

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6FN PARK & RECREATION CONFERENCE ROOM
WEDNESDAY, AUGUST 18, 2010**

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

MEMBERS ABSENT FROM HEARING: No one

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

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 18, 2010 docket.**

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1:16 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 June 16, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

MOTION: Wilson

I move approval of the Wednesday, **June 16, 2010** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 090-082

BUILDING OFFICIAL’S REPORT:

Application of Gregg Bartus for a special exception to the sign regulations at 2989 N. Stemmons Freeway. This property is more fully described as Lot 16 in City Block 7910 and is zoned MU-3 which allows one detached sign for ever 450 feet, or fraction thereof, of frontage on a public street. The applicant proposes to construct an additional detached premise sign which would require a special exception.

LOCATION: 2989 N. Stemmons Freeway

APPLICANT: Gregg Bartus

REQUEST:

- A special exception to the sign regulations is requested in conjunction with erecting and maintaining an additional detached sign along the site’s Stemmons Freeway street frontage - a site that currently has one detached sign (a billboard) along its street frontage. The subject site is developed with an office use (Mathur Law Offices).

STAFF RECOMMENDATION:

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Approval, subject to the following condition:

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

Rationale:

- The applicant has substantiated how strict compliance with the sign regulations (in this case, the site being held to one detached premise sign along the site's street frontage) would result in an inequity since the site has a feature that is uncharacteristic of most lots – that being an existing billboard on the site that accounts for the site's one permitted sign (from which the existing property owner “does not have interest in the ownership or content control”) and simultaneously precludes the applicant/owner from having a detached premise sign identifying his business – a type of sign that is typically found along the street frontages on other lots.
- In addition, there appears to be no corresponding benefit to the city and its citizens in accomplishing the objective of the sign regulations in this case (i.e. holding this site to just one sign - in this case, the existing billboard on the site) since the proposed additional sign has been represented as being in compliance with all other Code requirements. (If for any reason, the “additional sign” granted by the board in this request was discovered to be out of compliance with some other Code requirement at a later date, the applicant would be required to return to the board with a new application to address any issue that the board is empowered to consider related to non-compliance with city sign codes).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR AN ADDITIONAL DETACHED SIGN:

The Board of Adjustment may, in specific cases and subject to appropriate conditions, authorize one additional detached sign on a premise in excess of the number permitted by the sign regulations as a special exception to these regulations when the board has made a special finding from the evidence presented that strict compliance with the requirement of the sign regulations will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.

GENERAL FACTS:

- The Dallas Development Code states that only one detached sign is allowed per street frontage other than expressways, and that one expressway sign is allowed for every 450 feet of frontage or fraction thereof on an expressway. (The subject site frontage is approximately 343 linear feet).

The applicant submitted a revised site plan which indicates the location of the existing billboard sign and the proposed monument sign. Approximately 135 feet of distance separates the existing billboard sign and the proposed monument sign. The revised site plan indicates that the proposed monument sign is located 10' from the property line or 25' from the pavement line. The applicant has also submitted a revised sign elevation which denotes that the proposed monument sign is 108” (or

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9') high by 130" (or 10.8') long. (The actual sign board within the monument sign is shown on the revised elevation to be 102" long by 67" high).

- On July 22, 2010, the applicant submitted additional information to staff regarding the request (see Attachment A). This information included the following information:
 - an email that provided additional details about the request; and
 - a revised site plan, elevation, and photo of the site with the proposed sign superimposed on it.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed use)
North: MU-3 (Mixed use)
South: MU-3 (Mixed use)
East: MU-3 (Mixed use)
West: MU-3 (Mixed use)

Land Use:

The site is currently developed with an office use (Mathur Law Office). The areas to the north, east, south, and west appear to be developed with either office or warehouse uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- June 18, 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.
- July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2010: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th 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.

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July 22, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment A).

August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment 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:

- The request focuses on erecting and maintaining an additional detached sign along the site’s street frontage - a site that currently has one detached sign (a billboard which, according to the application, the existing property owner “does not have interest in the ownership or content control) along its street frontage and is developed with an office use (Mathur Law Offices).
- The submitted revised site plan indicates the location of the existing billboard sign and the proposed monument sign. Approximately 135 feet of distance separates the existing billboard sign and the proposed monument sign. The revised site plan indicates that the proposed monument sign is located 10’ from the property line or 25’ from the pavement line.
- A revised sign elevation has been submitted which denotes that the proposed monument sign is 108” (or 9’) high by 130” (or 10.8’) long. (The actual sign board within the monument sign is shown on the revised elevation to be 102” long by 67” high).
- The applicant has written that he has received verbal approval from a City of Dallas Sign Inspector with regard to the proposed sign as shown on the revised site plan and revised elevation.
- The applicant has the burden of proof in establishing the following:
 - That strict compliance with the requirement of the sign regulations (where in this case, the site would be limited to having only one sign along the street frontage) will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives of the sign regulations.
- Granting this special exception would allow a 2nd sign on the site – in this case a sign that could serve to identify the applicant’s business as opposed to the existing permitted billboard on the site to which the applicant/owner has no financial benefit from or control of. If the Board were to impose the submitted revised elevation and revised site plan as a condition to the request, the additional sign would be limited to the specific location and characteristics as shown of these documents.

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BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

APPEARING IN FAVOR: Greg Bartus, 7161Blairview Dr., Dallas, TX
Sanjay Mathir, 2989 N. Stemmons #1000, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 090-082** on application of Gregg Bartus, **deny** the special exception to allow an additional detached premise sign 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 any financial hardship or inequity that may result from strict compliance with the provisions of Article VII of the Dallas Development Code is outweighed by the benefit to be received by the citizens of the City of Dallas in promoting the health, safety, and welfare of the public in accomplishing the objectives of that article.

SECONDED: Reynolds

AYES: 1–, Gillespie

NAYS: 4 – Reynolds, Chernock, Wilson, Stefan

MOTION FAILED 4 – 1

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 090-082** on application of Gregg Bartus, **grant** the special exception to allow an additional detached premise sign, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that strict compliance with the provisions of Article VII of the Dallas Development Code will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the City of Dallas and its citizens in accomplishing the objectives of that article. I further move that the following condition be imposed to further the purpose and intent of Article VII of the Dallas Development Code:

- Strict compliance with the submitted revised elevation and submitted revised site plan is required.

SECONDED: Wilson

AYES: 4– Reynolds, Chernock, Wilson, Stefan

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

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FILE NUMBER: BDA 090-063

BUILDING OFFICIAL'S REPORT:

Application of Julio Hernandez to appeal the nonconforming use compliance date set by the City Council on April 27, 2005 at 3400 Ross Avenue. This property is more fully described as a 4,750 square foot tract in City Block 0512 and is zoned PD-298 (Subarea 1) which required that those uses that became nonconforming as a result of City Council action on April 27, 2005, must be brought to conformance no later than April 26, 2010. The applicant requests a later conformance date for the nonconforming vehicle or engine repair or maintenance use.

LOCATION: 3400 Ross Avenue

APPLICANT: Julio Hernandez

REQUEST:

- An application is made for the Board of Adjustment to appeal a City Council ordinance-imposed compliance date of April 26, 2010 for a nonconforming vehicle or engine repair or maintenance use (EZ Auto Repair/EZ Auto Service) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES:

Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

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(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate that a Certificate of Occupancy (CO # 0310081026) was issued on October 23, 2003, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005, must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The owner of use on the site could transition the use to any use that is permitted by right in the site's PD 298 (Subarea 1) zoning classification.
- On June 7, 2010, a subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- As of August 9, 2010, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Subarea 1) (Planned Development)
North: PD No. 298 (Subarea 1) (Planned Development)
South: PD No. 298 (Subarea 1) (Planned Development)
East: PD No. 298 (Subarea 6) (Planned Development)
West: PD No. 298 (Subarea 1) (Planned Development)

Land Use:

The site is currently developed with nonconforming vehicle or engine repair or maintenance use (EZ Auto Repair/EZ Auto Service). The area to the north appears to be vacant commercial use; the areas to the east, south and west appear to be developed with commercial uses.

Zoning/BDA History:

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There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- April 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.
- May 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- June 7, 2010: A subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment 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:

- The vehicle or engine repair or maintenance use on the subject site is a nonconforming use. City records indicate that a Certificate of Occupancy (CO # 0310081026) was issued on October 23, 2003, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to

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recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.

- The Dallas Development Code states the following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recover his investment in the use (up to the date of nonconformance) by the conformance date set by this subsection of the ordinance which in this case is April 26, 2010.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- As is the case with any nonconforming use, the owner of the use could transition the nonconforming vehicle or engine repair or maintenance use on the site to any use that is permitted by right in the site's PD No. 298 (Subarea 1) zoning classification.
- As of August 9, 2010, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

1:47 P.M.: Executive Session Begins
2:03 P.M.: Executive Session Ends

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

APPEARING IN FAVOR: Julio Hernandez, 3400 Ross Ave., Dallas, TX

APPEARING IN OPPOSITION: Eric Williamson, 3507 Bryan St., Dallas, TX

APPEARING FOR THE CITY: Charles Estee, 1500 Marilla St., Dallas, TX

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 090-063**, hold this matter under advisement until **October 20, 2010**.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

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FILE NUMBER: BDA 090-064

BUILDING OFFICIAL'S REPORT:

Application of Roxan Staff, represented by Roxan and Randy Staff, to require compliance of a nonconforming use at 2802 W. Northwest Highway, AKA: 2728 Community Drive. This property is more fully described as Lots 13, 14 and part of 15 in City Block A/5780 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming alcoholic beverage establishment use.

LOCATION: 2802 W. Northwest Highway, AKA: 2728 Community Drive

APPLICANT: Roxan Staff
Represented by Roxan and Randy Staff

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming "alcoholic beverage establishments" use (El Bom Boom) on the subject site.

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

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
 - (1) Amortization of nonconforming uses.
 - (A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.
 - (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
 - (i) The character of the surrounding neighborhood.

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- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
 - (iii) The manner in which the use is being conducted.
 - (iv) The hours of operation of the use.
 - (v) The extent to which continued operation of the use may threaten public health or safety.
 - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (iii) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
 - (iv) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

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- City records indicate the following:
 - On August 17, 1992, a certificate of occupancy (C.O. #9208171037) for a conforming alcoholic beverage establishment use was issued on property zoned CR (Community Retail).
 - On June 23 1993, Ordinance No. 21735 was passed which required an SUP for alcoholic beverage establishment use in CR zoning.
 - On August 16, 1994, a certificate of occupancy (C.O. #9408161023) for a nonconforming alcoholic beverage establishment use was issued on property zoned CR (Community Retail).
 - On August 27, 1997, a certificate of occupancy (C.O. #9708271025) for a nonconforming alcoholic beverage establishment use was issued on property zoned CR (Community Retail).
 - On January 5, 2001, a certificate of occupancy (C.O. #0101051043) for a nonconforming alcoholic beverage establishment use was issued on property zoned CR (Community Retail).
- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The subject site is zoned CR (Community Retail) that permits an “alcoholic beverage establishments” use by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for “alcoholic beverage establishments” use in Section 51A-4.210 (4):
 - “Alcoholic beverage establishments.”
 - (A) Definition:
 - (i) Bar, lounge or tavern means an establishment principally for the sale and consumption of alcoholic beverages on the premises that derives 75 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premise consumption.
 - (ii) Private-club bar means an establishment holding a private club permit under Chapter 32 or 33 of the Texas Alcoholic Beverage Code that derives 35 percent or more of its gross revenue from the sale or service of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code, for on-premise consumption and that is located within a dry area as defined in Title 6 (Local Options Elections) of the Texas Alcoholic Beverage Code.
 - (B) Districts permitted: By SUP only is GO(A)*, CR, RR, CS, industrial, central area, mixed use, multiple commercial, MF-4(A), LO(A), MO(A), UC-2, and UC-3 districts. *Note: This use is subject to restrictions in the GO(A) district.
- The owner of the site could eliminate the nonconforming use status of the existing alcoholic beverage establishments use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from “alcoholic beverage establishments” use to any use that is permitted by right in the site’s existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.

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- On June 4, 2010, the applicant submitted information to the Board Administrator on this application (see Attachment A). This information included a table of contents that listed the following three categories of information:
 - Application;
 - Zoning Map;
 - Adverse Effects;
 - Letters; and
 - Conclusion.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: MF-2 (Multifamily)
East: CR (Community Retail)
West: CR (Community Retail)

Land Use:

The site is currently developed a retail strip with the focus of this application being a suite within this center developed with an “alcoholic beverage establishments” use (El Bom Boom). The areas to the north, east, and west are developed with retail/commercial uses; and the area to the south is developed with multifamily residential uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- April 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.
- May 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 14, 2010: The Board Administrator wrote/sent the owner of the site/property (Asher Dreyfus, Sr.) a letter (with a copy to the applicant) that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:
 - a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;

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- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the purpose and main use permitted set forth for “community retail (RR)” districts (Section 51A-4.122 (b));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “alcoholic beverage establishments” use (Section 51A-4.210(4));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the property the date, time, and location of the briefing/public hearing, and provided a deadline of August 6th (corrected from June 4th on May 27th) to submit any information that would be incorporated into the board’s docket.

May 27, 2010:

The Board Administrator wrote/sent the record tenant and holder of the certificate of occupancy for the nonconforming alcoholic beverage establishment use on the site (Manuel Hernandez.) a letter (with a copy to the applicant) that informed him that a Board of Adjustment case had been filed against his use. The letter included following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the purpose and main use permitted set forth for “community retail (RR)” districts (Section 51A-4.122 (b));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “alcoholic beverage establishments” use (Section 51A-4.210(4));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);

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- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the record tenant and holder of the certificate of occupancy for the nonconforming alcoholic beverage establishment use on the site of the date, time, and location of the briefing/public hearing, and provided a deadline of August 6th to submit any information that would be incorporated into the board's docket.

June 4, 2010 The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment 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:

- The “alcoholic beverage establishments” use (El Bom Boom) on the subject site is a nonconforming use. According to city records, the use became nonconforming on June 23 1993 when the City Council passed Ordinance No. 21735- an ordinance that required an SUP (Specific Use Permit) for an “alcoholic beverage establishments” use on property zoned CR (Community Retail).
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing “alcoholic beverage establishments” use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from “alcoholic beverage establishments” use to any use that is permitted by right in the site’s existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming “alcoholic beverage establishments” use will have an adverse effect on nearby properties.

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- The purpose of the Board of Adjustment's August 18th public hearing shall be to determine whether continued operation of the nonconforming "alcoholic beverage establishments" use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

APPEARING IN FAVOR: Roxan Staff, 6964 Tokalon Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment in Appeal No. **BDA 090-064**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, based on the following factors:

- The character of the surrounding neighborhood is in better condition than the property in question and there is multifamily about 42 feet away.
- The degree of incompatibility of the use with the zoning district in which it is located in that over 200 apartments are located about a block away and the alley is crowded with cars and cigarette butts.
- The manner in which the use is being conducted - clearly with numerous TABC violations and protests for the TABC in their application for the renewal of their alcohol beverage license
- Visual evidence of used car sales frequently on the site.
- The hours of operation of the use where visual photographic evidence shows that at 8:00 a.m. there is a lot going on at the bar, and the bar does not close until 2:00 am – nearly 24 hours of operation.
- The extent to which continued operation of the use may threaten public health or safety in that we have a reported murder at this property and other crime statistics that are very alarming.
- The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- The extent to which public disturbances may be created or perpetuated by continued operation of the use with the crime statistics and hours of operation.
- The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use is self explanatory from the visual evidence presented to us.
- Other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties in that a Dart station will be opening soon which will generate additional traffic and attract some new quality development in the neighborhood in which this bar is clearly incompatible.

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- and set a hearing date of **November 17, 2010** for the purpose of establishing a compliance date for this nonconforming use.

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SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

FILE NUMBER: BDA 090-077

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for special exceptions to the fence height and visual obstruction regulations, and for a variance to the front yard setback regulations at 8905 White Pine Lane. This property is more fully described as Lot 34 in City Block C/8123 and is zoned PD-343 which limits the height of a fence in the front yard to 4 feet, requires a 45 foot visibility triangle at street intersections, and a front yard setback of 15 feet. The applicant proposes to maintain a 6 foot 6 inch fence which will require a 2 foot 6 inch special exception to the fence height regulations, to maintain items in a required visibility obstruction triangle which will require a special exception to the visual obstruction regulation, and to construct and maintain a structure and provide a 3 foot front yard setback which will require a 12 foot variance to the front yard setback regulations.

LOCATION: 8905 White Pine Lane

APPLICANT: Robert Baldwin

August 18, 2010 Public Hearing Notes:

- The applicant revised his submitted site plan/elevation document at the public hearing to address concerns raised by the Sustainable Development and Construction Department Project Engineer.

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a single family home:
 1. Special exceptions to the fence height regulations of 2’ 6” are requested in conjunction with maintaining a 6’ 6” high solid board-on-board fence located in the site’s two 15’ front yard setbacks along White Pine Lane and Goforth Road.
 2. A special exception to the visual obstruction regulations is requested in conjunction with maintaining an existing 6’ 6” high board-on-board fence located in the 45’ visibility triangle at the intersection of White Pine Lane and Goforth Drive.
 3. A variance to the front yard setback regulations of 12’ is requested in conjunction with constructing and maintaining a swimming pool “structure” that would be

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located in one of the site's two 15' front yard setbacks (White Pine Lane). (Note that although the submitted site plan indicates a "two story brick structure (to remain)" located in the site's 15' front yard setback along White Pine Lane, the application has only been made to construct and maintain a swimming pool structure in the required White Pine Lane front yard setback).

STAFF RECOMMENDATION (fence height special exceptions):

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 exception):

Denial

Rationale:

- The City's Development Services Senior Engineer has submitted a Review Comment Sheet marked "Recommends that this be denied" stating that the proposal would be a traffic hazard.
- The applicant has not substantiated how the location of the solid 6' 6" high fence/wall in the 45' White Pine Lane/Goforth Drive intersection visibility triangle does not constitute a traffic hazard.

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

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

Rationale:

- The subject site is unique and different from most lots zoned PD No. 343 in that it is irregular in shape, and has two 15' front yard setbacks - most residentially-zoned lots are rectangular in shape, and have one front yard setback. These features preclude the applicant from constructing and maintaining what appears to be a reasonably sized swimming pool "structure" on the site other than in one of the site's two 15' front yard setbacks.

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:

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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.

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 (related to the fence height special exceptions):

- The subject site is located at the northwest corner of White Pine Lane and Goforth Road. Regardless of how the structure functions on the site (the front door on the existing home on the site faces White Pine Lane), the site has two 15' front yard setbacks along both street frontages given that PD No. 343 states that "for purposes of Tract 2, front yard means that portion of a lot which abuts a street and extends across the width of the lot between the back of the curb and the setback line." The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts. The applicant has submitted a revised site plan/partial fence elevation document indicating a fence that is located in the site's two front yard setbacks and reaches a maximum height of 6' 6". (Attachment A includes among other things a copy of the applicant's revised site plan/elevation document that he requested replace the originally submitted site plan/elevation document).
- The following additional information was gleaned from the submitted revised site plan/partial fence elevation document for the fence *along Goforth Road*:
 - The proposal is shown to be approximately 15' in length parallel to the street, and on the east and west sides of the site in this front yard setback perpendicular to the street.
 - The proposal is shown to be located approximately on the property line and approximately 18' from the pavement line.
- The following additional information was gleaned from the submitted revised site plan/partial fence elevation document for the proposal *along White Pine Lane*:
 - The proposal is shown to be approximately 75' in length parallel to the street.
 - The proposal is shown to be located approximately on the property line and approximately 10' - 15' from the pavement line.

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- The proposal *along Goforth Road* is located on the site where no single family homes would have direct frontage – the homes/lots directly south of the site appear to have approximately 6’ – 9” high solid wood walls along Goforth Road but “front”/face south to Deer Trail Drive.
- The proposal *along White Pine Lane* is located on the site where two single family homes have direct frontage – neither home with a fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area and noted a number of solid wood fences along Goforth Road immediately south of the site – fences on lots that are bounded on by Goforth Road on the north and Deer Trail Drive on the south. The fences appear to be from approximately 6’ – 9’ in height.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the intersection of White Pines and Goforth;
 - a revised site plan/partial fence elevation document; and
 - a letter of support of the application from the president of the White Rock Villas Homeowners Association.

GENERAL FACTS (related to the visual obstruction special exception):

- 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 revised site plan/partial fence elevation document has been submitted that shows a portion of a 6’ 6’ high board-on-board fence located in the 45’ visibility triangle at the intersection of Goforth Road and White Pine Lane.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the intersection of White Pines and Goforth;
 - a revised site plan/partial fence elevation document; and
 - a letter of support of the application from the president of the White Rock Villas Homeowners Association.

GENERAL FACTS (related to the variance):

- Structures on lots zoned PD No. 343 Tract 2 are required to provide a minimum front yard setback of 15’. Regardless of how the structure functions on the site (the front door on the existing home on the site faces White Pine Lane), the site has two 15’

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front yard setbacks along both street frontages given that PD 343 states that “for purposes of Tract 2, front yard means that portion of a lot which abuts a street and extends across the width of the lot between the back of the curb and the setback line.”

A revised site plan/partial fence elevation document has been submitted denoting a pool “structure” (approximately 30’ x 12”) that is located 3’ from the White Pine Lane front property line (or 12’ into the 15’ front yard setback). (No encroachment is proposed in the site’s Goforth Road 15’ front yard setback).

- According to calculations taken by the Board Administrator from the submitted revised site plan/partial fence elevation document, approximately 350 of the total approximately 360 square foot proposed “pool” structure is to be located in the site’s White Pine Lane 15’ front yard. (Note that although the submitted site plan indicates a “two story brick structure (to remain)” located in the site’s 15’ front yard setback along White Pine Lane, the application has only been made to construct and maintain a pool in the required front yard setback. According to calculations taken by the Board Administrator from the submitted site plan, approximately 80 of the total approximately 1,500 square foot existing structure building footprint is located in the site’s White Pine Lane 15’ front yard).
- According to DCAD records, the site is developed with the following:
 - a structure built in 1999 that is in “very good” condition with 2,498 square feet of living area;
 - a 424 square foot attached garage.
- The subject site is zoned PD No. 343, is somewhat sloped, irregular in shape (approximately 80’ on the north, approximately 15’ on the south; approximately 130’ on the east; and approximately 153’ on the west), and (according to the application) approximately 5,541 square feet in area. The site has two 15’ front yard setbacks. Most residentially-zoned lots have one front yard setback.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the intersection of White Pines and Goforth;
 - a revised site plan/partial fence elevation document; and
 - a letter of support of the application from the president of the White Rock Villas Homeowners Association.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 343 (Planned Development)
North: PD No. 343 (Planned Development)
South: R-7.5(A) (Single family district 7,500 square feet)
East: PD No. 343 (Planned Development)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

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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:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- June 3, 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.
- July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 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 August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th 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.
- July 23, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment 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.
- August 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Site was recently replatted (S90-082) creating Lot 34A with an open area from the original plats (S956-276). I have no comment on the setback encroachment or fence height. However, I do recommend denial of the visibility triangle special exception since that would be a traffic hazard. Furthermore 45 x 45 should be

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measure assuming a 10 ft parkway along Goforth, so in the future, if Goforth is improved, the fence should not need to be relocated again.”

STAFF ANALYSIS (related to the fence height special exceptions):

- These requests focus on maintaining a 6’ 6” high solid board-on-board fence located in the site’s two 15’ front yard setbacks along White Pine Lane and Goforth Road.
- A revised site plan/partial fence elevation document has been submitted documenting that location, height, and material of the fence over 4’ in height in the White Pine Lane and Goforth Road front yard setbacks.
- Details of fence/wall over 4’ in height in the required *Goforth Road* front yard setback as gleaned from the submitted revised site plan/partial fence elevation document:
 - About 15’ in length parallel to the street, and on the east and west sides of the site in this front yard setback perpendicular to the street.
 - Located approximately on the property line and approximately 18’ from the pavement line.
- Details of fence/wall over 4’ in height in the required *White Pine Lane* front yard setback as gleaned from the submitted revised site plan/partial fence elevation document:
 - About 75’ in length 15’ in length parallel to the street, and on the east and west sides of the site in this front yard setback perpendicular to the street.
 - Located approximately on the property line and approximately 10’ – 15’ from the pavement line.
- The proposal/existing fence/wall *along Goforth Road* is located on the site where no single family homes would have direct frontage – the homes/lots directly south of the site appear to have approximately 6’ – 9” high solid wood walls along Goforth Road but “front”/face south to Deer Trail Drive.
- The proposal/existing fence/wall *along White Pine Lane* is located on the site where two single family homes have direct frontage – neither home with a fence in its front yard setback.
- A number of solid wood fences were noted along Goforth Road immediately south of the site in a field visit of the site and surrounding area conducted by the Board Administrator – fences on lots that are bounded on by Goforth Road on the north and Deer Trail Drive on the south. The fences appear to be from approximately 6’ – 9’ in height.
- As of August 9, 2010, no letters had been submitted to staff in support or in opposition to this specific proposal – a letter of support had been submitted from the White Rock Villas Homeowners Association with regard to the applicant’s plans “to landscape and build a swimming pool on your side lot” (see Attachment A).
- The applicant has the burden of proof in establishing that these special exceptions to the fence height regulations of 2’ 6” (to maintain an existing 6’ 6” high board-on-board fence in the front yard setbacks) will not adversely affect neighboring property.
- Granting these special exceptions of 2’ 6” with a condition imposed that the applicant complies with the submitted revised site plan/partial fence elevation document 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 this document.

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- Note that if the board were to grant this request and impose the submitted revised site plan/partial fence elevation document as a condition, but deny the request for the special exception to the visual obstruction regulations, notations would be made of such action on the submitted document whereby the location of the fence in the visibility triangle would not be “excepted.”

STAFF ANALYSIS (related to the visual obstruction special exception):

- This request focuses on maintaining a portion of an existing 6’ 6” high board-on-board fence located in the 45’ visibility triangle at the intersection of White Pine Lane and Goforth Drive.
- A revised site plan/partial fence elevation document has been submitted that shows that about 15’ of the fence length is located along each street in the 45’ Goforth Road/White Pine Lane intersection triangle.
- The Sustainable Development and Construction Department Project Engineer submitted a Review Comment Sheet marked ““Recommends that this be denied” with the following comments: “Site was recently replatted (S90-082) creating Lot 34A with an open area from the original plats (S956-276). I have no comment on the setback encroachment or fence height. However, I do recommend denial of the visibility triangle special exception since that would be a traffic hazard. Furthermore 45 x 45 should be measure assuming a 10 ft parkway along Goforth, so in the future, if Goforth is improved, the fence should not need to be relocated again.”
- The applicant has the burden of proof in establishing that granting the special exception to the visual obstruction regulations (to allow the maintenance of a portion of the existing 6’ 6” high solid board-on-board fence in the 45’ Goforth Road/White Pine Lane intersection triangle on the subject site) will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted revised site plan/partial fence elevation document, the existing 6’ 6” high solid board-on-board fence/wall would be “excepted” into the 45’ Goforth Road/White Pine Lane intersection triangle on the subject site in the location and of the heights and materials as shown on this document.
- Note that if the board were to grant this request and impose the submitted revised site plan/partial fence elevation document as a condition, but deny either one or both of the requests for the special exceptions to the fence height regulations, notations would be made of such action on the submitted document whereby the height of the fence higher than 4’ in one of both of the site’s front yard setbacks would not be “excepted.”

STAFF ANALYSIS (related to variance):

- This request focuses on constructing and maintaining a swimming pool “structure” most of which would be located in one of the site’s two 15’ front yard setbacks (White Pine Lane).
- The swimming pool structure that is the issue of this request is to be located on a site that has two front yard setbacks – a site with one front yard setback on Goforth Drive (where no structure is proposed to be located in); the other front yard setback on White Pine Lane (where the proposed swimming pool structure that is the issue of this request is to proposed to be located– a “structure” that is located as close as 3’ from the White Pine Lane front property line or 12’ into this 15’ front yard setback).

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- The submitted revised site plan/partial fence elevation document indicates a “two story brick structure (to remain)” located in the site’s 15’ front yard setback along White Pine Lane, however the application has only been made to construct and maintain a pool in the required White Pine Lane front yard setback.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the proposed swimming pool structure to be located in the site’s White Pine Lane 15’ front yard setback is approximately 350 square feet in area of the approximately 360 square foot structure footprint.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1999 that is in “very good” condition with 2,498 square feet of living area;
 - a 424 square foot attached garage.
- The subject site is zoned PD No. 343, is somewhat sloped, irregular in shape (approximately 80’ on the north, approximately 15’ on the south; approximately 130’ on the east; and approximately 153’ on the west), and (according to the application) approximately 5,541 square feet in area. The site has two 15’ front yard setbacks. Most residentially-zoned lots have one front yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the White Pine Lane front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 343 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 PD No. 343 zoning classification.
- If the Board were to grant the variance request, subject to the submitted revised site plan/partial fence elevation document, the structure in the front yard setback would be limited to what is shown on this document – which in this case is an approximately swimming pool structure located as close as 3’ from the White Pine Lane front property line (or as much as 12’ into this 15’ front yard setback).
- If the Board were to grant this request and impose the submitted revised site plan/partial fence elevation document as a condition, notations would be made on this document that the other structure shown on this document located in the White Pine Lane front yard setback (the “two story brick structure (to remain)”) was not “varied” since the applicant only made application for a variance to the front yard setback regulations for the proposed pool “structure” shown on this document.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

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

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APPEARING IN OPPOSITION: No one

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 090-077**, on application of Robert Baldwin, **grant** the request of this applicant to construct and maintain a 6-foot 6-inch high fence in both front yard setbacks as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted amended revised site plan/partial fence elevation document dated 8/18/10 is required.

SECONDED: Gillespie

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION #2: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 090-077**, on application of Robert Baldwin, **grant** the request of this applicant to maintain portions of a fence in a 45-foot visibility triangle at the intersection of Goforth Drive and White Pine Lane as a special exception to the visibility obstruction regulation 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 amended revised site plan/partial fence elevation document dated 8/18/10 is required.

SECONDED: Gillespie

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION #3: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 090-077**, on application of Robert Baldwin, **GRANT** the 12-foot variance to the front yard setback regulations for a swimming pool because our evaluation of the property and testimony shows that the

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physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted amended revised site plan/partial fence elevation document dated 8/18/10 is required.

SECONDED: Gillespie

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

FILE NUMBER: BDA 090-080

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for special exceptions to the fence height regulations and visual obstruction regulations at 4011 Cochran Chapel Road. This property is more fully described as Lot B in City Block 5077 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct an 8 foot 6 inch fence which will require a 4 foot 6 inch special exception to the fence regulations, and to construct and maintain items in a required visibility obstruction triangle which will require a special exception to the visual obstruction regulations.

LOCATION: 4011 Cochran Chapel Road

APPLICANT: Robert Baldwin

REQUESTS:

- The following appeals have been made in this application on a site that is currently being developed with a single family home:
 1. A special exception to the fence height regulations of 4’ 6” is requested in conjunction with constructing and maintaining 7’ high “iron fencing” and pedestrian gate (with what one may assume to be open), 7’ 8” high columns (of unspecified materials on the submitted revised site plan/elevation document); and an 8’ 6” high vehicular gate (of unspecified materials on the submitted revised site plan/elevation document) located in the site’s 40’ front yard setback.
 2. A special exception to the visual obstruction regulations is requested in conjunction with constructing and maintaining a portion of 7’ high “iron fencing” (which one may assume to be open) and one 7’ 8” high entry column (of unspecified material) to be located in the 20’ visibility triangle located on the west side of the driveway into the site from the street.

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The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on July 12, 2010, 49 days after the application was filed on May 24, 2010, and 35 days beyond the 14 days the applicant was required to post the sign on the site and remain posted until a final decision is made on the application.

The Dallas Development Code states that “The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.” The code additionally states “If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

The Board Administrator sent an email to the applicant on July 15, 2010 which stated the following: “You and I spoke on Monday about the fact that I did not see the required notification sign either posted or laying on the site when I photographed it on Monday, and how my finding would be incorporated into the staff report whereby the board would be required to determine if you met code provision (attached) regarding the posting of the notification sign prior to considering your actual appeal for these special exceptions. Please feel free to add any account you may feel is necessary to my finding by August 6th.” (As of August 9, 2010, the applicant has not responded to this concern).

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 exception):

Denial

Rationale:

- The City’s Development Services Senior Engineer recommends that this request be denied.
- The applicant has not substantiated how the location of the proposed “iron fencing” and column in the visibility triangle does not constitute a traffic hazard.

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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 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 site has one 40’ front yard setback.
The applicant has submitted a revised site plan/elevation document indicating that the proposal located in the required 40’ front yard setback reaches a maximum height of 8’ 6”. (Attachment A includes among other things a copy of the applicant’s revised site plan/elevation document that he requested replace the originally submitted site plan/elevation document).
- The following additional information was gleaned from the submitted revised site plan/elevation document:
 - The proposal shown in the front yard setback over 4’ in height is approximately 90’ in length parallel to the street and approximately 32’ - 40’ in length *perpendicular* to the streets on the east and west “sides” of the site in the front yard setbacks.
 - The proposal located approximately 0’ – 12’ from the site’s front property line or about 14’ – 26’ from the street pavement line.
- The submitted revised site plan/elevation document denotes that the fence to be located in the front yard setback parallel and perpendicular to the street is “iron fencing” where neither the heights nor specific materials are denoted – the fence in the front yard setback is denoted as “iron fencing,” and the column materials are not denoted. Additionally, the revised site plan/elevation document shows an approximate 10’ length of the proposal on the east side of the site in the front yard setback as “iron fencing on existing retaining wall” however there is no denotation of the specific heights or specific materials of either. Although the Board Administrator had emailed the applicant on July 20th concerns related to how one assessed from his originally submitted site plan/elevation whether the “iron fencing” was to be open or solid, what the materials of the columns were, and the maximum height of “iron fencing on existing retaining wall,” the revised site plan/elevation document submitted on July 23rd still did not make these specifications.

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- The site plan that is part of what is shown on the revised site plan/elevation document denotes what appears to be two columns immediately west of the driveway/entry gate while the elevation that is another part of what is shown on this document denotes one column immediately west of the driveway/entry gate. Although the Board Administrator had emailed the applicant on July 30th concerns related to this discrepancy on the two drawings on his one revised document, as of August 9th, the applicant has not responded to this concern.
- The submitted site plan shows circles that appear to be landscape materials adjacent to the fence/wall.
- No single family home “fronts” the proposal given the location of it on the end of a cul-de-sac.
- 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.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the site and “gates and fences on Cochran Chapel;” and
 - a revised site plan/elevation document.

GENERAL FACTS (related to the visual obstruction special exception):

- 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 revised site plan/elevation document has been submitted that shows a portion of 7’ high “iron fencing” (which one may assume to be open) and one 7’ 8” high entry column (of unspecified material) being located in the 20’ visibility triangle on the west side of the driveway into the site from the street.
 The submitted site plan on the revised site plan/elevation document denotes what appears to be two columns immediately west of the driveway/entry gate while the elevation on this document appears to show one column immediately west of the driveway/entry gate. Although the Board Administrator had emailed the applicant on July 30th concerns related to this discrepancy on the two drawings on his one revised document, as of August 9th, the applicant has not responded to this concern.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provides additional details about the requests;
 - attachments that show photographs of the site and “gates and fences on Cochran Chapel;” and
 - a revised site plan/elevation document.

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BACKGROUND INFORMATION:

Zoning:

Site: R-1 (A) (Single family district 1 acre)
North: TH-2(A) Townhouse
South: R-1 (A) (Single family district 1 acre)
East: R-1 (A) (Single family district 1 acre)
West: R-1 (A) (Single family district 1 acre)

Land Use:

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

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:

- May 24, 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.
- July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2010: The Board Administrator emailed the applicant’s representative the following information:
 - an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th 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.
- July 23, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board

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of Adjustment 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.

August 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” with the following comments: “No objection to fence height special exception. Deny any relief of visibility requirements.”

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

- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on July 12, 2010, 49 days after the application was filed on May 24, 2010, and 35 days beyond the 14 days the applicant was required to post the sign on the site and remain posted until a final decision is made on the application.
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification sign, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant did comply with the Dallas Development Code provision related to the posting of the notification sign on the site, the Board could consider the fence height special exception request as scheduled on August 18, 2010.
- This request focuses on constructing and maintaining 7’ high “iron fencing” and pedestrian gate (with what one may assume to be open), 7’ 8” high columns (of unspecified materials on the submitted revised site plan/elevation document); and an 8’ 6” high vehicular gate (of unspecified materials on the submitted revised site plan/elevation document) located in the site’s 40’ front yard setback.
- A revised site plan/elevation document has been submitted that shows the proposal in the front yard setback over 4’ in height to be approximately 90’ in length parallel to the street and approximately 32’ - 40’ in length *perpendicular* to the streets on the east and west “sides” of the site in the front yard setbacks.
- The submitted revised site plan/elevation document shows the proposal located approximately 0’ – 12’ from the site’s front property line or about 14’ – 26’ from the street pavement line.
- The submitted revised site plan/elevation document only denotes that the fence to be located in the front yard setback parallel and perpendicular to the street as “iron fencing.” Neither the heights nor specific materials for the fence perpendicular to the street are denoted on the submitted document – the fence in the front yard setback parallel to the street is denoted merely as “iron fencing,” and the column materials are not denoted.

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- The submitted revised site plan/elevation document shows an approximate 10' length of the proposal on the east side of the site in the front yard setback as "iron fencing on existing retaining wall" however there is no denotation of the specific heights or specific materials of either. The applicant has not responded to the Board Administrator's July 20th email that expressed concerns related to how one assessed from the originally submitted site plan/elevation whether the "iron fencing" was to be open or solid, what the materials of the columns were, and the maximum height of "iron fencing on existing retaining wall." (The revised site plan/elevation document submitted on July 23rd did not provide clarity from what was shown on the originally submitted site plan elevation document).
- The site plan that is part of what is shown on the revised site plan/elevation document denotes what appears to be two columns immediately west of the driveway/entry gate while the elevation that is another part of what is shown on this document denotes one column immediately west of the driveway/entry gate. Although the Board Administrator had emailed the applicant on July 30th concerns related to this discrepancy on the two drawings on his one revised document, as of August 9th, the applicant has not responded to this concern.
- No single family home "fronts" the proposal given the location of it on the end of a cul-de-sac.
- 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 August 9, 2010, no letters had been submitted to staff in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" (for a proposal to which a large extent is not defined on the submitted revised site plan/elevation document) will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted revised site plan/elevation document would provide some assurance that the proposal exceeding 4' in height would be located and maintained in the locations and of the heights (some of which have been provided) and materials (some of which have been provided) as shown on this document.
- Note that if the board were to grant this request and impose the submitted revised site plan/elevation document as a condition, but deny the request for the special exception to the visual obstruction regulations, notations would be made of such action on the submitted document whereby the location of the items in the visibility triangle would not be "excepted."

STAFF ANALYSIS (related to the visual obstruction special exception):

- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on July 12, 2010, 49 days after the application was filed on May 24, 2010, and 35 days beyond the 14 days the applicant was required to post the sign on the site and remain posted until a final decision is made on the application.

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- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification sign, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant did comply with the Dallas Development Code provision related to the posting of the notification sign on the site, the Board could consider the visual obstruction special exception request as scheduled on August 18, 2010.
- This request focuses on constructing and maintaining 7' high "iron fencing" (which one may assume to be open) and one 7' 8" high entry column (of unspecified material) to be located in the 20' visibility triangle located on the west side of the driveway into the site from the street.
- The submitted site plan on the revised site plan/elevation document denotes what appears to be two columns immediately west of the driveway/entry gate while the elevation on this document appears to show one column immediately west of the driveway/entry gate. Although the Board Administrator had emailed the applicant on July 30th concerns related to this discrepancy on the two drawings on his one revised document, as of August 9th, the applicant has not responded to this concern.
- The site plan on the revised site plan/elevation document shows that about 5' of the "iron fencing"/column length is located in the triangle area described above.
- The Sustainable Development and Construction Department Project Engineer submitted a Review Comment Sheet marked "Recommends that this be denied."
- The applicant has the burden of proof in establishing that granting the special exception to the visual obstruction regulations in conjunction with constructing and maintaining "iron fencing" and a column of unspecified material in the 20' visibility triangle located on the west side of the driveway into the site from the street will not constitute a traffic hazard.
- If the Board chooses to grant this request, subject to compliance with the submitted revised site plan/elevation document, the proposed "iron fencing" and a column of unspecified material would be "excepted" into the 20' visibility triangle located on the west side of the driveway into the site from the street in the location and of the materials and heights as shown on this document.

Note that if the board were to grant this request and impose the submitted revised site plan/elevation document as a condition, but deny the request for the special exception to the fence height regulations, notations would be made of such action on the submitted revised site plan/elevation whereby the height of the fence higher than 4' in the site's front yard setback would not be "excepted."

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

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

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

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Having fully reviewed the evidence in Appeal No. **BDA 090-080**, on application of Robert Baldwin, and heard all testimony and facts relating to the posting of the notification signs, I find that the required sign was not posted properly and I move that the Board of Adjustment, hold this matter under advisement until **September 15, 2010**.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION: Stefan

I move to adjourn this meeting.

SECONDED: Chernock

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

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

3:40 P.M. - Board Meeting adjourned for **August 18, 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.

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