

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, SEPTEMBER 21, 2011**

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

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair

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

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Lloyd Denman, Asst. Director and Trena Law, Board Secretary

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

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**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 21, 2011 docket.**

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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B August 17, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:    SEPTEMBER 21, 2011**

**MOTION: Leone**

I move approval of the **Wednesday, August 17, 2011** Board of Adjustment Public Hearing minutes.

**SECONDED: Chernock**

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

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**FILE NUMBER:    BDA 101-075**

**BUILDING OFFICIAL’S REPORT:**

Application of Julio Nathal, represented by James Kellum, to enlarge a nonconforming use at 13815 Skyfrost Drive. This property is more fully described as Lot 135 in City Block 8817 and is zoned A(A) Agricultural District, which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming outside salvage and reclamation use, which will require a request to enlarge a nonconforming use.

**LOCATION:            13815 Skyfrost Drive**

**APPLICANT:        Julio Nathal  
                              Represented by James Kellum**

**REQUEST:**

- A request is made to enlarge a nonconforming “outside salvage and reclamation” use (Auto City Salvage) on the subject site. In this particular case, the enlargement involves constructing and maintaining an approximately 7,300 square foot (121’ x 61’) “proposed covered storage area” on a site that, according to DCAD, has improvements of a 2,800 square foot “automotive service” structure built in 1980 on it, on a site that, according to the application, is 11.6 acres in area.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request to enlarge a nonconforming use since the basis for this type of appeal is based on when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use

was originally established by right; and 3) will not have an adverse effect on the surrounding area.

### **STANDARD FOR ENLARGING A NONCONFORMING USE:**

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

### **GENERAL FACTS:**

- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The application states that the site is 11.603 acres in area.
- The subject site is zoned A(A) (Agricultural).
- An “outside salvage and reclamation” use is not permitted in A(A) Agricultural District zoning.
- DCAD states that the site has improvements of an “automotive service” with 2,800 square feet built in 1980.
- Given provisions set forth the Dallas Development Code, the existing “outside salvage and reclamation” use on the site can obtain “conforming use” status upon obtaining a change in zoning to the IM (Industrial Manufacturing) district that permits this specific use with an SUP (Specific Use Permit) from the City Council.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance date that is provided 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.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: A(A) (Agricultural)  
North: MH(A) (Manufactured home)  
South: R-10(A)(Single family residential 10,000 square feet)  
East: MH(A) (Manufactured home)  
West: MH(A) (Manufactured home)

### **Land Use:**

The 11.6 acre subject site is developed with an “outside salvage and reclamation” use (Auto City Salvage). The areas to the north and east are developed with manufactured home uses, the area to the south appears to be developed with single family uses; and the area to the west appears to be undeveloped.

### **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 17, 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.

August 12, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 18, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current

Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, 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.

September 9, 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- This request focuses on enlarging a nonconforming “outside salvage and reclamation” use (Auto City Salvage) on the subject site.
- In this particular case, the enlargement involves constructing and maintaining an approximately 7,300 square foot (121’ x 61’) “proposed covered storage area” on a site that, according to DCAD, has improvements of a 2,800 square foot “automotive service” structure built in 1980, on a site that, according to the application, is 11.6 acres in area.
- The subject site is zoned A(A) Agricultural District.
- An “outside salvage and reclamation” use is not permitted in A(A) Agricultural District zoning.
- The applicant has the burden of proof to establish that the enlargement of the nonconforming use:
  1. does not prolong the life of the nonconforming use;
  2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
  3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted site plan and elevations, the enlargement of the nonconforming use on this site would be limited to what is shown on these documents.

### **BOARD OF ADJUSTMENT ACTION: SEPTEMBER 21, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

### **MOTION: Murrah**

I move that the Board of Adjustment grant application **BDA 101-075** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general

purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevations is required.

**SECONDED:** Wilson

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-077

**BUILDING OFFICIAL’S REPORT:**

Application of Robert Reeves for a special exception to the fence height regulations at 4645 Meadowood Road. This property is more fully described as Lot 17A in City Block 5543 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 an 11-foot high fence, which will require a special exception of 7 feet.

**LOCATION:** 4645 Meadowood Road

**APPLICANT:** Robert Reeves

**REQUEST:**

- A special exception to the fence height regulations of 7’ is requested in conjunction with constructing and maintaining a “5’ 6”±” - “6’ 0”±” high open ornamental iron fence with 7’ high cast stone columns and two 11’ high open metal gates/cast stone entry columns in the site’s 40’ front yard setback on a lot 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 person shall not erect or maintain a fence in a required yard more than 9’ above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.  
The applicant has submitted site plan/elevation document indicating that the proposal in the required front yard setback reaches a maximum height of 11’.
- The following additional information was gleaned from the submitted site plan:
  - The proposal is approximately 200’ in length parallel to the street.
  - The proposed fence is shown to be located approximately on the front property line or about 13’ – 20’ from the pavement line.
  - The proposed gates are shown to be located approximately 11’ from the front property line or about 25’ from the pavement line.
- Three single family homes have direct/indirect frontage to the proposal on the subject site, the one with direct frontage with a fence that appears higher than 4’ in height in its front yard setback – an approximately 6’ high open fence with 6.5’ high columns and a 10’ high entry that appears to be the result of a granted fence height special exception from September of 1997 – BDA 967-225.
- In addition to the fence mentioned above, the Board Administrator noted the following fences above four (4) feet high in the immediate area (approximately 500 feet from the site) which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
  - a 6’ high wrought iron fence with 6.5’ high stone columns and two 7’ high wrought iron gates immediately north of the site that appears to be the result of a granted fence height special exception from September of 2001 – BDA 001-250;
  - a 4’ high fence with 5’ high columns and an 8’ high entry gate on the property two lots north of the site;
  - a 4’ high open fence with an 8’ high stone entry wall located northeast of the site;
  - a 4’ - 5’ high stone entry fence and 8’ high stone entry columns east of the site;
  - a 4’ high open fence with 5.5’ high brick columns and a 9’ high entry gate south of the site; and
  - a 7’ high open metal fence with 8’ high columns southwest of the site that appears to be the result of a granted fence height special exception from March of 1996: BDA 956-160.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A and B).

**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 001-250, Property at 4655 Meadowood Road (the lot immediately north of the site)  
On September 11, 2001, the Board of Adjustment Panel B granted a request for a special exception to the fence regulations of 3' and imposed the submitted revised site/landscape plan and fence elevation as a condition to the request. The case report stated that the request was made in conjunction with constructing and maintaining a 6' high wrought iron fence with 6.5' high stone columns and two 7' high wrought iron gates along Meadowood Road.
2. BDA 967-295, Property at 4650 Meadowood Road (a lot east of the site)  
On September 15, 1997, the Board of Adjustment Panel C granted a request for a special exception to the fence regulations of 6', needed in conjunction with constructing and maintaining a maximum 10' high open metal entry gate.
3. BDA 967-160, Property at 4637 Meadowood Road (a lot south of the subject site)  
On March 26, 1996, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 4', needed in conjunction with constructing and maintaining an open 6' high fence with 6.5' high columns and and 8' high entry gate/columns.
4. BDA 001-194, Property at 4669 Meadowood Road (two lots north of the site)  
On May 15, 2001, the Board of Adjustment Panel B granted a request for a special exception to the fence regulations of 6' 1", needed in conjunction with constructing and maintaining a 6' high open iron fence with 7' high masonry pilasters, and a 10' 1" high entry gate. The Board imposed the following conditions: compliance with the submitted revised site plan and revised elevation is required; and the existing hedge along the entire street side of the proposed fence must be retained; and (or if/when needed) the plants (hedge) must be replaced with five-gallon Photinia, Nellie R. Stevens holly, or similar species planted three foot on center.



5. BDA 956-160, Property at 4637 Meadowood Road (the lot immediately southwest of the site)

On March 26, 1996, the Board of Adjustment Panel A granted a request for a special exceptions to the fence regulations of 7', needed in conjunction with constructing and maintaining a 7' 4" high open iron fence with 8' high stucco columns, and a 11' high entry gate.

**Timeline:**

- June 13, 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.
- August 12, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 18, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 30 & Sept 7, 2011: The applicant submitted additional information beyond what was submitted with the original application (Attachments A and B).
- September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- September 7, 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." (Note that no item appears to be represented on the submitted plans as being located in a visibility triangle).

## **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a “5’ 6”±” - “6’ 0”±” high open ornamental iron fence with 7’ high cast stone columns and two 11’ high open metal gates/cast stone entry columns in the site’s 40’ front yard setback on a lot developed with a single family home.
- The submitted site plan/elevation notes the location, height, and materials of the proposal over 4’ in height in the required front yard setback. The site plan indicates that the proposed fence is about 200’ in length parallel to the street, approximately on the site’s front property line or about 13’ – 20’ from the pavement line. (The proposed gates are shown to be located approximately 11’ from the front property line or about 25’ from the pavement line).
- Three single family homes have direct/indirect frontage to the proposal on the subject site, the one with direct frontage with a fence that appears higher than 4’ in height in its front yard setback – an approximately 6’ high open fence with 6.5’ high columns and a 10’ high entry that appears to be the result of a granted fence height special exception from September of 1997 – BDA 967-225.
- The Board Administrator conducted a field visit of the site and surrounding area and noted other fences above four feet high in the immediate area which appeared to be located in a front yard setback. These fences and locations are described in the “General Facts” section of this case report.
- As of September 12, 2011, 4 letters had been submitted to staff in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 7’ will not adversely affect neighboring property.
- Granting this special exception of 7’ with a condition imposed that the applicant complies with the submitted site plan/elevation would require that the proposal exceeding 4’ in height in the front yard setback would be constructed and maintained in the location and of the heights and materials as shown on this document.

## **BOARD OF ADJUSTMENT ACTION: SEPTEMBER 21, 2011**

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 101-077**, on application of Robert Reeves, **grant** the request of this applicant to construct and maintain an eleven-foot-high fence on the property 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:** Murrah

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-081

**BUILDING OFFICIAL’S REPORT:**

Application of Elise and James Sher for a special exception to the fence height regulations at 6007 Azalea Lane. This property is more fully described as Lot 22 in City Block 2/5500 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain an 8-foot 6-inch high fence, which will require a special exception of 4 feet 6 inches.

**LOCATION:** 6007 Azalea Lane

**APPLICANT:** Elise and James Sher

**REQUEST:**

- A special exception to the fence height regulations of 4’ 6” is requested in conjunction with maintaining a solid cedar fence ranging from approximately 7’ 3” – 8’ in height with stone columns ranging from 7’ 3” – 8’ 6” in height in the site’s front yard setback on a site 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 subject site is located at the northeast corner of Azalea Lane and Preston Road. The site has one front yard setback on Preston Road.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9’ above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.

The applicant has submitted a site plan, an elevation, and photos (with denoted height dimensions of the existing fence/columns on the site) indicating that the proposal in the front yard setback reaches a maximum height of 8' 6".

- The following additional information was gleaned from the submitted site plan:
  - The existing fence located in the required front yard over 4' in height is approximately 32' in length perpendicular to Azalea Lane and/or parallel to Preston Road. No part of the existing fence in the front yard setback is oriented parallel to Azalea Lane. The existing fence in the site's front yard setback is approximately 32' in length.
  - The proposal is shown to be located 11' from the site's front property line or 22' from the curb line.
- One single family home "fronts" to the existing fence on the subject site. This property has what appears to be virtually the same type of fence in terms of location and height as is on the subject site – a fence higher than 4' in height in what appears to be in the front yard setback with no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four feet high which appeared to be located in a front yard setback other than the one described above immediately south of the subject site at the southeast corner of Azalea Lane and Preston Road.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-16(A) (Single family district 16,000 square feet)  
North: R-16(A) (Single family district 16,000 square feet)  
South: R-16(A) (Single family district 16,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
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:**

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 27, 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.

August 12, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 18, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 7, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Need to comply with all C.O.D visibility requirements." (Note that no item appears to be represented on the submitted site plan as being located in a visibility triangle).

### **STAFF ANALYSIS:**

- This request focuses on maintaining a solid cedar fence ranging from approximately 7' 3" – 8' in height with stone columns ranging from 7' 3" – 8' 6" in height in the site's front yard setback on a site developed with a single family home.
- The subject site is located at the northeast corner of Azalea Lane and Preston Road. The site has one front yard setback on Preston Road.
- The submitted site plan and elevation documents the location, height, and material of the fence over 4' in height in the front yard setback. The site plan shows the existing fence located in the required front yard over 4' in height is approximately 32' in length perpendicular to Azalea Lane and/or parallel to Preston Road. No part of the existing fence in the front yard setback is oriented parallel to Azalea Lane. The existing fence in the site's front yard setback is approximately 32' in length. The fence is shown to be located 11' from the site's front property line or 22' from the curb line.
- One single family home "fronts" to the existing fence on the subject site. This property has what appears to be virtually the same type of fence in terms of location

and height as is on the subject site – a fence higher than 4' in height in what appears to be in the front yard setback with no recorded BDA history.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four feet high which appeared to be located in a front yard setback other than the one described above immediately south of the subject site at the southeast corner of Azalea Lane and Preston Road.
- As of September 12, 2011, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the height and material as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 21, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION No one

MOTION: **Murrah**

I move that the Board of Adjustment grant application **BDA 101-081** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Wilson**

AYES: 5– Reynolds, Chernock, Wilson, Leone, Murrah

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 101-085

**BUILDING OFFICIAL’S REPORT:**

Application of Ric Nesbit for a special exception to the landscape regulations at 6414 Abrams Road. This property is more fully described as Tract 9.1 and a part of Lot 9 in City Block 1/5437 and is zoned D(A), which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception.

LOCATION: 6414 Abrams Road

**APPLICANT:** Ric Nesbit

**September 21, 2011 Public Hearing Notes:**

- The Board heard testimony at the public hearing some of which was from the City of Dallas Chief Arborist who stated that he no longer supported the applicant's request upon further review of the issue at hand. The Board delayed action on this application until October 19<sup>th</sup> to allow the applicant to prepare a revised alternate landscape plan that addressed all of the concerns that had been expressed to date by city staff.

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with the constructing and maintaining an approximately 1,700 square foot "new one story brick" structure (labeled on one of three plans submitted in conjunction with this appeal as a "reading room") on a site developed with an approximately 4,400 square foot "existing one story brick" structure/church use, and not fully meeting the landscape regulations.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

- Compliance with the submitted landscape plan is required, except that the City Arborist may approve the following substitute trees for a live oak tree shown on the Abrams Road frontage portion of the landscape plan if a live oak tree will interfere with adjacent overhead utilities: One 4-caliper inch large tree or two 2-caliper inch small trees from the City Approved Replacement Tree List in Article X of the Dallas Development Code.
- All screening plant materials must be planted and maintained in compliance with City visibility regulations.

Rationale:

- The City's Chief Arborist supports the request with the conditions mentioned above imposed in conjunction with the request.
- The applicant has substantiated: 1) how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and 2) that the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and

(3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

### **GENERAL FACTS:**

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.  
In this particular application, three plans have been submitted to staff since its submittal to the City in July 2011. One plan was submitted with the application – a plan that appears to be merely a tree survey of the entire site. A second plan was submitted to the Building Inspection Development Code Specialist/Senior Plans Examiner near/on September 1<sup>st</sup> - a plan that appears to be a landscape plan for a part of the subject site (see Attachment A). A third plan was submitted to the Chief Arborist (and forwarded to the Board Administrator on September 13<sup>th</sup>) – a revised plan of the entire subject site – a plan in which the Chief Arborist has written his memo on the merits of this landscape special exception request (see Attachment B).
- The City of Dallas Chief Arborist’s memo to the Board Administrator stated the following:
  - The applicant is requesting a special exception to the landscape requirements of Article X: The Landscape Regulations, specifically the mandatory requirements and design standard requirements.
    - Trigger:
      - Proposed construction of a new structure on a property to be replatted with adjoining property with a church use. The replat is to occur before permitting.
    - Deficiencies:
      - Additional landscaping has been indicated only for the area near the new construction at the corner of Larmanda and Abrams. The new permit will require landscaping for the entire 1.77 acre property since the newly platted property will be less than 2 acres. The conditions for an artificial lot do not apply. Section 51A-10.122 states that a property over two acres in size may request for an artificial lot to satisfy the requirements of Article X that would not “violate the spirit of the landscape regulations.”
      - Chapter 51A-10.125(b)(1) and (b)(7). The property has a non-residential use in a residential (duplex) district. Article X requires a perimeter landscape buffer of a minimum of 10’ in width with the required plant groups where



- residential adjacency exists. The existing church site does not comply with buffer plant groups or buffer areas (portion of parking lot and driveway) on the south and east sides of the property. The areas for the new structure shows to have the required buffer area but not the required plant groups.
- Chapter 51A-10.125(b)(4). The overall site requires 9 street trees. Three new street trees are proposed but no other tree on the property qualifies by Article X definition.
  - Chapter 51A-10.125(b)(5). The southern half of the existing parking lot does not currently conform to Article X requirements for parking lot trees. The new additional parking proposed for the new structure would comply be definition although these may not be required parking spaces.
  - The property will require two design standards. The plan identifies two design standards for the new addition with: 1) screening of off-street parking; and 2) foundation planting. The plan does not identify all plantings at or near the existing church structure that might be accounted for in meeting the requirements. A small screening row could provide for screening the existing primary parking lot.
  - Factors for consideration:
    - If the combined property was 10,000 square feet larger, the building site would meet the requirements for an artificial lot, per Section 51A-10.122 for landscape area reduction. The special exception request under the artificial lot would be for the perimeter landscape buffer groups and street trees.
    - There are a few large trees in open space locations of the property to the north of the church structure. Other maturing large and small tree species populate the property. The property does meet the requirements for Site Trees under Article X regulations.
    - The plan calls for 4 new live oak trees of 4" caliper each to be planted near the new construction. A row of evergreen screening shrubs has been proposed along the perimeter of the lot at Larmanda and Abrams. A row of evergreen plantings have been proposed along the entire street side façade of the new structure.
    - Several young trees will be removed for construction. Any mitigation will be enforced under Article X tree preservation regulations. Planting the four proposed 4-caliper inch live oaks would place 16-caliper inches of trees on the property.
    - The exact location of the building, new impervious pavement and other improvements are subject to final review by Building Inspection.
  - Recommendation
    - Approval, subject to the following conditions:
      - (1) Compliance with the submitted landscape plan is required, except that the City Arborist may approve the following substitute trees for a live oak tree shown on the Abrams Road frontage portion of the landscape plan if a live oak tree will interfere with adjacent overhead utilities: One 4-caliper inch large tree or two 2-caliper inch small trees from the City Approved Replacement Tree List in Article X of the Dallas Development Code.
      - (2) All screening plant materials must be planted and maintained in compliance with City visibility regulations.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: D (A) (Duplex)  
North: D (A) (Duplex)  
South: D (A) (Duplex)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: PD No. 302 (Planned Development)

### **Land Use:**

The site is developed as a church use (Seventh Church of Christ Scientist). The area to the north is developed with office use; the areas to the east and south are developed with single family uses; and the area to the west is developed with retail 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:**

- July 8, 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.
- August 12, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 18, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- September 2, 2011: In response to the Board Administrator's discovery that an alternate landscape plan had not been submitted with the application for a special exception to the landscape regulations in July, the Chief Arborist emailed the Board Administrator that he had spoken to the applicant on September 1<sup>st</sup> who had indicated that he would be attempting to have an alternate landscape plan submitted in conjunction with his request by the September 6<sup>th</sup> staff review team

meeting. (As of September 2<sup>nd</sup>, the only plan that had been submitted to staff in conjunction with the applicant's request for a special exception to the landscape regulations had been what appeared to be a tree survey).

September 6, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a "site/floor plan" to the Board Administrator (see Attachment A). This plan that was only a representation of the part of the subject site on which the proposed reading room is to be located.

September 6, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, Sustainable Development and Construction Department Engineering Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 8, 2011: The Board Administrator contacted the applicant with regard to whether location of the proposed structure that triggered the applicant's request for a special exception to the landscape regulations was in compliance with side yard setback regulations. The Board Administrator informed the applicant that the Chief Arborist had pointed out that the plan (tree survey) submitted in conjunction with the application showed a 10' setback denoted from one of two dashed lines. But depending on which of the two dashed lines was the actual side property line would be whether the structure is in compliance with the side yard setback. The applicant stated that he would touch base with his architect and confirm that this proposed structure was located out of the side yard setback since he had not intended to request variance to the side yard setback regulations for the proposed structure. (As of September 13<sup>th</sup>, the applicant had not confirmed with the Board Administrator that the proposed structure would be providing the required 10' setback from the side property line).

September 8, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator stating that he was unable to make a full determination with regard to whether the proposed structure was providing the required side yard setback. The applicant had submitted a plan to him and the Chief Arborist that was still showing two property lot lines side by side adjacent to the proposed structure's side yard setback area. The Code Specialist stated, however, that this did not affect the proposed alternate landscape plan since even if the applicant had to move

the building over to meet the setback, the landscaping will still be provided as shown. The Code Specialist stated that the Chief Arborist had asked that the applicant's architect to confirm the correct property lot line.

September 7, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Need to comply with all C.O.D visibility requirements." (The Board Administrator was unable to make a determination as to compliance with these regulations in that no full scale alternate landscape/site plan had been submitted to him as of September 13<sup>th</sup>).

September 13, 2011: The Chief Arborist submitted a reduced copy of a revised plan and a memo pertaining to the landscape special exception request to the Board Administrator (see Attachment B).

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 1,700 square foot "new one story brick" structure (labeled on one of three plans submitted in conjunction with this appeal as a "reading room") on a site developed with an approximately 4,400 square foot "existing one story brick" structure/church use, and being "excepted" from fully meeting the City's landscape regulations.
- A number of plans have been submitted with this application, one of which the Chief Arborist has provided his assessment on. The Chief Arborist has stated that the applicant seeks an exception from the mandatory requirements and design standard requirements of Article X: The Landscape Regulations.
- The City of Dallas Chief Arborist supports the request with the conditions stated in the "Recommendation" section of this case report.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the staff suggested conditions, the site would be "excepted" from full compliance with the mandatory requirements and design standard requirements of Article X: The Landscape Regulations.
- Note that the applicant has only made an application for a special exception to the landscape regulations. None of the applicant's three submitted plans allows city staff to fully determine his ability to comply with the side yard setback requirements nor visual obstruction regulations. But, approval of the applicant's request for a special exception to the landscape regulations will not provide any relief with regard to setbacks nor to visual obstruction regulations.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 21, 2011**

**APPEARING IN FAVOR:** Ric Nesbit, 1701 Druid Ct., Ft. Worth, Texas

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 101-085**, hold this matter under advisement until **October 19, 2011**.

**SECONDED:** **Chernock**

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-063

**BUILDING OFFICIAL’S REPORT:**

Application of Shaun Feltner for special exceptions to the fence height and visual obstruction regulations at 3821 San Jacinto Street. This property is more fully described as Lot 23 in City Block 641 and is zoned PD-298, Subarea 8, 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/maintain a 6 foot high fence, which will require a special exception of 2 feet to the fence height regulations, and to locate/maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 3821 San Jacinto Street

**APPLICANT:** Shaun Feltner

**REQUESTS:**

- The following appeals had been made in this application on a site that is currently being developed with a townhome development:
  1. a special exception to the fence height regulations of 2’ had been requested in conjunction with constructing and maintaining a 6’ high open iron picket fence/gates to be located in the front yard setback; and
  2. special exceptions to the visual obstruction regulations had been requested in conjunction with locating and maintaining a 6’ high open iron picket fence/gates and vehicles that could potentially be parked in four 20’ visibility triangles at two drive approaches into the site from San Jacinto Street.

However, the applicant’s submittal of a revised site plan and elevation dated September 1, 2011 (see Attachment C) denotes no fence in the required front yard setback (subsequently eliminating the applicant’s need to request a fence height

special exception); and only vehicles that, if parked in spaces shown on the revised site plan, would be in the four 20' visibility triangles at the two drive approaches into the site from San Jacinto Street.

**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 exceptions):**

Approval, subject to the following condition:

- Compliance with the revised site plan and revised elevation both dated September 1, 2011 is required.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests (with the submitted revised site plan and elevation imposed as conditions) since the items in the visibility triangles would be minor encroachments of vehicles being located in the four existing parking spaces that do not constitute a traffic hazard.
- The applicant has substantiated how the location of the proposed items in the 20' visibility triangles at the two drive approaches into the site 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):**

- PD No. 298 states that for all residential uses, maximum fence height in the required front yard is four feet.  
The applicant had submitted a revised site plan and revised elevation indicating that the proposal in the required front yard setback reaches a maximum height of 6'.
- The following additional information was gleaned from the originally submitted revised site plan:
  - The proposed fence located in the front yard setback is over 4' in height and is approximately 165' in length parallel to the street.

- The proposed fence is shown to be located on the front property line or about 9' from the curb line.
- No single family home “fronts” to the proposed fence on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted the following fences above four feet high which appeared to be located in a front yard setback (note that the heights described below are approximations):
  1. a 6.5' high solid metal fence immediately east of the site with no recorded BDA history; and
  2. a 6.5' high solid metal fence immediately southwest of the site with no recorded BDA history.
- A revised site plan and revised elevation have been submitted that shows a “6' open iron picket fence” and gates located in four 20' visibility triangles at the two drive approaches into the site from San Jacinto Street (see Attachment A).
- On August 5, 2010, the applicant submitted photos of the site and surrounding area (see Attachment B).
- On August 17, 2011, the Board heard testimony from the applicant and staff at the public hearing, and delayed action on the application until their September 21<sup>st</sup> public hearing in order for the applicant to possibly amend his site plan and/or elevation in order to address concerns raised by city engineers.
- On September 6, 2011, the applicant submitted additional information to staff – information that included a revised site plan and revised elevation (see Attachment C dated September 1, 2011). These revised plans show a relocation of the fence and gates whereby they are no longer in the front yard setback. The relocation of the fence and gate out of the required front yard setback results in the applicant no longer needing a special exception to the fence height regulations.

**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 on properties in all zoning districts except central area districts, the Deep Ellum/Near Eastside District, State-Thomas Special Purpose District, and 20-foot visibility triangles at drive approaches on properties in all zoning districts); 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 and revised elevation had been submitted that showed a “6' open iron picket fence” and what would potentially be portions of parked vehicles located in four 20' visibility triangles at the two drive approaches into the site from San Jacinito Street (see Attachment A).
- On August 5, 2010, the applicant submitted photos of the site and surrounding area (see Attachment B).
- On August 17, 2011, the Board heard testimony from the applicant and staff at the public hearing, and delayed action on the application until their September 21<sup>st</sup> public hearing in order for the applicant to possibly amend his site plan and/or elevation in order to address concerns raised by city engineers.

- On September 6, 2011, the applicant submitted additional information to staff – information that included a revised site plan and revised elevation (see Attachment C). These revised plans show a relocation of the fence and gates whereby they are no longer in the drive approach visibility triangles. The relocation of the fence and gate out of the visibility triangles results in the applicant only needing special exceptions to the visual obstruction regulations to potentially locate vehicles in the parking spaces shown on the revised site plan that are located in the four 20' visibility triangles at the two drive approaches into the site from San Jacinto Street

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a townhome development. The areas to the north, east, south, and west are developed with a mix of residential and nonresidential 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:**

- May 2, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- June 23, 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit
  - additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and



- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

- July 13, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- August 2, 2011: 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 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, and the Assistant City Attorney to the Board.
- August 4, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Inadequate information provided. Gates need to be 40 feet (or at least 20') from the street curb, no mention of automatic openers, fire access, or blocking the parking space. Did this shared access development have a plat and engineering plans?"
- August 5, 2011: The applicant forwarded additional information beyond what was submitted with the original application (see Attachment B).
- August 15, 2011: The Sustainable Development and Construction Department Project Engineer submitted a revised review comment sheet marked "Recommends that this be denied" with the following comments: "Proposed site plan would be a traffic hazard: 1) fences/gates would be added to the existing parking already in site triangles; 2) cars waiting to enter would block the sidewalk and/or the street. We have offered an alternative but the applicant is not agreeable."
- August 17, 2011: The Board heard testimony from the applicant and staff at the public hearing, and delayed action on the application until their September 21<sup>st</sup> public hearing in order for the applicant to possibly amend his site plan and/or elevation in order to address concerns raised by city engineers.
- September 6, 2011: The applicant forwarded additional information beyond what was submitted with the original application and what was submitted to the Board at the August 17<sup>th</sup> public hearing (see Attachment C).
- September 9, 2011: The Sustainable Development and Construction Department Project Engineer submitted a revised review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Update: We have no objection to the revised plan (dated after 8-30-11) showing the gates moved back more

than 20' from the street curb. We also recommend approval of the minor encroachment of the 4 existing parking spaces into the 20 x 20 visibility triangles.”

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

- The applicant had submitted a site plan and elevation with his application that created a need for a request for a special exception to the fence height regulations to construct and maintain a 6' high open iron picket fence and gates that was to be located in the front yard setback on a site developed with a townhome development. However, the applicant submitted a revised site plan and revised elevation (dated September 1, 2011) that shows a relocation of the fence and gates whereby they are no longer located in the front yard setback. As a result, the applicant no longer needs approval on the fence height special exception request.

**STAFF ANALYSIS (visual obstruction special exceptions):**

- The applicant had originally made requests for special exceptions to the visual obstruction regulations to locate and maintain a 6' high open iron picket fence/gates and vehicles that could potentially be parked in four 20' visibility triangles at two drive approaches into the site from San Jacinto Street. However, the applicant submitted a revised site plan and revised elevation (dated September 1, 2011) that shows a relocation of the fence and gates whereby they are no longer located in the visibility triangles. As a result, the applicant only needs approval from the Board on his visual obstruction special exception requests to allow would potentially be vehicles that if parked in spaces shown on the revised site plan in the four 20' visibility triangles at the two drive approaches into the site from San Jacinto Street
- The Sustainable Development and Construction Department Project Engineer has no objections to these requests (with the submitted revised site plan and elevation imposed as conditions) since the items in the visibility triangles would be minor encroachments of vehicles being located in the four existing parking spaces.
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain potentially portions of parked vehicles in four 20' drive approach visibility triangles into the site from San Jacinto Street will not constitute a traffic hazard.
- If the Board chooses to grant any or all of these requests, subject to compliance with the submitted revised site plan and revised elevation dated September 1, 2011, the items shown on these documents (in this case, parked vehicles) would be “excepted” into the 20' drive approach visibility triangles.

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2011**

**APPEARING IN FAVOR:** Shaun Feltner, 1610 Tribeca Way, Dallas, TX  
Richard Delgado, 1610 Soho LN., Dallas, TX  
Eric Williams, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Agnich

I move that the Board of Adjustment in Appeal No. **BDA 101-063**, hold this matter under advisement until **September 21, 2011**.

SECONDED: **Chernock**

AYES: 5–Gillespie, Chernock, Leone, Agnich, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 21, 2011**

APPEARING IN FAVOR: Shaun Feltner, 1610 Tribeca Way, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Chernock**

I move that the Board of Adjustment, in Appeal No. **101-063**, on application of Shaun Feltner, **deny** the special exception requested by this applicant **without prejudice**, because the applicant has relocated the fence and gate out of the required front yard setback and is no longer requesting a special exception to the fence height regulations.

SECONDED: **Wilson**

AYES: 5– Reynolds, Chernock, Wilson, Leone, Murrah

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 101-063**, on application of Shaun Feltner, **grant** the request of this applicant to maintain items in a visibility triangle 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 revised site plan and elevation dated September 1, 2011 is required.

SECONDED: **Wilson**

AYES: 5– Reynolds, Chernock, Wilson, Leone, Murrah

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Chernock**

I move to adjourn this meeting.

SECONDED: **Wilson**

AYES: 5– Reynolds, Chernock, Wilson, Leone, Murrah

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

**1:32 P.M.** - Board Meeting adjourned for **September 21, 2011.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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