

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
WEDNESDAY, JANUARY 20, 2010**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member and David Wilson, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Marla Beikman, regular member, Christian Chernock, regular member and David Wilson, regular member

MEMBERS ABSENT FROM HEARING: No one

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

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

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**11:12 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 20, 2010 docket.**

**11:12 A.M.: Executive Session Begins**

**11:25 A.M.: Executive Session Ends**

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**1:10 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B November 18, 2009 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2010**

**MOTION: Wilson**

I move approval of the Wednesday, **November 18, 2009** Board of Adjustment Public Hearing minutes.

**SECONDED: Chernock**

**AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (Unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding *Larry Meletio and Jill Meletio v. City of Dallas, Texas, and Board of Adjustment, Dallas, Texas*, Civ. Action No. 3:09-CV-1205-M (N.D. Tex.), BDA 089-057, Property at 4341 Beechwood Lane

**\*This was not an action item.**

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**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER: BDA 089-010**

**REQUEST: To waive the two year limitation on a request for a special exception to the landscape regulations that was granted with a condition by Board of Adjustment Panel B on January 21, 2009.**

**LOCATION: 5636 Lemmon Avenue**

**APPLICANT: John K. Peacy, represented by Rob Baldwin**

**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:**

- 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 December 7, 2009, the applicant's representative for BDA089-010 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 landscape regulations that was granted by Board of Adjustment Panel B (with a condition imposed that compliance with the submitted alternate landscape plan is required) on January 21, 2009. (See Attachment A). This letter also provided details as to why the applicant felt the request should be granted.
- On January 5, 2010, the Board Administrator emailed the applicant's representative request the following information:
  - the public hearing date and panel that will consider the miscellaneous request;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the January 8<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."
- On January 8, 2010, the applicant's representative submitted another letter to the Board Administrator providing additional details about the request (see Attachment B).
- The January 2009 case report regarding BDA089-010 stated that a special exception to the landscape regulations was made in conjunction with constructing and maintaining a financial institution with drive-in window use (Bank of America) on the subject site which is developed as a retail strip center and not fully adhering to the City's landscape regulations.

**\*Member Marla Biekman recused herself and did not hear or vote on this matter.**

**BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2010**

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

**APPEARING IN OPPOSITION:** No one

**MOTION: Chernock**

I move that the Board of Adjustment waive the two year limitation on a request for a special exception to the landscape regulations that was granted with a condition by Board of Adjustment Panel B on January 21, 2009.

**SECONDED: Gillespie**

**AYES: 4– Reynolds, Gillespie, Chernock, Wilson**

**NAYS: 0 –**

**MOTION PASSED 4 – 0 (Unanimously)**

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**MISCELLANEOUS ITEM NO. 4**

**FILE NUMBER:** Unassigned

**REQUEST:** To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

**LOCATION:** 3306 Mojave Street

**APPLICANT:** Vennie and Marsha Logan

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.

- In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter related to the request of the board to waive the \$600.00 filing fee to be submitted with a potential board of adjustment application (see Attachment A).

**Timeline:**

January 8, 2010      The applicants submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above along with additional related financial documents (see Attachment A).

January 8, 2010:      The request was randomly assigned to Board of Adjustment Panel B.

January 8, 2010:      The Board Administrator wrote the applicants a letter that provided additional details about their request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2010**

APPEARING IN FAVOR:              Vennie Logan, 3306 Mojave Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION:    **Beikman**

I move that the Board of Adjustment **waive** the filing fee to be submitted in conjunction with the potential Board of Adjustment appeal.

SECONDED:    **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

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FILE NUMBER:      BDA 090-020

**BUILDING OFFICIAL’S REPORT:**

Application of Karl A. Crawley for a variance to the front yard setback regulations at 4918 Hovenkamp Drive. This property is more fully described as a 9.310 acre tract in City Block 6128 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 9-foot front yard setback which will require a variance of 16 feet.

LOCATION:              4918 Hovenkamp Drive

APPLICANT:          Karl A. Crawley

REQUEST:

- A variance to the front yard setback regulations of 16' is requested in conjunction with adding and maintaining an approximately 240 square foot "new freezer/cooler" structure in one of the site's five 25' front yard setbacks: Hazelhurst Lane. The addition would attach to an existing circa 1960's elementary school structure (Edna Rowe Elementary School) on the subject site – a structure with an approximately 60,000 square foot building footprint.

Note that the applicant has only made an application for a variance to the front yard setback regulations to address a structure that is proposed to be located in the site's 25' Hazelhurst Lane front yard setback, and not to remedy the portion of the existing structure in this setback that one may assume is a nonconforming structure – that is a structure that does not conform to the regulations of the code but was lawfully constructed under the regulations in force at the time of construction. The applicant has stated that if the owner were to ever intentionally destroy the existing structure in the Hazelhurst Lane front yard setback, that any replacement structure would comply with the front yard setback provisions.

### **STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Development of the subject site is restricted in that the subject site has five, 25' front yard setbacks – a characteristic that is atypical of lots zoned R-7.5(A) most of which have one front yard setback (and two at most), and in that the subject site is very unusually shaped – another characteristic that is atypical of lots zoned R-7.5(A) most of which are rectangular in shape.
- The location of the proposed "new freezer/cooler" structure that is the issue in this application is limited to its proposed location in that it must be located adjacent to the existing school kitchen in order for the kitchen and the cafeteria to function.

### **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 front yard setback on an R-7.5A) zoned lot is 25 feet. The applicant has submitted a site plan document indicating a “new freezer/cooler” structure that is located 9’ from the Hazelhurst Lane easement/front property line (or 16’ into the 25’ front yard setback). Although this submitted site plan document indicates portions of the existing structure that encroaches into the 25’ setback, the applicant has informed the Board Administrator that the portions of the existing structure in the Hazelhurst Lane front yard setback is not part of his variance request since the owner plans to make any replacement structure that is intentionally destroyed comply with the 25’ front yard setback.
- The Dallas Development Code states that 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. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the “new freezer/cooler” structure that would be located in the site’s 25’ Hazelhurst Lane front yard setback is approximately 33 square feet (or approximately 14 percent) of the 240 square foot building footprint.
- The site is irregular in shape (virtually pentagonal), and is (according to the application) 9.3 acres in area. The site is zoned R-7.5(A) and because it encompasses an entire block, the site has five street frontages hence front yard setbacks which is not a characteristic that is typical of lots zoned single family.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the request and a floor plan of the proposal.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with an elementary school (Edna Rowe Elementary School). 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:**

- Nov. 24, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 15, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 15, 2009: 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 January 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 8<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.
- January 4, 2010 The applicant submitted additional information to the Board Administrator (see Attachment A).
- January 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- January 8, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with C.O.D. visibility requirements."

## **STAFF ANALYSIS:**

- This request focuses on adding and maintaining an approximately 240 square foot "new freezer/cooler" structure in one of the site's five 25' front yard setbacks: Hazelhurst Lane. The addition would attach to an existing circa 1960's elementary school structure (Edna Rowe Elementary School) on the subject site – an existing structure with an approximately 60,000 square foot building footprint.

- The applicant has only made an application for a variance to the front yard setback regulations to address a structure that is proposed to be located in the site's 25' Hazelhurst Lane front yard setback, and not to remedy the portion of the existing structure in this setback that one may assume is a nonconforming structure. – that is a structure that does not conform to the regulations of the code but was lawfully constructed under the regulations in force at the time of construction. The applicant has stated that if the owner were to ever intentionally destroy the existing structure in the Hazelhurst Lane front yard setback, that any replacement structure would comply with the front yard setback provisions
- The submitted site plan indicates that about 33 square feet of the proposed 240 square foot freezer/cooler structure would be in the 25' front yard setback.
- The site is irregular in shape (virtually pentagonal), and is (according to the application) 9.3 acres in area. The site is zoned R-7.5(A) and because it encompasses an entire block, the site has five street frontages hence front yard setbacks which is not a characteristic that is typical of lots zoned single family.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The 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 R-7.5(A) (Single family) 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 R-7.5(A) (Single family) zoning classification.
- If the Board were to grant the front yard variance of 16', imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into this setback would be limited to that shown on the submitted plan which in this case is a "new freezer/cooler" structure that is located 9' from the Hazelhurst Lane easement/front property line or 16' into this 25' front yard setback.

**BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2010**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment grant application **BDA 090-020** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.
- The proposed cooler will be one-story in height and will have similar exterior material as the existing school.

**SECONDED: Chernock**

**AYES:** 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 089-113

**BUILDING OFFICIAL’S REPORT:**

Application of Joanna St. Angelo, represented by Mark Scruggs, for special exceptions to the landscape and tree preservation regulations at 3630 Harry Hines Boulevard. This property is more fully described as an irregularly shaped approximately .8157 acre tract of land in City Block 1/1000 and is zoned PD-193 (I-2) which requires mandatory landscaping and tree preservation. The applicant proposes to construct and maintain a structure and provide alternate landscape and tree mitigation plans which will require special exceptions to the landscape and tree preservation regulations.

**LOCATION:** 3630 Harry Hines Boulevard

**APPLICANT:** Joanna St. Angelo  
Represented by Mark Scruggs

**REQUESTS:**

- The following appeals have been made in this application on a site developed with an institutional use (The Sammons Center for the Arts):
  1. A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 125’ long, 7’ wide “accessibility ramp” that would connect the structure on the site and its surface off-street parking lot to Harry Hines Boulevard; and
  2. A special exception to the tree preservation regulations is requested in conjunction with mitigating protected trees that are required to be removed in tandem with constructing and maintaining the aforementioned “accessibility ramp” on the site.

**STAFF RECOMMENDATION (landscape and tree special exceptions):**

Hold under advisement/delay final action until Board of Adjustment Panel B’s March 17, 2010 public hearing

Rationale:

- The delay of final action on these special exception requests until March 17, 2010 is necessary since that applicant has stated that final authorization by the City of Dallas Public Works and Transportation to proceed with redesign of the accessibility ramp (that triggers the landscape/tree preservation ordinance compliance which this appeal is based on) is pending contract execution and there is insufficient time to develop ramp revisions and alternate landscape design for the Board's January 20<sup>th</sup> public hearing.
- The applicant's representative has stated that the new sidewalk cannot accommodate the ramp shown on the submitted alternate landscape plan, and that the ramp must be redesigned which will in turn affect the alternate landscape plan submitted to the Board as part of this application.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:**

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

**STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:**

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

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

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

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

**GENERAL FACTS (related to the landscape special exception):**

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot

PD No. 193 also states that with regard to when landscaping must be completed that “if a landscape plan is required under this section, all landscaping must be completed in accordance with the approved landscape plan before the final inspection of any structure on a lot or, if no final inspection is required, within 120 days of the date of the issuance of a landscape permit.”

The applicant has submitted an alternate landscape plan where, according to the City of Dallas Chief Arborist, the applicant seeks relief from Section 51P-193. 126.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the special exception request (see Attachment A). The memo stated the following:
  - Trigger:
    - New construction of new pedestrian ramp.
  - Deficiencies:
    - The proposal would base landscape completion past the final inspection of the construction permit for new paving. The proposed plan does not conform to PD 193 Part 1.
  - Factors:
    - The property houses the Sammons Center for the Arts on a lot with significant topographical challenges and an unusual shape formed by the placement between the Tollway, Harry Hines Boulevard, and the Oak Lawn Avenue “clover leaf.” Parking is limited and a new ramp is being built to accommodate pedestrian movement from remote parking north of Oak Lawn Avenue and to allow easier handicapped access.
    - The existing structure that is of a historic nature had been altered by roadway configuration. The odd configuration of the lots forces the sidewalk to abut the street on one side and a significant slope and the structure on the other side. The slopes prohibit the proper placement of required trees along the street frontage in the tree planting zone. The sidewalk could not be adjusted to the required area without significant engineering efforts, and not at all along the building façade.
    - Some existing landscaping will remain on the northeast corner along the Tollway but will be maintained and transitioned to accept three new trees. Steep slopes prohibit the planting of screening shrubs along Oak Lawn Avenue but new shrubs are to be installed facing Harry Hines Boulevard.
    - The addition of new nonpermeable surface to the property with the construction of the ramp requires the whole property to be in compliance with the PD 193 regulations unless the Board of Adjustment determines a “special exception will not compromise the spirit and intent” of the code.
  - Recommendation:
    - Approval of the submitted landscape plan to be completed within 24 months.
- The applicant’s representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a letter that requested that the board delay action on the application until January 20, 2010 since Dallas County recently informed the City of Dallas Public Works and

- The Board of Adjustment conducted a public hearing on this application on October 21, 2009, and delayed action on the matter until their January hearing per the applicant's representative's request.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was submitted prior to/at the October 21<sup>st</sup> public hearing (see Attachment C). This information included a letter that requested that the board delay action on the application until March 17, 2010 stating that final authorization by the City of Dallas Public Works and Transportation to proceed with redesign of the accessibility ramp (that triggers the landscape/tree preservation ordinance compliance which this appeal is based on) is pending contract execution and there is insufficient time to develop ramp revisions and alternate landscape design for the Board's January 20<sup>th</sup> public hearing.

**GENERAL FACTS (related to the tree preservation special exception):**

- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.

The Dallas Development Code additional states in section 51A-10.134(5) "if a property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

An attachment has been submitted with the application that states that "mitigation trees will be planted as part of the alternate landscape plan note above and completed in the same twenty four month time extension."

- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment A). The memo stated the following:
  - The applicant is requesting relief from tree preservation ordinance of Article X: more specifically, relief from Section 51A-10.134(5) pertaining to timing of tree replacement.
  - Trigger:  
New construction of new pedestrian ramp and removal of two protected trees.
  - Deficiencies:

The proposed extension of tree replacement is 6 months beyond the time allowed under Article X for the completion of tree replacement under a letter of credit or performance bond.

- Factors for consideration:

The two oak trees (15' and 19" caliper red oaks) must be removed to complete the ramp construction. The tree removal will be approved by tree removal application to allow for the improvement to the property. The applicant agrees to mitigate per Article X with the possible exception of timing on the property to be incorporated into the landscaping. Two non-protected hackberry trees in inappropriate locations are slated for removal to minimize maintenance concerns. The hackberry trees will not require a tree removal permit. Tree replacement is not required for non-protected trees.

The applicant requests to extend the timing of replacement for the two protected trees to 24 months in conjunction with the completion of the landscaping, if approved by the Board of Adjustment. This would allow for the funding, planning, and completion of site work renovations prior to the installation of replacement trees.

- Recommendation

Approval of the addition of time to complete the tree replacement to be done in conjunction with the completion of the landscape plan within 24 months.

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a letter that requested that the board delay action on the application until January 20, 2010 since Dallas County recently informed the City of Dallas Public Works and Transportation Department of their plans to rebuild the access road from Harry Hines Boulevard to Oak Lawn Avenue which will affect the accessibility ramp project that triggers the landscape ordinance compliance which this appeal is based on. As a result, the new sidewalk cannot accommodate the ramp which now must be redesigned which will in turn affect the alternate landscape plan submitted to the Board as part of this application.
- The Board of Adjustment conducted a public hearing on this application on October 21, 2009, and delayed action on the matter until their January hearing per the applicant's representative's request.
- The applicant's representative submitted additional information beyond what was submitted with the original application and beyond what was submitted prior to/at the October 21<sup>st</sup> public hearing (see Attachment C). This information included a letter that requested that the board delay action on the application until March 17, 2010 stating that final authorization by the City of Dallas Public Works and Transportation to proceed with redesign of the accessibility ramp (that triggers the landscape/tree preservation ordinance compliance which this appeal is based on) is pending contract execution and there is insufficient time to develop ramp revisions and alternate landscape design for the Board's January 20<sup>th</sup> public hearing.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (I-2 Subdistrict)(H-14) (Planned Development District, Industrial, Historic)

North: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)  
South: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)  
East: PD No. 193 (D Subdistrict) (Planned Development District, Duplex)  
West: PD No. 193 (I-2 Subdistrict) (Planned Development District, Industrial)

### **Land Use:**

The subject site is developed with an institutional use (The Sammons Center for the Arts). The area to the north is developed with the Harry Hines Boulevard/Oak Lawn Avenue interchange; the areas to the east and south are developed as the Dallas North Tollway; and the area to the south is developed as a railroad line.

### **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:**

- August 26, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Sept. 24, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment providing the public hearing date and panel that will consider the application; the October 5<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; the October 9<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 requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

- October 12, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).
- October 12, 2009 The applicant's representative submitted additional information to the Board Administrator (see Attachment B).
- October 21, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their January public hearing.
- Dec. 11, 2009: 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 January 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 8<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.
- January 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- January 7, 2010 The applicant's representative submitted additional information to the Board Administrator (see Attachment C).
- January 8, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with C.O.D. visibility requirements."

**STAFF ANALYSIS (related to the landscape special exception):**

- This request focuses on constructing and maintaining an approximately 125' long, 7' wide "accessibility ramp" that would connect the structure on the site and its surface off-street parking lot to Harry Hines Boulevard and not fully complying with landscape regulations.
- Approval of this landscape special exception request would allow the accessibility ramp to be constructed and maintained on the site developed as the Sammons Center for the Arts while allowing the site to not fully comply with the landscape requirements of PD No. 193.
- The City of Dallas Chief Arborist supported the request in October largely given the significant topographical challenges and an unusual shape of the formed by roadways surrounding it, the development on the subject site (an existing structure of historic nature), and the trigger in this case for full compliance with the Landscape Regulations – merely an accessibility ramp that connects the structure on the site and its surface off-street parking lot to Harry Hines Boulevard.

- The applicant has the burden of proof in establishing the following:
  - The special exception will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- Even though the City of Dallas Chief Arborist supported this request in October, the applicant has submitted letters after the submittal of the City Arborist's support position - letters that document how Dallas County has informed the City of Dallas Public Works and Transportation Department of their plans to rebuild the access road from Harry Hines Boulevard to Oak Lawn Avenue which will affect the accessibility ramp project triggering the landscape ordinance compliance which this appeal is based on, and how as a result, the new sidewalk cannot accommodate the ramp which now must be redesigned. The applicant therefore has requested for a delay of final action on this request until March 17<sup>th</sup> since the new ramp design will in turn affect the alternate landscape plan submitted to the Board as part of this application.

**STAFF ANALYSIS (related to the tree preservation special exception):**

- The request focuses on obtaining additional time to mitigate protected trees to be removed on this site (i.e. trees to be removed in conjunction with constructing and maintaining the aforementioned "accessibility ramp" on the site).
- The City of Dallas Chief Arborist supported the applicant's request in October.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (i.e. mitigating the protected trees to be removed on the site) will unreasonably burden the use of the property (in this case, a site that is developed with a structure of historic nature – the Sammons Center for the Arts).
  - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees to be removed on the site in conjunction with constructing and maintaining the accessibility ramp on the site) will not adversely affect neighboring property.
- Even though the City of Dallas Chief Arborist supported this request, the applicant submitted letters after the submittal of the City Arborist's support position - letters that document how Dallas County has recently informed the City of Dallas Public Works and Transportation Department of their plans to rebuild the access road from Harry Hines Boulevard to Oak Lawn Avenue which will affect the accessibility ramp project triggering the landscape ordinance compliance which this appeal is based on, and how as a result, the new sidewalk cannot accommodate the ramp which now must be redesigned. The applicant therefore has requested for a delay of final action on this request until March 17<sup>th</sup> since the new ramp design will in turn affect the alternate landscape plan submitted to the Board as part of this application.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 21, 2009**

APPEARING IN FAVOR: Mark Scruggs, 1907 Marilla St., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 089-113** hold this matter under advisement until **January 2010**.

**SECONDED: Chernock**

**AYES:** 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 5 –0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2010**

**APPEARING IN FAVOR:** Mark Scruggs, 1907 Marilla St., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 089-113** hold this matter under advisement until **March 17, 2010**.

**SECONDED: Beikman**

**AYES:** 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 5 –0 (unanimously)

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**FILE NUMBER:** BDA 090-017

**BUILDING OFFICIAL’S REPORT:**

Application of Robert Baldwin for a special exception to the fence height regulations at 5323 Park Lane. This property is more fully described as Lot 1A in City Block A/5589 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 4 inch high fence which will require a special exception of 4-feet-4-inches.

**LOCATION:** 5323 Park Lane

**APPLICANT:** Robert Baldwin

**January 20, 2010 Public Hearing Notes:**

- The applicant submitted a revised site plan/elevation of the proposal at the public hearing that the Board members had specific questions on.
- The Board delayed action on this request until February 17, 2010 indicating their interest in the applicant submitting written support of the revised proposal, and the

## **REQUESTS:**

- Special exceptions to the fence height regulations of up to 4' 4" are requested in conjunction with constructing and maintaining the following in the site's two 40' front yard setbacks on a site developed with a single family home:
  - in the Meadowbrook Drive front yard setback parallel and perpendicular to the street on the north and west sides of the site:
    - A 7' 4" high solid masonry fence/wall with 7' 10" high columns;
    - Two 8' 4" high gates (of unidentified materials) and solid masonry entry gate columns; and
  - in the Park Lane front yard setback *perpendicular* to this street on the east side of the subject site:
    - A 7' 4" high solid masonry fence/wall with 7' 10" high columns.

Note that the existing fence above 4' in height in the site's Park Lane front yard setback parallel to this street is not part of this application. The applicant has written that the owner "will not modify the existing fence along Park Lane, except to tie the new fence into it on the eastern side of the property." As a result, staff is assuming that this existing fence is in compliance with a special exception granted by the Board of Adjustment on the subject site in 1992- BDA92-034 – see the "Zoning/BDA History" section of this case report for additional details about this request.

## **STAFF RECOMMENDATION:**

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

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

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

## **GENERAL FACTS:**

- The subject site is located near the northeast corner of Meadowbrook Drive and Park Lane. Even though the Park Lane side of the site functions as the site's front yard and the Meadowbrook Drive side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Park Lane given that this frontage is the shorter of the two street frontages, and a front yard setback along Meadowbrook Drive in order to maintain the continuity of the established front yard setback along this street given that the shorter street frontage of the corner lot at Meadowbrook Drive and Park Lane is along Meadowbrook Drive.

The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a revised site plan/elevation document indicating a fence/wall/column/gate proposal that would be located in the site's two front yard setbacks and would reach a maximum height of 8' 4".

- The site plan on the submitted revised site plan/elevation document indicates the location of the proposal in the front yard setbacks. The following additional information was gleaned from this site plan for the proposal *along Meadowbrook Drive*:
  - The proposal is shown to be approximately 840' in length parallel to Meadowbrook Drive with two recessed entryways, and approximately 40' in length perpendicular to Meadowbrook Drive on the north.
  - The proposed fence/wall is shown to be located approximately on the Meadowbrook Drive front property line (or approximately 16' from the Meadowbrook Drive pavement line).
  - The proposed gates are shown to be located about 30' from the Meadowbrook Drive front property line (or approximately 40' from the Meadowbrook Drive pavement line).
- The following additional information was gleaned from the submitted revised site plan for the proposal *along Park Lane*:
  - The proposal would be approximately 40' in length perpendicular to Park Lane on the east side of the subject site.
- Although the applicant has written that "this fence will be constructed behind the existing trees and hedges that line Meadowbrook Drive" there are no denotations of any existing/proposed plant materials on the submitted revised site plan/elevation document.
- The proposal *along Meadowbrook Drive* would be located on the site where two single family homes would have direct frontage. One of these lots which has an approximately 5' – 6' high open ornamental iron fence with an approximately 9' high ornamental entry gate/columns– a result of an approved fence height special exception by the Board of Adjustment in 2009 – BDA089-085; the other lot which has an approximately 8' 6" high fence with approximately 13' high columns and an approximately 15' high gate – a result of an approved fence height special exception by the Board of Adjustment in 1997- BDA967-203.
- The proposal *along Park Lane* (perpendicular to this street) would be located on the site where two single family homes on the lots across the street would have indirect frontage. One of these lots which has an approximately 8' high wall (that was according to an application made to the Board in 2008 "grandfathered") with approximately 8' high gates – the gates being a result of an approved fence height special exception by the Board of Adjustment in 2008 – BDA078-081; the other lot which has an approximately 8.5' high fence– a result of an approved fence height special exception by the Board of Adjustment in 2001- BDA990-354.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Lane (generally from Park Lane to Falls Road) and along Park Lane (generally from Meadowbrook Drive to Hollow Way Road) and noted the following additional visible fences beyond what has been described above four feet

- A 6' high open wrought iron fence with 7' high brick entry columns and an 8' high open wrought iron arched gate immediately east of the subject site that is a result of an approved fence height special exception granted by the Board of Adjustment Panel B in September of 2007 (BDA067-198).
- A 6.5' high open wrought iron fence with 8' high columns and an 8.5' high entry gate with 8.5' high entry columns two lots east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel A in September of 2006 (BDA 056-210).
- A 6' high open wrought iron fence with 7' high columns and a 8' high entry gate with 8.5' high entry columns three lots east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel A in September of 2000 (BDA 990-342).
- A 8' high solid wall with 7' high columns with approximately 10' high gates south of the subject site where the gates/entry gate columns are a the result of an approved fence height special exception granted by the Board of Adjustment Panel B in June of 2008 (BDA 078-081). (The applicant for BDA078-081 had represented that the wall on this site was not an issue with this request since it was "grandfathered.")
- 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, and an aerial photograph of the subject site, a photograph "showing the style of the proposed fence," a letter of support from a neighboring property owner, and a revised site plan/elevation document.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. BDA090-017, Property at 5323 Park Lane (the lot immediately south of the subject site)</li> </ol> | <p>On February 17, 2010, the Board of Adjustment Panel B will consider a request for a fence height special exception of 4' 4".</p> |
|---|---|

2. BDA 089-085, Property at 9635 Meadowbrook Drive (a lot immediately west of subject site)

On August 17, 2009, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 9" and imposed the following condition: compliance with the submitted site plan and elevation document is required. The case report stated that the request was made in conjunction with constructing and maintaining a predominantly 5' – 6' high open ornamental iron fence with 8' 9" high open ornamental iron gate/stone entry columns in the site's 40' front yard setback

3. BDA 967-203, Property at 9707 Meadowbrook Drive (a lot immediately west of the subject site)

On March 18, 1997, the Board of Adjustment Panel B granted requests for special exception to the fence height to maintain an 8' 6" fence with columns of a maximum height of 13' 4", and gates with a maximum height of 15' 3" and to the visual obstruction regulations and imposed the following conditions: 1) Compliance with the submitted revised site plan/elevation plan and submitted revised landscape plan is required; and 2) Trees and branches located on the visibility triangle at the service entry driveway and Ravine Drive must have at least 8' clearance from ground level; 3) landscape must be provided as indicated on the submitted revised landscape plan for the property adjacent to the fence on Meadowbrook Road to a distance of 3' west of the fence toward the main building, and the area east of the fence on Meadowbrook Road to the pavement line provided the applicant can obtain a license to place landscaping on the public right-of-way; if not the applicant must reapply to the Board of approval of a revised plan. The case report stated that the request were made in conjunction with constructing and maintaining an 8' 6" high open metal fence, 13' 4" high columns, and a 15' 3" high entry gate in the front yards and in drive approach visibility triangles along Meadowbrook Drive and Ravine Drive.

4. BDA 990-354, Property at 9610 Meadowbrook Drive (the lot immediately south and west of the subject site)

On January 16, 2001, the Board of Adjustment Panel B granted requests for special exceptions to the fence height and visual obstruction regulations and imposed the following conditions: Compliance with the submitted revised elevation and newly revised planting plan is required. The case report stated that the request were made in

conjunction with constructing and maintaining an 8.5 high approximately 12' long masonry wall, an 8' high approximately 40' long open metal fence, and an 8' high open metal sliding gate in the site's Meadowbrook Drive front yard setback.

5. BDA 92-034, Property at 5323 Park Lane (the subject site)

On May 12, 1992, the Board of Adjustment granted a request for special exception to the fence height regulations to maintain an 8' high fence on the property and imposed the following conditions: "subject to a new landscape plan, to be submitted for approval by the board at its June 9<sup>th</sup> hearing. The revised landscape plan should have the following things: 1) clustered or singularly planted, at 25' on center, Dwarf Yaupon trees; and 2) replace some of the Savannah Holly with Dwarf Yaupons which can be planted in the beds or in the parkway. All other proposed landscaping shall remain the same." The case report described how the applicant's representative indicated that the fence would be brick with a concrete base. The wall will be 5' in height and will slope to a 6' 6" height near the gate columns. The height of the columns, including the decorative cut stone cap will be 7' 8". The applicant indicates that this will be the highest point on the fence, and the decorative fixtures will not exceed that height. Hence, the special exception of 3' 8" (The applicant's representative's amended the request)."

6. BDA 067-198, 5405 Park Lane (the lot east of the subject site)

On September 19, 2007, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' and imposed the following condition: submitted revised site plan/fence/column/gate elevation is required. The case report additionally stated that the application was made to construct and maintain generally a 6' high open wrought iron fence\* with two, 7' high brick entry columns and an 8' high open wrought iron arched gate in the site's 40' front yard setback on a site developed with a single family home but that a special exception of 7' had been requested to address a relatively small length of approximately 10' where the fence was to reach 11' in height in a

recessed area on the site where there was a creek bed.

- 7. BDA 056-210, 5423 Park Lane (the lot two lots east of the subject site)

On September 19, 2006, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' 6" and imposed the following conditions: 1) Compliance with the submitted revised site plan and "gate elevation" is required; and 2) No portion of the fence or gate may exceed eight-feet, six inches in height. The case report stated that the request was made for a special exception to the fence height regulations of 4' 6" where a "gate elevation" had been submitted that indicated a "6' 6" (TYP.)" high decorative iron fence with 8' high brick columns, and an 8.5' high decorative iron gate with 8.5' high entry columns. In addition, a site plan had been submitted that indicated that the fence is proposed to be located in the site's Park Lane 40' front yard setback on a site being developed with a single family home.

- 8. BDA 078-081, 5330 Park Lane (the lot immediately south of the subject site)

On June 25, 2008, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' and imposed the following conditions: 1) Compliance with the submitted revised site plan/elevation is required. The case report stated that the requests were made in conjunction with constructing/maintaining 3 arched open decorative iron gates (one gate at 8' in height along Alva Court that includes 7' high columns, and two gates at 10' in height along Park Lane) in the site's 40' front yard setbacks along Park Lane and Alva Court on a site being developed with a single family home. The case report additionally stated that the application did not include any request to remedy the existing approximately 8' high wall on the site – a wall that the applicant's representative has stated is "grandfathered."

**Timeline:**

- Nov. 13, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 15, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- Dec. 15, 2009: 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 January 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 8<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."
- Dec. 23, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- January 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- January 8, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with C.O.D. visibility requirements."

**STAFF ANALYSIS:**

- The requests focus primarily on constructing/maintaining a 7' 4" high solid masonry fence/wall in the site's two front yard setbacks parallel and perpendicular to Meadowbrook Drive on the north and west sides of the site, and perpendicular to Park Lane on the east side of the subject site. (The requested 4' 4" special exception is needed to allow two, 8' 4" high gates and entry gate columns in the Meadowbrook Drive front yard setback).
- A revised site plan/elevation document with two partial fence elevations has been submitted documenting the location of the proposed fence/wall/columns/gates relative to their proximity to the Meadowbrook Drive and Park Lane front property lines and pavement lines, the lengths of the proposals relative to the entire lot, and the proposed fence/wall building materials.
- Along Meadowbrook Drive, the proposal is shown to be approximately 840' in length parallel to the street with two recessed entryways, and approximately 40' in length perpendicular to the street on the north. The proposed fence/wall is shown to be located approximately on the front property line (or approximately 16' from the pavement line). The proposed gates are shown to be located about 30' from the front property line (or approximately 40' from the pavement line).
- Along Park Lane, the proposal is shown to be approximately 40' in length perpendicular to the street on the east side of the subject site.

- The submitted site plan/elevation document does not denote any existing or proposed landscape materials to be located adjacent to the proposal although the applicant has written that “this fence will be constructed behind the existing trees and hedges that line Meadowbrook Drive.”
- The proposal *along Meadowbrook Drive* would be located on the site where two single family homes would have direct frontage. One of these lots which has an approximately 5’ – 6’ high open ornamental iron fence with an approximately 9’ high ornamental entry gate/columns– a result of an approved fence height special exception by the Board of Adjustment in 2009 – BDA089-085; the other lot which has an approximately 8’ 6” high fence with approximately 13’ high columns and an approximately 15’ high gate – a result of an approved fence height special exception by the Board of Adjustment in 1997- BDA967-203.
- The proposal *along Park Lane* (perpendicular to this street) would be located on the site where two single family homes on the lots across the street would have indirect frontage. One of these lots which has an approximately 8’ high wall (that was according to an application made to the Board in 2008 “grandfathered”) with approximately 8’ high gates – the gates being a result of an approved fence height special exception by the Board of Adjustment in 2008 – BDA078-081; the other lot which has an approximately 8.5’ high fence– a result of an approved fence height special exception by the Board of Adjustment in 2001 - BDA990-354.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Lane (generally from Park Lane to Falls Road) and along Park Lane (generally from Meadowbrook Drive to Hollow Way Road) and noted a number of visible fences that appeared to be in front yard setbacks that have been previously described in the “General Facts” and “Zoning/BDA History” sections of the case report.
- As of January 11, 2010, one letter had been submitted to staff in support of the proposal, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 8’ 4” in height) will not adversely affect neighboring property.
- Granting these special exceptions of 4’ 4” with a condition imposed that the applicant complies with the submitted revised site plan/elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.

**BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2010**

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

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 090-017** hold this matter under advisement until **February 17, 2010**.

**SECONDED: Beikman**

**AYES:** 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 090-014

**BUILDING OFFICIAL’S REPORT:**

Application of Tommy McGee for a special exception to the landscape regulations at 1139 Bonnie View Road (AKA 1122 Hutchins Road). This property is more fully described as Lot 1F in City Block C/5895 and is zoned R-7.5(A) which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:** 1139 Bonnie View Road (AKA 1122 Hutchins Road)

**APPLICANT:** Tommy McGee

**January 20, 2010 Public Hearing Notes:**

- The applicant submitted a revised landscape plan at the public hearing.

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with obtaining a certificate of occupancy for a recently constructed church structure on a site developed with a church structure built in 1970 (Egypt Chapel Baptist Church) and not fully complying with the Landscape Regulations of the Dallas Development Code.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The City’s Chief Arborist recommends denial of the request/submitted landscape plan. This submitted revised alternate landscape plan is not clear and concise as to the full extent of the request whereby the Board, the staff, and the applicant are able to fully understand all the elements of the request in order to reach a successful resolution at inspection.
- The applicant has not substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; or how the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

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

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

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

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

### **GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.  
A revised alternate landscape plan has been submitted (see Attachment A) that according to the City of Dallas Chief Arborist is primarily deficient from Article X standards for residential adjacencies, street trees, and screening of off-street parking.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
  - The applicant is requesting a special exception to the landscape requirements of Article X.
  - Trigger:  
New construction of additional of floor area and new paving on the lot. (Landscaping must be completed prior to a final inspection for a certificate of occupancy. The site has not yet complied with either Article X standards, or the previously approved Board of Adjustment landscape plans.
  - Deficiencies:
    - The existing approved plan is primarily deficient from Article X standards for residential adjacencies, street trees, and screening of off-street parking. The Board approved the special exception to the landscape regulations (in August of 2008) that allowed exceptions to the landscape requirements related to screening, street trees, and perimeter buffer strip along Gallatin Street, and with modifications along Bonnie View Road, and approved a minor adjustment (a 9 foot wide buffer) along the north perimeter line with the

- adjacent residential property at the corner of Areba Street and Bonnie View Road.
- The new revised plan that is proposed has increased the level of deficiencies from Article X by:
    1. Removing the 10' landscape buffer along the east perimeter property line (that runs into Areba Street);
    2. Removing the 10' landscape buffer along the north perimeter line (that runs into Hutchins Road); and
    3. Altering the drive entry and perimeter landscaping locations along Areba Street.
  - Factors:
    - The new landscape plan is a “re-working” of the original landscape plan approved in 2006 and the plan approved by the Board of Adjustment in 2008.
    - Upon a previous site visit, the arborist identified several trees planted in small cut-outs within the 10' landscape buffer area along the north perimeter line that runs into Hutchins Road (Item #2 under deficiencies). It is staff's impression that the trees were planted in an attempt to comply with the plant material requirements for the buffer while the paving remained on site around these cut-outs. The cut-outs were insufficient for planting area for the buffer plant requirement. The proposed plan would eliminate these trees from requirement for the buffer. *If the trees are to be retained, either the full buffer should be created, or each tree should be retained within a permeable surface area of at least 25 square feet and protected from vehicles.*
    - The east perimeter 10' landscape buffer (Item #2 under deficiencies) is currently paved with a drive entry into the east side of the parking lot. A wooden fence screens the property from the adjacent residence to the east.
    - The east perimeter landscape buffer along Bonnie View Road is drawn on the plan (shown with hatched line) with a buffer with a tree at the northeast corner only. It is not clear that this buffer will be applied based on our site visit. If the 10' perimeter landscape buffer is required by this Board, it will be required for the final inspection. This area should be clarified by the applicant as to its current status and the applicant's proposal.
    - The north perimeter landscape buffer (that runs into Bonnie View Road) identifies a 9' wide buffer. This office has reason to believe that the buffer may be 7' wide. Although a small adjustment (if this is the case) the correct dimensions should be clarified for the record and for final inspection.
    - The arborist notations of the provided plan, aside the diagram and tables, should not be considered as standards for the Board of Adjustment approved plans. They refer solely to Article X landscape standards.
  - Recommendation
    - Denial of the submitted landscape plan.
      - The Chief Arborist does not have objections to administering the adjustments for the existing conditions, however, the plan should be clear and concise to the full extent of the request. The Board, the staff, and the applicant must be able to fully understand all the factors of the request for a successful resolution at inspection.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5 (A) (Single family residential 7,500 square feet)  
North: R-7.5 (A) (Single family residential 7,500 square feet)  
South: R-7.5 (A) (Single family residential 7,500 square feet)  
East: TH-3 (A) (Townhouse)  
West: R-7.5 (A) (Single family residential 7,500 square feet)

**Land Use:**

The subject site is developed with two structures that comprised a church campus (Egypt Baptist Church). The areas to the north, east, south, and west appear to be developed with single family uses.

**Zoning/BDA History:**

1. BDA078-107, Property at 1139 Bonnie View Road (AKA: 1122 Hutchins) (the subject site)

On August 13, 2008, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the following conditions: Compliance with the submitted alternate landscape plan is required; and the applicant is not required to provide the “added shrubs for buffer groups” as note on this alternate landscape plan along Gallatin Street. The case report stated that request was made in conjunction with obtaining a final building permit for a recently constructed church structure on a site developed with a church structure built in 1970 (Egypt Chapel Baptist Church).

Undated: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

Dec. 15, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

Dec. 15, 2009: The Board Administrator contacted the applicant by phone and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application which as it stands is merely a request for a special exception to the landscape regulations; the

- 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.
- January 4, 2010: The applicant submitted additional information to the staff (see Attachment A).
- January 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- January 8, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Comply with C.O.D. visibility requirements – will need to provide grading plant to address drainage concerns.”
- January 10, 2010 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

**STAFF ANALYSIS:**

- The request focuses on obtaining a certificate of occupancy for a recently constructed church structure on a site developed with a church structure (Egypt Chapel Baptist Church), and being “excepted” from certain Landscape Regulations of the Dallas Development Code.
- A revised alternate landscape plan has been submitted that (according to the City’s Chief Arborist), is primarily deficient from Article X standards for residential adjacencies, street trees, and screening of off-street parking.
- The City’s Chief Arborist recommends denial of the request/the submitted landscape plan in that a plan has yet to be submitted that is clear and concise to the full extent of the request whereby the Board, the staff, and the applicant is able to fully understand all the factors of the request in order to reach a successful resolution at inspection.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised alternate landscape plan, there would be difficulty in reconciling differences from the features shown on this submitted plan

- Granting this request for a special exception to the landscape regulations would not provide any relief that the applicant may need on the subject site to address possible violations to the Dallas Development Code's Fence, Screening, and Visual Obstruction Regulations.

**BOARD OF ADJUSTMENT ACTION: JANUARY 20, 2010**

APPEARING IN FAVOR: Tommy McGee, 7703 Robin Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 090-014**, on application of Tommy McGee, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised alternate landscape plan is required.

SECONDED: **Beikman**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

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MOTION: **Chernock**

I move to adjourn this meeting.

SECONDED: **Wilson**

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

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

**2:15P.M.** - Board Meeting adjourned for **January 20, 2010.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

BOARD SECRETARY

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