

**NOTICE FOR POSTING  
MEETING OF  
BOARD OF ADJUSTMENT, PANEL A  
TUESDAY, MAY 18, 2010**

**Briefing:** 11:00 A.M.

**5/E/S**

**Public Hearing:** 1:00 P.M.

**COUNCIL CHAMBERS**

**Purpose:** To take action on the attached agenda, which contains the following:

1. Zoning Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

**\*All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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05-18-2010

BOARD OF ADJUSTMENT, PANEL A  
TUESDAY, MAY 18, 2010  
AGENDA

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BRIEFING LUNCH PUBLIC HEARING	5/E/S  <b>COUNCIL CHAMBERS</b>	11:00 A.M.  1:00 P.M.
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**Donnie Moore, Chief Planner  
Steve Long, Board Administrator**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Tuesday, April 20, 2010</b> Board of Adjustment Public Hearing Minutes	M1
	City attorney briefing on the Dallas Development Code provisions related to amortization of nonconforming uses	M2
BDA 090-029	5221 Walnut Hill Lane <b>REQUEST:</b> Application of Adiena Bednarz to waive the two year time limitation on a request for a special exception to fence height regulations of 6' 6" granted by Board of Adjustment Panel A (with an imposed condition) on March 16, 2010.	M3

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**UNCONTESTED CASE**

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BDA 090-051	7065 Fairdale Ave. <b>REQUEST:</b> Application of Lora Renteria for special exceptions to the fence height and visual obstruction regulations	1
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**REGULAR CASE**

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BDA 090-054	5920 Westgrove Dr. <b>REQUEST:</b> Application of Thuy Nguyen, represented by Peter Kavanagh of Zone Systems, for special exceptions to the fence height and visual obstruction regulations	2
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## **EXECUTIVE SESSION NOTICE**

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a compliant or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

**(Rev. 6-24-02)**

**BOARD OF ADJUSTMENT  
CITY OF DALLAS, TEXAS**

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**TUESDAY, MAY 18, 2010**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A April 20, 2010 public hearing minutes.

**BOARD OF ADJUSTMENT  
CITY OF DALLAS, TEXAS**

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**TUESDAY, MAY 18, 2010**

**MISCELLANEOUS ITEM NO. 2**

City attorney briefing on the Dallas Development Code provisions related to amortization of nonconforming uses.

**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA 090-029

**REQUEST:** To waive the two year limitation on a request for a special exception to the fence height regulations of 6' 6" that was granted with an imposed condition by Board of Adjustment Panel A on March 16, 2010.

**LOCATION:** 5221 Walnut Hill Lane

**APPLICANT:** Adiena Bednarz

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS:**

- On March 16, 2010, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6' 6" on the subject site, and imposed the submitted revised site plan/elevation document as a condition to the request.
- On April 28, 2010, the owner of the property of the subject site (BDA090-029) submitted a letter to the Board Administrator requesting him to schedule for the board's consideration, a request to waive the two year time limit in place in conjunction with a request for a special exception to the fence height regulations of 6' 6" that was granted by Board of Adjustment Panel A on March 16, 2010 (see Attachment A). This letter provided an explanation as to why the owner was making the request (a higher/greater fence height is required to be requested in a new application to address an existing situation involving a retaining wall on the site), and provided rationale as to why this request should be granted.
- The Dallas Development Code states the following with regard to board action:
  - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
  - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
  - The applicant may apply for a waiver of the two year limitation in the following manner:
    - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.

- The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On April 28, 2010, the Board Administrator emailed the owner the following information:
  - the public hearing date and panel that will consider the miscellaneous request (May 18, 2010 – Panel A);
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - an attachment that provided the public hearing date and panel that will consider the application; the May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- The March 16, 2010 case report regarding BDA090-029 stated that special exception to the fence height regulations of 6' 6" had been requested in conjunction with relocating and maintaining (according to a revised Building Official's Report) a 10' 6" high "fence" or (according to the revised site plan/elevation submitted on March 1st) a perforated steel fence ranging from 5' – 10' 4" in height in the site's 40' front yard setback on a site developed with a single family home. (The case report noted that the revised Building Official's Report conveyed a 6' 6" special exception request, however, nothing on the submitted revised plan/elevation denoted any part of the proposal to be higher than 10' 4" in height).

**BOARD OF ADJUSTMENT  
CITY OF DALLAS, TEXAS**

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**TUESDAY, MAY 18, 2010**

**FILE NUMBER:** BDA 090-051

**BUILDING OFFICIAL'S REPORT:**

Application of Lora Renteria for special exceptions to the fence height and visual obstruction regulations at 7065 Fairdale Avenue. This property is more fully described as part of Lot 17 and Lot 18 in City Block K/5826 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet, and requires a 45 foot visibility triangle at street intersections and a 20 foot visibility triangle at drive approaches. The applicant proposes to construct/maintain an 8 foot high fence in a required front yard setback which will require a 4 foot special exception to the fence regulations, and to construct/maintain items in required visibility obstruction triangles which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 7065 Fairdale Avenue

**APPLICANT:** Lora Renteria

**REQUESTS:**

- The following appeals have been made in this application on a site that is currently developed with a single family home:
  1. A special exception to the fence height regulations of 4' is requested in conjunction with maintaining primarily a 5' open chain link fence part of which sits atop a 3" high concrete block retaining wall located in the site's 25' Fairdale Avenue/Elva Avenue front yard setbacks.
  2. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the existing 5' high open chain link fence located in: a) the 20' visibility triangle located on the south side of the driveway into the site from Fairdale Avenue/Elva Avenue, and b) the 45' visibility triangle at the "intersection" of Fairdale Avenue and Elva Avenue.

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

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):**

Approval, subject to the following condition:

- Compliance with the submitted site plan and fence elevations.

Rationale:

- The City's Development Services Senior Engineer has no objections to these requests on the condition that the fence in the triangles be maintained of open material, and that the triangle areas be mowed and kept clear of debris.
- The applicant has substantiated how the location of the open chain link fence in the visibility triangles 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 (related to the fence height special exception):**

- The subject site is located at the “intersection” of Fairdale Avenue and Elva Avenue. The site has 25' front yard setbacks along both streets.
- 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 fence elevations indicating that the proposal located in the 25' front yard setbacks reach a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
  - The existing fence located in the front yard setbacks over 4' in height is approximately 110' in length parallel to the streets and approximately 25' in length *perpendicular* to the street on the north “side” of the site in the front yard setbacks.
  - The existing fence is shown to be located approximately on the site’s front property lines or about 8’ – 10’ from what appears to be the street pavement line.
- The submitted elevation denotes a 5' high “chain link fence, black color” part of which is located atop a 3' high concrete block retaining wall in the required front yard setback.
- Three single family homes (none of which have a fence in their front yard setback) “fronts” to the existing fence 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.

**GENERAL FACTS (related to the visual obstruction special exceptions):**

- The Dallas Development Code states the following with regard to visibility triangles: A

- in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); 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 site plan and an elevation have been submitted that show portions of the 5' high open chain link fence located in: a) the 20' visibility triangle located on the south side of the driveway into the site from Fairdale Avenue/Elva Avenue, and b) the 45' visibility triangle at the “intersection” of Fairdale Avenue and Elva Avenue.

## **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) (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, and west are developed with single family uses.

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

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

### **Timeline:**

- March 18, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 22, 2010: The Board Administrator emailed the applicant the following information:
  - an attachment that provided the public hearing date and panel that will consider the application; the May 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 7<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 4, 2010:	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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
May 7, 2010	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: "Fence needs to be open (i.e. chain link, not solid) and triangle areas need to be mowed and kept clear of debris."

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

- This request focuses on maintaining primarily a 5' high open chain link fence part of which sits atop a retaining wall that reaches 3' in height in the Fairdale Avenue/Elva Avenue front yard setbacks.
- A site plan and fence elevations have been submitted documenting that location, height, and materials of the fence over 4' in height in the Fairdale Avenue/Elva Avenue front yard setbacks. The site plan shows the fence to be approximately 110' in length parallel to the streets and approximately 25' in length *perpendicular* to the streets on the north "side" of the site in the front yard setback. The full elevations show that the fence is comprised of open chain link, is 5' high part of which is located atop a 3' high concrete block retaining wall (only about 20' of the total 135' long fence in the front yard setbacks sits atop a retaining wall).
- Three single family homes (none of which have a fence in their front yard setback) "fronts" to the existing fence on the subject site.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted in a field visit of the site and surrounding area by the Board Administrator.
- As of May 10, 2010, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the existing chain link fence part of which is located atop a 3' high solid concrete block retaining wall that reaches a maximum 8' in height in the front yard setbacks) 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 fence elevations would assure that the existing fence exceeding 4' in height would be 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 site plan and fence elevation as conditions, but deny one or both of the requests for the special exceptions to the visual obstruction regulations, notations would be made of

**STAFF ANALYSIS (related to the visual obstruction special exceptions):**

- These requests focus on maintaining portions of an existing 5' high open chain link fence located in the 20' visibility triangle located on the south side of the driveway into the site from Fairdale Avenue/Elva Avenue, and the 45' visibility triangle at the "intersection" of Fairdale Avenue and Elva Avenue.
- A site plan has been submitted that shows that about 30' of the fence length is located in the combined area of the triangle areas described above.
- Although a berm is located in the visibility triangles described above, Building Inspection has determined that the berm does not have to be an issue in these requests since it predates the creation of the zoning ordinance.
- The submitted fence elevations show that the fence located in the visibility triangles is comprised of open chain link, and is 5' in height.
- 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: "Fence needs to be open (i.e. chain link, not solid) and triangle areas need to be mowed and kept clear of debris."
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing the maintenance of portions of the existing 5' high open chain link fence in the two visibility triangles on the subject site will not constitute a traffic hazard.
- If the Board chooses to grant one or both of these requests, subject to compliance with the submitted site plan and fence elevations, the existing 5' high open chain link fence would be "excepted" into one or both of the visibility triangles on the subject site.
- Note that if the board were to grant one of both of these requests and impose the submitted site plan and fence elevations as conditions, but deny the request for the special exception to the fence height regulations, notations would be made of such action on the submitted plans whereby the height of the fence higher than 4' in the site's front yard setbacks would not be "excepted."

**BOARD OF ADJUSTMENT  
CITY OF DALLAS, TEXAS**

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**TUESDAY, MAY 18, 2010**

**FILE NUMBER:** BDA 090-054

**BUILDING OFFICIAL'S REPORT:**

Application of Thuy Nguyen, represented by Peter Kavanagh of Zone Systems, for special exceptions to the fence height and visual obstruction regulations at 5920 Westgrove Drive. This property is more fully described as Lot 8 in City Block 2/ 8211 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet, and requires a 20 foot visibility triangle at drive approaches. The applicant proposes to construct/maintain a 12 foot 6 inch high fence in a required front yard setback which will require an 8 foot 6 inch special exception to the fence regulations, and to construct/maintain items in required visibility obstruction triangles which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 5920 Westgrove Drive

**APPLICANT:** Thuy Nguyen  
Represented by Peter Kavanagh of Zone Systems

**REQUESTS:**

- The following appeals have been made in this application on a site that is currently developed with a single family home:
  1. A special exception to the fence height regulations of 8' 6" is requested in conjunction with maintaining primarily a 7' high combination "scalloped" solid stone wall/open iron fence wall with approximately 9.5' high entry columns (with approximately 3' high decorative lamps atop) – a fence described in application materials that has been on the site generally unchanged since being built in 1970; and *constructing/adding* and maintaining two, 82" (or 6.8') high open wrought iron gates in the site's 40' front yard setback.
  2. Special exceptions to the visual obstruction regulations are requested in conjunction with "maintaining the existing wall" in the four 20' visibility triangles located on either side of the two driveways into the site from Westgrove Drive. (The applicant's representative has not requested that the Board consider any landscape materials as part of these requests – landscape materials that appeared to be located in at least three of the four drive approach visibility triangles when the Board Administrator conducted his field visit of the site on April 9, 2010).

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

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 City's Development Services Senior Engineer recommends that the requests be denied.
- The applicant has not substantiated how the location of the items/fence in the four drive approach visibility triangles 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 (related to the fence height special exception):**

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 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.

On April 22, 2010, the Board Administrator emailed the applicant's representative a list of concerns regarding his submitted materials -most of which are concerns related specifically to his submitted document that includes a series of plans, elevations, and photographs:

1. This document did not appear to include a site plan with a scale;
2. The maximum height of the fence height special exception is not clearly defined; and
3. This document did not specify the specific heights, location, and species of landscape materials that are graphically shown on the "front elevation" and in the photos. This information may be important in establishing what (if any) landscape materials are going to be planted and maintained next to the fence (if the applicant will be arguing that certain landscape materials help assure that the fence over 4' high does not adversely affect neighboring property)

Given these concerns and the understanding that the board typically imposes the applicant's submitted site plans and elevations as conditions to the types of special exceptions that the applicant's representative is requesting, the Board Administrator suggested that the applicant's representative may feel it is to his advantage to

provide a revised scaled site plan and revised elevations that more clearly represent his special exception requests.

On May 3 and 4, 2010, the applicant submitted additional materials that include a revised application and a revised document that includes a series of plans, maps, photos, and elevations (see Attachment A). The revised materials attached to the revised application requested a special exception of 8' 6"; the elevation on the revised document appeared to show the maximum height of the proposal at 150" or 12 feet, 6 inches.

- The following additional information was gleaned from the submitted scaled site plan:
  - The existing fence located in the front yard setback over 4' in height is approximately 170' in length parallel to the street
  - The existing fence is shown to be located approximately 4' from the site's front property line or about 15' from what appears to be the street pavement line.
- Although a document has been submitted with the application describing how "mature trees along the inside of the fence and in the courtyard provide a dark area all the time, and a "front elevation" depicts what appears to be bushes and trees adjacent to the fence," no document has been submitted that denotes the sizes, species, and locations of these landscape materials.
- One single family home (which has no fence in its front yard setback) "fronts" to the existing fence on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The applicant's representative submitted additional information (see Attachment A). This information included the following:
  - a revised application;
  - a document that further explained additional details about the requests; and
  - a revised document that included a series of plans, maps, photos, and elevations.

#### **GENERAL FACTS (related to the 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 and 20-foot visibility triangles at drive approaches); 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).
- The applicant has submitted a document that includes a series of plans, maps, photos, and elevations along with a document that states that these requests are to "allow the existing wall which is currently in the visibility triangle to remain."
- On April 22, 2010, the Board Administrator emailed the applicant's representative a list of concerns regarding his submitted materials -most of which are concerns related specifically to his submitted document that includes a series of plans, elevations, and photographs:

1. This document did not appear to include a site plan with a scale;
2. The maximum height of the fence height special exception is not clearly defined; and
3. This document did not specify the specific heights, location, and species of landscape materials that are graphically shown on the "front elevation" and in the photos. This information may be important in establishing what if any landscape materials are planned to be maintained or added in the required triangles. Hopefully, if there are certain landscape materials in the triangles (as it appears from some of the photos that the Board Administrator attached from his field visit), a clear set of plans (site plan and elevation) will be submitted that documents their location and heights.

Given these concerns and the understanding that the board typically imposes the applicant's submitted site plans and elevations as conditions to the types of special exceptions that the applicant's representative is requesting, he may feel it is to his advantage in order to comply with the code provision stating that the applicant has the burden of proof in establishing the necessary facts to warrant favorable action of the board to provide a revised *scaled* site plan and revised elevations that more clearly represent his special exception requests.

- The applicant's representative submitted additional information (see Attachment A). This information included the following:
  - a revised application;
  - a document that further explained additional details about the requests; and
  - a revised document that included a series of plans, maps, photos, and elevations.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

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

1. BDA 69-195, Property at 5920 West Grove Drive (the subject site)

On November 25, 1969, the Board of Adjustment granted a request for a variance to the fence height regulations of 2' for a 6' high fence in the front yard setback and a request for a variance to the fence height

regulations of 2' for an 8' high fence in the side yard setback. The Board imposed the following condition: "That Mr. Tom Leachman, President of the Architect's Control Board, write a letter to the Board of Adjustment confirming that the applicant has met certain requirements of the subdivision, and that this height of wall and its construction have met the Control Board's requirements and has already been approved."

**Timeline:**

- March 2, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 22, 2010: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 3<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 7<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.
  - Concerns related to the application –specifically concerns related to the amount of what is being requested as part of the fence height special exception request, and his submitted document that includes a series of plans, elevations, and photographs.
- May 3 & 4, 2010: The applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachment A).
- May 4, 2010: 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable

Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

May 7, 2010

The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "No objection to fence height special exception but must adhere to all C.O.D. visibility requirements, triangles and intersection site distance requirements."

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

- This request focuses on maintaining primarily a 7' high combination "scalloped" solid stone wall/open iron fence wall with approximately 9.5' high entry columns (with approximately 3' high decorative lamps atop) – a fence described in application materials that has been on the site generally unchanged since being built in 1970; and *constructing/adding* and maintaining two, 82" (or 6.8') high open wrought iron gates in the site's 40' front yard setback.
- A revised document that includes a series of plans, maps, photos, and elevations has been submitted documenting that location, height, and materials of the fence over 4' in height in the front yard setback. The site plan on the revised document shows the fence to be approximately 170' in length parallel to the street, located about 4' from the front property line or about 15' from what appears to be the street pavement line. The full elevation on the revised document shows that the fence is comprised of stone and is 7' high with 9.5' high entry columns with approximately 3' high decorative lamps atop. The partial elevation on the revised document shows that the proposed new gate is to be 82" in height (or 6.8') and open metal material.
- Although a document has been submitted with the application describing how "mature trees along the inside of the fence and in the courtyard provide a dark area all the time," and a "front elevation" depicts what appears to be bushes and trees adjacent to the fence, no document has been submitted that denotes the sizes, species, and locations of these landscape materials.
- One single family home (which has no fence in its front yard setback) "fronts" to the existing fence on the subject site.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted in a field visit of the site and surrounding area by the Board Administrator.
- As of May 10, 2010, no letters had been submitted in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 8' 6" (whereby that the existing/proposed fence/gates/columns reach a maximum 12' 6" in height in the site's front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 8' 6" with a condition imposed that the applicant complies with the submitted revised document that includes a series of plans, maps, photos, and elevations would assure that the existing fence/columns and proposed gates exceeding 4' in height would be maintained and constructed/maintained in the location and of the heights and materials as shown on this document.

- Note that if the board were to grant this request and impose the submitted revised document that includes a series of plans, maps, photos, and elevations as a condition, but deny any or all of the requests for the special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted document whereby the location of the any item in the triangles would not be “excepted.”

**STAFF ANALYSIS (related to the visual obstruction special exceptions):**

- These requests focus on “maintaining the existing wall” in the four 20’ visibility triangles located on the either side of the two driveways into the site from Westgrove Drive. The applicant’s representative has not requested that the Board consider any landscape materials as part of these requests – landscape materials that appeared to be located in at least three of the four drive approach visibility triangles when the Board Administrator conducted his field visit of the site on April 9, 2010.
- A site plan has been submitted on a document that shows that about 8’ of the fence length is located in each of the four 20’ visibility triangles on both sides of the two driveways into the subject site. No landscape materials are noted on the submitted site plan, however, it appears that some landscape materials denoted on the submitted “front elevation” may be of a height and location that “encroach” into some if not all drive approach visibility triangles.
- The Sustainable Development and Construction Department Project Engineer submitted a Review Comment Sheet marked “Recommends that this be denied” with the following comments: “No objection to fence height special exception but must adhere to all C.O.D. visibility requirements, triangles and intersection site distance requirements.”
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing items (in this case, “maintaining the existing wall”) in the four 20’ drive approach visibility triangles on the subject site will not constitute a traffic hazard.
- If any or all of these requests are granted, subject to compliance with the submitted revised document that includes a series of plans, maps, photos, and elevations, the existing wall that has been officially requested as part of this special exception and possibly landscape materials that have not officially been requested as part of this application may be “excepted” into one or all of the drive approach visibility triangles on the subject site. (The Board may wish to specify the item or items that they wish to “except” in each visibility triangle – item/items that they conclude do not constitute a traffic hazard).
- Note that if the board were to grant any or all of these requests and impose the submitted document that includes a series of plans, maps, photos, and elevations, as a condition, but deny the request for the special exception to the fence height regulations, notations would be made of such action on the submitted document whereby the height of the fence/column/gates higher than 4’ in the site’s front yard setback would not be “excepted.”