

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, MAY 19, 2010**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

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

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 19, 2010 docket.**

1:07 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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B April 21, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2010

MOTION: Wilson

I move approval of the Wednesday, **April 21, 2010** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

City attorney briefing on the Dallas Development Code provisions related to amortization of nonconforming uses.

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

MISCELLANEOUS ITEM NO. 3

REQUEST: To reimburse the \$600.00 filing fee submitted in conjunction with a request for a special exception to the fence height regulations – BDA090-056

LOCATION: 10151 Faircrest Drive

APPLICANT: Tony Cummins

May 19, 2010 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board on this request at the public hearing.

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

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

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers and reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter requesting a reimbursement of the \$600.00 filing fee submitted in conjunction with the request for a special exception to the fence height regulations (see Attachment A).

Timeline:

- March 26, 2010: The applicant submitted a letter to the Board Administrator stating among other things how he wanted him to place a fee reimbursement request on the board's docket (see Attachment A).
- April 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 22, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th 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 fee reimbursement request including a note how this standard states that the board may require the production of financial documents (i.e. financial documents as in but not limited to copies of 1040's, W-4's, bank statements - all with account numbers redacted); and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2010

APPEARING IN FAVOR: Tony Cummins, 10151 Faircrest Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gillespie

I move that the Board of Adjustment suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Wilson

AYES: 5 -Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION#2: Gillespie

I move to reimburse the filing fee submitted in conjunction with a request for a special exception to the fence height regulations.

SECONDED: Wilson

AYES: 5 -Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 4

FILE NUMBER: BDA 090-017

REQUEST: To waive the two year limitation on a request for a special exception to the fence height regulations of 4’ 4” that was granted with an imposed condition by Board of Adjustment Panel B on February 17, 2010.

LOCATION: 5323 Park Lane

APPLICANT: Rob Baldwin of Baldwin and Associates

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- On February 17, 2010, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 4' 4" on the subject site, and imposed the site plan/elevation plan submitted on February 15, 2010 as a condition to the request.
- On April 29, 2010, the applicant submitted a letter to the Board Administrator requesting him to schedule for the board's consideration, a request to waive the two year time limit in place in conjunction with a request for a special exception to the fence height regulations of 4' 4" that was granted by Board of Adjustment Panel B on February 17, 2010 (see Attachment A). This letter provided an explanation as to why the owner was making the request (the applicant now seeks to change the fence along Park Lane to more closely resemble the fence that was approved along Meadowbrook).
- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
 - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
 - The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On May 3, 2010, the Board Administrator emailed the applicant the following information:
 - the public hearing date and panel that will consider the miscellaneous request (May 19, 2010 – Panel B);
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - an attachment that provided the public hearing date and panel that will consider the application; the May 4th deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- The February 17, 2010 case report regarding BDA090-017 stated that special exceptions to the fence height regulations of 4' 4" had been requested in conjunction with constructing and maintaining the following in the site's two 40' front yard setbacks on a site developed with a single family home:
 - in the Meadowbrook Drive front yard setback parallel to the street, and perpendicular to the street on the north "side" of the site in the front yard setback:
 - A 7' 4" high solid masonry fence/wall with 7' 10" high columns;
 - An 8' 4" high "decorative wrought iron fence" on the portion of the site that is shown as a "floodway easement;" and

- in the Park Lane front yard setback *perpendicular* to this street on the east side of the subject site:
 - An 8' 4" high "decorative wrought iron fence."

The BDA090-017 case report noted the following:

1. The existing fence above 4' in height in the site's Park Lane front yard setback parallel to this street was not part of this application. The applicant wrote that the owner "will not modify the existing fence along Park Lane, except to tie the new fence into it on the eastern side of the property." As a result, staff assumed that this existing fence was in compliance with a special exception granted by the Board of Adjustment on the subject site in 1992- BDA92-034 – see the "Zoning/BDA History" section of this case report for additional details about this request.
2. The revised elevation/site plan document submitted at the January 20th public hearing indicated two gates in the Meadowbrook Drive front yard setback however, no elevation of these gates had been submitted.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2010

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

APPEARING IN OPPOSITION: No one

MOTION: **Duarte**

I move that the Board of Adjustment **waive** the two year limitation on a request for a special exception to the fence height regulations of 4' 4" that was granted with an imposed condition by Board of Adjustment Panel B on February 17, 2010.

SECONDED: **Chernock**

AYES: 4 - Gillespie, Chernock, Wilson, Duarte

NAYS: 1 – Reynolds,

MOTION PASSED 4 – 1

FILE NUMBER: BDA 090-056

BUILDING OFFICIAL'S REPORT:

Application of Tony Cummins for a special exception to the fence height regulations at 10151 Faircrest Drive. This property is more fully described as Lot 9 in City Block 1/8084 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot high fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 10151 Faircrest Drive

APPLICANT: Tony Cummins

REQUEST:

- A special exception to the fence height regulations of 4' is requested in conjunction with constructing and maintaining an 8' high solid board-on-board wood fence with steel posts (and pedestrian gate) in the site's 10' Ferndale Road front yard setback on a site developed with a single family home. (The proposed 8' high fence would replace an approximately 6' high wood fence on the subject site in virtually the same location).

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 northwest corner of Faircrest Drive and Ferndale Road. Even though the Ferndale Road frontage of the subject site functions as its side yard and the Faircrest Drive frontage functions as its front yard, the subject site has two front yard setbacks along both streets – a 25' front yard setback along Faircrest Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 10' front yard setback (created with a 10' platted building line) along Ferndale Road (the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 9' high fence could be maintained by right but deemed a front yard nonetheless in order to maintain the continuity of the established front yard setbacks established by the lots north of the site that front/are oriented eastward onto Ferndale Road).
- 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 10' Ferndale Road front yard setback is proposed to reach a maximum height of 8'. (No fence is proposed to be constructed/maintained in the subject site's 25' Faircrest Drive front yard setback).
- The following additional information was gleaned from the submitted site plan:
 - The proposal to be located in the Ferndale Road front yard setback over 4' in height is proposed to be approximately 75' in length parallel to the street and approximately 10' in length on the north and south "sides" of the site in the Ferndale Road front yard setback *perpendicular* to the street.

- The proposal is shown to be located approximately 0' – 1' from the site's Ferndale Road front property line. (The distance of the proposal from the Ferndale Road pavement line cannot be gleaned from the site plan since no pavement line is denoted).
- The submitted partial elevation shows a 8' high fence/wall and includes the following notations: "fence will not exceed 8' from ground at any point, posts on interior, board-on-board construction, steel posts."
- Four single family homes (none with fences in their front yard setback) "front" to the proposal on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area along Ferndale Road and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.

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:

- | | |
|---|--|
| <p>1. Miscellaneous Item #3, Property at 10151 Faircrest Drive (the subject site)</p> | <p>On May 19, 2010, the Board of Adjustment Panel B will reconsider reimbursing the filing fee submitted in conjunction with BDA090-056 - the board of adjustment application for a special exception to the fence height regulations requested on the subject site.</p> |
| <p>2. BDA 078-122, Property at 10304 Ferndale Road (the lot immediately east of the subject site)</p> | <p>On September 17, 2008, the Board of Adjustment Panel B denied a request for a special exception to the fence height of 4' with prejudice. The case report stated that the application was made to construct and maintain an 8 foot high fence in the site's Faircrest Drive front yard setback.</p> |

Timeline:

March 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.

- April 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 22, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th 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.
- May 4, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: 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: "Must comply with all C.O.D visibility requirements."

STAFF ANALYSIS:

- This request focuses on replacing an existing approximately 6' high solid wood fence with an 8' high solid board-on-board wood fence with steel posts (and pedestrian gate) in the site's 10' Ferndale Road front yard setback on a site developed with a single family home.
- The proposed fence that is the issue of this request is to be located on a site that has two front yard setbacks – one front yard setback on Faircrest Drive (where no fence is existing over 4' in height or proposed); the other front yard setback on Ferndale Road (where the proposed fence is that is the issue of this request is to be located– a fence that reaches 8' at its highest point).
- Even though the site's Ferndale Road frontage functions as its side/rear yard, and is the longer of the two street frontages of the corner lot which is typically a side yard where a 9' high fence can be built by right, the site's Ferndale Road frontage is deemed a front yard nonetheless in order to maintain the continuity of the established front yard setbacks established by the lots north of the site that front/are oriented eastward onto Ferndale Road.
- A site plan and a partial elevation have been submitted documenting that location, height, and materials of the proposed fence over 4' in height in the Ferndale Road front yard setback. The site plan shows the proposal to be approximately 75' in

- Four single family homes (none with fences in their front yard setback) “front” to the proposal 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 May 10, 2010, no letters had been submitted in support or opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ (whereby the proposed solid board-on-board fence with steel posts and gate that reach a maximum 8’ in height in the site’s Ferndale Road front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 4’ with a condition imposed that the applicant complies with the submitted site plan and partial elevation would assure that the proposal exceeding 4’ in height would be constructed and maintained in the location and of the height and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 19, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment grant application **BDA 090-056** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Wilson**

AYES: 5 - Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 090-049

BUILDING OFFICIAL’S REPORT:

Application of Refugio Soto for a special exception to the single family use regulations to authorize more than one electrical utility service or electrical meter at 907 N. Jester Avenue. This property is more fully described as Lot 24 in City Block 1/4153 and is zoned R-7.5(A) which requires that a single family use in a single family, duplex, or townhouse district to be supplied by not more than one electrical utility service, and metered by not more than one electrical meter. The applicant proposes to have an additional electrical meter on a lot with a single family use which will require a special exception to the single family use regulations.

LOCATION: 907 N. Jester Avenue

APPLICANT: Refugio Soto

May 19, 2010 Public Hearing Notes:

- The applicant provided testimony at the public hearing that established that his request was to maintain an additional electric meter on the site on a structure that housed some of his family members.

REQUEST:

- A special exception to the single family use regulations is requested in conjunction with a second electrical meter that (according to application) is “needed to control expense for a home office for tax purposes.” The site is currently developed with a single family home with its own electrical meter and a detached accessory structure denoted on the submitted site plan/survey plat as “frame apartment.”

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional electrical meter in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL ELECTRICAL UTILITY SERVICE AND ELECTRICAL METER:

The board may grant a special exception to authorize more than one electrical utility service and more than one electrical meter for a single family use on a lot in a single family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

GENERAL FACTS:

- The Dallas Development Code states that in R-7.5(A) zoning, a lot for a single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter.

A document which appears to be a survey plat of the property was submitted with the application that denotes the building footprints of two structures on the site, one of which is denoted as “brick and frame residence,” the other denoted as “frame apartment.” The document does not denote the location of either of the two electrical meters. The Board Administrator noted what appeared to be two electrical meters on the site on his April 15th field visit of the site – one meter being located on the west side of the structure labeled on the submitted plan as “brick and frame residence” and the other being located on the east side of the structure labeled on the submitted plan as “frame apartment.”

- DCAD records indicate that the site is developed with the following:
 - a structure built in 1924 in fair condition with 1,072 square feet of living area;
 - a 792 square foot ”APT GA CONV DT.”

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: NS(A) (Neighborhood Services)

Land Use:

The subject site is developed with a single family home and an accessory structure that according to the application is intended to be used as a home office. The areas to the north, east, and south are developed with single family uses; the area to the west is developed with what appears to be a commercial retail use.

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:

March 5, 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.

April 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 23, 2010: The Board Administrator contacted the applicant and mailed him the following information (see Attachment A):

- the public hearing date and panel that will consider the application; the May 7th 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
- information related to the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 4, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: 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.

The Building Inspection Senior Plans Examiner/Development Code Specialist commented that due to a reference on the site plan that the accessory structure is an "apartment", that a condition be added that an "Accessory structure not to be used as a dwelling unit or as income property."

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

STAFF ANALYSIS:

- This request focuses on a second electrical meter that (according to application) is "needed to control expense for a home office for tax purposes." The site is currently developed with a single family home with its own electrical meter and a detached accessory structure denoted on the submitted site plan as "frame apartment."
- A document which appears to be a survey plat of the property was submitted with the application that denotes the building footprints of two structures on the site, one of which is denoted as "brick and frame residence," the other denoted as "frame apartment." The document does not denote the location of either of the two electrical meters. The Board Administrator noted what appeared to be two electrical meters on the site on his April 15th field visit of the site – one meter being located on the west side of the structure labeled on the submitted plan as "brick and frame residence" and the other being located on the east side of the structure labeled on the submitted plan as "frame apartment."
- The applicant has the burden of proof in establishing that the additional electrical meter to be installed and/or maintained on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.
- If the Board were to grant the request, staff would suggest that the following condition be imposed to assure that the intent of the special exception standard is addressed: "The accessory structure on the subject site cannot be used as a dwelling unit or as income property."

BOARD OF ADJUSTMENT ACTION: MAY 19, 2010

APPEARING IN FAVOR: Refugio Soto, 907 N. Jester, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Olga Torres-Holyoak, 1500 Marilla Dr., Dallas, TX

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 090-049** on application of Refugio Soto, **deny** the special exception for more than one electrical utility service or electrical meter requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that granting the application would be contrary to the public interest; OR adversely affect neighboring properties; OR the service/meter will be used to conduct a use not permitted in the district the building site is located in.

SECONDED: **Chernock**

AYES: 5 - Reynolds, Gillespie, Chernock, Wilson, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 090-058

BUILDING OFFICIAL'S REPORT:

Application of John Colonna for a variance to the building height regulations at 1656 Cedar Hill Avenue. This property is more fully described as Lot 11 in City Block 1/4702 and is zoned R-7.5(A) which limits the maximum building height to 30 feet. The applicant proposes to construct/maintain a structure and provide a building height of 42 feet which will require a variance of 12 feet.

LOCATION: 1656 Cedar Hill Avenue

APPLICANT: John Colonna

May 19, 2010 Public Hearing Notes:

- A representative for the applicant submitted additional written information to the Board at the public hearing – information that included an aerial photograph of the site and surrounding area; a notification map that was represented as a document showing where there was support of the application in relation to the subject site; letters from neighbors expressing their concerns on the application; and photographs of homes and conditions in the area.

REQUEST:

- A variance to the height regulations of 12' is requested in conjunction with completing and maintaining a single family home, a portion of which (according to documents submitted with the application – a proposed enclosure of an existing permitted staircase/"steel canopy/cupola" structure) would exceed the 30' maximum structure height.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan, the "construction plans: roof access & roof plan" document, and the "building elevations" document is required.

Rationale:

- The subject site is restricted in its developable area given its significant slope – a site with a change in topography of over 70' over the approximately 360' length.
- Granting the variance does not appear to be contrary to the public interest in that it would only allow the enclosure of area that covers about 1/10 of the total area of the roof deck of the existing structure. Granting the variance would merely allow the enclosure of an existing approximately 130 square foot area permitted by right *unenclosed* as an "ornamental cupola or dome" structure.

STANDARD FOR A VARIANCE:

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

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

GENERAL FACTS:

- The maximum structure height on an R-7.5(A) zoned lot is 30 feet. The applicant had submitted a "building elevations" document denoting a structure that reaches 42' in height (or 12' above the maximum 30' structure height). While the submitted elevation denotes part of the structure that exceeds 30' in height, a section of this elevation makes the following reference: "Section 51A-4.408(2) In a district in which building height is limited to 36' or less, the following structures may project a maximum of 12' above the maximum structure height specified in the district regulations (Division 51A-4.100)."

The Dallas Development Code in Section 51A-4.408(a)(2) states:

“In a district in which building height is limited to 36 feet or less, the following structures may project a maximum of 12 feet above the maximum structure height specified in the district regulations: (A) Structures on top of a building: elevator penthouse or bulkhead; mechanical equipment room; cooling tower; tank designed to hold liquids; ornamental cupola or dome; skylights, clerestory; visual screens which surround roof mounted mechanical equipment; chimney and vent stacks; amateur communications tower; parapet wall, limited to a height of four feet.”

- According to calculations taken by the Board Administrator from the submitted site plan, the building footprint of the single family structure is approximately 36' x 36' or 1,300 square feet in area. The area of the existing unenclosed permitted staircase/steel canopy/cupola structure this is proposed to be enclosed and is the issue of this request is approximately 8' x 16' (or 128 square feet in area).
- The submitted site plan denotes that the subject site slopes downward from 494 on the south side of the site to 421 on the north side of the site over a length of approximately 360'. The submitted plat shows that the site is somewhat irregular in shape (170' on the north, approximately 150' on the south, 360' on the east, and approximately 245' on the west, and according to the application is 1.4 acres (or approximately 61,000 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- According to DCAD records, the property is developed with the following:
 - a structure built in 2009 with 4,240 square feet of living area,
 - a drive way retaining wall;
 - a 1,200 square foot attached garage; and
 - a deck.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter addressed to neighbors that provided additional details about the request;
 - a copy of a Restrictive Covenant filed with Dallas County on April 16, 2010 that (according to the applicant) “legally prevents any additional building as feared.”
 - photos that the applicant describes as showing the allowable height, and the requested height.
 - a letter to the Board Administrator that provided additional details about the request.

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 being developed with a single family home. The area to the north is developed as open space; and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA 078-046, Property at 1656 Cedar Hill Drive (the subject site) | On April 18, 2008, the Board of Adjustment Panel B denied a request for a variance to the building height regulations of 12' without prejudice. The case report stated that following: "Requests: Variances of 12' to the building height regulation." |
|--|--|

Timeline:

- March 25, 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.
- April 22, 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."
- April 22, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th 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.
- May 4, 2010: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- May 4, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: 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.

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

STAFF ANALYSIS:

- This request focuses on completing and maintaining a 42' high single family home, specifically enclosing an existing city-permitted staircase/"steel canopy/cupola" structure that would exceed the 30' maximum structure height by 12'.
- The applicant's proposal to enclose the existing 12' high canopy/cupola located atop the existing 30' high single family home is the issue of this application for a height variance - the existing unenclosed 12' high, approximately 130 square foot canopy/cupola is an "ornamental cupola or dome" structure that is permitted by code (Section 51A-4.408(A)(2)(v)). The proposed *enclosed* 12' high, 130 square foot canopy/cupola is technically no longer a permitted structure/"ornamental cupola or dome" and is a structure (if enclosed) that requires a variance to the height regulations.
- The Dallas Development Code in Section 51A-4.408(a)(2) states:
"In a district in which building height is limited to 36 feet or less, the following structures may project a maximum of 12 feet above the maximum structure height specified in the district regulations: (A) Structures on top of a building: elevator penthouse or bulkhead; mechanical equipment room; cooling tower; tank designed to hold liquids; ornamental cupola or dome; skylights, clerestory; visual screens which surround roof mounted mechanical equipment; chimney and vent stacks; amateur communications tower; parapet wall, limited to a height of four feet."
- The applicant has stated that this application is the same proposal as made to the Board of Adjustment Panel B in April of 2008 – an application (BDA078-046) that was denied without prejudice. The applicant has informed the Board Administrator that although the request to the board has not changed, a number of neighbors who were opposed to the original application are now in support of the current application two years later.
- The applicant has stated that the cupola is proposed to be enclosed because without the enclosure, access to the roof level of the structure would require a hatch to be lifted - the proposal would access to the roof level with a hinged door.
- According to calculations taken by the Board Administrator from the submitted site plan, the building footprint of the single family structure is approximately 36' x 36' or 1,300 square feet in area. According to DCAD, the structure has about 4,200 square feet of living area with a 1,200 square foot attached garage.
- The submitted site plan denotes that the subject site slopes downward from 494 on the south side of the site to 421 on the north side of the site over a length of approximately 360'. The submitted plat shows that the site is somewhat irregular in shape (170' on the north, approximately 150' on the south, 360' on the east, and approximately 245' on the west, and according to the application is 1.4 acres (or approximately 61,000 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this

chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) (Single family) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) (Single family) zoning classification.
- If the Board were to grant the height variance of 12', imposing a condition whereby the applicant must comply with the submitted site plan, the "construction plans: roof access & roof plan" document, and the "building elevations" document, the structure exceeding the maximum 30' height limit would be limited to that shown on these documents which in this case is a 12' high structure limited to an area that is approximately 8' x 16' in area – an area that is approximately 10 percent of the total roof level of the structure. If denied, the existing stair/canopy/cupola structure can remain in its current height and configuration - *unenclosed* as an "ornamental cupola or dome" structure.

2:03 P.M.: Break

2:06 P.M.: Resumed

2:26 P.M.: Break

2:34 P.M.: Resumed

BOARD OF ADJUSTMENT ACTION: MAY 19, 2010

APPEARING IN FAVOR: John McCall, 1650 Oak Knoll, Dallas, TX
John Colonna, 11349 S FM 372, Valley View, TX
Steve Habgood, 1645 Junior Dr., Dallas, TX

APPEARING IN OPPOSITION: Harrison Price, 1052 Kessler Pkwy, Dallas, TX
Gerry Unsell, 1038 Kessler Pkwy, Dallas, TX
Gilda Burleson, 1643 Cedar Hill Ave., Dallas, TX
Patricia Melly, 957 Kessler Pkwy, Dallas, TX
Tim Herfel, 940 Kessler Pkwy, Dallas, TX

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 090-058**, on application of John Colonna, **deny** the variance to the height regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Duarte**

AYES: 4 - Reynolds, Gillespie, Chernock, Duarte

NAYS: 1 – Wilson

MOTION PASSED 4 – 1

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Chernock

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

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

3:29 P.M. - Board Meeting adjourned for **May 19, 2010.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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