

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, MARCH 21, 2012**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member David Wilson, regular member, Jim Gaspard, alternate member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair and Paula Leone, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member, David Wilson, regular member, Jim Gaspard, alternate member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair and Paula Leone, regular member

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

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Casey Burgess, Asst. City Attorney John Rogers, Asst. City Atty., David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

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**11:30 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 21, 2012 docket.**

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**1:02 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 February 15, 2012 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2012**

**MOTION: Agnich**

I move approval of the **Wednesday, February 15, 2012** Board of Adjustment Public Hearing minutes.

**SECONDED: Chernock**

**AYES: 5– Reynolds, Chernock, Wilson, Gaspard, Agnich**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**FILE NUMBER: BDA 112-032**

**BUILDING OFFICIAL’S REPORT:**

Application of Rob Baldwin for a special exception to the fence height regulation at 10245 Strait Lane. This property is more fully described as Lot 4B City Block E/5532 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 and maintain an 8 foot 8 inch high fence in a required front yard which will require a special exception of 4 feet 8 inches.

**LOCATION: 10245 Strait Lane**

**APPLICANT: Rob Baldwin**

**March 21, 2012 Public Hearing Notes:**

- The applicant requested at the public hearing that the Board delay action on this application until their April hearing to allow him to possibly address concerns raised by an opposing property owner.

**REQUEST:**

- A special exception to the fence height regulations of 4' 8" is requested 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:
  - *parallel* to Strait Lane:
    - a 7' 3" high open iron picket fence/wall (with 3' high stone base) with 7' 9" high brick columns, and two, 8' 8" high open iron picket gates with 8' high brick columns; and
  - *perpendicular* to Strait Lane on the north and south "sides" of the site in the front yard setback:
    - a 7' 3" high open iron picket fence with 7' 9" high brick columns.

**STAFF RECOMMENDATION:**

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

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

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

**GENERAL FACTS:**

- The Dallas Development Code states that a 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 indicating a fence/wall/column/gate proposal that would be located in the site's front yard setback and that appears to reach a maximum height of 8' 8".
- A site plan has been submitted that indicates the location of the proposal in the front yard setback. The following additional information was gleaned from this site plan:
  - The proposal would be approximately 170' in length parallel to the street with recessed entryways, approximately 40' in length perpendicular to the street on the north and south sides of the site in the front yard setback.
  - The proposed fence/wall is shown to be located approximately on the front property line (or approximately 11' from the pavement line).
  - The proposed gates are to be located about 11' from the front property line (or approximately 20' from the pavement line).

**BACKGROUND INFORMATION:**

**Zoning:**

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

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

**Land Use:**

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

**Zoning/BDA History:**

1. BDA 967-213, Property at 10250 Strait Lane (the lot immediately south of the subject site)

On April 21, 1997, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations (subject to compliance with the submitted site plan, elevation plans, and landscape plan except for the portion of the proposed fence and columns to be located in the North Lindhurst drive visibility triangle), granted requests for special exceptions to visual obstruction regulations to maintain fence/columns/gates at the Strait Lane/N. Lindhurst intersection visibility triangle and at the Strait Lane drive approach (subject to compliance with the submitted site plan, elevation plans, and landscape plan except for the portion of the proposed fence and columns to be located in the North Lindhurst drive visibility triangle), and denied a request for a special exception to the visual obstruction regulations without prejudice at the North Lindhurst Drive approach visibility triangle.

The case report stated that the requests were made to construct and maintain an a fence at a maximum height of 6' for an open metal fence; 6' 4" for stucco columns; 7' 4" for open metal gates in the front yards and in intersection and drive approach visibility triangles on the property.

**Timeline:**

January 19, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 8, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 8, 2012: 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 February 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 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.

March 6, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorneys to the Board.

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

### **STAFF ANALYSIS:**

- The request focuses on constructing/maintaining a 7' 3" high open iron picket fence/wall (with 3' high stone base) with 7' 9" high brick columns, and two, 8' 8" high open iron picket gates with 8' high brick columns parallel to the street, and a 7.5' high open iron fence and a 7' 3" high open iron picket fence with 7' 9" high brick column perpendicular to the street on the north and south sides in the front yard setback on a property being developed with a single family home.
- A scaled site plan/elevation document has been submitted documenting the location of the proposed fence/wall/columns/gates relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The proposal is shown to be located approximately on the property line or about 11' from the pavement line. (The gates are shown to be located about 11' from the front property line or about 20' from the pavement line). The proposal is shown to be about 170' long parallel to the street and about 40' long perpendicular on the north and south sides of the site in the front yard setback.
- A "Landscape Planting Plan" document has been submitted that provides details of landscape materials to be provided adjacent to the proposal.

- The proposal would be located on a site where one single family home would have direct/indirect frontage, a property that has no fence in its front yard.
- The Board Administrator conducted a field visit of the site and surrounding area along Strait Lane from North Lindhurst Avenue to Dorset Lane and noted the following fence/wall which appeared to be located in the front yard setback (Note that these dimensions are approximations):
  - an approximately 6' high open metal fence with approximately 6' 4' high columns and approximately 7' 6" high gates located immediately south of the site (which appears to be a result of BDA 967-213).
- As of March 12, 2012, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' 8" in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 8" with a condition imposed that the applicant complies with the submitted site plan/elevation document would require the proposal exceeding 4' in height in the front yard setback to be constructed/maintained in the location and of the heights and materials as shown on this document.

**BOARD OF ADJUSTMENT ACTION:    MARCH 21, 2012**

APPEARING IN FAVOR:            Robert Baldwin, 3904 Elm #B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 112-032**, hold this matter under advisement until **April 18, 2012**.

SECONDED: **Chernock**

AYES: 5– Reynolds, Chernock, Wilson, Gaspard, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER:    BDA 112-016

**BUILDING OFFICIAL'S REPORT:**

Application of Mini-Roll, Inc. to require compliance of a nonconforming use at 13943 C. F. Hawn Freeway. This property is more fully described as Tract 282 in City Block 8820 and is zoned CS, which limits the legal uses in a zoning district. The applicant requests that the Board establish a compliance date for a nonconforming outside sales use.

LOCATION:            13943 C. F. Hawn Freeway

APPLICANT:        Mini-Roll, Inc.

## **March 21, 2012 Public Hearing Notes:**

- The owner of the nonconforming use (Rachel Barnes) submitted written documentation to the Board at the public hearing.

### **REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming “outside sales” use (Kleberg Flea Market) on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(iii) The manner in which the use is being conducted.

(iv) The hours of operation of the use.

(v) The extent to which continued operation of the use may threaten public health or safety.

(vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

(vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

(viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

(ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
    - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
    - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
    - (cc) Any return on investment since inception of the use, including net income and depreciation.
    - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

### **GENERAL FACTS:**

- City records indicate the following:
  - The nonconforming use being appealed at 13943 C. F. Hawn Freeway: outside sales use.
  - Reason the use is classified as nonconforming: it existed prior to annexation.
  - Date that the nonconforming use became nonconforming: 4-1-78, Consolidation
  - Current zoning of the property on which the use is located: CS, D-1
  - Previous zoning of the property on which the use is located: N/A - Consolidation
- City records indicate the following:
  - A Certificate of Occupancy was issued on 09-16-2011 for property at 13943 C. F. Hawn Freeway to owner Rachel Barnes for an outside sales use with remarks: "Nonconforming outside sales (flea market), existing prior to annexation/consolidation. One 22' x 50' metal bldg on-site. No parking allowed on site until approved parking surface has been permitted and approved."



- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The subject site is zoned Commercial Service (CS) district that permits a “outside sales” use with a Specific Use Permit (SUP).
- The record owner of the property with the nonconforming “outside sales” use could eliminate the nonconforming use status by obtaining a Specific Use Permit (SUP) from City Council.
- The record owner of the property could transition the use on the site from “outside sales” use to any use that is permitted by right in the site’s existing Commercial Service (CS) zoning classification.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CS (Commercial Service)  
North: R-10(A) (Single family residential, 10,000 square feet)  
South: CS (Commercial Service)  
East: CS (Commercial Service)  
West: CS (Commercial Service)

**Land Use:**

The site is currently developed with an “outside sales” use (Kleberg Flea Market). The areas to the east and west are developed with commercial/retail uses; the area to the north is developed with single family uses; and the area to the south is a freeway (C. F. Hawn Freeway).

**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:**

November 22, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 12, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 24, 2012: The Board Administrator wrote/sent the record owner of the property (Rachel Barnes) a letter (with a copy to the applicant- Mini-Roll, Inc. c/o Debbie Leonard) that informed her that a Board of Adjustment case had been filed against the nonconforming “outside

sales” use on the property. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials that has been submitted in conjunction with the application by the applicant.
2. A copy of the section of the Dallas Development Code that describes the Board of Adjustment (Section 51A-3.102).
3. A copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102 (90)).
4. A copy of the section of the Dallas Development Code that provides the purpose and main uses permitted set forth for “Commercial service” zoning district (Section 51A-4.123 (a)).
5. A copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “outside sales” use (Section 51A-4.210 (21)).”
6. A copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704).
7. A copy of the section of the Dallas Development Code that describes the Board of Adjustment hearing procedures (51A-4.703).
8. A copy of the City of Dallas Board of Adjustment Working Rules of Procedures.
9. A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed Ms. Barnes of the date, time, and location of the public hearing, and provided a deadline of March 9th to submit any information that would be incorporated into the board’s docket.

March 6, 2012:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorneys to the Board.

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

**STAFF ANALYSIS:**

- The “outside sales” use (Kleburg Flea Market) on the subject site is a nonconforming use. According to city records, the use became nonconforming on April 1, 1978 upon “consolidation.”
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The record owner of the property with the nonconforming “outside sales” use could eliminate the nonconforming use status by obtaining a Specific Use Permit (SUP) from City Council.
- The record owner of the property could transition the use on the site from “outside sales” use to any use that is permitted by right in the site’s existing CS (Commercial Service) zoning classification.
- The applicant has the burden of proof in establishing the following:
  - Continued operation of the nonconforming “outside sales” use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment’s March 21<sup>st</sup> public hearing shall be to determine whether continued operation of the nonconforming “outside sales” use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2012**

APPEARING IN FAVOR: Debbie Leonard, 815 Roaring Springs, Grand Prairie, TX  
Doug Combs, 2187 S Woody Road, Dallas, TX

APPEARING IN OPPOSITION: Rachel Barnes, 13908 Vida Lane, Dallas, TX  
Nancy Perez, P.O. Box 14978, Wylie, TX  
Marvin Brock, 521 Thomas Trail, Seagoville, TX  
Keith Alexander, 406 Lemont Ave, Dallas, TX

**MOTION #1 Wilson**

I move that the Board of Adjustment in Appeal No. BDA 112-016 suspend the rules and accept the evidence that is presented today.

**SECONDED: Agnich**

**AYES: 5– Reynolds, Chernock, Wilson, Gaspard, Agnich**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

**MOTION#2: Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 112-016**, based on the evidence presented at the public hearing, find that continued operation of this

nonconforming use will have an adverse effect on nearby properties, based on the following factors:

- The character of the surrounding neighborhood with the finding of fact that surrounding zoning being residential and commercial retail.
- The degree of incompatibility of the use with the zoning district in which it is located with the finding of fact that there is R-10 Single Family to the north and commercial service to the south, east, and west.
- The manner in which the use is being conducted with the finding of fact that there is not proper consideration for parking and public thoroughfare traffic, creating public traffic hazards and emergency vehicle access to surrounding property and fire hydrants.
- The hours of operation of the use with the finding of fact that the weekend hours of operation are severely impacting adjacent business use on weekends and not allowing neighbors sufficient access to public streets on weekends for purposes of ingress and egress into the neighborhood.
- The extent to which continued operation of the use may threaten public health or safety with the finding of fact that there is excessive standing water without proper drainage, excessive traffic on thoroughfare which could inhibit emergency vehicle access and parking in front of hydrants further inhibiting fire department access.
- The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor with the finding of fact that there is not proper paving and excessive standing water and trash.
- The extent to which public disturbances may be created or perpetuated by continued operation of the use with the finding of fact of traffic congestion and illegal parking.
- The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use with the finding of fact of illegal parking on adjacent property and traffic congestion on public streets.

As a result of these findings, I move to set a hearing date of **May 16, 2012** for the purpose of establishing a compliance date for this nonconforming use.

**SECONDED: Gaspard**

**AYES:** 5– Reynolds, Chernock, Wilson, Gaspard, Agnich

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 112-031

**BUILDING OFFICIAL'S REPORT:**

Application of Rob Baldwin for a special exception to the tree preservation regulations at 2201 Hawthorne Avenue et al. This property is more fully described as Lots 1 through 71 in City Block 2301 and is zoned PD-193 (MF-2), which requires mandatory tree mitigation. The applicant proposes to construct and maintain residential structures and

provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

**LOCATION:** 2201 Hawthorne Avenue et al

**APPLICANT:** Rob Baldwin

**March 21, 2012 Public Hearing Notes:**

- The Board Administrator circulated a document that included an alternate tree preservation plan prepared/submitted by the applicant to the Board, and a favorable response to the applicant's plan from the City of Dallas Chief Arborist.

**REQUEST:**

- A special exception to the tree preservation regulations is requested in conjunction with according to the application allowing "additional time to complete tree mitigation" on a property that is undeveloped.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant has not substantiated:
  - how strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code (specifically related to the additional time to complete tree mitigation of protected trees removed on the site) will unreasonably burden the use of the property; and
  - that the special exception will not adversely affect neighboring property.
- The City's Chief Arborist recommends denial of the request since there is no formal landscape or tree mitigation plan on which to make a determination.

**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:**

- 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.

An application has been submitted that states that a request has been made to “allow additional time to complete tree mitigation” and that “the property is in the process of being replatted and rezoned and the final landscape design and tree mitigation plan will be prepared after the rezoning of the property is complete.”

- The City of Dallas Chief Arborist submitted a memo regarding this request to the Board Administrator (see Attachment A). The memo stated the following:
  - The applicant is requesting relief from tree mitigation regulations of Article X of the Dallas Development Code (The Landscape and Tree Preservation Regulations).
  - Trigger:
    - Tree removal permit in conjunction with a grading permit issued on November 6, 2006.
  - Deficiencies:
    - The property has been graded and most trees have been removed under permits issued to a previous property owner. The identified total mitigation was stated as “105 protected trees totaling 1,712 inches” and an equivalent reforestation value of \$145,842.00 and “subject to arborist verification.”
    - The tree replacement ordinance requires that all mitigation for trees removed under a tree removal permit to be completed within 6 months, and no greater than 18 months under a letter of credit or performance bond (Section 51A-10.134). No tree mitigation has been completed to date.
  - Factors for consideration:
    - The properties were reviewed by the Board (case # 078-076) in June of 2008 for a tree mitigation special exception. The same factors that applied on the Chief Arborist’s report of June 16, 2008 remain with the exception of the request of the applicant stating “the property is in the process of being replatted and rezoned and the final landscape plan design and tree mitigation plan will be prepared after the rezoning of the property is complete.”
    - A landscape special exception has not been requested.
    - All tree mitigation requirements run with the land regardless of the y new owner. The current owner is not the party who removed the trees under the original permit.
    - The request by the current owner is “to allow additional time to complete tree mitigation.” There is no request for a reduction of the required mitigation.
    - The Chief Arborist has been in communication with the applicant regarding the request but has not received a formal written statement at the time of submitting this memorandum that specifies what they are requesting.
  - Recommendation:

- Denial because no formal landscape or tree mitigation plan on which to make a determination.
- If the Board decides it is favorable to grant an extension, the Chief Arborist recommends granting an extension of no longer than the final building inspection of the first dwelling unit to be completed, or three years from the date of the hearing, whichever is sooner.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)  
North: PD No. 193 (MF-2 Subdistrict) (Planned Development District, Multifamily)  
South: IR (Industrial Research)  
East: PD No. 193 (PDS 28) (Planned Development District)  
West: IR (Industrial Research)

**Land Use:**

The subject site is undeveloped. The area to the north is developed with single family residential uses; the area to the east is developed as what appears to be an institutional/private school use; and the areas to the south and west are developed with office/industrial uses.

**Zoning/BDA History:**

- |   |   |
|---|---|
| <p>1. BDA 078-076, Property at 2223 Hawthorne Avenue (the subject site)</p> | <p>On June 25, 2008, the Board of Adjustment Panel B denied a request for a special exception to the tree preservation regulations without prejudice. The case report stated that the application was made in conjunction with mitigating removed protected trees on a site that is planned to be developed with a single family development.</p> |
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**Timeline:**

- January 18, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 8, 2012: 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.”

February 8, 2012: 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 February 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 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.

March 6, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorneys to the Board.

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

March 12, 2012: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**STAFF ANALYSIS:**

- An application has been made “to allow additional time to complete tree mitigation” on a property that is undeveloped.
- The request focuses on obtaining additional time to mitigate protected trees removed on this site beyond the 6 - 18 months the applicant had to do so from when a tree removal permit was issued on this site in November of 2006.
- While the application states that “the property is in the process of being replatted and rezoned and the final landscape plan design and tree mitigation plan will be prepared after the rezoning of the property is complete,” the applicant has not presented a formal written statement to staff that specifies what they are requesting.
- The property owner can comply with tree preservation regulations by mitigating the removed trees in any of the alternative methods provided for in Article X: planting within one mile of the Property, donating trees to the Park Department, forming a conservation easement on property within city limits, and/or paying into the Reforestation Fund.



- The City of Dallas Chief Arborist recommends that this request be denied.
- 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 all protected trees removed on the site within 30 days – 18 months from removal) will unreasonably burden the use of the property.
  - The special exception (allowing for an extension of the time period in which to fully mitigate protected trees removed on the site in 2006) will not adversely affect neighboring property.
- If the Board chooses to grant this request, staff suggests that the Board consider granting an extension of no longer than the final building inspection of the first dwelling unit to be completed, or three years from the date of the hearing, whichever is sooner.

**BOARD OF ADJUSTMENT ACTION: MARCH 21, 2012**

APPEARING IN FAVOR: Robert Baldwin, 3904 Elm, Ste B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 112-031**, on application of Rob Baldwin, **grant** the request of this applicant for a special exception to the tree preservation 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 Article X tree preservation regulations is required, except that all tree mitigation must be completed before the final inspection on the first building or by March 21, 2015, whichever comes first.

SECONDED: **Chernock**

AYES: 5– Reynolds, Chernock, Wilson, Gaspard, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

AYES: 5– Reynolds, Chernock, Wilson, Gaspard, Agnich

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

**2:50 P.M.** - Board Meeting adjourned for **March 21, 2012.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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