

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, MARCH 20, 2012**

MEMBERS PRESENT AT BRIEFING: Jordan Schweitzer, Panel Vice-Chair, Johnnie Goins, regular member, Jim Gaspard, alternate member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM BRIEFING: Scott Hounsel, regular member

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

MEMBERS PRESENT AT HEARING: Jordan Schweitzer, Panel Vice-Chair, Johnnie Goins, regular member, Jim Gaspard, alternate member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM HEARING: Scott Hounsel, regular member

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

**11:30 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 20, 2012** 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 A **February 14, 2012** public hearing minutes as amended.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2012**

**MOTION:** Gaspard

I move **approval** of the Tuesday, **February 14, 2012** public hearing minutes.

**SECONDED:** Duarte

**AYES:** 4 – Schweitzer, Goins, Gaspard, Duarte

**NAYS:** 0 -

**MOTION PASSED:** 4– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 112-029

**REQUEST:** To reimburse the filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations – BDA 112-029.

**LOCATION:** 2128 Lolita Drive

**APPLICANT:** Gloria De La Cruz

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.

- In making this determination, the board may require the production of financial documents.

**Timeline:**

January 10, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" – BDA 112-029, an application for special exceptions to the fence height and visual obstruction regulations.

February 8, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

February 28, 2012: The applicant submitted a letter requesting reimbursement of the \$1,200.00 filing fee (see Attachment A).

February 29, 2012: The Board Administrator emailed the applicant's family member information related to the fee reimbursement request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2012**

**APPEARING IN FAVOR:** Marco A. De La Cruz, 2120 Lolita Dr., Dallas, TX

**APPEARING IN OPPOSITON:** No one

**MOTION:** Duarte

I move to **approve** reimbursement of the filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations – BDA 112-029.

**SECONDED:** Gaspard

**AYES:** 3 – Schweitzer, Gaspard, Duarte

**NAYS:** 1 - Goins

**MOTION PASSED:** 3– 1

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**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA 112-030

**REQUEST:** To reimburse the filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations – BDA 112-030

**LOCATION:** 2120 Lolita Drive

**APPLICANT:** Antonio De La Cruz

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.

**Timeline:**

January 10, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” – BDA 112-030, an application for special exceptions to the fence height and visual obstruction regulations.

February 8, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

February 28, 2012: The applicant submitted a letter requesting reimbursement of the \$1,200.00 filing fee (see Attachment A).

February 29, 2012: The Board Administrator emailed the applicant’s family member information related to the fee reimbursement request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2012**

**APPEARING IN FAVOR:** Marco A. De La Cruz, 2120 Lolita Dr., Dallas, TX

**APPEARING IN OPPOSITON:** No one

**MOTION:** Duarte

I move to **approve** reimbursement of the filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations – BDA 112-030.

**SECONDED:** Gaspard  
**AYES:** 3 – Schweitzer, Gaspard, Duarte  
**NAYS:** 1 - Goins  
**MOTION PASSED:** 3– 1

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**FILE NUMBER:** BDA 112-024

**BUILDING OFFICIAL’S REPORT:**

Application of Clint V. Nolen, represented by Brandon Davenport, for a variance to the side yard setback regulations at 5547 Del Roy Drive. This property is more fully described as Lot 6 in City Block 10/6383 and is zoned R-16(A), which requires a side yard setback of 10 feet. The applicant proposes to maintain a structure and provide a 9 foot 3 inch side yard setback, which will require a variance of 9 inches.

**LOCATION:** 5547 Del Roy Drive

**APPLICANT:** Clint V. Nolen  
Represented by Brandon Davenport

**REQUEST:**

- A variance to the side yard setback regulations of 9” is requested in conjunction with obtaining a final building permit on a recently remodeled single family home, a portion of which is located in the site’s western 10’ side yard setback.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with submitted site plan is required.

Rationale:

- The applicant has substantiated how the subject site is unique and different from most lots zoned R-16(A) given its irregular shape and the fact that the property has more restrictive front and side yard platted building lines than that of what is required of the zoning district. (The subject site has a 40’ front yard platted building line when the zoning requires a 30’ setback, and a 20’ side yard platted building line when the zoning requires a 10’ setback).
- The applicant has substantiated how the house on the subject site is proportionate to or of similar size/scale of other “surrounding new construction/remodels” in the area, specifically how the home on the subject site has of 5,171 square feet compared to the average of 23 other new construction/remodels in the area with an average of approximately 5,500 square feet.

**STANDARD FOR A VARIANCE:**

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

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

### **GENERAL FACTS:**

- The minimum side yard setback on an R-16(A) zoned lot is 10 feet. The applicant has submitted a survey plat indicating a structure that is located as close as 9.4' (or 9' 3") from the site's western side property line (or 9" into the required 10' side yard setback).
- The site is flat, somewhat irregular in shape (approximately 120' on the north, approximately 100' on the south, approximately 146' on the east, and approximately 153' on the west), and is (according to the application) 0.39 acres (or approximately 17,000 square feet) in area. The plat map of the site indicates that the property has a 40' platted building line along Del Roy Avenue, and a 20' platted building line along Nuestra Drive. (The R-16(A) zoning district would require a 35' front yard setback along Del Roy Drive and a 10' side yard setback along Nuestra Drive). The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- According to DCAD records, the property at 5547 Del Roy has the following improvements:
  - "main improvement" built in 1955 with 5,933 square feet of living area, and 5,388 square feet of total area; and
  - "additional improvement" – 529 square foot attached garage.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A).

### **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-16(A) (Single family district 16,000 square feet)

### **Land Use:**

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

### **Zoning/BDA History:**

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

### **Timeline:**

November 14, 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 8, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

February 8, 2012: 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 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 1, 2012: The applicant's representative submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 6, 2012: 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 Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorneys to the Board.

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

**STAFF ANALYSIS:**

- This request focuses on obtaining a final building permit on a recently remodeled single family home, a portion of which is located in the site's western 10' side yard setback.
- According to the applicant, the submitted site plan indicates that the area of the structure that is located in the site's western 10' side yard setback is approximately 1.2 square feet (or approximately 0.027 percent) of the approximately 4,472 square foot building footprint. (Submitted floors plans show that the area of the home in the side yard setback is a portion of the master bath on the first floor, and a portion of guest bath on the second floor).
- The site is flat, somewhat irregular in shape (approximately 120' on the north, approximately 100' on the south, approximately 146' on the east, and approximately 153' on the west), and is (according to the application) 0.39 acres (or approximately 17,000 square feet) in area. The plat map of the site indicates that the property has a 40' platted building line along Del Roy Avenue, and a 20' platted building line along Nuestra Drive. (The R-16(A) zoning district would require a 35' front yard setback along Del Roy Drive and a 10' side yard setback along Nuestra Drive). The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) (Single family) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) (Single family) zoning classification.
- If the Board were to grant the side yard variance of 9", imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into this setback would be limited to that shown on the site plan which in this case is a portion of an existing single family home that is located 9' 3" from the western side property line or 9" into this 10' side yard setback.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2012**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Gaspard**



I move that the Board of Adjustment grant application **BDA 112-024** 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 is required.

**SECONDED: Goins**

**AYES:** 4 – Schweitzer, Goins, Gaspard, Duarte

**NAYS:** 0 -

**MOTION PASSED:** 4– 0(unanimously)

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**FILE NUMBER:** BDA 112-029

**BUILDING OFFICIAL’S REPORT:**

Application of Gloria De La Cruz for special exceptions to the fence height and visual obstruction regulations at 2128 Lolita Drive. This property is more fully described as Lot 14A in City Block B/6185 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to maintain a 6 foot 2 inch high fence in a required front yard, which will require a 2 foot 2 inch special exception to the fence height regulations, and to maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 2128 Lolita Drive

**APPLICANT:** Gloria De La Cruz

**REQUESTS:**

- The following appeals have been made on a site that is currently developed with a single family home:
  1. A special exception to the fence height regulations of 2’ 2” is requested in conjunction with maintaining a 4’ 4” high open picket fence with two arched 4’ 4” - 6’ 2” high open picket gates in the site’s front yard setback; and
  2. special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the aforementioned fence and one of the two sliding gates in the 20-foot visibility triangles on either side of the driveway into the site from Lolita Drive.

(Note that this application abuts a property to the south where a member of the same family as this application seeks similar fence height and visual obstruction special exception requests of the Board of Adjustment Panel A: BDA 112-030).

**STAFF RECOMMENDATION (fence height special exception):**

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

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

Approval of the requests, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.
- The applicant has substantiated how the location of the items (open picket fence and open picket sliding gate) in the 20-foot visibility triangles on either side of the driveway into the site from Lolita 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 Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation of the proposal/existing fence in the front yard setback that reaches a maximum height of 6' 2".
- 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 represented on the site plan as being approximately 120' in length parallel to Lolita Drive and approximately 25' perpendicular to Lolita Drive on the north and south sides of the site in the front yard setback.
  - The proposal is shown to be located on the site's front property line or 12' from the curb line.

**GENERAL FACTS (visual obstruction special exceptions):**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight 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 and elevation has been submitted indicating an approximately 10' lengths of the open picket 4' 4" high fence with open picket 4' 4" - 6' 2" gate in the 20-foot visibility triangles on either side of the driveway into the site from Lolita Drive.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

- |   |   |
|---|---|
| 1. Miscellaneous Item #2, BDA 112-030, Property at 2128 Lolita Drive (the subject site)   | On March 20, 2012, the Board of Adjustment Panel A will consider a request to reimburse the filing fee submitted in conjunction with this application.  |
| 2. BDA 112-030, Property at 2120 Lolita Drive (the lot immediately south of subject site) | On March 20, 2012, the Board of Adjustment Panel A will consider requests for special exceptions to the fence height and visual obstruction regulations requested in conjunction with maintaining a 4' 4" high open picket fence with two arched 4' 4" - 6' 2" high open picket gates in the site's front yard setback; and maintaining portions of the aforementioned fence and one of the aforementioned sliding gates in the 20-foot visibility triangles on either side of the northern driveway and on one side of the |

southern driveway into the site from Lolita Drive.

**Timeline:**

- January 10, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 8, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- February 9, 2012: The Board Administrator emailed a family member of the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 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 requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 6, 2012: 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 Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorneys to the Board.
- March 8, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

**STAFF ANALYSIS (fence height special exception):**

- This request focuses on maintaining a 4’ 4” high open picket fence with two arched 4’ 4” - 6’ 2” high open picket gates in the site’s front yard setback on a site developed with a single family home.
- 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 at approximately 120’ in length parallel to the street and approximately 25’ perpendicular on the north

and south sides of the site in the front yard setback. The proposal is shown to be located on the site's front property line or 12' from the curb line.

- Two single family home "front" to the existing fence on the subject site, neither of which have fences.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences other than the fence to the south that is the issue at hand of BDA 112-030 significantly above four feet high that appeared to be located in a front yard setback.
- As of March 12, 2012, 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 2' 2" will not adversely affect neighboring property.
- Granting this special exception of 2' 2" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback (in this case, an existing fence) to be maintained in the location and of the height and material as shown on these documents.

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

- The requests for special exceptions to the visual obstruction regulations focus on maintaining portions of the aforementioned fence and one of the two sliding gates in the 20-foot visibility triangles on either side of the driveway into the site from Lolita Drive.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain an open picket fence and gate in the visibility triangles at the drive approaches into the site from Lolita Drive does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the items in the 20-foot visibility triangles on either side of the driveway into the site from Lolita Drive would be limited to the location, height and materials of those items as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2012**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 112-029** 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: Goins**

**AYES:** 4 – Schweitzer, Goins, Gaspard, Duarte

**NAYS:** 0 -

**MOTION PASSED:** 4– 0(unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 112-030

**BUILDING OFFICIAL’S REPORT:**

Application of Antonio De La Cruz for special exceptions to the fence height and visual obstruction regulations at 2120 Lolita Drive. This property is more fully described as Lot 16 in City Block B/6185 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to maintain a 6 foot 2 inch high fence in a required front yard, which will require a 2 foot 2 inch special exception to the fence height regulations, and to maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 2120 Lolita Drive

**APPLICANT:** Antonio De La Cruz

**REQUESTS:**

- The following appeals have been made on a site that is currently developed with a single family home:
  1. A special exception to the fence height regulations of 2’ 2” is requested in conjunction with maintaining a 4’ 4” high open picket fence with two arched 4’ 4” - 6’ 2” high open picket gates in the site’s front yard setback; and
  2. special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the aforementioned fence and one of the aforementioned sliding gates in the 20-foot visibility triangles on either side of the northern driveway and on one side of the southern driveway into the site from Lolita Drive.

(Note that this application abuts a property to the north where a member of the same family as this application seeks similar fence height and visual obstruction special exception requests of the Board of Adjustment Panel A: BDA 112-029).

**STAFF RECOMMENDATION (fence height special exception):**

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

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

Approval of the requests, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to these requests.
- The applicant has substantiated how the location of the items (open picket fence and open picket sliding gate) in the 20-foot visibility triangles on either side of the northern driveway and on one side of the southern driveway into the site from Lolita 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 Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation of the proposal/existing fence in the front yard setback that reaches a maximum height of 6'. (The applicant has requested a 2' 2" special exception nonetheless with an assumption made that the gates may reach 6' 2" in height regardless of the 6' height denoted on the submitted elevation).
- 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 represented on the site plan as being approximately 100' in length parallel to Lolita Drive and approximately 25' perpendicular to Lolita Drive on the north side of the site in the front yard setback.
  - The fence and northern gate is shown to be located on the site's front property line or 10' from the curb line; the southern gate is shown to be located 21' from the property line or 31' from the curb line.
- Two single family home "front" to the existing fence on the subject site, neither of which have fences.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences other than the fence to the north that is the issue at hand of BDA 112-029 significantly above four feet high that appeared to be located in a front yard setback.

**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 street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight 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 and elevation has been submitted indicating an approximately 10' lengths of the open picket 4' 4" high fence with open picket 4' 4" - 6' 2" gate in the 20-foot visibility triangles on either side of the northern driveway and on one side of the southern driveway into the site from Lolita Drive.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

- |   |  |
|---|--|
| 1. Miscellaneous Item #3, BDA 112-030, Property at 2120 Lolita Drive (the subject site)   | On March 20, 2012, the Board of Adjustment Panel A will consider a request to reimburse the filing fee submitted in conjunction with this application.               |
| 2. BDA 112-029, Property at 2128 Lolita Drive (the lot immediately north of subject site) | On March 20, 2012, the Board of Adjustment Panel A will consider requests for special exceptions to the fence height and visual obstruction regulations requested in |



conjunction maintaining a 4' 4" high open picket fence with two arched 4' 4" - 6' 2" high open picket gates in the site's front yard setback, and maintaining portions of the aforementioned fence and one of the two sliding gates in the 20-foot visibility triangles on either side of the driveway into the site from Lolita Drive.

### **Timeline:**

- January 10, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- February 8, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- February 9, 2012: The Board Administrator emailed a family member of the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 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 requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 6, 2012: 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 Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorneys to the Board.
- March 8, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

### **STAFF ANALYSIS (fence height special exception):**

- This request focuses on maintaining a 4' 4" high open picket fence with two arched 4' 4" - 6' 2" high open picket gates in the site's front yard setback on a site developed with a single family home.
- 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 at approximately 100' in length parallel to the street and approximately 25' perpendicular on the north side of the site in the front yard setback. The fence and northern gate is shown to be located on the site's front property line or 10' from the curb line; the southern gate is shown to be located 21' from the property line or 31' from the curb line.
- Two single family home "front" to the existing fence on the subject site, neither of which have fences.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences other than the fence to the north that is the issue at hand of BDA 112-029 significantly above four feet high that appeared to be located in a front yard setback.
- As of March 12, 2012, 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 2' 2" will not adversely affect neighboring property.
- Granting this special exception of 2' 2" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback (in this case, an existing fence) to be maintained in the location and of the height and material as shown on these documents.

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

- The requests for special exceptions to the visual obstruction regulations focus on maintaining portions of the aforementioned fence and one of the aforementioned sliding gates in the 20-foot visibility triangles on either side of the northern driveway and on one side of the southern driveway into the site from Lolita Drive.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain an open picket fence and gate in the visibility triangles at the drive approaches into the site from Lolita Drive does not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the items in the 20-foot visibility triangles on either side of the northern driveway and on one side of the southern driveway into the site from Lolita Drive would be limited to the location, height and materials of those items as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2012**

APPEARING IN FAVOR:            No one

APPEARING IN OPPOSITON: No one

MOTION: **Gaspard**

I move that the Board of Adjustment grant application **BDA 112-030** 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: **Goins**

AYES: 4 – Schweitzer, Goins, Gaspard, Duarte

NAYS: 0 -

MOTION PASSED: 4– 0(unanimously)

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MOTION: **Goins**

I move to adjourn this meeting.

SECONDED: **Duarte**

AYES: 4–Schweitzer, Goins, Gaspard, Goins

NAYS: 0 -

MOTION PASSED 4– 0 (unanimously)

**1:49 P.M.** - Board Meeting adjourned for **March 20, 2012.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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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.