

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
WEDNESDAY, FEBRUARY 17, 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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**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 17, 2010 docket.**

**11:03 A.M.: Executive Session Begins**

**11:13 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 January 20, 2010 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2010**

**MOTION: Chernock**

I move approval of the Wednesday, **January 20, 2010** Board of Adjustment Public Hearing minutes.

**SECONDED: Beikman**

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

**NAYS: 0** –

**MOTION PASSED 5 – 0** (Unanimously)

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**MISCELLANEOUS ITEM NO. 2**

Briefing by the City Attorney's Office on lobbyist registration, campaign contribution restrictions, multiple seconds, and gift policy (see Attachment A for related material).

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

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**MISCELLANEOUS ITEM NO. 3**

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. 4**

Authorize settlement of the lawsuit styled *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

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2010**

**MOTION: Gillespie**

I move that the Board of Adjustment authorize settlement of the lawsuit styled 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 as explained to the board by the Assistant City Attorney.

**SECONDED: Wilson**

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

**NAYS: 0** –

**MOTION PASSED 5 – 0 (Unanimously)**

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**FILE NUMBER:** BDA 090-023

**BUILDING OFFICIAL’S REPORT:**

Application of Lawrence Lacerte, represented by Rob Baldwin, for a special exception to the fence height regulations at 5306 Falls Road. This property is more fully described as Lot 1 in City Block 3/5604 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 in the required front yard setback which will require a special exception of 4-feet 4-inches.

**LOCATION:** 5306 Falls Road

**APPLICANT:** Lawrence Lacerte  
Represented by Rob Baldwin

**February 17, 2010 Public Hearing Notes:**

- The applicant’s representative submitted a letter to the board requesting that this application be denied without prejudice.

**REQUESTS:**

- Special exceptions to the fence height regulations of 4’ 4” are requested in conjunction with constructing and maintaining a 7’ 4” high solid fence/wall of unspecified materials with 7’ 10” high columns in the site’s two 40’ front yard setbacks along Falls Road and Meadowbrook Drive on a site developed with a single family home. Although a site plan/elevation document includes a partial “gate elevation” that is 8’ 4” in height there is no delineation of the location of a gate on the submitted site plan.

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The subject site is located at the southeast corner of Meadowbrook Drive and Falls Road. Even though the Falls Road 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 Falls Road 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 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".

- On January 27<sup>th</sup>, the Board Administrator emailed the following concerns related to the submitted site plan/elevation document to the applicant's representative:
  1. The fact that the partial fence elevation does not indicate building materials;
  2. The fact that the site plan does not denote the location of any gate even though a "gate elevation" has been submitted that would imply the location of a gate in one if not both of the front yard setbacks; and
  3. The fact that the scales on the submitted site plan/elevation document are not to the scale shown on the plans.

On January 27, 2010, the applicant's representative emailed the Board Administrator stating that he would have his architect look into the concern related to the scale on the plans, and that he was expecting a new fence elevation the next day that should include "much more decorative iron." But as of February 9<sup>th</sup>, no site/plan elevation had been submitted beyond that what was submitted with the original application on November 13, 2009.

- Neither the site plan nor the elevations on the submitted site plan/elevation document is to scale. However, the site plan on the submitted site plan/elevation document indicates the location of the proposal in the front yard setbacks to be approximately mid way between the property lines and the 40' front yard setback lines. There are two partial elevations on the submitted site plan/elevation document one of which is a fence panel elevation that shows a wall (of unspecified materials) that is 7' 4" high with 7' 10" high columns; the other which is a gate elevation that

shows a gate (or unspecified materials) that is 8' 4" high. (The site plan shows no location of gates on the site in the front yard setback).

- The following additional information was gleaned from this site plan for the proposal *along Meadowbrook Drive*:
  - The proposal is shown to be approximately 260' in length parallel to Meadowbrook Drive, and approximately 20' in length perpendicular to Meadowbrook Drive on the south.
  - The distances of the proposed fence/wall to the property lines and pavement line cannot be gleaned from the site plan that is not to scale.
- The following additional information was gleaned from this site plan for the proposal *along Falls Road*:
  - The proposal is shown to be approximately 195' in length parallel to Falls Road, and approximately 20' in length perpendicular to Falls Road on the east.
  - The distances of the proposed fence/wall to the property lines and pavement line cannot be gleaned from the site plan that is not to scale.
- 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 a fence that appears to be above 4' in height but outside the front yard setback; the other lot has an approximately 6' high open fence with solid base that (according to neighbors/owners in the area) is a fence that has been on that site for a number of years but recently renovated/updated.
- The proposal *along Falls Road* would be located on the site where one single family home across the street would have direct frontage – a home/lot with no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Lane (generally from Falls Road to Park Lane) and along Falls Road (generally from Meadowbrook Drive to Hollow Way Road) and noted the following additional visible fences beyond what has been described above four feet high which appeared to be located in the front yard setback beyond the two fences mentioned above. (Note that these locations and dimensions are approximations):
  - A 6' high open wrought iron fence with 7' high brick entry columns and an 8' high open wrought iron arched gate southwest 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).
  - An approximately 5' – 6' high open ornamental iron fence with an approximately 9' high ornamental entry gate/columns southwest of the subject site – a result of an approved fence height special exception by the Board of Adjustment in 2009 ( BDA089-085).
  - An approximately 5' 4" high open ornamental iron fence with 5' 8" high brick columns; and a 6' 6" high iron gate flanked by two, 8' 10" high brick entry columns and solid brick entry wing walls (each about 12' in length) ranging in height from 6' 2" – 7' 2", 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 northeast of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel C in September of 2009 (BDA 0896-106).
- The submitted site plan/elevation document does not denote any existing or proposed landscape materials to be located adjacent to the proposal.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA090-017, Property at 5323 Park Lane (the lot immediately south of the subject site) On February 17, 2010, the Board of Adjustment Panel B will consider a request for a fence height special exception of 4' 4".
  
2. BDA 089-085, Property at 9635 Meadowbrook Drive (a lot two lots southwest 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 southwest 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 089-106, Property at 5405 Falls Road (a lot two lots northeast of the subject site)

On September 14, 2009, the Board of Adjustment Panel C granted a request for special exception to the fence height regulations of 4' 10" and imposed the submitted site plan and elevation as a condition. The case report stated that the request were made in conjunction with constructing and maintaining the following in the site's 40' front yard setback on a site being developed with a single family home: a 5' 4" high open ornamental iron fence with 5' 8" high brick columns; and a 6' 6" high iron gate flanked by two, 8' 10" high brick entry columns and solid brick entry wing walls (each about 12' in length) ranging in height from 6' 2" – 7' 2".

**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.
- January 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 21, 2010: The Board Administrator contacted the applicant and emailed him the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 5<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.

Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February 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, the Sustainable Development Department Project Engineer, and the Assistant City Attorney to the Board.

Feb. 5, 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 all C.O.D. visibility requirements."

**STAFF ANALYSIS:**

- The requests focus on constructing/maintaining a 7' 4" high solid fence/wall of unspecified materials with 7' 10" high columns (and possibly an 8' 4' high gate) in the site's two 40' front yard setbacks along Falls Road and Meadowbrook Drive on a site developed with a single family home.
- A site plan/elevation document with a partial fence elevation has been submitted documenting the location of the proposed fence/wall/columns relative to their proximity to the Meadowbrook Drive and Falls Road front property lines and pavement lines, however the plan is not to scale. A partial "gate elevation" has been submitted as well however there is no delineation of the location of a gate on the submitted site plan.
- The Board Administrator relayed the following concerns related to the submitted site plan/elevation document to the applicant's representative in late January:
  1. The fact that the partial fence elevation does not indicate building materials;
  2. The fact that the site plan does not denote the location of any gate even though a "gate elevation" has been submitted that would imply the location of a gate in one if not both of the front yard setbacks; and
  3. The fact that the scales on the submitted site plan/elevation document are not to the scale shown on the plans.

The applicant's representative responded by stating that he would have his architect look into the concern related to the scale on the site plan/elevations, and that he was expecting a new fence elevation on January 28th that should include "much more decorative iron." But as of February 9<sup>th</sup>, no site/plan elevation had been submitted beyond that what was submitted with the original application on November 13, 2009.

- The following additional information was gleaned from this site plan for the proposal *along Meadowbrook Drive*:
  - The proposal is shown to be approximately 260' in length parallel to Meadowbrook Drive, and approximately 20' in length perpendicular to Meadowbrook Drive on the south.

- The distances of the proposed fence/wall to the property lines and pavement line cannot be gleaned from the site plan that is not to scale.
- The following additional information was gleaned from this site plan for the proposal *along Falls Road*:
  - The proposal is shown to be approximately 195' in length parallel to Falls Road, and approximately 20' in length perpendicular to Falls Road on the east.
  - The distances of the proposed fence/wall to the property lines and pavement line cannot be gleaned from the site plan that is not to scale.
- 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 fence that appears to be above 4' in height but outside the front yard setback; the other lot has an approximately 6' high open fence with solid base that (according to neighbors/owners in the area) is a fence that has been on that site for a number of years but recently renovated/updated.
- The proposal *along Falls Road* would be located on the site where one single family home across the street would have direct frontage – a home/lot with no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Lane (generally from Falls Road to Park Lane) and along Falls Road (generally from Meadowbrook Drive to Hollow Way Road) and noted a 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.
- The submitted site plan/elevation document does not denote any existing or proposed landscape materials to be located adjacent to the proposal.
- As of February 9, 2010, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special 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 site plan/elevation document would require that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document even though the submitted site plan/elevation document is not to scale, does not denote the location of gates, and does not denote the proposed building materials of the proposed fence wall.
- Although the applicant’s representative informed staff that he would have his architect look into the concern related to the scale on the site plan/elevations, and that he was expecting a new fence elevation on January 28<sup>th</sup> that should include “much more decorative iron,” that as of February 9<sup>th</sup> (four days beyond the February 5<sup>th</sup> deadline that staff had informed him of on January 21<sup>st</sup> in which to submit information for the Board’s docket), no site/plan elevation had been submitted beyond that what was submitted with the original application on November 13, 2009.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2010**

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

APPEARING IN OPPOSITION: No one

**MOTION #1: Wilson**

I move that the Board of Adjustment, in Appeal **BDA 090-023**, on application of Lawrence Lacerte, represented by Robert Baldwin, **deny** the fence height special exception along Meadowbrook Drive requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Chernock**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (Unanimously)

**MOTION #2: Wilson**

I move that the Board of Adjustment, in Appeal **BDA 090-023**, on application of Lawrence Lacerte, represented by Robert Baldwin, **deny** the fence height special exception along Falls Road requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Chernock**

**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

**February 17, 2010 Public Hearing Notes:**

- The applicant submitted a revised site plan/elevation of the proposal at the public hearing.

**AMENDED 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 to the street, and perpendicular to the street on the north "side" of the site in the front yard setback:
    - A 7' 4" high solid masonry fence/wall with 7' 10" high columns;
    - An 8' 4" high "decorative wrought iron fence" on the portion of the site that is shown as a "floodway easement;" and
  - in the Park Lane front yard setback *perpendicular* to this street on the east side of the subject site:
    - An 8' 4" high "decorative wrought iron fence."

Note the following:

1. 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.
2. The revised elevation/site plan document submitted at the January 20<sup>th</sup> public hearing indicates two gates in the Meadowbrook Drive front yard setback however, no elevation of these gates have been submitted.

**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.

**UPDATED GENERAL FACTS (FEBRUARY 17, 2010):**

- On January 20, 2010, the Board of Adjustment conducted a public hearing on this application where the applicant submitted a revised site plan/elevation of the proposal at the public hearing (see Attachment B). Some of the concerns expressed by the Board members regarding this document involved proposed materials, proposed heights, proposed locations of the fence from the property line, documentation of existing and/or proposed landscape materials and the area in which they can be maintained/installed in the required yard as opposed to the public right-of-way.

- The revised site plan/elevation submitted at the January 20<sup>th</sup> public hearing appeared to make the following amendments to the site plan/elevation document submitted with the original application:
  1. Indication of an 8' 4" high "decorative iron fence" proposed in the site's Park Lane 40' front yard setback perpendicular to this street (as opposed to the originally proposed 7' 4" high solid masonry fence/wall).
  2. An 8' 4" high "decorative iron fence" is proposed for a portion of the fence in the site's Meadowbrook Drive front yard setback parallel to this street over what is shown on this plan as an "existing floodway easement" (as opposed to the originally proposed solid 7' 4" high masonry fence along the entire length of the site's Meadowbrook Drive frontage).
- The Board delayed action on this request until February 17, 2010 indicating their interest in the applicant submitting *written* support of the revised proposal that he submitted on January 20<sup>th</sup>, and the additional clarification/amendments to the revised site plan/elevation submitted on January 20<sup>th</sup> particularly for the proposal in the Meadowbrook Road front yard setback.
- On February 1, 2010, the applicant emailed the Board Administrator that he had met with his client on January 29<sup>th</sup>, was working on a new elevation, and had hoped to have something for staff by February 4<sup>th</sup> (the day before the February 5<sup>th</sup> deadline that staff had informed him of on January 21<sup>st</sup> in which to submit information for the Board's docket). As of February 9<sup>th</sup>, no site/plan elevation had been submitted beyond that what was submitted to the Board at the January 20<sup>th</sup> public hearing.

**ORIGINAL GENERAL FACTS (January 20, 2010):**

- 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 high which appeared to be located in the front yard setback beyond the two fences mentioned above. (Note that these locations and dimensions are approximations):
  - 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 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:**

- |   |  |
|---|--|
| 1. BDA090-023, Property at 5306 Falls Road (the lot immediately north of the subject site)  | On February 17, 2010, the Board of Adjustment Panel B will consider a request for a fence height special exception of 4' 4".   |
| 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   | On March 18, 1997, the Board of Adjustment Panel B granted requests for special exception to the fence height to maintain an   |

site)

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."
- January 20, 2010: The Board of Adjustment conducted a public hearing on this application and delayed action until February 17<sup>th</sup> indicating their interest in the applicant submitting written support of the revised proposal, and the applicant providing additional clarification of the revised site plan/elevation submitted on January 20<sup>th</sup>, or submitted a *revised* revised proposal, particularly for the fence along Meadowbrook Road.
- January 21, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date; the February 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 5<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."
- Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February 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, the Sustainable Development Department Project Engineer, and the Assistant City Attorney to the Board.

**STAFF ANALYSIS:**

- The requests focus primarily on constructing/maintaining:
  1. a 7' 4" high solid masonry fence/wall in the parallel and perpendicular to Meadowbrook Drive on the north side of the site in the Meadowbrook Drive front yard setback, and
  2. an 8' 4" high "decorative wrought iron fence" perpendicular to Park Lane on the east side of the subject site in the Park Lane front yard setback.
 The requested 4' 4" special exception that was originally requested to allow two, 8' 4" high gates and entry gate columns in the Meadowbrook Drive front yard setback, is now requested (give a revised site plan/elevation submitted by the applicant at the January 20<sup>th</sup> public hearing) to address the proposed 8' 4" high "decorative wrought

iron fence” since gate elevations are no longer shown on the submitted revised site plan/elevation.

- The applicant submitted a revised site plan/elevation document at the January 20<sup>th</sup> public hearing showing a site plan along with two partial fence elevations 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 at a range of 0’ – 5’ from the front property line (or approximately 12’ from the pavement line). The proposed gates are shown to be located about 18’ and 25’ from the front property line (or approximately 30’ 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 revised site plan/elevation document submitted on January 20<sup>th</sup> 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 February 9, 2010, two letters had been submitted on this application both of which were submitted prior to the January 20<sup>th</sup> hearing based on the originally submitted site plan and elevation: one letter had been submitted to staff in support of the proposal, and one letter had been submitted in opposition. (Although the applicant had represented at the January 20<sup>th</sup> public hearing that the owner who had written the opposition letter to the original proposal was in support of his revised

proposal that he submitted to the board at the January 20<sup>th</sup> hearing, no written documentation of this support has been submitted to date).

- 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 revised site plan/elevation document submitted at January 20<sup>th</sup> public hearing would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on this document.
- Although the applicant had emailed the Board Administrator that he was working on a new elevation and had hoped to have something for staff by February 4<sup>th</sup> (the day before the February 5<sup>th</sup> deadline that staff had informed him of on January 21<sup>st</sup> in which to submit information for the Board's docket), that as of February 9<sup>th</sup>, no site/plan elevation had been submitted beyond that what was submitted to the Board at the January 20<sup>th</sup> public hearing.

**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)

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 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**, on application of Robert Baldwin, **grant** the request of this applicant to construct and maintain an 8-foot-4-inch tall fence on the Park Lane and Meadowbrook Lane portion of the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move

that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the site plan/elevation plan submitted on February 15, 2010 is required.

**SECONDED: Wilson**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 090-026

**BUILDING OFFICIAL’S REPORT:**

Application of Mehul Patel, represented by Rob Baldwin, for a special exception to the landscape regulations at 1610 Cedar Springs Road. This property is more fully described as Lots 1, 3, 11 and 12 in City Block 297 and is zoned PD-193 which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:** 1610 Cedar Springs Road

**APPLICANT:** Mehul Patel  
Represented by Rob Baldwin

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

- The applicant’s representative submitted additional graphics related to the request at the public hearing.

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a hotel structure (Hilton Garden Inn) on a site currently under development, and not fully complying with the required number of street trees within the tree planting zone and the minimum 6’ sidewalk width requirement of the Oak Lawn Special Purpose District Landscaping Requirements.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant has not substantiated how granting the special exception would not compromise the spirit and intent of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).

- The City's Chief Arborist recommends denial of this request based on the fact that in his opinion the minimum landscape standards for PD No. 193 should be applied in this case and on this site including the provision of the minimum 6' wide sidewalks and the required number of street trees in the tree planting zone, particularly since pedestrian activity is expected to increase in the vicinity with the construction of a new museum nearby.

**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.

**GENERAL FACTS:**

- 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 that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.  
The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically the mandatory provisions for sidewalk width and tree planting zone requirements.
- 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:
  - The special exception request is triggered by new construction.
  - Deficiencies:
    1. Providing the required number of trees in the tree planting zone.
    2. Providing the minimum sidewalk width requirements (6 feet) for nonresidential properties.
  - Factors:
    - The sub-zoning for the district is Industrial which allows a 0' setback.
    - Pedestrian activity is expected to increase in the vicinity with the construction of a new museum nearby.
    - The design for floor area and use expansion has encroached into the area mandated by zoning regulations for landscaping.
    - Sidewalk widths should not include tree grates. Although anticipated, tree grates are not identified on the plan.
  - Recommendation:
    - Denial of the landscape plan.

The minimum landscape standards for PD No. 193 should be applied for 6' sidewalk width in the development design that are in addition to tree grates for the purposes of public safety. Street trees should be reduced for the Cedar Springs Road parking inset, per this plan.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (I-2) (Planned Development, Industrial Subdistrict)  
North: PD 193 (I-2) (Planned Development, Industrial Subdistrict)  
South: PD 193 (I-2) (Planned Development, Industrial Subdistrict)  
East: PD 193 (PDS 24) (Planned Development, Planned Development Subdistrict)  
West: PD 193 (MF-3) (Planned Development, Multifamily Subdistrict)

**Land Use:**

The subject site is currently under development. The areas surrounding the site are developed with a mix of uses including undeveloped parcels of land, surface parking lots, and office and retail uses.

**Zoning/BDA History:**

- |   |   |
|---|---|
| 1. BDA089-029, Property at 1610 Cedar Springs Road (the subject site) | On June 17, 2009, the Board of Adjustment Panel B denied a request for a variance to the off-street parking regulations without prejudice, and granted a request for a special exception to the visual obstruction regulations and imposed the submitted site plan as a condition. The case report stated that the requests were made in conjunction with the construction and maintenance of a hotel/motel and restaurant use. |
|---|---|

**Timeline:**

- Dec. 17, 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.
- January 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 21, 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 February 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis;

- and the February 5<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.

Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February 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, the Sustainable Development Department Project Engineer, and the Assistant City Attorney to the Board.

Feb. 5, 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 all C.O.D. visibility requirements." (Note that the Board of Adjustment Panel B granted a request for a special exception to the visual obstruction regulations on June 17, 2009, and imposed the submitted site plan as a condition: BDA089-029. The case report stated that the requests were made in conjunction with the construction and maintenance of a hotel/motel and restaurant use. Additionally note that the plan imposed as a condition to the visual obstruction special exception request was a partial site plan of the site – a plan that only showed a violation of the visibility triangles at a one-way egress point out of the proposed structure onto Caroline Street).

Feb, 9, 2010 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a hotel structure (Hilton Garden Inn) on a site currently under development, and not complying with the required number of street trees within the tree planting zone and the minimum 6' sidewalk width requirement of the Oak Lawn Special Purpose District Landscaping Requirements.
- The City of Dallas Chief Arborist recommends denial of the submitted landscape plan because of the need to meet the requirements sought in this request – the site is in an area of the Planned Development District where pedestrian activity is expected to increase in the vicinity with the construction of a new museum nearby.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient the mandatory provisions related to street trees in the tree planting zone and minimum sidewalk widths) will not compromise the spirit and

intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).

- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be "excepted" from providing the required number of street trees in the tree planting zone, and from providing sidewalks at the minimum required widths.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 2010**

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

**APPEARING IN OPPOSITION:** Michael Karns, 11075 Harry Hines Blvd., Dallas, TX

**MOTION:** Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 090-026** hold this matter under advisement until **March 17, 2010**.

**SECONDED:** Chernock

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 090-021

**BUILDING OFFICIAL’S REPORT:**

Application of Yonas Belaineh, represented by Robert Baldwin, for a special exception to the landscape regulations at 5636 Lemmon Avenue. This property is more fully described as Lot 2 in City Block A/2476 and is zoned PD-193 which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:** 5636 Lemmon Avenue

**APPLICANT:** Yonas Belaineh  
Represented by Robert Baldwin

**February 17, 2010 Public Hearing Notes:**

- The applicant’s representative submitted a revised alternate landscape plan at the public hearing.

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with obtaining a final building permit/certificate of occupancy on a recently constructed

financial institution with drive-in window use (Bank of America) and not fully complying in part with the front yard landscape area and tree planting requirements of the Oak Lawn Special Purpose District Landscaping Requirements, and/or not fully complying with a previously Board-approved alternate landscape plan imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the site by Board of Adjustment Panel B in January of 2009: BDA 089-010.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant has not substantiated how granting the special exception would not compromise the spirit and intent of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- The City's Chief Arborist recommends denial of this request based primarily on the fact that the features/landscape materials shown on the submitted proposed alternate landscape plan do not appear to fully match the existing landscape placement and materials on the site awaiting inspection.

**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.

**GENERAL FACTS:**

- 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 that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.  
According to the City of Dallas Chief Arborist, the applicant is requesting a special exception to the landscape requirements of PD No. 193 and to address amendments from a previously approved landscape plan by Board of Adjustment Panel B in January of 2009.
- 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:

- The special exception request is triggered by new construction and on-site adjustments.
- Deficiencies:
  - The primary deficiencies are in the required front yard landscape area along Lemmon Avenue, and in the tree planting requirements along Inwood Road.
  - The site amendments to the previous Board action for landscaping are along the Inwood Road street frontage and site entry adjustment, and the requested plant materials in the “clouded” area on the plan.
- Factors:
  - The Board approved an alternate landscape plan previously which removed the requirement for full compliance to PD No. 193 landscape provisions.
  - Site adjustments to the drive entry along Inwood Road required adjustments to the landscaping layout along the street.
  - The drawing for the requested amendments along Inwood Road does not seem to match the layout of the existing landscaping awaiting inspection. The chief arborist favors a plan that removes any large species from directly under the power lines and places the trees further into the interior of the lot as originally approved.
  - The plan identifies a “clouded” area where the type and species of landscape plant materials have been adjusted. The chief arborist has no objections to the change of plant materials.
- Recommendation:
  - Denial of the proposed landscape plan.

The plan must fully match the landscape placement and materials at the time of inspection. The applicant must be prepared to match the physical landscaping to the approval of the Board to avoid further reviews on this matter. The chief arborist favors the Inwood Road tree planting plan, as was previously approved, in order to minimize long-term conflicts with utilities and to place trees further from the street traffic.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
- North: CS (Commercial Service)
- South: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
- East: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
- West: PD No. 72 & SUP 240 (Planned Development District, Specific Use Permit)

**Land Use:**

The subject site is developed with a financial institution with drive-in window use (Bank of America). The areas to the north and east are developed with commercial uses; and the areas to the south and west are developed with retail uses.

**Zoning/BDA History:**

1. Z889-153, Lemmon Avenue and Inwood Road, east corner (the subject site and parcels of land east and south of the subject site)

On October 11, 1989, the City Council created an ordinance authorizing a GR Subdistrict on property previously zoned a LC Subdistrict within PD No. 193. The City Council also authorized acceptance of a deed restriction instrument submitted in conjunction with the change in zoning – deed restrictions that limited height to 30 feet and two stories; floor area ratio to 0.5:1; prohibition of drive-through restaurants within a certain area of the area of request; prohibited sexually oriented businesses; and required a continuous masonry screening wall at least 6 feet in height in certain areas of the area of request.  
(Note that the applicant’s representative informed the Board Administrator on January 6, 2009 that his request to the board of adjustment for a special exception to the landscape regulations does not violate these deed restrictions).
2. Z067-316, Lemmon Avenue and Inwood Road, east corner (the subject site)

On August 13, 2008, the City Council granted an application for a Specific Use Permit (SUP) for a bank or savings and loan office on property zoned a GR General Retail Subdistrict within PD No. 193.  
(Note that the applicant’s representative informed the Board Administrator on January 7, 2009 that his request to the board of adjustment for a special exception to the landscape regulations is consistent with the SUP approval).
3. BDA089-010, 5636 Lemmon Avenue (the subject site)

On January 21, 2009, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition to the request. The case report stated that the request 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.
4. Miscellaneous Item # 3, BDA089-010, 5636 Lemmon

On January 20, 2010, the Board of Adjustment Panel B waived the two year

Avenue (the subject site)

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 in order for the applicant to resubmit the same type of application on the subject site.

**Timeline:**

- Dec. 7, 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.
- January 21, 2010: 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.”
- January 21, 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 February 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 5<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.
- Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February 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, the Sustainable Development Department Project Engineer, and the Assistant City Attorney to the Board.
- Feb. 5, 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 all C.O.D. visibility requirements.”
- Feb. 9, 2010 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on obtaining a final building permit/certificate of occupancy on a recently constructed financial institution with drive-in window use (Bank of America) and not fully complying in part with the front yard landscape area and tree planting requirements of the Oak Lawn Special Purpose District Landscaping Requirements, and/or not fully complying with a previously Board-approved alternate landscape plan imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the site by Board of Adjustment Panel B in January of 2009: BDA089-010.
- Approval of this landscape special exception request would allow the issuance of the final building permit/certificate of occupancy for the recently constructed bank on the site while allowing the site to not fully comply primarily with the required front yard landscape area along Lemmon Avenue, and the tree planting requirements along Inwood Road.
- The City of Dallas Chief Arborist recommends denial of the submitted proposed alternate landscape plan in that the features/landscape materials shown on this plan do not appear to fully match the existing landscape placement and materials on the site awaiting inspection.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient primarily with the front yard landscape area and tree planting requirements of the ordinance) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate landscape plan, the site would be “excepted” from full compliance from the front yard landscape and tree planting requirements of PD No. 193, and from compliance with the previously approved landscape plan imposed as a condition to a request for a special exception granted on the site by Board of Adjustment Panel B in January of 2009. If the Board grants the request and imposes the submitted alternate landscape plan as a condition, the applicant must be prepared to match the physical landscaping to the Board-imposed plan.

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

Deleted: ¶  
¶

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 17, 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, in Appeal No. **BDA 090-021**, on application of Yonas Belaineh, represented by Robert Baldwin, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Wilson**

AYES: 4- Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (Unanimously)

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MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 -

MOTION PASSED 4– 0 (unanimously)

**2:05 P.M.** - Board Meeting adjourned for **February 17, 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.