

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, MARCH 15, 2011**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Steve Harris, regular member, Scott Housel, regular member and Johnnie Goins, regular member

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Steve Harris, regular member, Scott Housel, regular member and Johnnie Goins, regular member

MEMBERS ABSENT FROM HEARING: No one

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

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 15, 2011** 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 A **February 15, 2011** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 15, 2011

MOTION: Hounsel

I move **approval** of the Tuesday, **February 15, 2011** public hearing minutes.

SECONDED: Schweitzer

AYES: 5 – Richmond, Schweitzer, Harris, Hounsel, Goins,

NAYS: 0 -

MOTION PASSED: 5- 0 (unanimously)

FILE NUMBER: BDA 101-021

BUILDING OFFICIAL'S REPORT:

Application of John Gilboux, represented by Shane Garthoff, for special exceptions to the fence height and visual obstruction regulations at 6801 Winding Rose Trail. This property is more fully described as Lot 14 in City Block R/8727 and is zoned PD-106 which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to maintain a 6-foot high fence which will require a 2-foot special exception to the fence regulations, and to maintain items in a required visibility obstruction triangle which will require a special exception to the visual obstruction regulations.

LOCATION: 6801 Winding Rose Trail

APPLICANT: John Gilboux
Represented by Shane Garthoff

March 15, 2011 Public Hearing Notes:

- The applicant submitted additional written documentation to the board members at the public hearing.

REQUESTS:

- The following appeals had been made in this application on a site that is currently developed with a single family home:
 1. a special exception to the fence height regulations of 2' is requested in conjunction with maintaining two, approximately 20.5' long, 6' high solid cedar fence panels in the site's 30' Winding Rose Trail front yard setback; and
 2. a special exception to the visual obstruction regulations is requested in conjunction with maintaining a portion of one of the two aforementioned fence panels located in the 45' visibility triangle at the intersection of Winding Rose Trail and Riseden Drive.

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 Sustainable Development and Construction Department Project Engineer recommends denial of this request.
- The applicant has not substantiated how the location of the existing fence panel in the 45' visibility triangle at the intersection of Winding Rose Trail and Riseden Drive 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 subject site is located at the northeast corner of Winding Rose Trail and Riseden Drive. The Winding Rose Trail frontage of the subject site functions as and is the site's required front yard, and the site's Riseden Drive frontage functions and is one of the site's two required side yards. The site has a 30' front yard setback along Winding Rose Trail (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family or duplex zoning district), and a 6' side yard setback along Riseden Drive (the longer of the two frontages of this corner lot where a 9' high fence could be maintained by right). The site's Riseden Drive frontage is deemed a side yard setback given that there is no front yard setback north of the site which must be continued southward to/on the site's Riseden Drive frontage.
- 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 site plan/elevation indicating that the proposal in the front yard setback reaches a maximum height of 6'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is comprised of two 20' 4" long, 6' high "1" x 6" cedar slats" fence panels located 3' and 6' from the front property line or about 15' and 18' from the curb line. (This document denotes a third 4' high panel located between the two 6' high fence panels that are the issue of this request).
- One single family home without any fence in its front yard setback "fronts" the existing 6' high fence panels on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.

GENERAL FACTS (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 site plan/elevation has been submitted that shows a portion of one of the two 20' 4" long, 6' high fence panels located in the 45' visibility triangle at the intersection of Winding Rose Trail and Riseden Drive.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 106 (Planned Development)

North: PD No. 106 (Planned Development)
South: PD No. 106 (Planned Development)
East: PD No. 106 (Planned Development)
West: PD No. 106 (Planned Development)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, and south are developed with single family uses, and the area to the west is developed with a park (Old Renner Park).

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:

December 23, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 15, 2011: 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 February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "No comment on fence- recommend denial of any sight reduction requirements."

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

- This request focuses on maintaining two, approximately 20.5' long, 6' high solid cedar fence panels in the site's 30' Winding Rose Trail front yard setback on site developed with a single family home.
- The submitted site plan/elevation documents the location, height, and materials of the fence over 4' in height in the required front yard setback. The site plan shows the two fence panels over 4' in height to be maintained in the front yard setback to be located 3' and 6' from the front property line or 15' and 18' from the pavement line. The elevation shows these fence panels to 6' in height and to be "1" x 6" cedar slats."
- One single family home without any fence in its front yard setback "fronts" the existing 6' high fence panels on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- As of March 7, 2011, four letters had been submitted to staff in opposition to the request, and no letters had been submitted in support.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan/elevation would provide assurance that the proposal exceeding 4' in height in the front yard setback would be maintained in the location and of the height and material as shown on this document.
- Note that if the board were to grant this request and impose the submitted site plan/elevation 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 plan whereby the location of the item 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 one of the two 20' 4" long , 6' high fence panels located in the 45' visibility triangle at the intersection of Winding Rose Trail and Riseden Drive – a fence panel that is approximately 5' into the visibility triangle.
- The Sustainable Development and Construction Department Project Engineer recommends denial of this request.
- The applicant has the burden of proof in establishing that granting the request for special exception to the visual obstruction regulations to the 45' visibility triangle at the Winding Rose Trail and Riseden Drive will not constitute a traffic hazard.

- If the Board chooses to grant this request, subject to compliance with the submitted site plan/elevation, the item shown on this document (an approximately 5' length of a 6' high solid cedar fence panel) would be "excepted" into the 45' visibility triangle at Winding Rose Trail and Riseden Drive.
- Note that if the board were to grant this request and impose the submitted site plan/elevation as a condition, but deny the request for a special exception 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 the front yard setback would not be "excepted."

BOARD OF ADJUSTMENT ACTION: MARCH 15, 2011

APPEARING IN FAVOR: John Gilboux, 6801 Winding Rose Trail, Dallas, TX
Karen Gilboux, 6801 Winding Rose Trail, Dallas, TX

APPEARING IN OPPOSITION:

MOTION #1: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 101-021**, on application of John Gilboux, represented by Shane Garthoff, **grant** the request of this applicant to construct and maintain a 6-foot high fence 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 site plan/elevation is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 101-021**, on application of John Gilboux, represented by Shane Garthoff, **grant** the request of this applicant to maintain a fence in the 45' visibility triangle at the intersection of Winding Rose Trail and Riseden Drive as a special exception to the visual obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Harris, Honsel, Goins
NAYS: 0 -
MOTION PASSED: 5- 0 (unanimously)

FILE NUMBER: BDA 101-023

BUILDING OFFICIAL’S REPORT:

Application of Maria C. Solis for a special exception to the fence height regulations at 1108 Glencliff Drive. This property is more fully described as Lot 1 in City Block 17/6662 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to maintain a 7-foot 6-inch high fence which will require a special exception of 3 feet 6 inches.

LOCATION: 1108 Glencliff Drive

APPLICANT: Maria C. Solis

REQUEST:

- A special exception to the fence height regulations of 3’ 6” is requested in conjunction with maintaining a 7’ 6” open ornamental steel entry gate with 7’ 6” high brick entry columns and flanking approximately 25’ long, 5’ – 6’ high combination solid brick/ open steel picket wing walls in the site’s 25’ front yard setback on a site currently 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 site plan and an elevation indicating an entry column/gate proposal in the site's front yard setback that would reach a maximum height of 7' 6".

- The following additional information was gleaned from the submitted site plan:
 - The entry gate/entry wing wall/column proposal is shown to be approximately 25' in length on either side of the driveway and approximately 20' across the driveway.
 - The entry gate/entry wing wall/column proposal is shown to begin approximately on property line and to be angled back into the setback approximately 24'. (The site plan represents the gate approximately 24' from the property line where if it were to be located 1' further back would no longer be in the required front yard).
 - The site plan denotes "4 high chain link fence" in the front yard setback which is permitted by right.
- The existing entry gate/entry wing wall/column proposal feature is located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4' in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Glenclyff Drive (generally 500 feet north and south of the site) and noted no other fences that appeared to be located in a front yard setback and higher than 4' in height.

BACKGROUND INFORMATION:

Zoning:

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

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:

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

Timeline:

December 27, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 14, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” with the following comments: “Comply with all C.O.D visibility requirements.”

STAFF ANALYSIS:

- The request focuses on maintaining a 7’ 6” open ornamental steel entry gate with 7’ 6’ high brick entry columns and flanking approximately 25’ long, 5’ – 6’ high combination solid brick/ open steel picket wing walls in the site’s 25’ front yard setback on a site currently developed with a single family home.
- A site plan and elevation has been submitted indicating that the proposal is shown to be approximately 25’ in length on either side of the driveway and approximately 20’ across the driveway; to begin approximately on property line and to be angled back into the setback approximately 24’. (The site plan represents the gate approximately 24’ from the property line where if it were to be located 1’ further back would no longer be in the required front yard).

- The existing entry gate/entry wing wall/column proposal feature is located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4' in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Glenclyff Drive (generally 500 feet north and south of the site) and noted no other fences that appeared to be located in a front yard setback and higher than 4' in height.
- As of March 7, 2011, 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 would be maintained at a maximum of 7' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal would be maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 15, 2011

APPEARING IN FAVOR: Maria Solis, 1108 Glenclyff Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 101-023**, on application of Maria C. Solis, **grant** the request of this applicant to construct and maintain an seven-foot six-inch high fence 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 site plan and elevation is required.

SECONDED: Goins

AYES: 5 – Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-028

BUILDING OFFICIAL'S REPORT:

Application of Ashley Ness for a special exception to the rear yard setback regulations for tree preservation at 707 N. Windomere Avenue. This property is more fully

described as Lot 2 in City Block 24/3475 and is zoned CD-1 (Subarea 1) which requires a rear yard setback of 3 feet. The applicant proposes to maintain a structure and provide a 0 foot rear yard setback which will require a 3-foot special exception.

LOCATION: 707 N. Windomere Avenue

APPLICANT: Ashley Ness

March 15, 2011 Public Hearing Notes:

- The Board of Adjustment heard testimony on this matter at the public hearing and delayed action on this matter until May 17th in order for the applicant to have the opportunity to file a companion case seeking a variance for the rear yard setback rather than or in addition to a special exception.

REQUEST:

- A special exception to the rear yard setback regulations of 3' for tree preservation is requested in conjunction with maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.

STAFF RECOMMENDATION:

Denial

Rationale:

- The City of Dallas arborist staff has investigated the trees on the property and have formed an opinion that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
- In addition, the applicant has not substantiated how the requested special exception is compatible with the character of the neighborhood and that the value of the surrounding properties will be adversely affected by the granting of this special exception request.

STANDARD FOR A SPECIAL TO THE REAR YARD REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum rear yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

GENERAL FACTS:

- Structures on lots zoned CD No. 1 are required to provide a minimum rear yard setback of 5'. However, the Code states that in a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.
The submitted site plan denotes an accessory structure adjacent to an alley that is located on the rear property line (or as much as 3' into the 3' rear yard setback).
- According to calculations taken from the site plan by the Board Administrator, about 60 square feet (or 1/10) of the existing approximately 600 square foot accessory structure is located in the site's 3' rear yard setback.
- DCAD records indicate that the site is developed a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A, B, and D). This information included the following:
 - photographs of the subject site;
 - a petition signed by 6 owners/neighbors in support of the request;
 - a document stating that the block of N. Windomere on which the site is located has curbside trash pick-up; and
 - a document from a certified arborist stating among other things how "the trees located on your property would more than likely suffer adversely from being transplanted." (Note that this document was submitted after the Chief Arborist submitted his memo on this request, and after the staff had formed their recommendation of denial on this request).
- On March 7, 2011, the City of Dallas Chief Arborist submitted a memo to the Board Administrator pertaining to this request (see Attachment C). The memo stated the following:
 - The arborist staff has investigated the trees on the property and have formed an opinion that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
 - An Italian cypress and a plum tree appear to be within the influence of the probable building location if the structure was relocated within its current configuration but moved within the setback distance. Both trees are relatively young (approximately 3" caliper) and would be suitable for transplant to replacement. The trees are regarded as ornamental landscape trees of potential medium and small sizes, respectively.
 - The "preservation of large trees" is a fundamental purposed of the city's tree preservation ordinance that was established following an initial resolution by the City Council in 1990 to preserve large trees "which, once removed, can be replaced only after generations." Although the city arborists encourage citizens to protect all trees once planted in appropriate locations, the city arborists' opinion is that the preservation status is directed towards trees, if removed, that would no

longer provide the significant financial value and environmental benefits to the owner *and the community* found in large established canopy trees native to, or adapted to, this region.

- All trees on single family or duplex lots which are two acres or less in size with a residential use are not protected under city ordinance. Otherwise, only trees that a 8" in diameter or greater are protected. The city anticipates that some trees must be removed for construction purposes and allows for this with building permits for construction.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CD No 1 (Conservation district)
<u>North:</u>	CD No 1 (Conservation district)
<u>South:</u>	CD No 1 (Conservation district)
<u>East:</u>	CD No 1 (Conservation district)
<u>West:</u>	CD No 1 (Conservation district)

Land Use:

The subject site is developed with a single family use. 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:

January 26, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 14 & 22, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

The email also included a suggestion that the application possibly submit photographs of the mid-part of the site that the Board Administrator could not photograph, an amended site plan showing the location of the tree or trees that the applicant feels justifies the request since typically an applicant making this type of application shows the location, species, and caliper inch of the tree or trees that the applicant feels is worthy of preservation.

Feb. 24 & 28, 2011: The applicant submitted additional information to the Board Administrator (see Attachments A and B).

March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 3, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation not relevant in this case. If approved, recommend indemnity for the City if damage occurs to the building."

March 7, 2011: The Chief Arborist submitted a memo to the Board Administrator (see Attachment C). This memo stated among other things that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.

March 7, 2011: The applicant submitted additional information to the Board Administrator (see Attachment D). (Note that this particular information was submitted after the Chief Arborist had submitted to the Board Administrator and after staff had formed their recommendation of denial of this application).

STAFF ANALYSIS:

- The focus of this request is maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.
- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a rear yard setback on CD No. 1 zoned lot

either by an application for a variance to the rear yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the rear yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site that is worthy of preservation - not property hardship. The applicant in this case as made an application for a *special exception* to the rear yard setback regulations for tree preservation.

- This special exception request is made to maintain an approximately 60 square foot portion of an approximately 600 square foot accessory structure in the site's 3' rear yard setback. (Although staff suggested that the applicant denote the location, size and species of the tree or trees that she feels is worthy of preservation and in turn precludes her from locating an accessory structure in compliance with rear yard setbacks, no such denotation was made on any submitted plan). The site plan shows what is assumed to be the accessory structure on the property that is located on the rear property line or 3' into the required 3' setback – no tree is denoted on the site plan.
- The City's Chief Arborist has stated among other things that the trees that are the nature of this request (a relatively young Italian cypress and a plum tree approximately 3" caliper) within proximity to the structure in question are not worthy of preservation for a building relocation from setback requirements.
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
 1. Whether the requested special exception is compatible with the character of the neighborhood.
 2. Whether the value of the surrounding properties will be adversely affected.
 3. Whether the tree is worthy of preservation.
- If the Board were to grant the rear yard special exception request of 3', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the rear yard setback would be limited to that what is shown on this plan – which in this case is a portion of an accessory structure located on the rear property line (or as much as 3' into the site's 3' rear yard setback).
- If the Board chooses to grant this request, it should be noted that the submitted site plan does not denote the location, size or species of a tree (or trees) that the applicant contends is the tree (or trees) that is worthy of preservation, and in turn a tree that precludes her from relocating the accessory structure out of the required rear yard setback. If the Board feels that this type of documentation is relevant to the approval of this type of tree preservation application, they may request that the applicant amend the submitted site plan by adding this information on the site plan.

BOARD OF ADJUSTMENT ACTION: MARCH 15, 2011

APPEARING IN FAVOR: Ashley Ness, 707 N. Windomere Ave., Dallas, TX
Larry Ness, 2011 Cedar Springs Rd., Dallas, TX
Stephanie Wooley, 1701 N. Collins Blvd., Ste 1100,
Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 101-028**, on application Ashley Ness, **grant** the request of this applicant for a special exception of 3 feet to the rear yard setback regulation to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Richmond**

AYES: 2 – Richmond, Harris

NAYS: 3 - Schweitzer, Hounsel, Goins

MOTION FAILED: 2– 3

MOTION #2: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **April 19, 2011**.

SECONDED: **Richmond**

AYES: 4 – Richmond, Schweitzer, Harris, Hounsel,

NAYS: 1 - Goins

MOTION PASSED: 4– 1

MOTION #1: **Goins**

I move to adjourn this meeting.

SECOND: **Harris**

AYES: 5– Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Schweitzer**

I move to reconsider the motion to adjourn this meeting.

SECOND: **Hounsel**

AYES: 5– Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: **Schweitzer**

I move to reconsider my motion previously made today on **BDA 101-028** to hold this matter under advisement until **April 19, 2011**.

SECOND: **Harris**

AYES: 4– Richmond, Schweitzer, Harris, Hounsel,

NAYS: 1 - Goins

MOTION PASSED: 4-1

MOTION #4: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **May 17, 2011**.

SECONDED: **Hounsel**

AYES: 4 – Richmond, Schweitzer, Harris, Hounsel

NAYS: 1 - Goins

MOTION PASSED: 4– 1

MOTION #5: **Harris**

I move to adjourn this meeting.

SECOND: **Goins**

AYES: 5– Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:48 P.M. - Board Meeting adjourned for **March 15, 2011**.

CHAIRPERSON

BOARD ADMINISTRATOR

MOTION: **Goins**

I move to adjourn this meeting.

SECOND: **Harris**

AYES: 5– Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:42 P.M. - Board Meeting adjourned for **March 15, 2011**.

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.