

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, SEPTEMBER 15, 2010

Briefing:	11:00 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

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 that 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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09-15-2010

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, SEPTEMBER 15, 2010
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	11:00 A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEM

Approval of the Wednesday, August 18, 2010 Board of Adjustment Public Hearing Minutes	M1
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UNCONTESTED CASES

BDA 090-090	110 W. Camp Wisdom Road REQUEST: Application of David Moore, represented by Sid Hollingsworth, for a variance to the side yard setback regulations	1
BDA 090-093	826, 830 and 834 Fern Ave. and 825 Rayenell Avenue REQUEST: Application of the City of Dallas at to request an interpretation of the intent of the zoning district boundary map	2

HOLDOVER CASE

BDA 090-080	4011 Cochran Chapel Road REQUEST: Application of Robert Baldwin for special exceptions to the fence height and visual obstruction regulations	3
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REGULAR CASE

BDA 090-088	5656 Meaders Circle REQUEST: Application of Jonathan Vinson for special exceptions to the fence height and visual obstruction regulations	4
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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 complaint 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)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B August 18, 2010 public hearing minutes.

FILE NUMBER: BDA 090-090

BUILDING OFFICIAL'S REPORT:

Application of David Moore, represented by Sid Hollingsworth, for a variance to the side yard setback regulations at 110 W. Camp Wisdom Road. This property is more fully described as Tract 1.1 in City Block 6640 and is zoned RR which requires a 20 foot side yard setback for residential adjacency. The applicant proposes to construct and maintain a structure in the required side yard and provide a 3 foot side yard setback which will require a variance of 17 feet.

LOCATION: 110 W. Camp Wisdom Road

APPLICANT: David Moore
Represented by Sid Hollingsworth

REQUEST:

- A variance to the side yard setback regulations of 17' is requested in conjunction with constructing and maintaining an approximately 450 square foot (30' x 15') office addition structure proposed to be located in the 20' side yard setback along the western side of the site currently developed as a car wash (Kwik Kar Wash). The submitted site plan indicates that proposed addition triggering this variance request aligns with two existing structures on the site both of which are located in the side yard setback 3' feet from the site's western side property line – existing structures that the City recognizes as legal nonconforming structures.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is restricted in its developable area and unique compared to most RR zoned lots given the number of and location of easements on it. The number and location of easements on the site (particularly the 40' wide ingress/egress easement on the east side of the site) combined with the location of existing structures on the site and the use of the site preclude the location of the proposed structure other than in the required 20' western side yard setback.
- Granting the variance does not appear to be contrary to the public interest in that the proposed addition triggering this variance request aligns with two existing nonconforming structures on the site 3' feet from the site's western side property line.

STANDARD FOR A VARIANCE:

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

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

GENERAL FACTS:

- The minimum side yard setback on a RR (Regional Retail) zoned lot is 20 feet where adjacent to or directly across an alley from a single family, duplex, townhouse, or multifamily zoning district; or no minimum in all other cases. The subject site directly abuts to an R-7.5(A) (single family) zoning district to the west.
The applicant has submitted a site plan indicating two existing structures that are located 3' from the site's western side property line (which the City recognizes as legal nonconforming structures - that is structures that do not conform to the regulations of the code but were lawfully constructed under the regulations in force at the time of construction) and a proposed structure that would align with these existing structures 3' away from the western side property line or 17' into the required 20' side yard setback.
Although the applicant has been advised of the Code's provisions for nonconforming structures (i.e. the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent), he has chosen to only request variance for the proposed addition that would align between the two existing nonconforming structures that are located in the side yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, the entire approximately 450 square foot addition is proposed to be located in the site's side yard setback on the west side of the lot.
- The site is flat, is generally rectangular in shape (169' x 150'), and is approximately 25,000 square feet in area. The site is zoned RR (Regional Retail). The submitted plat map denotes a 15' wide sanitary sewer easement along the east side of the site, and a 15' wide storm sewer easement in the site's lower southeast corner. The submitted site plan denotes a 15' wide storm sewer easement running diagonally across the site from the northwest corner to the southeast corner, a 40' wide ingress and egress easement on the east side of the site, and an area labeled "storm water drainage facilities vol, 512, pg 1191 (tract 2)" near the northwest corner of the site.

- According to DCAD records, the property is developed with a “self serve car washes” built in 1984 with a total area of 2,500 square feet.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	RR (Regional Retail)
<u>North:</u>	RR (Regional Retail)
<u>South:</u>	RR (Regional Retail)
<u>East:</u>	RR (Regional Retail)
<u>West:</u>	R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a commercial/retail use (Kwik Kar Wash). The areas to the north, east, and south are developed with commercial and retail uses; and the area to the west is 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:

- July 20, 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.
- August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 23, 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 August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 3rd 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 27, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- September 3, 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: "No new structures over the storm sewer easement."

STAFF ANALYSIS:

- The request focuses on constructing and maintaining an approximately 450 square foot (30' x 15') office addition structure proposed to be located in the 20' side yard setback along the western side of the site currently developed as a car wash (Kwik Kar Wash).
- The submitted site plan indicates that proposed addition triggering this variance request aligns with two existing structures on the site both of which are located in the side yard setback 3' feet from the site's western side property line – existing structures that the City recognizes as legal nonconforming structures.
- According to calculations taken by the Board Administrator from the submitted site plan, the entire approximately 450 square foot addition is proposed to be located in the site's side yard setback on the west side of the lot.
- The site is flat, is generally rectangular in shape (169' x 150'), and is approximately 25,000 square feet in area. The site is zoned RR (Regional Retail). The submitted plat map denotes a 15' wide sanitary sewer easement along the east side of the site, and a 15' wide storm sewer easement in the site's lower southeast corner. The submitted site plan denotes a 15' wide storm sewer easement running diagonally across the site from the northwest corner to the southeast corner, a 40' wide ingress and egress easement on the east side of the site, and an area labeled "storm water drainage facilities vol, 512, pg 1191 (tract 2)" near the northwest corner of the site.
- According to DCAD records, the property is developed with a "self serve car washes" built in 1984 with a total area of 2,500 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations of 17' will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same RR (Regional Retail) zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same RR (Regional Retail) zoning classification.
- If the Board were to grant the variances to the side yard setback regulations, imposing a condition whereby the applicant must comply with the submitted site plan, the encroachment into this setback would be limited to what is shown on this plan which in this case is structure that is located 3' from the western side property line or 17' into the 20' side yard setback.

FILE NUMBER: BDA 090-093

BUILDING OFFICIAL'S REPORT:

Application of the City of Dallas at 826, 830 and 834 Fern Avenue and 825 Rayenell Avenue to request an interpretation of the intent of the zoning district boundary map. This property is more fully described as Lots 1, 12 and 13 and Tracts 14 and 15 in City Block 5/6252 and is zoned PD No. 533 and R-7.5(A). The applicant requests the Board of Adjustment to interpret the zoning map for these properties that was adopted by map during the city's zoning transition in 1989.

LOCATION: 826, 830 and 834 Fern Avenue and 825 Rayenell Avenue

APPLICANT: City of Dallas

REQUEST:

- An application has been made by the City of Dallas to interpret the intent of the zoning district map where uncertainty exists on property zoned PD No. 533 (Planned Development) and R-7.5(A) (Single family). The subject site is developed with what appears to be vacant commercial structures. The application states that "the zoning on the property was adopted by map during the City's zoning transition in 1989. The zoning district boundary line is not clear as it relates to this property. A Board of Adjustment interpretation is requested."

STAFF RECOMMENDATION:

- Staff has determined that it is a reasonable interpretation of the study area map attached to the ordinance that the zoning boundary was not intended to shift to the north on Fern Avenue. That the intention of the broad, hand drawn, line used to indicate the zoning boundary was to leave zoning south of the line R-7.5(A) but property north of the line, and on and under the line, RR Regional Retail.

BOARD OF ADJUSTMENT EMPOWERMENT TO INTERPRET THE INTENT OF THE ZONING DISTRICT MAP:

Section 51A-3.102(d)(3) of the Dallas Development Code states that the Board of Adjustment is empowered to interpret the intent of the zoning district map where uncertainty exists because the actual physical features differ from those indicated on the zoning district map and when the rules set forth in the zoning district boundary regulations do not apply.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 533 & R-7.5 (A) (Planned Development and Single family residential 7,500 square feet)
North: PD No. 533 (Planned Development)
South: R-7.5 (A) (Single family residential 7,500 square feet)
East: PD No. 533 (Planned Development)
West: R-7.5 (A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with what appears to be vacant commercial structures. The areas to the north and east are a freeway (US Highway 175); and the areas to the south and west are developed with what appears to be single family uses.

Timeline:

August 6, 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.

August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request site is currently bisected by a zoning boundary which not only bisects the property but an existing building on the property. Prior to a city wide zoning transition in 1989, the entire site was zoned LC Light Commercial. The zoning map currently indicates that the northern part of the site is zoned RR Regional Retail and the southernmost part of the site is R-7.5(A) single family. This zoning prohibits the building bisected by the zoning line from being used for its historical non-residential use. The building lost any non-conforming rights associated with the previous LC zoning when it became vacant for a period greater than 6 months.
- This request is for an interpretation of a zoning boundary that was adopted by map as part of the city wide zoning transition in 1989. The transition adopted zoning districts established by a new development code for the city, Chapter 51A.

- With typical zoning change requests, the zoning is adopted with legal descriptions (metes and bounds or lot and block descriptions). During transition the new zoning was adopted by map with no detailed legal description of the boundaries of the zoning districts.
- As part of the transition process, the city was divided into quadrants (Northwest, Northeast, Southwest and Southeast) for the purpose of adopting new zoning maps. Within these quadrants there were some areas designated to be studied in more depth designated as special study areas. These special study areas were also adopted by map but by a separate ordinance.
- The request site was within the southeast transition quadrant but also within a special study area named the Census Tract 93.03 Land Use Study.
- The quadrant wide zoning transition in July of 1989 rezoned the request site from an LC Light Commercial zoning district under Chapter 51 to an RR Regional Retail zoning district under Chapter 51A. The maps adopted with this ordinance clearly kept the existing boundaries in place and did not alter the boundaries between residential and non-residential zoning districts.
- The ordinance adopting the maps associated with the special area study was adopted in September of 1989. These maps had hand drawn boundaries and were more ambiguous than the maps adopted with the quadrant transition zoning.
- When the hand drawn boundaries were applied by staff to the official maps at that time, the zoning boundary on the request site shifted one block to the north on the lot fronting on Fern and two lots to the north on lots fronting on Rayenell Avenue.
- In a recent review of the maps attached to the ordinance adopting the special study area zoning, it is not clear whether the boundary was intended to shift to the north on the boundary of the lot fronting on Fern Avenue. It is clear that where there was previously an offset of the zoning boundary between Fern Avenue and Rayenell Avenue, that offset had been removed and it was now a straight line across the block.
- Staff has determined that it is a reasonable interpretation of the study area map attached to the ordinance that the zoning boundary was not intended to shift to the north on Fern Avenue. That the intention of the broad, hand drawn, line used to indicate the zoning boundary was to leave zoning south of the line R-7.5(A) but property north of the line, and on and under the line, RR Regional Retail.
- A conclusion that the boundary was not intended to shift in this manner is supported by wording in the zoning recommendations section of the Census Tract 93.03 Land Use Study. In the recommendation for subarea (4b), where the request site is located, it states that the proposed zoning, while a reduction from commercial zoning to more neighborhood compatible retail zoning, “would still permit the existing land uses...” The primarily residential subarea (5) to the south and east of the site, clearly does not mention any existing LC zoning, the zoning on the property prior to transition, to be converted to residential zoning. This would imply that the existing non-residential zoning on the request site would remain non-residential zoning and transition the entire site to an RR Regional Retail district, retaining the D-1 dry overlay.
- If the board determines that the zoning boundary should not have been shifted to the north on the request site, the zoning map will be corrected to reflect this conclusion and the two southern most lots will now reflect RR zoning with a D-1 dry overlay

FILE NUMBER: BDA 090-080

BUILDING OFFICIAL'S REPORT:

Application of Robert Baldwin for special exceptions to the fence height regulations and visual obstruction regulations at 4011 Cochran Chapel Road. This property is more fully described as Lot B in City Block 5077 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 driveway approaches. The applicant proposes to construct an 8 foot 6 inch fence which will require a 4 foot 6 inch special exception to the fence regulations, and to construct and maintain items in a required visibility obstruction triangle which will require a special exception to the visual obstruction regulations.

LOCATION: 4011 Cochran Chapel Road

APPLICANT: Robert Baldwin

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' 6" is requested in conjunction with (according to a revised site plan/elevation document dated "2010-08-30") constructing and maintaining:
 - 7' high "open iron fencing" and pedestrian gate, 7' 8" high columns of unspecified materials; and an 8' 6" high vehicular gate of unspecified materials parallel to the street located in the site's 40' front yard setback;
 - 7' high "open iron fencing" with 7' 8" high columns of unspecified materials perpendicular to the street on the west side of the site in the front yard setback; and
 - 7' high "open iron fencing" and "4'- 0" iron fencing on existing 3'-0" retaining wall" on the east side of the site in the front yard setback.
 2. A special exception to the visual obstruction regulations is requested in conjunction with constructing and maintaining a portion of 7' high open iron fencing and one 7' 8" high entry column of unspecified material to be located in the 20' visibility triangle located on the west side of the driveway into the site from the street.

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 exception):

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends that this request be denied.
- The applicant has not substantiated how the location of the proposed “open iron fencing” and column in the visibility triangle 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.

UPDATED GENERAL FACTS (related to the fence height special exception)(September 2010):

- The Board of Adjustment Panel B conducted a public hearing on this application and determined at this hearing that the applicant had not complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site, and delayed action until September 15th per the request of the applicant.
- 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 site has one 40’ front yard setback.
The applicant has submitted a revised site plan/elevation document dated 2010-08-30 indicating that the proposal located in the required 40’ front yard setback reaches a maximum height of 8’ 6”. (Attachment B includes a copy of the applicant’s revised site plan/elevation document dated “2010-08-30.”)
- The following additional information was gleaned from the submitted revised 2010-08-30 site plan/elevation document:
 - The proposal shown in the front yard setback over 4’ in height is approximately 90’ in length parallel to the street and approximately 32’ - 40’ in length *perpendicular* to the streets on the east and west “sides” of the site in the front yard setbacks.
 - The proposal located approximately 0’ – 12’ from the site’s front property line or about 14’ – 26’ from the street pavement line.

- The submitted revised site plan dated 2010-08-30 shows circles that appear to be landscape materials adjacent to the fence/wall.
- No single family home “fronts” the proposal given the location of it on the end of a cul-de-sac.
- 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.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the site and “gates and fences on Cochran Chapel;” and
 - a revised site plan/elevation document.
- On August 30, 2010, the applicant submitted additional information beyond what was submitted with the original application and at the August 18th public hearing (see Attachment B).

UPDATED GENERAL FACTS (related to the visual obstruction special exception)(September 2010):

- The Board of Adjustment Panel B conducted a public hearing on this application and determined at this hearing that the applicant had not complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site, and delayed action until September 15th per the request of the applicant.
- 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).
 A revised site plan/elevation document dated 2010-08-30 has been submitted that shows a portion of 7’ high “open iron fencing” and one 7’ 8” high entry column of unspecified material being located in the 20’ visibility triangle on the west side of the driveway into the site from the street.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the site and “gates and fences on Cochran Chapel;” and
 - a revised site plan/elevation document.
- On August 30, 2010, the applicant submitted additional information beyond what was submitted with the original application and at the August 18th public hearing (see Attachment B).

ORIGINAL GENERAL FACTS (related to the fence height special exception)(August 2010):

- 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 site has one 40' front yard setback.
The applicant had submitted a revised site plan/elevation document indicating that the proposal located in the required 40' front yard setback reached a maximum height of 8' 6". (Attachment A includes among other things a copy of the applicant's revised site plan/elevation document that he requested replace the originally submitted site plan/elevation document).
- The following additional information was gleaned from the originally submitted revised site plan/elevation document:
 - The proposal shown in the front yard setback over 4' in height was approximately 90' in length parallel to the street and approximately 32' - 40' in length *perpendicular* to the streets on the east and west "sides" of the site in the front yard setbacks.
 - The proposal located approximately 0' – 12' from the site's front property line or about 14' – 26' from the street pavement line.
- The submitted revised site plan/elevation document denoted that the fence to be located in the front yard setback parallel and perpendicular to the street was "iron fencing" where neither the heights nor specific materials are denoted – the fence in the front yard setback was denoted as "iron fencing," and the column materials are not denoted. Additionally, the revised site plan/elevation document showed an approximate 10' length of the proposal on the east side of the site in the front yard setback as "iron fencing on existing retaining wall" however there was no denotation of the specific heights or specific materials of either. Although the Board Administrator had emailed the applicant on July 20th concerns related to how one assessed from his originally submitted site plan/elevation whether the "iron fencing" was to be open or solid, what the materials of the columns were, and the maximum height of "iron fencing on existing retaining wall," the revised site plan/elevation document submitted on July 23rd still did not make these specifications.
- The site plan that was part of what is shown on the revised site plan/elevation document denoted what appeared to be two columns immediately west of the driveway/entry gate while the elevation that was another part of what was shown on this document denoted one column immediately west of the driveway/entry gate. Although the Board Administrator had emailed the applicant on July 30th concerns related to this discrepancy on the two drawings on his one revised document, as of August 9th, the applicant had not responded to this concern with an amended plan.
- The submitted site plan showed circles that appear to be landscape materials adjacent to the fence/wall.

- No single family home “fronts” the proposal given the location of it on the end of a cul-de-sac.
- 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.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the site and “gates and fences on Cochran Chapel;” and
 - a revised site plan/elevation document.

ORIGINAL GENERAL FACTS (related to the visual obstruction special exception)(August 2010):

- 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).

A revised site plan/elevation document had been submitted that shows a portion of 7’ high “iron fencing” (which one may assume to be open) and one 7’ 8” high entry column (of unspecified material) being located in the 20’ visibility triangle on the west side of the driveway into the site from the street.

The submitted site plan on the revised site plan/elevation document denoted what appears to have been two columns immediately west of the driveway/entry gate while the elevation on this document appeared to show one column immediately west of the driveway/entry gate. Although the Board Administrator had emailed the applicant on July 30th concerns related to this discrepancy on the two drawings on his one revised document, as of August 9th, the applicant had not responded to this concern with an amended plan.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the site and “gates and fences on Cochran Chapel;” and
 - a revised site plan/elevation document.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 (A) (Single family district 1 acre)

North: TH-2(A) Townhouse)
South: R-1 (A) (Single family district 1 acre)
East: R-1 (A) (Single family district 1 acre)
West: R-1 (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 or undeveloped tracts of land.

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 24, 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.
- July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 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 August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 23, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 3, 2010: 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 Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

- August 4, 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. Deny any relief of visibility requirements."
- August 3, 2010: 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 Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- August 18, 2010: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their September 15th public hearing.
- August 25, 2010: The Board Administrator sent a letter to the applicant's representative that the public hearing date and the September 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials.
- August 30, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment B).
- August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- September 3, 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. Since this is new construction, recommend denial of visibility triangle request. If fence is approved in the visibility triangle condition that vegetation be maintained to conform with visibility requirements (i.e. 30' – 8' above the curb remains clear)."

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

- This request focuses on constructing and maintaining 7' high "open iron fencing" and pedestrian gate, 7' 8" high columns of unspecified materials; and an 8' 6" high vehicular gate of unspecified materials located in the site's 40' front yard setback parallel to the street. The request additionally focuses on constructing and maintaining 7' high "open iron fencing" with 7' 8" high columns of unspecified materials perpendicular to the street on the west side of the site in the front yard setback; and 7' high "open iron fencing" and "4'- 0" iron fencing on existing 3'-0" retaining wall" on the east side of the site in the front yard setback.
- A revised site plan/elevation document dated 2010-08-30 has been submitted that shows the proposal in the front yard setback over 4' in height to be approximately 90' in length parallel to the street and approximately 32' - 40' in length *perpendicular* to the streets on the east and west "sides" of the site in the front yard setbacks.
- The submitted revised site plan/elevation document dated 2010-08-30 shows the proposal located approximately 0' – 12' from the site's front property line or about 14' – 26' from the street pavement line.
- No single family home "fronts" the proposal given the location of it on the end of a cul-de-sac.
- 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 September 7, 2010, one letter had been submitted to staff in support and one letter had been submitted 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' 6" will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted revised site plan/elevation document dated 2010-08-30 would provide assurance that the proposal exceeding 4' in height would be located and maintained in the locations 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 site plan/elevation document as a condition, but deny the request for the special exception to the visual obstruction regulations, notations would be made of such action on the submitted document whereby the location of the items in the visibility triangle would not be "excepted."

STAFF ANALYSIS (related to the visual obstruction special exception):

- This request focuses on constructing and maintaining 7' high "open iron fencing" and one 7' 8" high entry column of unspecified material to be located in the 20' visibility triangle located on the west side of the driveway into the site from the street.
- The site plan on the revised site plan/elevation document dated 2010-08-30 shows that about 5' of the "open iron fencing"/column length is located in the triangle area described above.
- The Sustainable Development and Construction Department Project Engineer submitted a Review Comment Sheet marked "Recommends that this be denied."
- The applicant has the burden of proof in establishing that granting the special exception to the visual obstruction regulations in conjunction with constructing and

- If the Board chooses to grant this request, subject to compliance with the submitted revised site plan/elevation document dated 2010-08-30, the proposed “open iron fencing” and a column of unspecified material would be “excepted” into the 20’ visibility triangle located on the west side of the driveway into the site from the street in the location and of the materials and heights as shown on this document.
- Note that if the board were to grant this request and impose the submitted revised site plan/elevation document 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 revised site plan/elevation whereby the height of the fence higher than 4’ in the site’s front yard setback would not be “excepted.”

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

APPEARING IN FAVOR: Robert Baldwin, 401 Exposition Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

Having fully reviewed the evidence in Appeal No. **BDA 090-080**, on application of Robert Baldwin, and heard all testimony and facts relating to the posting of the notification signs, I find that the required sign was not posted properly and I move that the Board of Adjustment, hold this matter under advisement until **September 15, 2010**.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

FILE NUMBER: BDA 090-088

BUILDING OFFICIAL'S REPORT:

Application of Jonathan Vinson for special exceptions to the fence height and visual obstruction regulations at 5656 Meaders Circle. This property is more fully described as Lot 2 in City Block 1/ 5514 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 driveway approaches. The applicant proposes to construct/maintain a 7 foot 6 inch high fence in a required front yard setback which will require a 3 foot 6 inch special exception to the fence height regulations, and to construct/maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

LOCATION: 5656 Meaders Circle

APPLICANT: Jonathan Vinson

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 3' 6" is requested in conjunction with maintaining (according to submitted revised plans) a 6' high wrought iron fence with 7' high posts, and two approximately 7' high wrought iron gates flanked by 7' 6" high entry gate posts located in the site's required 50' front yard.
 2. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the existing 6' high wrought iron fence and four existing 7' 6" high entry gate posts that are located in the four 20' visibility triangles located at the two driveways into the site from the street.

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 of the requests, subject to the following conditions:

1. Compliance with the submitted revised site plans and revised elevation is required.
2. Any/all landscape materials/vegetation located in all visibility triangles on the site should be maintained in compliance with the City's visual obstruction regulations.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to these requests with the condition that vegetation should be maintained to conform to visibility requirements.

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. The site has a 50' front yard given that the lot has a 50' platted building line.
The applicant has submitted revised site plans and a revised elevation indicating that the proposal located in the required 50' front yard reaches a maximum height of 7' 6". (Attachment A includes a copy of the applicant's revised site plans and revised elevation).
- The following additional information was gleaned from the submitted revised site plans:
 - The proposal/existing fence shown over 4' in height in the required front yard is approximately 85' in length parallel to the curved street and approximately 50' in length *perpendicular* to the street on the east "side" of the site in the required front yard.
 - The proposal/existing fence is located approximately on the site's front property line and approximately 15' from the street pavement line.
- The submitted site plan denotes "large trees" and "plant beds" adjacent to the fence/wall.
- No single family home "fronts" the proposal given the location of it on the end of a cul-de-sac.
- 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.
- On September 2, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a revised elevation, plan view, and enlarged plan view of the proposal.

immediately north of subject site) of 4 feet without prejudice. The minutes indicate that the request was made for a solid wooden fence 8' in height in the front yard along Meaders Lane.

Timeline:

- June 24, 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.
- August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 23, 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 August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 3rd 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 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- Sept. 3 & 7, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachments A, C, and D).
- Sept. 3 & 7, 2010: A neighboring property owner directly northeast of the subject site forwarded letters and other related documents in opposition to the application (see Attachment B).
- September 3, 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: "No objection to fence height and fence in visibility

triangles; however vegetation needs to be maintained to conform with visibility requirements (i.e. 30" – 8' above the curb remains clear)."

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

- This request focuses on maintaining (according to submitted revised plans) a 6' high wrought iron fence with 7' high posts, and two approximately 7' high wrought iron gates flanked by 7' 6" high entry gate posts located in the site's required 50' front yard.
- Revised site plans and a revised elevation has been submitted that shows the proposal/existing fence in the required front yard over 4' in height to be approximately 85' in length parallel to the curved street and approximately 50' in length *perpendicular* to the streets on the east "side" of the site in the required front yard.
- The submitted revised site plans show the proposal/existing fence located approximately on the site's front property line or about 15' from the street pavement line.
- No single family home "fronts" the proposal given the location of it on the end of a cul-de-sac.
- 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 September 7, 2010, 14 letters had been submitted to staff in support of the application, and 11 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 plans and revised elevation would provide assurance that the proposal exceeding 4' in height would remain located and maintained in the location and of the heights and materials as shown on these documents.
- Note that if the board were to grant this request and impose the submitted revised site plans and revised elevation as a condition, but deny any 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 items in any such visibility triangle would not be "excepted."

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

- This request focuses on maintaining portions of the existing 6' high wrought iron fence and four existing 7' 6" high entry gate posts that are located in the four 20' visibility triangles located at the two driveways into the site from the street.
- The Sustainable Development and Construction Department Project Engineer has indicated that he has no objections to these requests with the condition that vegetation should be maintained to conform to visibility requirements.

- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations in conjunction with maintaining posts and open wrought iron fence in the 20' visibility triangles located on both sides of the two driveways into the site from the street will not constitute a traffic hazard.
- If the Board chooses to grant any/all of these requests, subject to compliance with the submitted revised site plans and revised elevation document, the items shown on these documents would be "excepted" into the 20' visibility triangles.
- Note that if the board were to grant any/all of these requests and impose the submitted revised site plans and revised elevation 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 documents whereby the height of the fence higher than 4' in the site's front yard setback would not be "excepted."