

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, MAY 16, 2011**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, and Bob Richard, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

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

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**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **MAY 16, 2011** docket.  
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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C April 18, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2011**

**MOTION:**    **Maten**

I move **approval** of the Monday, **April 18, 2011** public hearing minutes.

**SECONDED:**    **Coulter**

**AYES:** 5–Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:**     BDA 101-041

**BUILDING OFFICIAL’S REPORT:**

Application of Jonathan G. Vinson for a special exception to the landscape regulations at 1801 W. Davis Street. This property is more fully described as Lot 5 in City Block A/5127 and is zoned PD-830, Subdistrict 6-1, which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:**            1801 W. Davis Street

**APPLICANT:**        Jonathan G. Vinson

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with the constructing and maintaining an approximately 21,000 square foot sanctuary structure on a site currently developed as a church campus use (St. Cecilia Catholic Church), and not fully meeting the landscape regulations.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Compliance with the submitted landscape plan is required.
2. In meeting compliance with the provisions of 51A-10.108, General Maintenance, and 51A-10.134, Tree Replacement, any ‘preserved’ trees on this plan that dies must be replaced with a similar tree from the Approved Replacement Tree List and placed in a general proximity to the original tree.

Rationale:

- The City’s Chief Arborist supports the request with the conditions mentioned above imposed in conjunction with the request.
- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and 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 in a relatively small area on the site that is not in close proximity to the new construction on the site triggering the applicant to fully comply with the landscape regulations site. Secondly, the applicant is seeking very minimal exception to the landscape regulations in a very small area/location on the site, yet meeting/exceeding all other provisions of the landscape regulations elsewhere on the site.

**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, from the perimeter landscape buffer requirements that must be provided along the entire length of the portion of the lot where residential adjacency exists.

- 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 requesting a special exception to the landscape requirements of Article X: The Landscape Regulations, more specifically the perimeter landscape buffer requirements of Section 51A-10.125(b)(1) which states that “a landscape buffer strip must be provided along the entire length of the portion of the perimeter of the lot where a residential adjacency exists.”
  - Trigger:  
New construction.
  - Deficiencies – the proposed landscape plan is deficient in compliance with the perimeter landscape buffer requirements of Article X along the east side of the property. The deficiency occurs from an existing condition to the east of the existing school along Mary Cliff.
  - Factors for consideration:
    - The building permit for construction was submitted on December 23, 2009, prior to the Council approval of Planned Development 830. The standing ordinances at the time of the permit application apply to this property.
    - Residential adjacencies, as stated under Article X, apply to the lot on the west, north, and east. A lot with residential adjacency is “a building site with a non-residential use that is adjacent to or directly across a street 64 feet or less in width, or an alley, from private property in an agricultural, single family, duplex, townhouse, CH, multifamily, or manufactured housing district.”
    - The street right-of-way to the east, Mary Cliff, is approximately 62 feet in width at the location of the primary deficiency adjacent to the existing structure and use on the property. Under the proposed plan, the remainder of the property meets or exceeds the buffer width requirements.
    - The proposed number of new interior trees between the building, and those covering the parking lots, with the residential adjacencies to the west and multifamily to the north, create a significant visual buffer to the non-residential uses on the property.
    - The primary construction on the property is to the west of the existing structure. Some large trees are remaining on the property and an extensive planting plan identifies all 510 caliper inches of mitigation (tree preservation ordinance) to be replaced on the property through planting 515 inches on site.
    - The site meets or exceeds all other Article X landscape requirements.
  - Recommendation
    - Approval of the submitted landscape plan, subject to the following conditions:
      - In meeting compliance with the provisions of 51A-10.108, General Maintenance, and 51A-10.134, Tree Replacement, any ‘preserved’ trees on this plan that dies must be replaced with a similar tree from the Approved Replacement Tree List and placed in a general proximity to the original tree.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment B).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 830 (Planned Development)  
North: PD No. 796 (Planned Development)  
South: PD No. 830 (Planned Development)  
East: R-7.5(A) & CD No. 1 (Single family 7,500 square feet and Conservation District)  
West: PD No. 830 (Planned Development)

### **Land Use:**

The site is currently developed as a church campus (St. Cecilia Catholic Church). The areas to the north and south are undeveloped; the area to the east is developed with single family uses; and the area to the west is developed with multifamily use.

### **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 23, 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 C.
- 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 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 2, 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application for staff to consider at the May 3<sup>rd</sup> staff review team meeting.

- 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 4, 2011: The Chief Arborist submitted a memo pertaining to the application to the Board Administrator and the Board of Adjustment Chief Planner (see Attachment A).
- 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."
- May 6, 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment B).

#### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 21,000 square foot sanctuary structure on a site currently developed as a church campus use (St. Cecilia Catholic Church), and being "excepted" from fully meeting the City's landscape regulations.
- An alternate landscape plan has been submitted whereby the applicant seeks a exception from the landscape requirements, in this specific case, a small area on the east side of the site where the applicant is not proposing to provide a portion of the code-required landscape buffer strip.
- The City of Dallas Chief Arborist supports the request (with the conditions previously mentioned in this case report) largely given that the area/way in which the applicant is not proposing to meet the landscape regulations is minimal combined with the fact that the applicant's submitted alternate landscape meets or exceeds the landscape regulations in all other ways and in all other areas.
- 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 conditions mentioned previously in this case report, the site would be minimally "excepted" from full compliance with the landscape buffer requirements of Article X: The Landscape Regulations in a relatively small area of the site on a portion of the east side of the site while meeting or exceeding all other landscape regulations in all other areas of the site.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2011**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Moore

I move that the Board of Adjustment grant application **BDA 101-041** 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 the intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.
- In meeting compliance with the provisions of 51A-10.108, General Maintenance, and 51A-10.134, Tree Replacement, any 'preserved' trees on this plan that die must be replaced with a similar tree from the Approved Replacement Tree List and placed in general proximity to the original tree.

**SECONDED:** Maten

**AYES:** 5–Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-042

**BUILDING OFFICIAL’S REPORT:**

Application of Tommy Mann and Kirk Williams, Winstead, PC for a special exception to the fence height regulations at 9821 Meadowbrook Drive. This property is more fully described as Tract 10 in City Block 5601 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 12-foot 4-inch high fence which will require a special exception of 8 feet 4 inches.

**LOCATION:** 9821 Meadowbrook Drive

**APPLICANT:** Tommy Mann and Kirk Williams, Winstead, PC

**REQUEST:**

- A special exception to the fence height regulations of 8’ 4” is requested in conjunction with constructing and maintaining an 8’ 8” high open wrought iron fence

with 9' 1" high columns and a 12' 4" high open wrought iron entry gate in the site's 40' front yard setback on a lot being developed with a single family home.

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code states that a 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 and a "landscape development plan"/partial elevation document indicating that the proposal in the required front yard setback reaches a maximum height of 12' 4".
- The following additional information was gleaned from the submitted site plan:
  - The proposal is approximately 148' in length parallel to the street.
  - The proposed fence is shown to be located approximately 5' from the front property line or about 15' from the pavement line.
  - The proposed gate is shown to be located approximately 17' from the front property line or about 27' from the pavement line.
- The submitted "landscape development plan"/partial elevation document denotes several notations pertaining to landscaping adjacent to the proposed fence including: "boxwood hedge maintained at 20" ht.," "evergreen hedge," two "existing site trees," six "flowering ornamental trees," "entry enrichment," and "evergreen groundcover."
- No single family home "fronts" to the proposal on the subject site since the homes to the east front either north to Edlen Drive or south to Falls Road.
- 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 fences above four (4) feet high which appeared to be located in a front yard setback:
  - an approximately 6' high open chain link fence with 6' – 8' high stone entry wing walls and a 7.5' high steel gate two lots immediately north of the site that appears to be the result of a granted fence height special exception from September of 2006- BDA 056-204;
  - an approximately 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) two lots southeast of the subject site that appears to be the

result of a granted fence height special exception from June of 2010 – BDA 090-070; and

- an approximately 6’ high open wrought iron fence (atop an approximately 2’ high solid base) with approximately 7’ high stucco columns located immediately south of the site that may be the result of a granted fence height special exception from June of 1980 – BDA 80-191 where the board granted a variance of 3’ for the “application for a permit to erect a 7’ high brick column and a 6’ 3” wrought-iron fence which will permit a variance of 3’.”

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

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

1. BDA 056-204, Property at 9901 Meadowbrook Drive ( two lots north of subject site) On September 19, 2006, the Board of Adjustment Panel A granted a special exception to the fence height regulations of 4’ imposing the following conditions to the request: Compliance with the submitted site plan/landscape plan/elevation is required; and that 5 gallon containers, 4 feet on center of Ilex x or Nellie R. Stevens be planted. The staff report stated that the request was made in conjunction with constructing and maintaining a 6’ high chain link fence with 6’ – 8’ high stone wing walls and an approximately 7.5’ high steel gate in the front yard setback.
2. BDA 090-070, Property at 5306 Falls Road ( two lots southeast of subject site) On June 16, 2010, the Board of Adjustment Panel B granted a request for special exceptions to the fence height regulations of 4’ 6” and imposed the submitted revised site plan/elevation document dated 6-10-10 as a

condition to the request. The case report stated that the special exceptions to the fence height regulations of 4' 6" were requested in conjunction with constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) in the site's Falls Road front yard setback, and an alternating 8' high solid masonry or stone fence wall with an 8' high wrought iron fence in the site's Meadowbrook Drive front yard setback.

3. BDA 80-191, Property at 9807 Meadowbrook Drive ( the lot immediately south of subject site)

On June 10, 1980, the Board of Adjustment granted a variance of 3' for the "application for a permit to erect a 7' high brick column and a 6' 3" wrought-iron fence which will permit a variance of 3'."

**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 C.
- 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 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- 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 plans as being located in a visibility triangle).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an 8' 8" high open wrought iron fence with 9' 1" high columns and a 12' 4" high open wrought iron entry gate in the site's 40' front yard setback on a lot being developed with a single family home.
- The submitted site plan and "landscape development plan"/partial elevation document notes the location, height, and materials of the fence over 4' in height in the required front yard setback. The site plan indicates that the proposed fence is about 148' in length parallel to the street, approximately 5' from the site's front property line or about 15' from the curb line.
- A "landscape development plan"/partial elevation document has been submitted site plan which makes several notations pertaining to landscaping adjacent to the proposed fence including: "boxwood hedge maintained at 20" ht.," "evergreen hedge," two "existing site trees, six "flowering ornamental trees," "entry enrichment," and "evergreen groundcover."
- No single family home "fronts" to the proposal on the subject site since the homes to the east front either north to Edlen Drive or south to Falls Road.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other 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 8' 4" will not adversely affect neighboring property.
- Granting this special exception of 8' 4" with a condition imposed that the applicant complies with the submitted site plan and "landscape development plan"/partial elevation document would provide assurance that the proposal exceeding 4' in height in the front yard setback would be maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 101-042** 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 the intent of the Dallas Development Code:

- Compliance with the submitted site plan and “landscape development plan”/partial elevation is required.

**SECONDED:** **Maten**

**AYES:** 5–Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-044

**BUILDING OFFICIAL’S REPORT:**

Application of Kamlesan Naidoo for a special exception to the fence height regulations at 2045 Lauraette Drive. This property is more fully described as Lot 22 in City Block 7/4614 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 maintain a 6-foot high fence which will require a special exception of 2 feet.

**LOCATION:** 2045 Lauraette Drive.

**APPLICANT:** Kamlesan Naidoo

**REQUEST:**

- A special exception to the fence height regulations of 2’ is requested in conjunction with maintaining an open wrought iron fence on a lot developed with a single family home that is either an average height of 5’ 5” (according to the submitted elevation) or 6’ in height (according to the application).

**STAFF RECOMMENDATION:**

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

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

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

## **GENERAL FACTS:**

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.  
The applicant has submitted a revised site plan/partial elevation (see Attachment A) and full elevation indicating that the fence in the required front yard setback has an average height of 5' 5". Note however that the applicant has written on his application that a request has been made of "2 feet to the fence height in front yard to allow for a 6 ft fence height."
- The following additional information was gleaned from the submitted revised site plan:
  - The existing fence is shown to be approximately 110' in length parallel to the street and approximately 22' in length *perpendicular* to the street on the east and west sides of the site in the front yard setback.
  - The existing fence is shown to be located approximately 3' from the site's front property line or about 14' from the curb line.
- No single family home "fronts" to the fence on the subject site. The property immediately south and west of the site is the Stevens Park Golf Course.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high in the immediate area which appeared to be located in a front yard setback – an approximately 4' 4" – 4' 9" high open wrought iron fence with approximately 5' high stone columns with approximately 2' high decorative lamps atop immediately north of the subject site – a case (BDA 101—045) to be heard by Board of Adjustment Panel C on May 16, 2011.

## **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) (Single family district 7,500 square feet)
<u>West:</u>	R-7.5(A)(SUP 235) (Single family district 7,500 sq ft) (Specific Use Permit)

### **Land Use:**

The subject site is developed with a single family home. The areas to the north and east are developed with single family uses; the areas to the south and west are developed with a public golf course (Stevens Park Golf Course).

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

1. BDA 101-045, Property at 1032 N. Hampton road ( the lot immediately north of subject site)      On May 16, 2011, the Board of Adjustment Panel C will consider a request to the fence height regulations of 3' 6" to maintain a 4' 4" – 4' 9' high open iron fence with 7' 1" high pedestrian gate columns.

**Timeline:**

- March 29, 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 C.
- 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 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 3, 2011:      The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised site plan/partial elevation to the Board Administrator (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 no item appears to

be represented on the submitted plans as being located in a visibility triangle).

**STAFF ANALYSIS:**

- This request focuses on maintaining an open wrought iron fence on the site developed with a single family home which is either 5' 5" or 6' in height depending on information denoted on the submitted elevation or application.
- The submitted revised site plan/partial elevation and full elevation that documents the location, height, and materials of the fence over 4' in height in the required front yard setback. The revised site plan indicates that the existing fence is open wrought iron, is about 110' in length parallel to the street and approximately 22' in length *perpendicular* to the street on the east and west sides of the site in the front yard setback. The plan shows the fence is located approximately 3' from the site's front property line or about 14' from the curb line.
- No single family home "fronts" to the fence on the subject site. The property immediately south and west of the site is the Stevens Park Golf Course.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high in the immediate area which appeared to be located in a front yard setback – an approximately 4' 4" – 4' 9" high open wrought iron fence with approximately 5' high stone columns with approximately 2' high decorative lamps atop immediately north of the subject site – a case (BDA 101—045) to be heard by Board of Adjustment Panel C on May 16, 2011.
- As of May 9, 2011, a petition signed by 23 neighbors/owners in support of the application had been submitted to staff and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 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/partial elevation and full elevation would provide assurance that the proposal exceeding 4' in height in the front yard setback would be maintained in the location and of the height and material as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 101-044** 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 the intent of the Dallas Development Code:

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

**SECONDED: Maten**

**AYES: 5–Boyd, Moore, Maten, Coulter, Richard**

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA101-045**

**BUILDING OFFICIAL’S REPORT:**

Application of Brian VanderMolen for a special exception to the fence height regulations at 1032 N. Hampton Road. This property is more fully described as Lot 23 in City Block 7/4614 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 maintain a 7-foot 6-inch high fence which will require a special exception of 3 feet 6 inches.

**LOCATION: 1032 N. Hampton Road**

**APPLICANT: Brian VanderMolen**

**REQUEST:**

- A special exception to the fence height regulations of 3’ 6” is requested in conjunction with maintaining (according to the submitted elevation) a 4’ 3” – 4’ 9” high open wrought iron fence with approximately 5’ high stone columns with approximately 2’ high decorative lamps atop on a lot developed with a single family home.

**STAFF RECOMMENDATION:**

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

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

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

## **GENERAL FACTS:**

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.  
The applicant has submitted a revised site plan and elevation indicating a proposal that reaches a maximum height of 7' 1". (Note that although the applicant has requested a special exception of 3' 6", nothing appears on the submitted documents higher than 7' 1".)
- The following additional information was gleaned from the submitted revised site plan:
  - The proposal is approximately 50' in length parallel to the street and approximately 9' - 16' in length *perpendicular* to the street on the north and south sides of the site (respectively) in the front yard setback.
  - The fence is shown to be located approximately 9' – 16' from the site's front property line or about 17' – 23' from the curb line.
- No single family home "fronts" to the fence on the subject site. The property immediately west of the site is the Stevens Park Golf Course.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following two other fences above four (4) feet high in the immediate area which appeared to be located in a front yard setback:
  - an approximately 6' high open iron fence immediately south of the subject site – a case (BDA 101—044) to be heard by Board of Adjustment Panel C on May 16, 2011; and
  - an approximately 9' high solid wood fence wall immediately north of the subject site with no recorded BDA history.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A). This information included a revised site plan (that shows the fence to be in compliance with the visual obstruction regulations) and an updated petition from what was originally submitted with the application.

## **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) (Single family district 7,500 square feet)
<u>West:</u>	R-7.5(A)(SUP 235) (Single family district 7,500 sq ft) (Specific Use Permit)

### **Land Use:**

The subject site is developed with a single family home. The areas to the north, south, and east are developed with single family uses; the area to the west is developed with a public golf course (Stevens Park Golf Course).

**Zoning/BDA History:**

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|---|--|
| 1. BDA 101-044, Property at 2045 Lauraette Drive ( the lot immediately south of subject site) | On May 16, 2011, the Board of Adjustment Panel C will consider a request to the fence height regulations of 2' to maintain a 6' open wrought iron fence. |
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**Timeline:**

- March 29, 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 C.
- 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 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 2 and 4, 2011: The applicant forwarded additional information on this application beyond what was submitted with 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 no item appears to be represented on the submitted plans as being located in a visibility triangle).

**STAFF ANALYSIS:**

- This request focuses on maintaining (according to the submitted elevation) a 4' 3" – 4' 9" high open wrought iron fence with approximately 5' high stone columns with approximately 2' high decorative lamps atop on a lot developed with a single family home.
- The submitted revised site plan and elevation documents the location, height, and materials of the fence over 4' in height in the required front yard setback. The site plan indicates that the proposal is about 50' in length parallel to the street and approximately 9' - 16' in length *perpendicular* to the street on the north and south sides of the site (respectively) in the front yard setback. The plan shows the fence to be located approximately 9' – 16' from the site's front property line or about 17' – 23' from the curb line.
- No single family home "fronts" to the fence on the subject site. The property immediately west of the site is the Stevens Park Golf Course.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other 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, a petition signed by 25 neighbors/owners in support of the application had been submitted to staff and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' 6" will not adversely affect neighboring property.
- Granting this special exception of 3' 6' with a condition imposed that the applicant complies with the submitted revised site plan and elevation would provide assurance that the proposal exceeding 4' in height in the front yard setback would be maintained in the location and of the height and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MAY 16, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment grant application **BDA 101-045** 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 the intent of the Dallas Development Code:

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

SECONDED: **Maten**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Richard**

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

**1:08 P. M.** - Board Meeting adjourned for **May 16, 2011**.

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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