

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, AUGUST 17, 2011**

MEMBERS PRESENT AT BRIEFING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, Paula Leone, regular member, Robert Agnich, alternate member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM BRIEFING: Darlene Reynolds, Vice Chair, David Wilson, regular member

MEMBERS PRESENT AT HEARING: Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, Paula Leone, regular member, Robert Agnich, alternate member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM HEARING: Darlene Reynolds, Vice Chair, David Wilson, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, David Cossum, Asst. Director, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Jerry Svec, Project Engineer, Lloyd Denman, Asst. Director and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, David Cossum, Asst. Director, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Jerry Svec, Project Engineer, Lloyd Denman, Asst. Director and Trena Law, Board Secretary

11:04 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 17, 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 June 15, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: **AUGUST 17, 2011**

MOTION: Leone

I move approval of the **Wednesday, June 17, 2011** Board of Adjustment Public Hearing minutes.

SECONDED: Gaspard

AYES: 5– Gillespie, Chernock, Leone, Agnich, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-059

BUILDING OFFICIAL'S REPORT:

Application of Ricardo Galceran, represented by Stefan Kesler, for a special exception to the landscape regulations at 5555 Youngblood Road. This property is more fully described as Lot 1 in City Block A/8003 and is zoned IM, which requires landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 5555 Youngblood Road

**APPLICANT: Ricardo Galceran
 Represented by Stefan Kesler**

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the constructing and maintaining a new landfill operations building (McCommas Bluff Landfill and NW Transfer Station), and not fully meeting the landscape regulations.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City's Chief Arborist supports the request with the condition mentioned above imposed in conjunction with the request.
- The applicant has substantiated: 1) how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and 2) that the special exception will not adversely affect neighboring property.
- In this case, the applicant is not able to fully meet the landscape requirements on the property given existing conditions on the site and the surrounding area (a land fill use with heavy large vehicular traffic causing dust on a daily basis). Secondly, the applicant's alternate landscape plan does not adversely affect neighboring property given that the landscape appears suitable and appropriate for the heavy industrial uses of the site. (The surrounding use is a land fill; the subject site is set away from any public streets and is established on public property within an "artificial lot" away from all other uses on adjacent lots; and the site will be used for municipal employees and high activity landfill operations).

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape 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 requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
An alternate landscape plan has been submitted which according to the City of Dallas Chief Arborist is deficient from meeting the landscape requirements of Article

X, more specifically, mandatory provisions related to parking lot trees or street trees (51A-10.125) and design standards (51A-10.126).

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator (see Attachment A). The memo stated the following:
 - The applicant is requesting a special exception to the landscape requirements of Article X: The Landscape Regulations.
 - Trigger:
New construction.
 - Deficiencies:
 - The plan does not provide for Article X mandatory provisions for parking lots trees or street trees, or for specified design standards.
 - Factors for consideration:
 - The submitted landscape would be installed with a new building addition at the McCommas Bluff Landfill operations.
 - The site is set away from any public streets and is established on public property within an “artificial lot” away from all other uses on adjacent lots. The site will be used for municipal employees and high activity landfill operations.
 - The plan provides two large evergreen live oak trees and a series of flowering crepe myrtles trees, and combined low-level vegetation surrounding the parking lot. The vegetation is concentrated on the south side of the building which helps filters noise and heat exposure.
 - The landscaping is centered around, and oriented toward, buffering the facility and pedestrian use area from the external conditions of the landfill. Planting is concentrated nearest the office uses and entry ways, and filters the site from the roadways and the heavy large vehicle traffic with the resulting dust that is active in the area on a daily basis. The landscape appears suitable and appropriate for the heavy industrial uses of the site.
 - Recommendation
 - Approval of the submitted landscape plan.

BACKGROUND INFORMATION:

Zoning:

Site: IM (Industrial Manufacturing)
North: IM (Industrial Manufacturing)
South: IM (Industrial Manufacturing)
East: IM (Industrial Manufacturing)
West: IM (Industrial Manufacturing)

Land Use:

The site is and the areas surrounding the site are developed as a landfill (McCommas Bluff Landfill) or related uses.

Zoning/BDA History:

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

Timeline:

- April 26, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- June 23, 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 August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.
- August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, 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.
- August 4, 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: “Need to comply with all C.O.D visibility requirements.”
- August 8, 2011: The Chief Arborist submitted a memo pertaining to the application to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- This request focuses constructing and maintaining a new landfill operations building (McCommas Bluff Landfill and NW Transfer Station), and being “excepted” from fully meeting the City’s landscape regulations.

- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements, in this specific case, exception from full compliance with parking lot tree, street tree, and design standard requirements.
- The City of Dallas Chief Arborist supports the request (with the condition that the applicant must comply with his submitted alternate landscape plan) largely given that the landscape provided on the alternate landscape plan appears suitable and appropriate for the heavy industrial uses of the site.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be “excepted” from full compliance with the parking lot tree, street tree, and design standard requirements of Article X: The Landscape Regulations on a site that is used for and surrounded by heavy industrial use – the McCommas Bluff Sanitary Landfill.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Duarte**

I move that the Board of Adjustment grant application **BDA 101-059** 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.

SECONDED: **Agnich**

AYES: 5–Gillespie, Chernock, Leone, Agnich, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-073

BUILDING OFFICIAL’S REPORT:

Application of Jeff Whitacre for a special exception to the fence height regulations at 3407 Dartmoor Drive. This property is more fully described as Lot 23 in City Block 8/6442 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/maintain an 8 foot high fence, which will require a special exception of 4 feet.

LOCATION: 3407 Dartmoor Drive

APPLICANT: Jeff Whitacre

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high board on board wood fence to be located in one of the site's two required front yards on a site developed with a single family home – Cromwell Drive. (No fence proposal is shown to be located in the site's Dartmoor Drive required front yard).

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 northeast corner of Dartmoor Drive and Cromwell Drive. The site has two required front yards - a 20' required front yard created by a platted building line along its shorter frontage (Cromwell Drive) and a 30' required front yard (created by another platted building line) along its longer frontage (Dartmoor Drive). Regardless of how the site's Cromwell Drive frontage functions as a side yard on the property, it is a front yard nonetheless given that it is the shorter of the property's two street frontages. The site's longer Dartmoor Drive frontage that functions as the property's front yard is also deemed a front yard in order to maintain continuity of the required front yards established by the lots east of the site fronting southward onto Dartmoor 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 elevation indicating that the proposal in the 20' Cromwell Avenue required front yard reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal located in the Cromwell Drive required front yard over 4' in height is approximately 36' in length parallel to the street and approximately 15' in length

perpendicular to Cromwell Drive on the north and south sides of the site in the required front yard.

- The proposal is shown to be located 5' from the site's Cromwell Drive front property line or 15' from the curb line.
- No single family home "fronts" to the proposed fence on the subject site since the home on the lot immediately west across Cromwell Drive fronts southward onto Dartmoor Drive 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.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed as a public elementary school (Everette L. DeGolyer Elementary School).

Zoning/BDA History:

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

Timeline:

- June 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.

August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, 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.

August 4, 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: "Need to 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 constructing and maintaining an 8' high board on board wood fence parallel to Cromwell Drive - one of the site's two required front yards on a site developed with a single family home. (No fence proposal is shown to be located in the site's Dartmoor Drive front yard setback).
- The subject site is located at the northeast corner of Dartmoor Drive and Cromwell Drive. The site has two required front yards - a 20' required front yard created by a platted building line along its shorter frontage (Cromwell Drive) and a 30' required front yard (created by another platted building line) along its longer frontage (Dartmoor Drive). Regardless of how the site's Cromwell Drive frontage functions as a side yard on the property, it is a front yard nonetheless given that it is the shorter of the property's two street frontages. The site's longer Dartmoor Drive frontage that functions as the property's front yard is also deemed a front yard in order to maintain continuity of the required front yards established by the lots east of the site fronting southward onto Dartmoor Drive.
- Note that if the site's Cromwell Avenue frontage were approximately 5' longer, it would be deemed the property's side yard and the applicant would not be required to make an application to the board since a 9' high fence can be erected and maintained by right.
- The submitted site plan and elevation documents the location, height, and material of the fence over 4' in height in the Cromwell Avenue required front yard. The site plan shows the fence to be approximately 36' in length parallel to Cromwell Avenue and approximately 15' in length *perpendicular* to Cromwell Avenue on the north and south sides of the site in the required front yard; and to be located approximately 5' from the site's Cromwell Avenue front property line or about 15' from the curb line. The elevation shows that the proposed fence to be 8' in height and board on board.

- No single family home “fronts” to the proposed fence on the subject site since the home on the lot immediately west across Cromwell Drive fronts southward onto Dartmoor Drive 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.
- As of August 8, 2011, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ (whereby the proposal would reach a maximum of 8’ in height in the site’s Cromwell Avenue 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 elevation would assure that the proposal exceeding 4’ in height in the Cromwell Avenue 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: AUGUST 17, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Duarte

I move that the Board of Adjustment grant application **BDA 101-073** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: Agnich

AYES: 5–Gillespie, Chernock, Leone, Agnich, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-074

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for a special exception to the fence height regulations at 9226 Greenville Avenue. This property is more fully described as Lot 1 in City Block E/8159 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain an 8 foot high fence, which will require a special exception of 4 feet.

LOCATION: 9226 Greenville Avenue

APPLICANT: Robert Baldwin

August 17, 2011 Public Hearing Notes:

- The Board Administrator circulated a revised site plan that the applicant had prepared/amended between the briefing and hearing. This plan included notations that included notes that included “fence will be in full compliance with visual obstruction regulations.”

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining an approximately 7’ 6” high solid stucco fence/wall with 8’ high columns and an approximately 7’ high solid gate (“material to be determined by owner”) to be located in one of the site’s two required front yards on a site developed with a single family home – Whitehurst Drive. (According to the applicant, the requested stucco fence/wall in this application would “match the fence that was previously approved by the Board of Adjustment on the Greenville Avenue side of his property” and would replace an existing wood fence along Whitehurst 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 Greenville Avenue and Whitehurst Drive. The site has two required front yards (created by an 18.75’ building line along both streets) - one required front yard along its shorter frontage (Whitehurst Drive) and another required front yard along its longer frontage (Greenville Avenue). Regardless of how the site’s Whitehurst Drive frontage functions as a side yard on the property, it is a front yard nonetheless given that is it the shorter of the property’s two street frontages. The site’s longer Greenville Avenue frontage that functions as the property’s front yard is also deemed a front yard (even though it is the longer of the two frontages) in order to maintain continuity

of the required front yards established by the lots south of the site fronting westward onto Greenville Avenue.

- 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 partial elevation indicating that the proposal in the Whitehurst Drive required front yard reaches a maximum height of 8'. (The applicant has written that this request is to seek "permission to construct a fence taller than four feet in height along Whitehurst Drive to match the fence that was previously approved by the Board of Adjustment on the Greenville Avenue side of his property.")

- The following additional information was gleaned from the submitted site plan:
 - The proposed concrete block wall with stucco located in the Whitehurst Drive front yard setback is over 4' in height and is represented as being approximately 130' in length parallel to the street.
 - The proposed concrete block wall with stucco is shown to be located on the site's Whitehurst Drive front property line or about 18' from what appears to be represented as the curb line.
- The following additional information was gleaned from the submitted partial elevation:
 - "proposed concrete block wall with stucco finish to match existing wall" that is approximately 7' 6" in height;
 - "proposed gate (type and material to be determined by owner)" that is approximately 7' 6" in height; and
 - 8' high columns (no materials specified).
- The Board Administrator emailed the applicant on June 29, 2011, that, for the record, he had reviewed the applicant's submitted site plan in conjunction with this request and was not able to fully/completely determine that the site (as represented on this plan) was visual obstruction regulation compliant. The applicant was advised that his request as it was currently made with not provide any relief to the visual obstruction regulations needed to address any existing or proposed noncompliance with these regulations, and would only provide relief to the fence height regulations.
- No single family home "fronts" to the proposed fence the subject site since the home on the lot immediately north across Whitehurst Drive fronts westward onto Greenville Avenue as does the home on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in a front yard setback- an approximately 9' high wood fence was noted along Whitehurst Drive two lots east of the subject site. This fence has no recorded BDA history.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a letter (and related site plan) that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 94-129, Property at 9226 Greenville Avenue (the subject site) On November 8, 1994, the Board of Adjustment granted a special exception to the fence height regulations to maintain an 8' fence on the property. The Board imposed the following conditions: 1) a revised elevation governing the property must be approved by the Board Administrator, showing the maximum height of the fence and columns to be no higher than 8' in height, and size of the photinias to be planted in front of the fence at a minimum size of 5 gallon containers; 2) a revised site/landscape plan must be submitted and approved by the Board Administrator to reflect an 8' fence; and 3) compliance with the revised elevation and site/landscape plan is required by the applicant.

Timeline:

- June 14, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- June 27, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.

July 26, 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, 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.

August 4, 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: "Need to comply with all C.O.D visibility and flood plain requirements." (See note in the "General Facts" section of the case report with regard to staff's concern forwarded to the applicant with regard to whether the site/proposed fence is compliant with visual obstruction regulations).

STAFF ANALYSIS:

- The applicant's request focuses on constructing and maintaining an approximately 7' 6" high solid stucco fence/wall with 8' high columns and an approximately 7' high solid gate ("material to be determined by owner") to be located in one of the site's two required front yards on a site developed with a single family home – Whitehurst Drive.
- According to the applicant, the requested stucco fence/wall in this application would "match the fence that was previously approved by the Board of Adjustment on the Greenville Avenue side of his property" and would replace an existing wood fence along Whitehurst Drive.
- The subject site is located at the southeast corner of Greenville Avenue and Whitehurst Drive. The site has two required front yards (created by an 18.75' building line along both streets) - one required front yard along its shorter frontage (Whitehurst Drive) and another required front yard along its longer frontage (Greenville Avenue). Regardless of how the site's Whitehurst Drive frontage functions as a side yard on the property, it is a front yard nonetheless given that is it the shorter of the property's two street frontages. The site's longer Greenville Avenue frontage that functions as the property's front yard is also deemed a front yard (even though it is the longer of the two frontages) in order to maintain continuity

of the required front yards established by the lots south of the site fronting westward onto Greenville Avenue.

- The submitted site plan and partial elevation documents the location, height, and material of the fence over 4' in height in the Whitehurst Drive required front yard. The site plan shows the fence to be approximately 130' in length, approximately on the front property line, and about 18' from what is represented as the curb line. The partial elevation shows an approximately 7' 6" high stucco wall, an approximately 7' 6" high gate ("type and material to be determined by owner") and 8' high columns.
- No single family home "fronts" to the proposed fence the subject site since the home on the lot immediately north across Whitehurst Drive fronts westward onto Greenville Avenue as does the home on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in a front yard setback- an approximately 9' high wood fence was noted along Whitehurst Drive two lots east of the subject site. This fence has no recorded BDA history.
- As of August 8, 2011, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal would reach a maximum of 8' in height in the site's Whitehurst 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 partial elevation would assure that the proposal exceeding 4' in height would be limited to a fence higher than 4' in the site's Whitehurst Drive required front yard, and would be constructed and maintained in the location and of the heights and material as shown on these document.
- The applicant's request for a special exception to the fence height regulations will not provide any relief to any existing or proposed noncompliant issues on the subject site pertaining to the visual obstruction or floodplain regulations.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2011

APPEARING IN FAVOR: Robert Baldwin, 3901 Elm Street, Ste B, Dallas, TX
Richard Kottle, 9207 Arbor Branch Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 101-074**, on application of Robert Baldwin, **grant** the request of this applicant to construct and maintain an eight-foot high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Agnich

AYES: 5–Gillespie, Chernock, Leone, Agnich, Duarte
NAYS: 0 –
MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-063

BUILDING OFFICIAL’S REPORT:

Application of Shaun Feltner for special exceptions to the fence height and visual obstruction regulations at 3821 San Jacinto Street. This property is more fully described as Lot 23 in City Block 641 and is zoned PD-298, Subarea 8, which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct/maintain a 6 foot high fence, which will require a special exception of 2 feet to the fence height regulations, and to locate/maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 3821 San Jacinto Street

APPLICANT: Shaun Feltner

August 17, 2011 Public Hearing Notes:

- The Board heard testimony from the applicant and staff at the public hearing, and delayed action on the application until their September 21st public hearing in order for the applicant to possibly amend his site plan and/or elevation in order to address concerns raised by city engineers.

REQUESTS:

- The following appeals have been made in this application on a site that is currently being developed with a townhome development:
 1. a special exception to the fence height regulations of 2’ is requested in conjunction with constructing and maintaining a 6’ high open iron picket fence/gates to be located in the front yard setback; and
 2. special exceptions to the visual obstruction regulations are requested in conjunction with locating and maintaining a 6’ high open iron picket fence/gates and vehicles that could potentially be parked in four 20’ visibility triangles at two drive approaches into the site from San Jacinto Street.

STAFF RECOMMENDATION (fence height special exceptions):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of these requests.
- The applicant has not substantiated how the location of the proposed items in the 20' visibility triangles at the two drive approaches into the site does not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (fence height special exception):

- PD No. 298 states that for all residential uses, maximum fence height in the required front yard is four feet.
The applicant had submitted a revised site plan and revised elevation indicating that the proposal in the required front yard setback reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted revised site plan:
 - The proposed fence located in the front yard setback is over 4' in height and is approximately 165' in length parallel to the street.
 - The proposed fence is shown to be located on the front property line or about 9' from the curb line.
- No single family home "fronts" to the proposed fence on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fences above four (4) feet high which appeared to be located in a front yard setback (note that the heights described below are approximations):
 1. a 6.5' high solid metal fence immediately east of the site with no recorded BDA history; and
 2. a 6.5' high solid metal fence immediately southwest of the site with no recorded BDA history.
- A revised site plan and revised elevation have been submitted that shows a "6' open iron picket fence" and gates located in four 20' visibility triangles at the two drive approaches into the site from San Jacinto Street (see Attachment A).
- On August 5, 2010, the applicant submitted photos of the site and surrounding area (see Attachment B).

GENERAL FACTS (visual obstruction special exceptions):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections on properties in all zoning districts except central area districts, the Deep Ellum/Near Eastside District, State-Thomas Special Purpose District, and 20-foot visibility triangles at drive approaches on properties in all zoning districts); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A revised site plan and revised elevation have been submitted that shows a “6’ open iron picket fence” and what would potentially be portions of parked vehicles located in four 20’ visibility triangles at the two drive approaches into the site from San Jacinito Street (see Attachment A).
- On August 5, 2010, the applicant submitted photos of the site and surrounding area (see Attachment B).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Planned Development)
North: PD No. 298 (Planned Development)
South: PD No. 298 (Planned Development)
East: PD No. 298 (Planned Development)
West: PD No. 298 (Planned Development)

Land Use:

The subject site is developed with a townhome development. The areas to the north, east, south, and west are developed with a mix of residential and nonresidential 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:

May 2, 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.

June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.
- July 13, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, 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.
- August 4, 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 provided. Gates need to be 40 feet (or at least 20') from the street curb, no mention of automatic openers, fire access, or blocking the parking space. Did this shared access development have a plat and engineering plans?"
- August 5, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment B).

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

- This request focuses on constructing and maintaining a 6' high open iron picket fence and gates to be located in the front yard setback on a site developed with a townhome development.
- The submitted revised site plan and revised elevation documents the location, height, and materials of the fence over 4' in height in the required front yard. The site plan shows the proposal to be approximately 165' in length parallel to the street, and approximately on the front property line or about 9' from the curb line. The revised elevation denotes that the fence is to be 6' in height and open iron pickets.
- No single family home "fronts" to the proposed fence on the subject site.

- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fences above four (4) feet high which appeared to be located in a front yard setback (note that the heights described below are approximations):
 1. a 6.5' high solid metal fence immediately east of the site with no recorded BDA history; and
 2. a 6.5' high solid metal fence immediately southwest of the site with no recorded BDA history.
- As of August 8, 2011, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted revised site plan and revised elevation would provide assurance that the proposal exceeding 4' in height in the required front yard would be constructed and maintained in the location and of the height and material as shown on these documents.
- Note that if the board were to grant this request and impose the submitted revised site plan and revised elevation as a condition, but deny any/all of the requests for the special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the items in the visibility triangles would not be "excepted."

STAFF ANALYSIS (visual obstruction special exceptions):

- The requests for special exceptions to the visual obstruction regulations focus on locating and maintaining a 6' high open iron picket fence/gates and vehicles that could potentially be parked in four 20' visibility triangles at two drive approaches into the site from San Jacinto Street.
- The Sustainable Development and Construction Department Project Engineer recommends denial of this request commenting: "Inadequate information provided. Gates need to be 40 feet (or at least 20') from the street curb, no mention of automatic openers, fire access, or blocking the parking space."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain a 6' high open iron picket fence and potentially portions of parked vehicles in four 20' drive approach visibility triangles into the site from San Jacinto Street will not constitute a traffic hazard.
- If the Board chooses to grant any or all of these requests, subject to compliance with the submitted revised site plan and revised elevation, the items shown on these documents (in this case, open iron picket fence and parked vehicles) would be "excepted" into the 20' drive approach visibility triangles.
- Note that if the board were to grant any or all of these requests and impose the submitted revised site plan and revised elevation as a condition, but deny the request for a special exception to the fence height regulations, notations would be made of such action on the submitted plans whereby any fence in a front yard setback higher than 4' would not be "excepted."

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2011

APPEARING IN FAVOR: Shaun Feltner, 1610 Tribec Way, Dallas, TX

Richard Delgado, 1610 Soho LN., Dallas, TX
Eric Williams, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 101-063**, hold this matter under advisement until **September 21, 2011**.

SECONDED: **Chernock**

AYES: 5–Gillespie, Chernock, Leone, Agnich, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: **Duarte**

I move to adjourn this meeting.

SECONDED: **Chernock**

AYES: 5– Gillespie, Chernock, Leone, Agnich, Duarte

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

1:25 P.M. - Board Meeting adjourned for **August 17, 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.