

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, APRIL 16, 2012**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Bob Richard, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Bob Richard, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

11:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 16, 2012** docket.

1:00 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 C March 19, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

MOTION: Moore

I move **approval** of the Monday, **March 19, 2012** public hearing minutes.

SECONDED: Maten

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-039

BUILDING OFFICIAL’S REPORT:

Application of Pithou Nuth for a special exception to the fence height regulations at 10757 Lennox Lane. This property is more fully described as Lot 2B in City Block B/5534 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 7 foot high fence in a required front yard, which will require a special exception of 3 feet.

LOCATION: 10757 Lennox Lane

APPLICANT: Pithou Nuth

April 16, 2012 Public Hearing Notes:

- The applicant submitted written documentation to the Board at the public hearing including a map with corresponding photographs of other fences in the immediate area, and a revised elevation that amended the originally submitted elevation by increasing the height of the proposed wall from 6’ 1” to 6’ 9”.
- The Board delayed action on this application until May 14th to allow the applicant an opportunity to meet with an opposing property owner and possibly submit a revised proposal with consideration given to a proposal with partial if not entirely open materials and/or some landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

REQUEST:

- A special exception to the fence height regulations of 3' is requested in conjunction with constructing and maintaining an approximately 6' 1" high solid stucco wall with 7' high stucco columns in the site's Royal Lane 40' front yard setback on a site that is developed with a single family home. (No part of this application is made to construct and/or maintain a fence higher than 4' in the site's Lennox Lane front yard setback).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is a corner lot zoned R-1ac (A) with two street frontages of unequal distance. The site is located at the southwest corner of Royal Lane and Lennox Lane. Even though the Lennox Lane frontage of the subject site appears to function as its front yard and the Royal Lane frontage appears to function as its side yard, the subject site has two 40' front yard setbacks along both streets. The site has a 40' front yard setback along Royal Lane (the shorter of the two frontages which is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a 40' front yard setback along Lennox Lane (the longer of the two frontages of this corner lot of unequal frontage distance) which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's Lennox Lane frontage is deemed a front yard to maintain the continuity of the established front yard setback along this street for the lot immediately south that fronts eastward and has a front yard setback along Lennox Lane.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The applicant had submitted a scaled site plan indicating a "new stucco wall" in the site's Royal Lane front yard setback and an elevation that shows the wall in the required Royal Lane front yard setback reaching a maximum height of 7'- in this case the 7' maximum height being columns with is slightly higher than the denoted 6' ¾" high solid stucco wall.
- The following additional information was gleaned from the submitted site plan:

- Approximately 165' in length parallel to Royal Lane and approximately 35' in length perpendicular on the west side of the site in the front yard setback.
- Approximately 5' from the Royal Lane front property line and approximately 10' from the pavement line.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|--|--|
| <p>1. BDA 94-126, Property at 10757 Lennox Lane (the subject site)</p> | <p>On October 25, 1994, the Board of Adjustment granted a request for a special exception to the fence height regulations to maintain a 7' fence on the site with the following conditions: the fence must be setback a minimum of 10 feet from the property line; the fence must of an acceptable open metal material and the fence must not exceed 6' in height; columns of metal or solid materials not exceeding 7' in height; and a landscape plan approved by his Board (landscaping in front of fence between the fence and the property line).</p> |
| <p>2. BDA 978-231, Property at 10757 Lennox Lane (the subject site)</p> | <p>On October 19, 1998, the Board of Adjustment Panel C denied requests for special exceptions to the fence height and visual obstruction regulations without prejudice. The case report stated that the requests were made to construct and maintain an 8' high solid masonry wall in the front yard setback and in the 45' visibility triangle at Royal Lane and Lennox Lane.</p> |
| <p>3. BDA 045-172, Property at 4610 Royal Lane (two lots west of the subject site)</p> | <p>On May 18, 2005, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of</p> |

- 7' imposing the following condition: Compliance with the newly submitted "Preliminary Concept Plan/Site Plan and Elevation" dated May 18, 2005 is required. The case report stated that the request was made in conjunction with constructing a wall in the 40' Royal Lane front yard setback on a site developed with a single family home.
4. BDA 88-119, Property at 4707 Royal Lane (the lot immediately northeast of the subject site) On November 8, 1988, the Board of Adjustment granted a request for a special exception to the fence height regulations to maintain a 6' 10" open metal fence with brick columns subject to compliance with a site plan and landscape plan.
5. BDA 056-225, Property at 10770 Lennox Lane (the lot immediately east of the subject site) On November 13, 2006, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 5' and imposed the following condition to the request: compliance with the submitted revised site plan Option B elevation, and landscape plan is required. The case report states the request was made to construct and maintain an 8' high solid stucco fence with 9' high stucco columns and a sliding gate to be located in the site's Lennox Lane and Royal Lane front yard setbacks on a site developed with a single family home.

Timeline:

- February 22, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 20, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- March 21, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 3, 2012:

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

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

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 6' 1" high solid stucco wall with 7' high stucco columns in the site's Royal Lane 40' front yard setback on a site that is developed with a single family home.
- The submitted site plan and elevation documents the location, height, and materials of the fence over 4' in height in the required front yard. The site plan shows the proposal to be approximately 165' in length parallel to Royal Lane and approximately 35' in length *perpendicular* on the west side of the site in the required front yard; and to be located approximately on the front property line or about 10' from the pavement line.
- Two single family homes "front" to the proposed fence/wall, one of which has an existing approximately 7' high open metal fence behind significant landscaping that appears to be a result of an approved fence height special exception in 1988: BDA 88-119.
- The Board Administrator conducted a field visit of the site and surrounding area (approximately 500 feet east and west of the subject site) and noted one other fence above four (4) feet high immediately east of the subject site – an approximately 7' high combination open iron fence/solid stucco base fence/wall that appears to be a result of an approved fence height special exception in 2006: BDA 056-225.
- As of April 9, 2012, no letters had been submitted to staff in support or in opposition to the request.

- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 7' in height) will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the Royal Lane front yard setback to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Pithou Nuth, 10757 Lennox Lane, Dallas, TX

APPEARING IN OPPOSITION: Sherrill Stone, 4625 Royal Lane, Dallas, TX

MOTION #1: **Moore**

I move that the Board of Adjustment in Appeal No. **112-039** suspend the rules and accept the evidence that is presented today.

SECONDED: **Maten**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

MOTION #2: **Coulter**

I move that the Board of Adjustment in Appeal No. **BDA 112-039**, hold this matter under advisement until **May 14, 2012**.

SECONDED: **Richard**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 112-042

BUILDING OFFICIAL'S REPORT:

Application of Mark Molthan for special exceptions to the fence height and visual obstruction regulations at 5322 Walnut Hill Lane. This property is more fully described as Lot 2 in City Block 1/5602 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 and maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5322 Walnut Hill Lane

APPLICANT: Mark Molthan

April 16, 2012 Public Hearing Notes:

- The Board delayed action on this application until May 14th to allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

REQUESTS:

- The following appeals had been made in this application on a site that is being developed with a single family home:
 1. a special exception to the fence height regulations of 4' is requested in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard, and
 2. special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway).(Note that this application is adjacent to two other properties where the same applicant/owner seeks similar fence height special exception requests of the Board of Adjustment Panel C: BDA 112-043 and 044).

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.
- The applicant has substantiated how the location of portions of an existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane does not constitute a traffic hazard.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

GENERAL FACTS (fence height special exception):

- 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 scaled site plan/elevation that denotes that the proposal reaches a maximum height of 8 feet.
- The submitted site plan denotes the following regarding the proposal:
 - Approximately 175' in length parallel to the street.
 - Fence ranging from approximately 5'- 13' from the property line (or about 13' – 18' from the pavement line).
 - Gates at approximately 19' from the property line (or about 28' from the pavement line).

GENERAL FACTS (visual obstruction special exceptions):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A scaled site plan/elevation document has been submitted that denotes portions of the existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway).

BACKGROUND INFORMATION:

Zoning:

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

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

Land Use:

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

Zoning/BDA History:

1. BDA 067-082, Property at 5404 Walnut Hill Lane (the lot immediately east subject site) On September 17, 2007, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' imposing the following condition with the request: compliance with the submitted revised site/landscape plan and revised elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.
2. BDA 112- 044, Property at 5404 Walnut Hill Lane (the lot immediately east of subject site) On April 16, 2012, the Board of Adjustment Panel C will consider requests for special exceptions to the fence height regulations made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns on a site developed with a single family home.
3. BDA 112-043, Property at 5414 Walnut Hill Lane (two lots east of the subject site) On April 16, 2012, the Board of Adjustment Panel C will consider a request for a special exception to the fence height made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns on a site developed with a single family home.
4. BDA 88-096, 5414 Walnut Hill Lane (two lots east of the subject site) On September 27, 1988, the Board of Adjustment Panel granted a request for a special exception to fence height regulations of 1' 6", and imposed the following conditions: 1. The fence shall be constructed in accordance with the revised fence elevation plan submitted; 2. The pilasters shall be evenly spaced approximately 16 feet apart; 3. The fence

shall be located at least 5 feet from the front property line, and the area between the fence and the street shall be landscaped; 4. The fence on the west property line shall be eliminated; and 5. The fence shall comply with all visibility obstruction triangles. The case report states that a request was made to construct an 8' high fence; however, the board specified in their motion that the special exception was granted to erect a fence 5' 6" high.

5. BDA 90-023, 9995 Hollow Way (three lots east of the subject site)

On April 10, 1990, the Board of Adjustment granted a request for a special exception to fence height regulations of 2' and imposed the following conditions to the request: submit a revised landscape plan that indicates the wall recessed and additional landscaping as provided. The case report states that the case report was made to construct a 6' high solid masonry fence in the site's Walnut Hill front yard setback.

6. BDA 956-193, 9930 Meadowbrook Drive (the lot immediately west of the subject site)

On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 8" imposing the following condition with the request: compliance with the submitted revised landscape/site plan and elevation is required. The case report states that the request was made to construct and maintain an approximately 176' long, 7' 6" high solid stone wall with 8' high stone columns, and two, approximately 7' high open wrought iron gates

Timeline:

February 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

March 21, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to

submit additional evidence for staff to factor into their analysis; and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

April 5, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS (fence height special exception):

- The request focuses on maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard on a property being developed with a single family home.
- This site abuts two properties directly west where the same applicant/owner has made applications to maintain a fence of similar features than that which is on the subject site –requests for special exceptions to fence height regulations made to Board of Adjustment Panel C on April 16, 2012: BDA 112-043 and 044.
- A scaled site plan/elevation document has been submitted documenting the location of the existing fence/wall/columns/gates relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The proposal is shown to be located approximately 5' – 13' from the property line or about 13' – 18' from the pavement line. (The gates are shown to be located about 19' from the front property line or about 28' from the pavement line). The proposal is shown to be about 175' long parallel to the street.
- There are 2 single family homes that have direct frontage to the fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, the Board Administrator noted two other fences/walls in the immediate area above 4 feet high which appeared to be located in the front yard setback. There is an approximately 7' high solid concrete/wood fence located three lots east of the site that appears to be a result of a previous board case at this location (BDA 90-

023) and an approximately 7' high solid concrete wall located west of the site that appears to be a result of a previous board case at this location (BDA 956-193).

- As of April 9, 2012, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that reaches 8' in height) does not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan/elevation document would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on this document.

STAFF ANALYSIS (visual obstruction special exceptions):

- These requests focus on maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway).
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain approximately 8' lengths of existing wall in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane will not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan/elevation would require that the items in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane to be limited to the location, height and materials of those items as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Mark Molthan, 4347 W Northwest Hwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 112-042**, hold this matter under advisement until **May 14, 2012**.

SECONDED: **Moore**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 112-043

BUILDING OFFICIAL’S REPORT:

Application of Mark Molthan for a special exception to the fence height regulations at 5414 Walnut Hill Lane. This property is more fully described as Lot 4 in City Block 1/5602 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence in a required front yard, which will require a special exception of 4 feet.

LOCATION: 5414 Walnut Hill Lane

APPLICANT: Mark Molthan

April 16, 2012 Public Hearing Notes:

- The Board delayed action on this application until May 14th to allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with maintaining an approximately 7’ 6” high solid stone/brick wall with 8’ high stone/brick columns, a 7’ high pedestrian gate, and two, 8’ high sliding wrought iron gates in the site’s 40’ front yard setback on a site being developed with a single family home.

(Note that this application is adjacent to two other properties where the same applicant/owner seeks similar fence height special exception requests of the Board of Adjustment Panel C: BDA 112-042 and 044).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
- The applicant has submitted a scaled site plan/elevation that denotes that the proposal reaches a maximum height of 8 feet.
- The submitted site plan denotes the following regarding the proposal:
 - Approximately 175' in length parallel to the street.
 - Fence at its closest is approximately 10' from the property line (or about 18' from the pavement line).
 - Gates are approximately 20' from the property line (or about 30' from the pavement line).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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|---|--|
| <p>1. BDA 067-082, Property at 5404 Walnut Hill Lane (the lot immediately west of the subject site)</p> | <p>On September 17, 2007, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' imposing the following condition with the request: compliance with the submitted revised site/landscape plan and revised elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.</p> |
| <p>2. BDA 112- 044, Property at 5404 Walnut Hill Lane (the lot immediately west of subject site)</p> | <p>On April 16, 2012, the Board of Adjustment Panel C will consider requests for special exceptions to the fence height and visual obstruction regulations made in conjunction with approximately 7' 6" high solid stone/brick wall with 8' high stone/brick</p> |

3. BDA 112-042, Property at 5322 Walnut Hill Lane (two lots immediately west of the subject site)

columns in the site's 40' front yard setback on a site developed with a single family home

On April 16, 2012, the Board of Adjustment Panel C will consider a request for a special exception to the fence height made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard, and a request for special exceptions to the visual obstruction regulations requested in conjunction with maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane (about 8' of length on either side of the driveway).

4. BDA 88-096, 5414 Walnut Hill Lane (the subject site)

On September 27, 1988, the Board of Adjustment Panel granted a request for a special exception to fence height regulations of 1' 6", and imposed the following conditions: 1. The fence shall be constructed in accordance with the revised fence elevation plan submitted; 2. The pilasters shall be evenly spaced approximately 16 feet apart; 3. The fence shall be located at least 5 feet from the front property line, and the area between the fence and the street shall be landscaped; 4. The fence on the west property line shall be eliminated; and 5. The fence shall comply with all visibility obstruction triangles. The case report states that a request was made to construct an 8' high fence; however, the board specified in their motion that the special exception was granted to erect a fence 5' 6" high.

5. BDA 90-023, 9995 Hollow Way (the lot immediately east of the subject site)

On April 10, 1990, the Board of Adjustment granted a request for a special exception to fence height regulations of 2' and imposed the following conditions to the request: submit a revised landscape plan that indicates the wall recessed and additional landscaping as provided. The case report

6. BDA 956-193, 9930
Meadowbrook Drive (three lots
west of the subject site)

states that the case report was made to construct a 6' high solid masonry fence in the site's Walnut Hill front yard setback.

On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 8" imposing the following condition with the request: compliance with the submitted revised landscape/site plan and elevation is required. The case report states that the request was made to construct and maintain an approximately 176' long, 7' 6" high solid stone wall with 8' high stone columns, and two, approximately 7' high open wrought iron gates

Timeline:

February 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

March 21, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard on a property being developed with a single family home.
- This site abuts two properties directly east where the same applicant/owner has made applications to maintain a fence of similar features than that which is on the subject site –requests for special exceptions to fence height regulations made to Board of Adjustment Panel C on April 16, 2012: BDA 112-042 and 044.
- A scaled site plan/elevation document has been submitted documenting the location of the existing fence/wall/columns/gates relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The proposal is shown to be located at its closest point approximately on the property line or about 18' from the pavement line. (The gates are shown to be located about 20' from the front property line or about 30' from the pavement line). The proposal is shown to be about 175' long parallel to the street.
- There are 2 single family homes that have direct frontage to the fence/wall. These homes are located across a 6-lane divided major thoroughfare (Walnut Hill Lane) from the subject site, one of which has an approximately 6' solid fence in its front yard.
- In addition, the Board Administrator noted two other fences/walls in the immediate area above four (4) feet high which appeared to be located in the front yard setback. There is an approximately 7' high solid concrete/wood fence located one lot east of the site that appears to be a result of a previous board case at this location (BDA 90-023) and an approximately 7' high solid concrete wall located three lots west of the site that appears to be a result of a previous board case at this location (BDA 956-193).
- As of April 9, 2012, no letters had been submitted to staff in opposition or in support to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that reaches 8' in height) does not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan/elevation document would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Mark Molthan, 4347 W Northwest Hwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Maten

I move that the Board of Adjustment in Appeal No. **BDA 112-043**, hold this matter under advisement until **May 14, 2012**.

SECONDED: Moore

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA 112-044

BUILDING OFFICIAL’S REPORT:

Application of Mark Molthan for a special exception to the fence height regulations at 5404 Walnut Hill Lane. This property is more fully described as Lot 3 in City Block 1/5602 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8 foot high fence in a required front yard, which will require a special exception of 4 feet.

LOCATION: 5404 Walnut Hill Lane

APPLICANT: Mark Molthan

April 16, 2012 Public Hearing Notes:

- The Board delayed action on this application until May 14th to allow the applicant an opportunity to possibly submit a revised proposal with consideration given to a proposal with partial open materials and/or landscaping added adjacent to the proposal that would lessen its impact on neighboring properties.

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with maintaining an approximately 7’ 6” high solid stone/brick wall with 8’ high stone/brick columns in the site’s 40’ front yard setback on a site developed with a single family home.

(Note that this application abuts two other properties where the same applicant/owner seeks similar fence height special exception requests of the Board of Adjustment Panel C: BDA 112-042 and 043. Additionally note that Board of Adjustment Panel C granted a request for a fence height special exception request on this site/property in September of 2007- BDA 067-082- an exception made to construct and maintain a 7’ 6” high solid stone wall with 8’ high stone columns and two, approximately 7’ high sliding electric open wrought iron gates in the site’s 40’ front yard setback on a site that at that time was being developed with a single family home).

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a scaled site plan/elevation that denotes that the proposal reaches a maximum height of 8 feet.
- The submitted site plan denotes the following regarding the proposal:
 - Approximately 175' in length parallel to the street.
 - Ranging from approximately 6'- 10' from the property line (or about 16' – 20' from the pavement line).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 067-082, Property at 5404 Walnut Hill Lane (the subject site) On September 17, 2007, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 4' imposing the following condition with the request: compliance with

2. BDA 112- 042, Property at 5322 Walnut Hill Lane (the lot immediately west of subject site)

the submitted revised site/landscape plan and revised elevation is required. The case report states that the request was made to construct a 7' 1" high solid concrete fence with 7' 8" high concrete columns about 2' – 7' from the Walnut Hill front property line.

On April 16, 2012, the Board of Adjustment Panel C will consider requests for special exceptions to the fence height and visual obstruction regulations made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns and two 8' high wrought iron gates in the site's 40' front yard, and maintaining portions of the aforementioned existing 7' 6" high solid stone/brick wall located in the 20' visibility triangles on either side of the western driveway into the site from Walnut Hill Lane

3. BDA 112-043, Property at 5414 Walnut Hill Lane (the lot immediately east of the subject site)

On April 16, 2012, the Board of Adjustment Panel C will consider a request for a special exception to the fence height made in conjunction with maintaining an approximately 7' 6" high solid stone/brick wall with 8' high stone/brick columns, a 7' high pedestrian gate, and two, 8' high sliding wrought iron gates in the site's 40' front yard setback on a site being developed with a single family home.

4. BDA 88-096, 5414 Walnut Hill Lane (the lot immediately east of the subject site)

On September 27, 1988, the Board of Adjustment Panel granted a request for a special exception to fence height regulations of 1' 6", and imposed the following conditions: 1. The fence shall be constructed in accordance with the revised fence elevation plan submitted; 2. The pilasters shall be evenly spaced approximately 16 feet apart; 3. The fence shall be located at least 5 feet from the front property line, and the area between the fence and the street shall be landscaped; 4. The fence on the west property line shall be eliminated; and 5. The fence shall comply with all visibility obstruction triangles. The case report states that a request was made to construct an 8' high fence; however, the

- board specified in their motion that the special exception was granted to erect a fence 5' 6" high.
5. BDA 90-023, 9995 Hollow Way (two lots immediately east of the subject site) On April 10, 1990, the Board of Adjustment granted a request for a special exception to fence height regulations of 2' and imposed the following conditions to the request: submit a revised landscape plan that indicates the wall recessed and additional landscaping as provided. The case report states that the case report was made to construct a 6' high solid masonry fence in the site's Walnut Hill front yard setback.
6. BDA 956-193, 9930 Meadowbrook Drive (two lots west of the subject site) On May 28, 1996, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 3' 8" imposing the following condition with the request: compliance with the submitted revised landscape/site plan and elevation is required. The case report states that the request was made to construct and maintain an approximately 176' long, 7' 6" high solid stone wall with 8' high stone columns, and two, approximately 7' high open wrought iron gates

Timeline:

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- March 20, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- March 21, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 23, 2012: The Board Administrator emailed the applicant the following information:

- A picture that he photographed on the property at 5404 Walnut Hill Lane several days ago; and a question as to whether the existing “fence” matches what is represented on your submitted site plan/elevation; and if not, what was his proposal to the board: 1) to change the existing “fence” on the property to match what is shown on his submitted site plan/elevation; or 2) to change what is shown on his submitted site plan/elevation to match the existing “fence”?
- An observation for him to be aware of the fact that if/when the board grants this type of request they almost always impose the applicant’s submitted site plan and/or elevation as a condition to the request. With this in mind, you may want to make sure that whatever is on your submitted plan is what you are willing to construct/modify/maintain on the property.

April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

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- This site abuts properties directly east and west where the same applicant/owner has made applications to maintain a fence of similar features than that which is on the subject site –requests for special exceptions to fence height regulations made to Board of Adjustment Panel C on April 16, 2012: BDA 112-042 and 043.
- A scaled site plan/elevation document has been submitted documenting the location of the existing fence/wall/columns relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the

proposed building materials. The proposal is shown to be located approximately 6' – 10' from the property line or about 16' – 20' from the pavement line. The proposal is shown to be about 175' long parallel to the street.

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BOARD OF ADJUSTMENT ACTION: APRIL 16, 2012

APPEARING IN FAVOR: Mark Molthan, 4347 W Northwest Hwy, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 112-044**, hold this matter under advisement until **May 14, 2012**.

SECONDED: **Moore**

AYES: 5– Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5-0 (unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Moore

AYES: 5—Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

2:01 P. M. - Board Meeting adjourned for **April 16, 2012.**

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.