for a total of 1,600 caliper inches (quantity) from the current development (1,211”) and a future unscheduled construction (389”);
 2. tree mitigation resolution for future construction (389”) within an unspecified timeline (timing);
 3. tree mitigation resolution through a proposed alternate method of mitigation to compensate for the reduction of, or noncompliance with, available forms of mitigation including planting on site or complying with available alternate methods of mitigation by ordinance..
 - Trigger:
New construction and the related removal of protected trees
 - Deficiencies:

The ongoing development has presently incurred 1,211 inches of tree replacement requirement for the initial phase of development with the detention pond. A future proposed expansion could likely remove a minimum of 389 inches of protected trees for a potential removal of at least 1,600 inches. The current mitigation debt at the date of this letter is 1,211 inches.

- Factors for consideration:
 - Upon final inspection of the initial construction, the property will comply with Article X landscape requirements.
 - The applicant will be adding 2 new 3" caliper red oak trees for 6" of total mitigation compliance on the property.
 - The applicant proposes compensation of mitigation by: 1) a reduced carbon footprint by the introduction of the "environmental value of the HVAC system that includes geothermal heat exchange technology and general green building improvements, and 2) the protection and stewardship of 13.4 acres of open space and woodland with significant topography. In total, native vegetation covers about 14.6 acres or 2/3 of the lot. The applicant has developed for minimal impervious surface.
 - The property is 22.1 acres in size. Approximately 11 acres is within the Escarpment Zoned which is restricted area from development protected under Article V. The zone is 82 percent of the overall listed 13.4 acres of open space and woodland to be protected and nearly half of the total property area. The lands area is heavily wooded and not open to planting of nursery stock or the installation of irrigation systems.
 - The property is not eligible for the full mitigation reduction potential of conservation easement under Article X, Section 51A-10.135. Escarpment zones are generally not allowed for use for credit in Article X conservation easements as they are not 'attractive for development.' Article V prohibits any development in escarpment zones, and is also restrictive to construction for adjacent land areas. For purposes of comparison, if the maximum land area to be protected was available for a conservation easement (no escarpment), the property would be eligible for 1,280 inches (80 percent of the 1,600 inches) of mitigation reduction by ordinance.
 - The request is for a special exception of 1,600 inches of mitigation. Any tree removal permit that may occur on the property above this threshold would be mitigated per Article X requirements.
- Recommendation
 - Approval, subject to the submitted landscape plan and the following (additional) conditions.
 1. Compliance with Section 51A-10.108, General Maintenance, is required.
 2. All development must comply with the minimum landscape standards of Article X, as amended. A landscape plan for construction must include a complete tabulation of provided and remaining mitigation as of the date of permit review.
 3. Protected trees within the 'Area of next phase of development', per plan, may be removed with permit.
 4. All other trees are subject to removal based on approval of the Building Official, per the conditions of Section 51A-10.132(e), Decision of the

Building Official, or as necessary for purposes listed in Section 51A-10.140(b), Defense to Prosecution.

5. All trees to be mitigated up to 1,600 caliper inches are not subject to Section 51A-10.134 for 'timing.' All additional mitigation is subject to Article X requirements.

BACKGROUND INFORMATION:

Zoning:

Site: LO-1 (Limited Office)
North: A(A) (Agricultural)
South: PD No. 521 (Planned Development)
East: MF-1(A) (Multifamily)
West: R-7.5(A) & TH-1(A) (Single family 7,500 square feet and townhouse)

Land Use:

The site is currently being developed with developed with (according to the application) a 10,000 square foot institutional use (Pioneer Bible Translators). The areas to the north and east appear to be undeveloped; and the areas to the south and west are developed with single family uses.

Zoning/BDA History:

1. Miscellaneous Item #2, Property at 7255 W. Camp Wisdom Road (the subject site) On May 18, 2011, the Board of Adjustment Panel B will consider reimbursing the filing fee submitted in conjunction with BDA 101-032 – a request for a special exception to the tree preservation regulations.

Timeline:

- March 30, 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.
- April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the 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, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

May 4, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

STAFF ANALYSIS:

- The request focuses on not fully mitigating protected trees removed/to be removed on a site being developed with (according to the application) a 10,000 square foot institutional use (Pioneer Bible Translators).
- The 1,600 caliper inches of trees that have been removed/or will be removed on the site are required to either be planted on site, or provided through one or more of the alternate methods of compliance provided in Article X: The Landscape and Tree Preservation Regulations of the Dallas Development Code – options including planting trees within one mile of the property; donating trees to the Park Department; making a payment into the Reforestation Fund, and granting a conservation easement to the City.
- 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 (in this case, a site that is currently under development as an institutional use (Pioneer Bible Translators)); and
 - The special exception will not adversely affect neighboring property.
- The City of Dallas Chief Arborist recommends approval of the request, subject to the following conditions previously mentioned in this case report. The Chief Arborists conditional support is based upon among other things how the applicant proposes to compensate for mitigation by:
 - 1) a reduced carbon footprint by the introduction of an environmentally-valuable HVAC system on the site that includes geothermal heat exchange technology and general green building improvements; and
 - 2) the protection and stewardship of over 13 acres of the 22-acre site as open space and woodland – an area that the applicant is not technically able to designate as a “conservation easement” (an “alternate method of tree mitigation” provided in Article X) given that this area is an escarpment zone.

- If the Board were to grant this request and impose the conditions suggested by staff/the Chief Arborist, the site would be “excepted” from full compliance to the tree preservation regulations of the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: MAY 18, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 101-032** 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 landscape plan is required.
- Compliance with Section 51A-10.108, General Maintenance, is required.
- All development must comply with the minimum landscape standards of Article X, as amended. A landscape plan for construction must include a complete tabulation of provided and remaining mitigation as of the date of permit review.
- Protected trees within the ‘Area of next phase of development’, per plan, may be removed with permit.
- All other trees are subject to removal based on approval of the Building Official, per the conditions of Section 51A-10.132(e), Decision of the Building Official, or as necessary for purposes listed in Section 51A-10.140(b), Defense to Prosecution.
- All trees to be mitigated up to 1,600 caliper inches are not subject to Section 51A-10.134 for ‘timing.’ All additional mitigation is subject to Article X requirements.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-038

BUILDING OFFICIAL’S REPORT:

Application of Douglas Jorgensen for a special exception to the sign regulations at 10400 N. Central Expressway. This property is more fully described as Lot 1C in City Block A/7292 and is zoned MC-1 which allows 1 detached sign for every 450 feet, or

fraction thereof, of frontage on a public street. The applicant proposes to construct an additional detached premise sign which will require a special exception.

LOCATION: 10400 N. Central Expressway

APPLICANT: Douglas Jorgensen

REQUESTS:

- A special exception to the sign regulations is requested in conjunction with erecting and maintaining an additional detached sign on the property near the intersection of North Central Expressway northbound service road and Meadow Road. The site is developed with a medical office use (Minimally Invasive Spine Institute) and currently has two detached signs – one detached sign along its North Central Expressway service road frontage and another along its Meadow Road frontage.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how strict compliance with the sign regulations (in this case, the site being held to one detached premise sign along each of the site's street frontages) would result in an inequity since the site has limited visibility due to the adjacent elevated freeway to its west (North Central Expressway). The proposed additional sign in its proposed location near the intersection of North Central Expressway and Meadow Road would provide direction and identification of the medical office use on the site (Minimally Invasive Spine Institute) to patients or emergency vehicles, particularly those traveling southbound from Central Expressway and eastbound on Meadow Road.
- In addition, there appears to be no corresponding benefit to the city and its citizens in accomplishing the objective of the sign regulations in this case (i.e. holding this site to just one sign on each street frontage) since the proposed additional sign has been represented as being in compliance with all other Code requirements. (If for any reason, the "additional sign" granted by the board in this request was discovered to be out of compliance with some other Code requirement at a later date, the applicant would be required to return to the board with a new application to address any issue that the board is empowered to consider related to non-compliance with city sign codes).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the

requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

GENERAL FACTS:

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that one expressway sign is allowed for every 450 feet of frontage or fraction thereof on an expressway.
The applicant has submitted a site plan which indicates the locations of existing signs along the North Central Expressway northbound service road and Meadow Road. The site plan also indicates the location of a proposed sign near/at the intersection of these two streets at the southwest corner of the property. The applicant has also submitted a sign elevation denoting a monument sign that is 4' 4" – 5' 5" high and 12' in length.
- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: MC-1 (Deed Restricted)(Multiple Commercial)
North: MU-3 (Mixed use)
South: MU-3 (SAH) (Mixed use)(Standard Affordable Housing)
East: MF-2 (A) (Multifamily)
West: MU-1 (Mixed use)

Land Use:

The site is currently developed with a medical office use (Minimally Invasive Spine Institute). The area to the north is developed with office use; the area to the east is developed with multifamily use; the area to the south is undeveloped; and the area to the west is developed as the North Central Expressway. (Note that although the property is deed restricted, the applicant has represented “that there are no deed restrictions regarding signs.”)

Zoning/BDA History:

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

Timeline:

March 9, 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.

- April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 2, 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment A).
- May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the 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, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- May 5, 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: "Comply with all C.O.D visibility requirements." (Note that the proposed sign that is the issue in this application appears on the submitted site plan to be in compliance with the city's visual obstruction regulations).

STAFF ANALYSIS:

- The request focuses on erecting and maintaining an additional detached sign on the property near the intersection of North Central Expressway northbound service road and Meadow Road. The site is developed with a medical office use (Minimally Invasive Spine Institute) and currently has two detached signs – one detached sign along its North Central Expressway service road frontage and another along its Meadow Road frontage.
- A site plan has been submitted which indicates the locations of existing signs along the North Central Expressway northbound service road and Meadow Road. The site plan also indicates the location of a proposed sign near/at the intersection of these two streets at the southwest corner of the property.

- A sign elevation has been submitted denoting a monument sign that is 4' 4" – 5' 5" high and 12' in length.
- The applicant has represented that "if the sign is allowed it will meet all required city codes."
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along each of its street frontages) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception would allow an additional sign on the site – in this case a sign that could serve to provide direction and identification of the medical office use on the site (Minimally Invasive Spine Institute) to patients or emergency vehicles, particularly those traveling southbound from Central Expressway and eastbound on Meadow Road. If the Board were to impose the submitted elevation and site plan as a condition to the request, the additional sign would be limited to the specific location and characteristics as shown of these documents.

BOARD OF ADJUSTMENT ACTION: MAY 18, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 101-038** 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.

- Strict compliance with the submitted site plan and elevation is required.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-043

BUILDING OFFICIAL'S REPORT:

Application of Donald Pate for a special exception to the fence height regulations at 9438 Inwood Road. This property is more fully described as Lots 1 and 2 in City Block 9/5582 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 an 8-foot high which will require a special exception of 4 feet.

LOCATION: 9438 Inwood Road

APPLICANT: Donald Pate

May 18, 2011 Public Hearing Notes:

- The applicant submitted a gate elevation to the board at the public hearing.

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining a 7' 6" high stone veneer wall 8' high cast stone columns and two, 7' 6" high metal swing gates ("design "TBD"") in the site's 40' front yard setback on a lot developed with a single family home. (The proposed fence appears to be replacement of an approximately 4' high open wrought iron fence in the property's front yard setback).

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 had submitted a site plan/elevation indicating that the proposal in the required front yard setback reaches a maximum height of 8'.

- The following additional information was gleaned from the submitted site plan:
 - The proposal is approximately 144' in length parallel to the street and approximately 40' in length *perpendicular* to the street on the north and south sides of the site in the front yard setback.
 - The fence proposal is shown to be located on the front property line or about 14' – 20' from the curb line.
 - The proposed gates (of materials “to be determined”) are shown to be located approximately 13' from the front property line or about 27' – 33' from the curb line.
- The submitted site plan denotes several notations pertaining to landscaping adjacent to the proposed wall: “retain and salvage existing landscaping were possible. Replant as necessary,” “remove existing evergreen tree, retain existing crape myrtle.”
- Two single family homes “front” to the proposal on the subject site, one of which appears to have a fence higher than 4' in height in its front yard setback – an approximately 6' high solid stucco wall with no recorded BDA history.
- 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 following additional fences above four (4) feet high which appeared to be located in a front yard setback beyond what was previously described:
 - an approximately 6' high open wrought iron fence with approximately 7' high stucco columns immediately south of the site that may be the result of a granted fence height special exception from October of 2002- BDA 012-248; and
 - an approximately 8.5' high solid stone fence two lots southwest of the site that appears to be a result of an approved fence height special exception from November of 2006- BDA 056-235.

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, east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. BDA 101-020, Property at 5100 Park Lane (two lots north of subject site) | <p>On February 15, 2011, the Board of Adjustment Panel A granted special exceptions to the fence height regulations of up to 8' 8" imposing the submitted site plan</p> |
|--|---|

and elevation document as a condition to the request. The staff report stated that these requests were made in conjunction with constructing and maintaining the following in the site's 40' Park Lane front yard setback: an 8' high open wrought iron fence with 9' high stone columns and an approximately 11.5' high open wrought iron gate with 12' 8" high entry gate columns parallel to Park Lane, and an 8' high stucco wall with 9' high stone columns perpendicular to Park Lane on the east side of the subject site ; and in the site's 40' Inwood Road front yard setback: an 8' high stucco wall with 9' high stone columns parallel and perpendicular to Inwood Road on the west and south sides of the subject site

2. BDA 012-248, Property at 9430 Inwood Road (the lot immediately south of subject site)

On October 22, 2002, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 5' 3.5" to the front yard fence height regulations and a special exception of 3.5 inches to the side yard fence regulations and imposed the submitted site plan and elevation as a condition to the request. The case report stated that a special exception of 5' 3.5" to the *front* yard fence height regulations was requested in conjunction with the constructing and maintaining the following in the *front* yard setback along Inwood Road: an 8' high solid wall; an 8' high open metal entry gate; and 9' 3.5" high columns; and that a special exception of 3.5" to the *side* yard fence height regulations was requested however, upon further review of plans and elevations, the applicant has informed the Board Administrator that there was no longer a need for that request.

3. BDA 056-235, Property at 5031 Deloache (two lots southwest of subject site)

On November 14, 2006, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4.5' and a special exception to the visual obstruction regulations and imposed the submitted revised site plan and elevation and that gates must be set 20 feet from edge of pavement as a condition to the requests. The case report stated that the

requests were made in conjunction with constructing and maintaining an 8' high solid stone wall with 8.5' high columns.

Timeline:

- March 24, 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.
- April 20, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 21, 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the 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, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- May 5, 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: "Comply with all C.O.D visibility requirements." (Note that no item appears to be represented on the submitted site plan as being located in a visibility triangle).

STAFF ANALYSIS:

- This request focuses on replacing what appears to be an approximately 4' high open wrought iron fence with a 7' 6" high stone veneer wall 8' high cast stone columns and two, 7' 6" high metal swing gates ("design "TBD") in the site's 40' front yard setback on a lot developed with a single family home.
- The submitted site plan/elevation documents the location, height, and materials of the proposed solid stone veneer fence/wall over 4' in height in the required front yard setback. The site plan indicates that the proposal is about 144' in length parallel to

the street and approximately 40' in length *perpendicular* to the street on the north and south sides of the site in the front yard setback. The plan shows the fence to be located approximately on the site's front property line or about 14' – 20' from the curb line. The proposed gates (of materials "to be determined") are shown to be located approximately 13' from the front property line or about 27' – 33' from the curb line.

- The submitted site plan denotes several notations pertaining to landscaping adjacent to the proposed wall: "retain and salvage existing landscaping were possible. Replant as necessary," "remove existing evergreen tree, retain existing crape myrtle."
- Two single family homes "front" to the proposal on the subject site, one of which appears to have a fence higher than 4' in height in its front yard setback – an approximately 6' high solid stucco wall with no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two additional fences above four (4) feet high in the immediate area which appeared to be located in a front yard setback beyond what was previously described in the "General Facts" section of this case report.
- As of May 9, 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 4' 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 provide assurance that the proposal exceeding 4' in height in the front yard setback would be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: MAY 18, 2011

APPEARING IN FAVOR: Donald pate, 9438 Inwood Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1 Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 101-043**, on application of Donald Pate, **deny** the fence height special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Reynolds

AYES: 1– Gillespie

NAYS: 4 – Reynolds, Chernock, Wilson, Leone

MOTION FAILED 4 –1

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 101-043**, on application of Donald Pate, **grant** the request of this applicant to construct and maintain an eight-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required including the gate elevation submitted on May 18, 2011.

SECONDED: Leone

AYES: 4 – Reynolds, Chernock, Wilson, Leone

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

FILE NUMBER: BDA 101-037

BUILDING OFFICIAL’S REPORT:

Application of Alan Joseph Eynon, represented by Santos T. Martinez, for a variance to the front yard setback regulations at 9702 Vinewood Drive. This property is more fully described as Lot 19A in City Block D/7399 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single family structure and provide a 19.7 foot front yard setback which will require a variance of 5.3 feet.

LOCATION: 9702 Vinewood Drive

APPLICANT: Alan Joseph Eynon
Represented by Santos T. Martinez

REQUESTS:

- Variances to the front yard setback regulations of 5.3’ are requested in conjunction with the following on a site developed with a single family home and a detached garage:
 1. maintaining an existing one-story garage, part of which is located in one of the site’s two 25’ front yard setbacks (Vinewood Drive); and
 2. completing and maintaining a second floor atop the existing garage, part of which is located in the same 25’ Vinewood Drive front yard setback as is the existing garage.(No portion of the request is made in this application to construct/maintain any portion of a structure in the site’s Oates Drive front yard setback).

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the site is somewhat sloped, slightly irregular in shape, and with the unique characteristic (given its single family zoning and location at the corner of two streets) of having two 25' front yard setbacks, the applicant has not substantiated how these physical features of the property are of a restrictive enough nature that preclude him from being able to comply with the development standards in the Dallas Development Code including but not limited to front yard setbacks particularly since the subject site is (according to the application) 0.33 acres or over 14,000 square feet in area - nearly twice the area of typical lot found in R-7.5(A) zoning at 7,500 square feet.

STANDARD FOR A VARIANCE:

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

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- Single family structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.

The subject site is located at the northeast corner of Oates Drive and Vinewood Drive. Regardless of how the structures on the site may be oriented or addressed on the property, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Oates Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25' front yard setback along Vinewood Drive, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5' side yard setback would be required. However, the site's Vinewood Drive frontage is deemed a front yard setback in order to maintain the continuity of the established front yard setback established by the lots north of the site that front/are oriented westward onto Vinewood Drive.

The applicant has submitted a site plan has been submitted denoting a portion of an "existing detached 2 car garage & proposed second story addition" structure located

in the 25' Vinewood Drive front yard setback. The application requests a variance of 5.3' which would make the structure 19.7' from the front property line or 5.3' into this 25' front yard setback. (No encroachment is proposed in the site's Oates Drive 25' front yard setback).

- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure footprint to be maintained and to be completed/maintained vertically with a 2nd floor in alignment with the 1st floor of the existing structure in the site's Vinewood Drive 25' front yard setback is approximately 125 square feet in area or approximately 1/5 of the approximately 670 square foot building footprint.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1999 in “very good” condition with 2,648 square feet of living area;
 - a 725 square foot detached garage; and
 - a 725 square foot room addition.
- The subject site is relatively flat (contour lines on the submitted site plan show a change in grade from 510' to 515' over a length of about 77'), slightly irregular in shape (approximately 112' on the north; approximately 108' on the south; approximately 123' on the east; and approximately 119' on the west), and (according to the application) is 0.33 acres (or 14,375 square feet) in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback.
- The applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>North:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>South:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>East:</u>	R-7.5(A)(SUP 1256) (Single family district 7,500 square feet)(Specific Use Permit)
<u>West:</u>	R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single family home and a detached garage structure currently being modified with a second story atop. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with a private school (White Rock Montessori School).

Zoning/BDA History:

1. BDA 101-022, Property at 9702 Vinewood Drive (the subject site) On March 16, 2011, the Board of Adjustment Panel B denied requests for variances to the

front yard setback regulations of 5.3' without prejudice. The staff report stated that the requests were made maintaining an existing one-story garage, part of which is located in one of the site's two 25' front yard setbacks (Vinewood Drive); and completing and maintaining a second floor atop the existing garage, part of which is located in the same 25' Vinewood Drive front yard setback as is the existing garage.

Timeline:

March 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.

April 20, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. 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."

April 21, 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 2, 2011: The applicant's representative forwarded additional information on this application to staff (see Attachment A).

May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the 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, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The requests focus on maintaining an existing one-story garage, part of which is located in one of the site's two 25' front yard setbacks (Vinewood Drive); and completing and maintaining a second floor atop this existing garage. (No portion of the request is made in this application to maintain and/or complete/maintain any portion of a structure in the site's Oates Drive front yard setback).
- The structure (an existing one-story garage with a second floor to be completed/maintained atop) that is the issue of this request is located on a site that has two 25' front yard setbacks. An application for variance of 5.3' has been requested which would make the structure that is the issue of this request located 19.7' from the Vinewood Drive front property line.
- Regardless of how the existing main structure on the site may be oriented or addressed, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Oates Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25' front yard setback along Vinewood Drive, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5' side yard setback is required. The site's Vinewood Drive frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots north of the site that front/are oriented westward onto Vinewood Drive.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the structure footprint to be maintained and to be completed/maintained vertically with a 2nd floor in alignment with the 1st floor of the existing structure in the site's Vinewood Drive 25' front yard setback is approximately 125 square feet in area or approximately 1/5 of the approximately 670 square foot building footprint.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1999 in "very good" condition with 2,648 square feet of living area;
 - a 725 square foot detached garage; and
 - a 725 square foot room addition.
- The subject site is relatively flat (contour lines on the submitted site plan show a change in grade from 510' to 515' over a length of about 77'), slightly irregular in shape (approximately 112' on the north; approximately 108' on the south; approximately 123' on the east; and approximately 119' on the west), and (according to the application) is 0.33 acres (or 14,375 square feet) in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one 25' front yard setback, two 5' side yard setbacks, and one 5' rear yard setback.
- The site has approximately 90' x 80' of developable area left (or an approximately 7,200 square foot area) once its setbacks are accounted for as opposed to 90' x

100' of developable area left (or an approximately 9,000 square foot area) if the site were more typical with having just one front yard setback. The site's approximately 7,200 square feet of developable space is larger than the developable space found on a more typically sized R-7.5(A) zoned lot (150' x 50') with two front yard setbacks at approximately 2,400 square feet.

- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the Vinewood Drive front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant either one or both of the variance requests, subject to the submitted site plan, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that is represented on the application as being located 5.3' into the 25' Vinewood Drive front yard setback

BOARD OF ADJUSTMENT ACTION: MAY 18, 2011

APPEARING IN FAVOR: Forest Ponder, 6333 East Mockingbird, #852, Dallas, TX
Santos Martinez, 900 Jackson St., Dallas, TX
Jim Christensen, 9721 Vinewood Dr., Dallas, TX
Alan Hamilton, 70835 Lubbock Dr, Dallas, TX
Harrell Lucky, 1529 Oates Dr., Dallas, TX
Chris Cutshall, 1535 Oates Dr., Dallas, TX
Dallas Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: Mike Coker, 2700 Swiss Ave #100, Dallas, TX
Lily Arenas, 9714 Vinewood, Dallas, TX

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 101-037**, on application of Alan Joseph Eynon, represented by Santos Martinez, **grant** the 5.3 foot variance to the minimum front yard setback regulations for the first floor of the existing garage and the variance for the second story of the existing garage requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Gillespie

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

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

2:27 P.M. - Board Meeting adjourned for **May 18, 2011.**

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.