

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
WEDNESDAY, APRIL 21, 2010**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member, David Wilson, regular member, Alex Salina, alternate member and Matt Murrah, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member, David Wilson, regular member, Alex Salina, alternate member and Matt Murrah, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair

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

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**11:02 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 21, 2010 docket.**

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**1:09 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 March 17, 2010 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: APRIL 21, 2010**

**MOTION: Murrah**

I move approval of the Wednesday, **March 17, 2010** Board of Adjustment Public Hearing minutes.

**SECONDED: Wilson**

**AYES:** 5– Reynolds, Chernock, Wilson, Salinas, Murrah

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

City attorney briefing on certain Dallas Development Code standards regarding applications to the Board of Adjustment.

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

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**FILE NUMBER:** BDA 090-046

**BUILDING OFFICIAL'S REPORT:**

Application of Jonathan Vinson for a special exception to the fence height regulations at 5806 Watson Avenue. This property is more fully described as Lot 1 in City Block F/ 5614 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 a 13 foot high fence which will require a 9 foot special exception to the fence height regulations.

**LOCATION:** 5806 Watson Avenue

**APPLICANT:** Jonathan Vinson

**REQUEST:**

- A special exception to the fence height regulations of 9 feet\* is requested in conjunction with constructing and maintaining a primarily 8' high masonry wall in the site's 40' Watson Avenue front yard setback. This special exception proposal also includes an entryway wall feature that includes two 5' – 8' high solid metal vehicular gates with a 4'- 9' high solid masonry wall between these two gates – gates flanked by two 10' high columns and two 12' high columns.
- \* Even though the application and the Building Official's Report mentions a 9' special exception, nothing on the submitted revised site plan and elevation appears to be higher than 12' which would require an 8' special exception.

**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 Watson Avenue and Douglas Avenue. The site has one front yard setback along Watson Avenue.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.  
The applicant submitted a survey plat/site plan and a document that appeared to be a partial site plan/partial elevation with the original application. The partial elevation on this document along with what is written on the application denotes a proposal in the front yard setback that reaches a maximum height of 13'.
- On March 22, 2010, the Board Administrator emailed the applicant with the following concerns some of which were conveyed to him when the application was submitted in February:
  1. The submitted "survey plat" did not denote the pavement line of Douglas Avenue and Watson Street, and as a result, a determination could not be made as to the location/locations of where the special exceptions to the visual obstruction regulations were needed (or how much).
  2. The submitted document labeled "Plan 2 Conceptual Fence Elevation" included what appeared to be only a partial site plan depicting what was proposed - a partial site plan that did not include a line denoting/identifying the proposal; did not denote the proposal over 4' in height to be located in the front yard setback relative to the entire lot; did not denote a property line; did not denote a

3. This same submitted document labeled "Plan 2 Conceptual Fence Elevation" also included what appeared to be a partial elevation depicting what was proposed - a partial elevation that did not convey a clear/full representation of what was proposed to exceed 4' in height in the front yard setback.
4. The locations and forms of the "new iron fence" and "new iron gates" on the submitted "survey plat" (a fence line with two recessed gates) did not appear to match the location and form of the "gates" and what appeared to be the location of the fence on the submitted document labeled "Plan 2 Conceptual Fence Elevation" (a fence line with *no* recessed gates).
5. The submitted "survey plat" appeared to show the "new iron fence 8' "connecting with a "new masonry fence 8' " near Douglas Avenue which did not appear to match the notation where the 8' stucco wall "connects to *existing* 8' masonry wall" on the submitted partial elevation document labeled "Plan 2 Conceptual Fence Elevation."
6. The heights and materials denoted on the submitted "survey plat" as "new iron fence 8' " and "new iron gates" shown centered between the circle drive did not appear to match the heights and materials of the proposal as denoted on the submitted partial elevation document labeled "Plan 2 Conceptual Fence Elevation" as a wall ranging from approximately 5.5' - 10' in height and labeled as "cast stone" and "stucco" centered between the circle drive.

The Board Administrator stated that given these concerns and the understanding that the board typically imposes the applicant's submitted site plans and elevations as conditions to the types of special exceptions that are being requested, that the applicant may feel it is to his advantage in order to comply with the code provision stating that the applicant has the burden of proof in establishing the necessary facts to warrant favorable action of the board to provide a revised site plan and a revised elevation - a scaled site plan along with a corresponding/matching scaled full elevation that represents his special exception requests. (The Board Administrator offered to provide examples of site plans/elevations from past applications if desired).

- On April 1, 2010, the applicant submitted a revised scaled site plan and a revised document that appeared to be partial site plan/full elevation (see Attachment A). The elevation on this document denoted a proposal in the front yard setback that appears to reach a maximum height of 12' – that maximum height being for two entryway columns. The submitted revised site plan denoted conditions on the site that complied with the visual obstruction regulations, hence the applicant's withdrawal of that portion of his application that was made with the original application.
- The following additional information was gleaned from the submitted revised site plan:
  - The proposal is shown to be approximately 140' in length parallel to Watson Avenue and approximately 36' on the "sides" of the site in the front yard setback perpendicular to Watson Avenue.
  - The fence proposal is shown to be located approximately on the site's Watson Avenue front property line or about 18' from the pavement line. (Note that the

gates are shown to be recessed about 3' from the property line or about 21' from the pavement line).

- The revised partial site plan/elevation document denotes “red maple (typ),” “magnolia (typ),” “crape myrtles,” and an “Indian Hawthorn hedge” to be located adjacent to the proposal.
- The proposal would be located on the site where one single family home would have frontage. This lot has an approximately 7' high open iron fence with 8' 6" high columns, an 8' 6" high open iron gate – a result of an approved fence height special exception by the Board of Adjustment Panel C in 2008 – BDA078-125.
- The Board Administrator conducted a field visit of the site and surrounding area along Watson Avenue (generally from the site at the corner of Watson Avenue and Douglas to approximately 500' to the east) and noted no additional visible fences beyond what has been described above which appeared to be located in the front yard setback and above 4' in height.
- The applicant submitted information beyond what was submitted with the original application (see Attachment B). This information included the following:
  - two letters in support of the request from neighbors/owners;
  - a letter that provided additional details about the request;
  - copies of the revised partial site plan/elevation and full site plan (that had been forwarded earlier to city staff);
  - photos of the site, views of the site, views from the site, and other fences/gates in the area.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

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

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

1. BDA 078-125, Property at 5807 Watson Avenue (the lot immediately north of subject site)

On September 15, 2008, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' 6" and imposed the following condition: compliance with the submitted site plan and partial elevation is required, and a variance to the front yard setback regulations of 23' 6" and imposed

the following conditions: Compliance with the submitted site plan (indicating a 16 foot, 9 inch setback) is required; and the storage building must remain behind the existing shrubs as stated in the letter from Warren Packer dated August 26, 2008. The case report state that the following appeals were made in this application on a site currently developed with a single family home: special exceptions to the fence height regulations of 4' 6" were requested in conjunction with constructing and maintaining a 7' high open iron fence with 8' 6" high columns, an 8' 6" high Watson Avenue open iron gate, and an 8' high Douglas Avenue open iron gate (both gates with 8' 6" high stucco columns) in the site's 40' front yard setbacks along Watson Avenue and Douglas Avenue; and a variance to the front yard setback regulations of 23' 6" was requested in conjunction with constructing and maintaining an approximately 150 square foot storage building in the site's 40' Douglas Avenue front yard setback.

**Timeline:**

February 26, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 19, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 23, 2010: The Board Administrator contacted the applicant and emailed the following information:

- the public hearing date and panel that will consider the application; the April 5<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 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 request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

- April 1, 2010: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- April 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- April 9, 2010: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment B).
- April 9, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Must comply with all C.O.D. visibility requirements."

#### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining primarily an 8' high masonry wall in the site's 40' Watson Avenue front yard setback. (The proposal also includes an entryway wall feature that includes two 5' – 8' high solid metal vehicular gates with a 4'- 9' high solid masonry wall between these two gates – gates flanked by two 10' high columns and two 12' high columns).
- A revised scaled site plan and a revised partial site plan/elevation document have been submitted documenting that location, height, and materials of the fence over 4' in height. The revised site plan shows the fence to be approximately 140' in length parallel to Watson Avenue and approximately 36' in length *perpendicular* to the street. The elevation shows that the proposal is to be of masonry material, and although mostly 8' in height ranging from 4' – 12' in height.
- The revised partial site plan/elevation document denotes "red maple (typ)," "magnolia (typ)," "crape myrtles," and an "Indian Hawthorn hedge" to be located adjacent to the proposal.
- One single family home would "front" to the proposal on the subject site – a lot that has an approximately 7' high open iron fence with 8' 6" high columns, an 8' 6" high open iron gate – a result of an approved fence height special exception by the Board of Adjustment Panel C in 2008 – BDA078-125.
- No additional visible fences beyond what has been described above which appeared to be located in the front yard setback and above 4' in height were noted in a field visit of the site and surrounding area along Watson Avenue (generally from the site at the corner of Watson Avenue and Douglas to approximately 500' to the east).
- As of April 12, 2010, two letters had been submitted in support and no letters had been submitted in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 9' (whereby the proposal would reach the maximum

- Granting this special exception of 9' with a condition imposed that the applicant complies with the submitted revised site plan and revised partial site plan/elevation document would assure that the proposal exceeding 4' in height would be constructed and maintained in the location and of the heights and material as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: APRIL 21, 2010**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment grant application **BDA 090-046** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted revised site plan and revised partial site plan/elevation document is required.

SECONDED: **Murrah**

AYES: 5 -Reynolds, Chernock, Wilson, Salinas, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER: BDA 090-031

**BUILDING OFFICIAL’S REPORT:**

Application of Ralph and Olga Molina for special exceptions to the fence height and visual obstruction regulations at 4402 N. Jim Miller Road. This property is more fully described as Lot 73B in City Block 5823 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at drive approaches. The applicant proposes to maintain a 6-foot-10 inch high fence in required front yard setback and in visibility triangles at drive approaches which will require a 2-foot 10-inch special exception to the fence height regulations and special exceptions to the visual obstruction regulations.

LOCATION: 4402 N. Jim Miller Road

APPLICANT: Ralph and Olga Molina

## **REQUESTS:**

- The following appeals have been made in this application on a site that is currently developed with a single family home:
  1. A special exception to the fence height regulations of 2' 10" is requested in conjunction with maintaining a 6' high solid wood fence atop a 10" high wood retaining wall located in the site's 25' Lovett Avenue front yard setback.
  2. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of this 6' 10" high solid wood fence located in three 20' visibility triangles two of which are located on either side of the driveway into the site from Lovett Avenue and one of which is located on the west side of the driveway into the home immediately east of the subject site on Lovett Avenue.

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

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

## **STAFF RECOMMENDATION (visual obstruction special exceptions):**

Denial

Rationale:

- The City's Development Services Senior Engineer recommends that the request be denied given that "Lovett Avenue is a 50 foot right-of-way and should have 27 feet of paving, and that visibility triangles must be calculated assuming the 27 foot paving is present."
- The applicant has not substantiated how the location of the items/fence in the three drive approach visibility triangles does not constitute a traffic hazard.

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

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

## **STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

## **GENERAL FACTS (related to the fence height special exception):**

- The subject site is located at the northeast corner of N. Jim Miller Road and Lovett Avenue. Even though the Lovett Avenue "side" of the subject site functions as its

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.  
The applicant has submitted a site plan and a partial fence elevation indicating that the proposal in the 25' Lovett Avenue front yard setback reaches a maximum height of 6' 10". (No fence is proposed to be constructed/maintained in the subject site's 25' N. Jim Miller Road front yard setback).
- The following additional information was gleaned from the submitted site plan:
  - The existing fence located in the Lovett Avenue front yard setback over 4' in height is approximately 90' in length parallel to the street and approximately 24' in length *perpendicular* to the street.
  - The existing fence is shown to be located about 1' from the site's Lovett Avenue front property line or about 8' from what appears to be the pavement line.
- The submitted partial elevation only denotes a fence/wall and does not denote what appeared to be a solid metal gate noted on the site that is higher than 4' in height (but lower than the existing fence) and in the front yard setback.
- One single family home (without a fence in its front yard setback) "fronts" to the existing fence on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The applicant submitted a fax to staff which requested to add requests for special exceptions to the visual obstruction regulations. This fax along with a revised Building Official's Report is included in this case report (see Attachment A).

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

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
  - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
 A site plan and a partial elevation have been submitted that show portions of the 6' 10" high solid wood fence located in the site's located in three 20' visibility triangles two of which are located on either side of the driveway into the site from Lovett Avenue and one of which is located on the west side of the driveway into the home immediately east of the subject site on Lovett Avenue.

- The applicant submitted a fax to staff which requested to add requests for special exceptions to the visual obstruction regulations. This fax along with a revised Building Official's Report is included in this case report (see Attachment A).

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

1. Miscellaneous Item #2, Property at 4402 N. Jim Miller Road (the subject site) On November 18, 2009, the Board of Adjustment Panel B waived the filing fee submitted in conjunction with the pending/possible board of adjustment application on the subject site.

**Timeline:**

January 6, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 19, 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 any preliminary action is required on a case, including but not limited to a fee waiver or waiver of the two year waiting period, the case must be returned to the panel taking the preliminary action."

February 23, 2010: The Board Administrator contacted the applicant who expressed her interest in scheduling the application beyond March of 2010 in order to further investigate a need for a special exception to the visual obstruction regulations in addition to the special exception to the fence height regulations.

March 23, 2010: The Board Administrator contacted the applicant and discussed the following information:

- the public hearing date and panel that will consider the application; the April 5<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 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 23, 2010: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

April 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

April 9, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "No objection to taller fence provided they comply with all C.O.D. visibility requirements; Lovett Avenue is a 50 foot ROW and should have 27 foot paving; visibility triangles must be calculated assuming the 27 foot paving is present."

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

- This request focuses on maintaining a 6' high solid wood fence atop a 10' high wood retaining wall located in the site's 25' Lovett Avenue front yard setback.
- The fence that is the issue of this request is located on a site that has two front yard setbacks – one front yard setback on N. Jim Miller Road (where no fence is existing over 4' in height or proposed); the other front yard setback on Lovett Avenue (where the existing fence is located that is the issue of this request – a fence that reaches 6' 10" at its highest point).
- Regardless of the way the subject site's Lovett Avenue frontage functions as the site's side yard, this Lovett Avenue frontage is technically deemed a front yard setback in order to maintain the continuity of the established front yard setbacks along the lots east of the site that front/are oriented southward onto Lovett Avenue.
- A site plan and a partial elevation have been submitted documenting that location, height, and materials of the fence over 4' in height in the Lovett Avenue front yard setback. The site plan shows the fence to be approximately 90' in length parallel to Lovett Avenue and approximately 24' in length *perpendicular* to the street. The partial elevation document shows that the fence is comprised of wood, is 6' high located atop a 10" high wood retaining wall. The submitted partial elevation does not

- One single family home (without a fence in its front yard setback) “fronts” to the existing fence on the subject site.
- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted in a field visit of the site and surrounding area by the Board Administrator.
- As of April 20, 2010, two letters/emails had been submitted in support and no letters had been submitted in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2’ 10” (whereby the existing solid wood fence that reaches a maximum 6’ 10” in height in the site’s Lovett Avenue front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 2’ 10” with a condition imposed that the applicant complies with the submitted site plan and partial elevation would assure that the existing fence exceeding 4’ in height would be maintained in the location and of the height and material as shown on these documents. The board may also wish to establish with the applicant if there is some other component of the proposal (e.g. gate) in the front yard setback over 4’ in height that should be considered as part of the request, and if so, to “except” it in addition to the fence/wall that has been applied for.
- Note that if the board were to grant this request and impose the submitted site plan and partial elevation as conditions, and deny any or all of the requests for the special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the fence in the triangles would not be “excepted.”

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

- This request focuses on maintaining portions of an approximately 6’ 10” high solid wood fence located in three 20’ drive approach visibility triangles, two of which are located on either side of the driveway into the site from Lovett Avenue and one of which is located on the west side of the driveway into the home immediately east of the subject site on Lovett Avenue.
- A site plan has been submitted that shows that about 12’ of the fence lengths are located in the 20’ visibility triangles on either side of the driveway into the subject site, and about 6’ of the fence length is located in the 20’ visibility triangle on the west side of the driveway into the home immediately east of the subject site on Lovett Avenue.
- The submitted partial elevation shows that the fence is comprised of solid wood, and is 6’ 10” in height.
- The Sustainable Development and Construction Department Project Engineer submitted a Review Comment Sheet marked “Has no objections if certain conditions are met” with the following comments: “No objection to taller fence provided they comply with all C.O.D. visibility requirements; Lovett Avenue is a 50 foot ROW and should have 27 foot paving; visibility triangles must be calculated assuming the 27 foot paving is present.”
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations and allowing the maintenance of

- If any or all of these requests are granted, subject to compliance with the submitted site plan and partial elevation, the existing solid wood fence would be “excepted” into one or all of the drive approach visibility triangles on the subject site.
- Note that if the board were to grant any or all of these requests and impose the submitted site plan and partial elevation as conditions, and deny the request for the special exception to the fence height regulations, notations would be made of such action on the submitted plans whereby the height of the fence higher than 4’ in the site’s Lovett Avenue front yard setback would not be “excepted.”

**BOARD OF ADJUSTMENT ACTION: APRIL 21, 2010**

APPEARING IN FAVOR: Ralph Molina, 4402 N. Jim Miller, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Salinas**

I move that the Board of Adjustment, in Appeal No. **BDA 090-031**, on application of Ralph and Olga Molina, **deny** the special exception to the fence height regulations 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: Reynolds**

AYES: 5 -Reynolds, Chernock, Wilson, Salinas, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**MOTION #2: Salinas**

I move that the Board of Adjustment, in Appeal No. **BDA 090-031**, on application of Ralph and Olga Molina, **grant** the request of this applicant to maintain portions of a fence in all 20-foot visibility triangles and the driveway approach triangles as special exceptions to the visibility obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and partial elevation is required.

**SECONDED: Wilson**

AYES: 5 -Reynolds, Wilson, Salinas,

NAYS: 0 – Chernock, Murrah

MOTION FAILED 3 –2

**MOTION #3: Salinas**

I move that the Board of Adjustment, in Appeal No. **BDA 090-031**, on application of Ralph and Olga Molina, **deny** all the visibility obstruction special exceptions requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

**SECONDED: Chernock**

**AYES:** 5 -Reynolds, Wilson, Chernock, Salinas, Murrah

**NAYS:** 0 –

**MOTION PASSED** 5 –0(unanimously)

**1:27 P.M.: Break**

**1:33 P.M.: Resumed**

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**FILE NUMBER:** BDA 090-047

**BUILDING OFFICIAL’S REPORT:**

Application of John J. DeShazo, Jr, represented by DeShazo Tang & Associates, for a special exception to the parking regulations at 7901 W. Northwest Highway. This property is more fully described as Lot 1A in City Block K/5453 and is zoned RR which requires parking to be provided. The applicant proposes to construct and maintain a structure for office uses, and retail and personal service uses, and provide 8,993 of the required 11,011 parking spaces which will require a 2,018 space special exception (18% reduction) to the parking regulations.

**LOCATION:** 7901 W. Northwest Highway

**APPLICANT:** John J. DeShazo, Jr,  
Represented by DeShazo Tang & Associates

**REQUEST:**

- A special exception to the off-street parking regulations of 2,018 parking spaces (or an 18 percent reduction of the required off-street parking) is requested in conjunction with, according to application materials, accommodating the proposed conditions at NorthPark Center with a proposed building program including (according to the application) General Merchandise, Restaurant, Office, Bank, Movie Theater, and other uses inherent to a “Retail Mall.” The applicant proposes to provide 8,993 of the 11,011 off-street parking spaces required in conjunction with occupying the existing center with the proposed anticipated uses.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. The special exception of 2,018 spaces shall automatically and immediately terminate when and if the property is no longer used for office uses, or retail and personal service uses permitted in the subject site's RR (Regional Retail) zoning district.
2. The applicant or property owner must submit a parking analysis of the site to the Department of Sustainable Development and Construction Project Engineer no later than December 31, 2013. Should the parking analysis show any parking deficiency, the applicant or property owner must immediately mitigate that deficiency as may be agreed between the applicant or property owner and the Department of Sustainable Development and Construction.
3. The applicant or property owner must continue to maintain the existing DART shuttle between the shopping center and the DART rail station in the future. Failure by the applicant or property owner to maintain the DART shuttle service in the future will result in the loss of credit for 275 off-street parking spaces only.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to this request if similar conditions are imposed as those on the parking special exception request on the subject site in 2004 – those being described in the “Zoning/BDA History” of this case report.
- The applicant has substantiated how the parking demand generated by office uses, and retail and personal service uses permitted in the subject site's RR (Regional Retail) zoning district does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.

- (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
  - 4) In granting a special exception, the board may:
    - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
    - (B) impose restrictions on access to or from the subject property; or
    - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
  - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
  - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
    - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
    - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- According to a study submitted in conjunction with the application, NorthPark Center is situated on an 85.8-acre tract of land that currently contains approximately 2.2 million gross square feet of area and includes 225 stores and restaurants. The study provides a table of "existing conditions" including the following listed use categories each with a different parking requirement: retail, restaurant, furniture use, mall office use, bank office building, and theater use.
- The submitted study states that NorthPark Center is proposing a number of modifications to the existing building program to accommodate current marked demands including: providing awnings on the existing outdoor dining areas; changes in use of existing leased areas; and renovating the façade of an existing tenant that results in a minimal increase in building area.
- The applicant is proposing to provide 8,993 (or 82 percent) of the required 11,011 parking spaces required in conjunction with the existing and proposed uses on the subject site.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: RR (Regional Retail)  
North: SUP 1447, PD No. 260, SUP 1414  
South: PD No. 463  
East: PD No. 55, PD No. 92, and GO (A)  
West: SUP 30, and SUP 477

### **Land Use:**

The subject site is developed as a retail center (NorthPark Center). The area to the north is developed with private school, multifamily and retail uses; the area to the east is developed with a freeway (Central Expressway); the area to the south is developed with retail uses; and the area to the west is developed with cemetery and philanthropic/institutional use.

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

1. BDA 82-213, 8687 North Central Expressway (the subject site)\*  
On July 27, 1982, the Board of Adjustment granted a request for a variance to the parking regulations of 737 spaces. The applicant proposed to provide 7,842 of the 8,579 parking spaces required. This variance was in conjunction with constructing a 158,612 square foot addition and conversion of 23,000 square feet of retail space into restaurant uses. (The staff had recommended that the request be denied). \*Note that according to information submitted by the applicant, the parking variance of 737 parking spaces was not reflected in calculations that resulted in their conclusion that 11,153 parking spaces are required in association with the proposed additions.
  
2. BDA 034-129, Property at 8687 N. Central Expressway (the subject site)  
On February 18, 2004, the Board of Adjustment Panel B granted a special exception to the off street parking regulations of 1,998 parking spaces (or 18 percent of the total off-street parking requirement) which, according to the case report, was requested in conjunction with expanding an existing 1,552,282 square foot retail/restaurant/office use (NorthPark Center) by adding 693,973 sq. ft. of new area. The Board imposed the following conditions in conjunction with this request:
  1. The special exception of 1,794 spaces

2. Applicant/property owner must submit a parking analysis of the site to the Department of Development Services Engineer no later than two years from the date of completion of the expansion and build out of the proposed additions to the shopping center. Should the parking analysis show any parking deficiency, applicant/property owner must immediately mitigate that deficiency as may be agreed between the applicant/property owner and the Department of Development Services; and
3. Applicant/property owner must continue to maintain the existing DART shuttle service between the shopping center and the DART rail station in the future in order to continue the transit credit of 167 parking spaces. Failure by the applicant/property owner to main the DART shuttle service in the future will result in loss of the credit for the 167 parking spaces only.

3. BDA 067-052, Property at 8070 Park Lane (the lot immediately east of the subject site)

On March 19, 2007, the Board of Adjustment Panel C granted a special exception to the off street parking regulations of 374 parking spaces (or 5.67% percent of the total off-street parking requirement) in conjunction with (according to the case report) developing the 33 acre subject site with a mixed uses. The Board imposed the following conditions in conjunction with this request:

1. The special exception shall automatically and immediately terminate if and when the office uses on the site are changed or discontinued to have less than 125,000 square feet of office use.
2. The applicant or property owner must submit a parking analysis of the site to the Department of Development Services engineer no later than December 31,

## **Timeline:**

February 26, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 19, 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.”

March 23, 2010: The Board Administrator contacted the applicant and emailed the following information:

- the public hearing date and panel that will consider the application; the April 5<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 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 request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

April 9, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Need to condition this special exception with similar conditions as were on the 2004 case, with updated numbers.”

## **STAFF ANALYSIS:**

- This request focuses on the applicant's proposal to accommodate the proposed conditions at NorthPark Center (e.g. providing awnings on the existing outdoor dining areas; changes in use of existing leased areas; and renovating the façade of an existing tenant that results in a minimal increase in building area) with a proposed building program including according to the application, "General Merchandise, Restaurant, Office, Bank, Movie Theater, and other uses inherent to a "Retail Mall" where 82 percent of the code required off-street parking is proposed to be provided.
- Although the application is technically made for a special exception total of 2,018 parking spaces, the special exception can be viewed as a special exception of 224 space or a 2 percent reduction to the required parking – 224 spaces being the net difference between the 2,018 spaces requested to be reduced in this request from the 1,794 parking spaces that were "special excepted" on the subject site in 2004 in conjunction with expanding an existing 1,552,282 square foot retail/restaurant/office use (NorthPark Center) by adding 693,973 sq. ft. of new area.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Need to condition this special exception with similar conditions as were on the 2004 case, with updated numbers."
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the existing and proposed uses does not warrant the number of off-street parking spaces required, and
  - The special exception of 2,018 spaces (or 18 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the conditions mentioned in the "Staff Recommendation" section of this case report, the applicant would be allowed to provide awnings on the existing outdoor dining areas; make changes in use of existing leased areas; and renovate the façade of an existing tenant on the 85.8-acre tract of land containing approximately 2.2 million gross square feet of area with 225 stores and restaurants, and provide 8,993 of the 11,011 off-street parking spaces required by the code.

**BOARD OF ADJUSTMENT ACTION: APRIL 21, 2010**

APPEARING IN FAVOR: Kirk Williams, 5400 Renaissance Tower, Dallas, TX  
David Navarez, 400 S. Houston, Dallas, TX  
John DeShazo, 400 S. Houston, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 090-047**, on application of John J. DeShazo, Jr, represented by DeShazo Tang & Associates, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 2,018 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 2,018 spaces shall automatically and immediately terminate when and if the property is no longer used for office uses, or retail and personal service uses permitted in the subject site’s RR (Regional Retail) zoning district; with the combination of those uses not to exceed 11,011 required parking spaces.
- The applicant or property owner must submit a parking analysis of the site to the Department of Sustainable Development and Construction Project Engineer no later than December 31, 2013. Should the parking analysis show any parking deficiency, the applicant or property owner must immediately mitigate that deficiency as may be agreed between the applicant or property owner and the Department of Sustainable Development and Construction.
- The applicant or property owner must continue to maintain the existing DART shuttle between the shopping center and the DART rail station in the future. Failure by the applicant or property owner to maintain the DART shuttle service in the future will result in the loss of credit for 275 off-street parking spaces only.

SECONDED: **Wilson**

AYES: 5 -Reynolds, Chernock, Wilson, Salinas, Murrah

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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**MOTION: Murrah**

I move to adjourn this meeting.

**SECONDED: Chernock**

**AYES: 5– Reynolds, Chernock, Wilson, Salinas, Murrah**

**NAYS: 0 -**

**MOTION PASSED 5– 0 (unanimously)**

**1:55 P.M.** - Board Meeting adjourned for **April 21, 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.