

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, 6ES
TUESDAY, MAY 20, 2014**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Larry French, regular member, Hector Leija, regular member, Mark Rieves, regular member, and Philip Lewis, alternate member

MEMBERS ABSENT FROM BRIEFING: Lindsey Williams, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief, Arborist Ali Hatefi, Engineer and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Larry French, regular member, Lindsey Williams, regular member, Hector Leija, regular member and Mark Rieves, regular member, and Philip Lewis, alternate member

MEMBERS ABSENT FROM HEARING: Lindsey Williams, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator
Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief, Arborist Ali Hatefi, Engineer and Trena Law, Board Secretary

11:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 20, 2014** docket.

1:01 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **April 22, 2014** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2014

MOTION: French

I move **approval** of the Tuesday, **April 22, 2014** public hearing minutes.

SECONDED: Rieves

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-026

BUILDING OFFICIAL’S REPORT: Application of J. Jared Day for special exceptions to the fence height and visual obstruction regulations at 5931 Boca Raton Drive. This property is more fully described as Lot 11, Block 13/6383 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct/maintain an 8 foot high fence, which will require a 4 foot special exception to the fence height regulations, and to locate/maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 5931 Boca Raton Drive

APPLICANT: J. Jared Day

May 20, 2014 Public Hearing Notes:

- A person appearing on behalf of the applicant submitted additional written documentation to the Board at the public hearing.

REQUESTS:

The following requests have been made on a site that is currently developed with a single family home/use:

1. A special exception to the fence height regulations of 4’ is made to maintain an 8’ high solid board-on-board wood fence in site’s 35’ front yard setback.
2. A special exception to the visual obstruction regulations is made to maintain a portion of the aforementioned 8’ high solid wood fence and “vegetation” in the 45’ visibility triangle at the intersection of Boca Raton Drive and Preston Road.

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.

STAFF RECOMMENDATION (fence height):

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):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objection to this request.
- The applicant has substantiated how maintaining a portion maintaining a portion of an 8’ high solid wood fence and “vegetation” (noted on an elevation to be an average height of 12’) in the 45’ visibility triangle at the intersection of Boca Raton Drive and Preston Road does not constitute a traffic hazard.

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, south, east, 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:

February 7, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 14, 2014: 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 April 30th deadline to submit additional evidence for staff to factor into their analysis; and the May 9th 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.”

May 6, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

May 8, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant’s request for a special exception to the visual obstruction regulations marked “Has no objections.”

GENERAL FACTS/STAFF ANALYSIS (fence height):

- This request focuses on maintaining an 8’ high solid board-on-board wood fence in the site’s 35 front yard setback on a site developed with a single family home/use.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.

- The site is located at the northwest corner of Boca Raton Drive and Preston Road. The site has a 35' front yard setback along Boca Raton Drive, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in a single-family zoning district. The site also has a side yard setback along Preston Road, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where only a 10' setback is required and where a 9' high fence can be constructed and maintained by right.
- The applicant has submitted a site plan and elevations of the proposal in the front yard setback that reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 42' in length angled at the intersection of Boca Raton Drive and Preston Road.
 - The proposal is represented as being located approximately on the Boca Raton Drive front property line and about 6' from the Preston Road side property line, or about 12' from the pavement lines of both streets.
- The site plan shows the fence location and unmarked circles adjacent to the fence that appears to be a representation of average 12' "vegetation" that is shown on a submitted elevation.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high which appeared to be located in a front yard setback.
- One home fronts the proposal on Boca Raton Drive, a property with no fence in its front yard setback.
- As of May 12, 2014, no letters have been submitted in support of the request and one letter has been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction):

- This request focuses on maintaining a portion of an 8' high solid wood fence and "vegetation" (noted on an elevation to be an average height of 12') in the 45' visibility triangle at the intersection of Boca Raton Drive and Preston Road.
- The Dallas Development Code states the following: 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 elevations have been submitted indicating portions of an 8' high solid board-on-board wood fence and "vegetation" in the 45' visibility triangle at the intersection of Boca Raton Drive and Preston Road.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant's request for a special exception to the visual obstruction regulations marked "Has no objections."
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to maintain portions of an 8' high solid wood fence and "vegetation" in the 45' visibility triangle at the intersection of Boca Raton Drive and Preston Road does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevations would require the items (an 8' high solid wood fence and "vegetation" in the 45' visibility triangle at the intersection of Boca Raton Drive and Preston Road) to be limited to and maintained in the locations, height and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2014

APPEARING IN FAVOR: Teresa Bunk, 112 Westview, Ft. Worth, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **French**

I move that the Board of Adjustment, in request No. **BDA 134-026**, on application of J. Jared Day, **grant** the request to construct and maintain an 8-foot high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Rieves**

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

MOTION #2: **French**

I move that the Board of Adjustment, in request **No. BDA 134-026**, on application of J. Jared Day, **grant** the request to maintain items in the visibility triangle as special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Rieves

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-042

BUILDING OFFICIAL'S REPORT: Application of Robert Reeves for a special exception to the landscape regulations at 100 Crescent Court. This property is more fully described as Lot 1A, Block 2/948, and is zoned PD-193(HC), which requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 100 Crescent Court

APPLICANT: Robert Reeves

May 20, 2014 Public Hearing Notes:

- The Board Administrator circulated additional written documentation submitted by the applicant to the Board at the briefing (see Attachment C).

REQUEST:

A special exception to the landscape regulations is made to construct and maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Delay action until Panel A's June 24, 2014 public hearing

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request to delay action on this application until Panel A's June 24th public hearing given that the applicant stated he intends revise his alternate landscape plan.

BACKGROUND INFORMATION:

Site: PD 193(HC) (Planned Development, Heavy Commercial)
North: PD 193(HC) (Planned Development, Heavy Commercial)
South: PD 193 (PDS 334) (Planned Development, Planned Development)
East: PD 193(PDS 64) (Planned Development, Planned Development)
West: PD 193(PDS 74) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a mixed use development (The Crescent). The areas to the north, east, south, and west are developed with a mix of land uses.

Zoning/BDA History:

- | | |
|---|--|
| 1. BDA 81-239, 239, Property at 2304 Cedar Springs Road (the subject site) | On October 13, 1981, the Board of Adjustment granted a 599 parking space variance, subject to a parking study to be conducted approximately one year after initial completion of the project |
| 2. BDA 81-239A, Property at 100, 200, 300, 400, and 500 Crescent Court (the subject site) | On February 14, 1988, the Board of Adjustment granted a request for “a 599 parking space variance and eliminate the set-aside land provisions subject to a TMP program as per the memo from Ken Melston, Manager of Transportation Engineering Services. |

Timeline:

- March 12, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 14, 2014: The Board Administrator emailed the following information to the applicant:
- an attachment that provided the public hearing date and panel that will consider the application; the April 30th deadline to

submit additional evidence for staff to factor into their analysis; and the May 9th 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."

April 29, 2014: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 6, 2014 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

May 9, 2014: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

May 9, 2014: The City of Dallas Chief Arborist emailed the Board Administrator of his support of the applicant's request to delay this matter until June where he would hold formal comments until a final revised alternate landscape plan has been submitted (see Attachment C).

GENERAL FACTS/ STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The applicant has requested that this application be delayed until Panel A's June 24th public hearing "to allow his client to go back before the Oak Lawn Committee in June with a revised alternate landscape plan and address their issues."
- The City of Dallas Chief Arborist supports the applicant's request for delay of action on this application until June of 2014.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2014

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

APPEARING IN OPPOSITION: No one

MOTION: Leija

I move that the Board of Adjustment, in Appeal No. **BDA 134-042**, hold this matter under advisement until June 24, 2014.

SECONDED: Lewis

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 134-043

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin for a special exception to a special exception to the single family use regulations to authorize more than one electrical utility service or electrical meter and a variance to the front yard setback regulations at 10349 Strait Lane. This property is more fully described as Lot 11, Block D/5532, and is zoned R-1ac(A), which requires that a single family dwelling use in a single family, duplex, or townhouse district may be supplied by not more than one electrical utility service, and metered by not more than one electrical meter and requires a front yard setback of 40 feet. The applicant proposes to have an additional electrical utility service or electrical meter on a lot with a single family use, which will require a special exception to the single family use regulations; and to construct/maintain a structure and provide a 29 foot front yard setback, which will require an 11 foot variance to the front yard setback regulations.

LOCATION: 10349 Strait Lane

APPLICANT: Robert Baldwin

REQUESTS:

The following requests have been made on a site that is currently developed with a single family home:

1. A special exception to the single family use regulations is requested in conjunction with maintaining an additional electrical meter on the site.
2. A variance to the front yard setback regulations of 11' is requested to construct and maintain an approximately 160 square foot (approximately 20' x 8') generator structure, all of which is proposed to be located in site's 40' front yard setback.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL ELECTRICAL UTILITY SERVICE AND ELECTRICAL METER:

The board may grant a special exception to authorize more than one electrical utility service and/or more than one electrical meter for a single family use on a lot in a single family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

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:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) 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.

STAFF RECOMMENDATION (special exception):

No staff recommendation is made on this or any request for a special exception to authorize more than one electrical utility service and/or more than one electrical meter for a single family use on a lot in a single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the special exception will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- While the lot is “L” shaped, the applicant has not substantiated how this feature or its slope (the site is flat) or its restrictive size (almost 1.5 acres in area in a zoning district where lots are typically 1 acre in area) preclude him from developing it in a manner commensurate with other developments in the same R-1ac(A) zoning. Even with the assumption that lots are developed with generator structures, the applicant has not documented why the proposed generator structure could not be located somewhere else on the flat, relatively large lot while simultaneously being in compliance with its one front yard, one rear yard, and two side yard setback requirements.

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/use. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 123-109, Property at 10349 Strait Lane (the subject site)

On November 19, 2013, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 5’ and imposed the submitted revised site plan/elevation as a condition to the request. The case report states that the request was made to construct/maintain a fence in the site’s 40’ front yard setback on a site that is currently undeveloped – a 6’ high open iron picket fence with 6.6’ high masonry columns with a 6’ – 8.5’ high open metal picket gate flanked by 9’ high, approximately 12’ long solid masonry wing walls with 9’ high masonry entry columns.

2. BDA 067-111, Property at 10349 Strait Lane (the northern portion of the subject site) On August 14, 2007, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations of 15 feet and imposed the submitted revised scaled site plan as a condition. The case report stated that the request was made to construct and maintain a carport structure in the site's Kelsey Road 40' front yard setback on as site developed with a single family home.
3. BDA 093-063, Property at 10349 Strait Lane (the northern subject site) On April 27, 1993, the Board of Adjustment granted a request for a special exception to the fence height regulations of 4' 3" to maintain "a 6' wrought iron fence with an 8' high gate and columns of 6.5' as amended." The case report stated that the request was made to construct a 6' high open wrought iron fence with 6' 5" high brick columns along Strait Lane and Kelsey Road.

Timeline:

- March 24, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- April 14, 2014: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application as originally submitted as a special exception to the single family use regulations; the April 30th deadline to submit additional evidence for staff to factor into their analysis; and the May 9th 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.
- April 30, 2014: The applicant submitted amended his application by adding a variance to the front yard setback regulations, and submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

April 30, 2014: The Board Administrator emailed the applicant the following additional information on his amended application:

- the criteria/standard that the board will use in their decision to approve or deny the variance request.

May 1, 2014: The Board Administrator emailed the applicant the following information:

- The fact that before applications area assigned at City Hall to one of the three board panels, in order to adhere to the code provisions (51. 3.102(b)) and board's rules (Section 9(k)) (attached), a determination is made as to whether there is history on the site, and if so, what type of board application was applied for on the subject site.
- When the May applications were forwarded here to City Hall, history was checked at 10349 Strait Lane and assessed from the map that there was no history related to what had originally been applied for in conjunction with BDA 134-043 – a special exception to the single family regulations for an additional electric meter; and that as a result, the application as originally submitted for just a special exception was randomly assigned for Panel A's May 20th docket on April 14th.
- However, on April 30th, when the applicant added a front yard variance to this application, that the Board Administrator re-checked to see if there was any VARIANCE history on the property and discovered that there was.
- The front yard variance request from 2007 (BDA 067-111) was heard by Panel A so the subsequent case on this property re-filed concerning the same request (front yard variance) coincidentally/luckily could stay as scheduled with Panel A.
- The Board Administrator asked the applicant to look at the information regarding the 2007 case (and the imposed condition) that he had attached and establish for the record *no later than May 2nd* that the action on this property in 2007 in no way implicated the variance request that he made on this property. (The site plan imposed as a condition in 2007 shows a "proposed open-sided porte cochere" in the Kelsey Road front yard setback; the site plan submitted on April 30th did not).

May 5, 2014: The Board Administrator emailed the applicant the following information:

- As he knew, the staff review team meeting was May 6th at 1:30 pm and though technically the deadline for additional submittals that he was given on April 14th for staff review purposes was noon, April 30th, that an amended plan that the applicant referenced would be forthcoming that accurately depicted the location and size of the previously granted porte cochere/caport in the site's Kelsey Road front yard setback in 2007 would be

accepted and taken to the staff review team meeting if one were submitted by the end of the day May 5th.

- And discussed the morning of May 5th with regard to the point in the applicant's April 30th letter, the Board Administrator's understanding from discussions he had with other staffers is that this property has ONE front yard setback on Kelsey Road, and that the statement in the applicant's letter that the "property is encumbered by two (2) front yard setbacks" is incorrect.

May 6, 2014:

The Board Administrator emailed the applicant the following information about assumptions being made with regard to the site plan the applicant submitted on April 30th:

- This plan does not accurately represent the location of the porte cochere/carport that was granted variance and conditioned to a site plan in 2007.
- Regardless of the representations on the site plan, there is no part of THIS application that would require variance to any structure on the property other than what is labeled "proposed generator location" in this site's front yard setback.
- Given that the board typically imposes a site plan as a condition to variance request, as the applicant wrote on May 2nd, he plans on submitting a revised site plan to the board by the end of this week (if he wants it to be included in the docket) or at their May 20th public hearing that will accurately convey the location of the porte cochere/carport that was granted variance in 2007 – a location and size on a to-be-submitted site plan that matches what was shown on the 2007 site plan.
- This plan does not show the location of either of the two electric meters on the replatted site.

May 6, 2014 :

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

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

May 9, 2014:

The applicant submitted additional documentation on this application beyond what was submitted with the original application and beyond what was discussed at the May 6th staff review team meeting (see Attachment B). This information included a revised site plan and an email stating that "According to the architect this

plan does accurately show the location of the porte cochre and this application is not asking for anything related to this structure.”

GENERAL FACTS/STAFF ANALYSIS (special exception):

- This request focuses on maintaining a second electrical meter on a site developed with a single family home/use.
- The Dallas Development Code states that in R-1ac(A) zoning, a lot for a single family use may be supplied by not more than one electrical service, and metered by not more than one electrical meter.
- The applicant has submitted a revised site plan that indicates the location of the two electrical meters on the subject site.
- The application states that the property was two lots where were recently replatted into a single lot, and that the pool house and green house that were originally located on the lot originally known as 10341 Strait Lane has an electric meter as does the original house on 10349 Strait Lane. The applicant states that the owner would like to keep both meters on the lot so he does not have to rewire the property.
- The applicant has the burden of proof in establishing that the additional electrical meter to be installed and/or maintained on the site will: 1) not be contrary to the public interest; 2) not adversely affect neighboring properties; and 3) not be used to conduct a use not permitted in the zoning district.

GENERAL FACTS/STAFF ANALYSIS (variance):

- This request focuses on constructing and maintaining an approximately 160 square foot (approximately 20' x 8'), approximately 4' high generator structure, all of which is proposed to be located in the site's 40' front yard setback on Kelsey Road on a site developed with a single family home/use.
- Structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'.
- The site is located on the southwest corner of Strait Lane and Kelsey Road. The site has one 40' front yard setback. The site has a 40' front yard setback along Kelsey Road because it is the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single-family zoning district. Regardless of the orientation of the house on the property which fronts Strait Lane, and was which constructed prior to a recent replat of the property when Strait Lane on this corner property was front yard, the site now has after replat of the subject site, a 10' side yard setback along Strait Lane, the longer of the two frontages of this corner where there is no longer (given the recent replat of the subject site) continuity of the established front yard setback to maintain along Strait Lane between Dorset Lane and Kelsey Road.
- The submitted revised site plan denotes that the “proposed generator location” approximately 39' from the site's front property line or 11' into this 40' front yard setback.
- According to calculations taken from the site plan, the entire approximately 160 square foot generator structure is located in the site's 40' front yard setback.
- The subject site is flat, “L” shaped, and according to the application is 1.45 acres in area. The site is zoned R-1ac(A) where lots typically are 1 acre in area.

- According to DCAD records, the “main improvements” at 10349 Strait Lane is a structure built in 1993 with 10,121 square feet of living area and 10,121 square feet of total area. The “additional improvements” at this address include: a tennis court, an 800 square foot cabana, a 160 square foot cabana, a 513 square foot greenhouse, a 24 square foot outbuilding, an 807 square foot detached garage, a pool, a 606 square foot cabana, and a 280 square foot detached carport.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) 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-1ac(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted revised site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is an approximately 160 square foot generator structure located 29’ from the site’s front property line (or 11’ into the site’s 40’ front yard setback).

BOARD OF ADJUSTMENT ACTION: MAY 20, 2014

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Nolen**

I move that the Board of Adjustment, in request **No. BDA 134-043**, on application of Robert Baldwin, **grant** the request to install and maintain an additional electrical meter on a site developed with a single family structure and use as a special exception to the single family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not will not be contrary to the public interest, will not adversely affect neighboring property, and will not be used to conduct a use not permitted in the district where the building site is located.

SECONDED: **French**

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Nolen

I move that the Board of Adjustment, in request **No. BDA 134-043**, on application of Robert Baldwin, **grant** an 11-foot variance to the front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: Rieves

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 134-045

BUILDING OFFICIAL’S REPORT: Application of Peter F. Hennessey for a special exception to the fence height regulations at 4989 Shadywood Lane. This property is more fully described as Lot 6, Block 2/5575, 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/maintain a 7 foot high fence, which will require a 3 foot special exception to the fence height regulations.

LOCATION: 4989 Shadywood Lane

APPLICANT: Peter F. Hennessey

May 20, 2014 Public Hearing Notes:

- The applicant and neighboring citizens submitted additional written documentation to the Board at the public hearing.

REQUEST:

A request for a special exception to the fence height regulations of 3’ is made to construct and maintain a 6’ high solid masonry fence with 7’ high masonry columns, and a 6’ maximum high vehicular and pedestrian gates in the site’s 40’ front yard setback along Briarwood Lane on a site developed with a single family home/use.

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.

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.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home. The areas to the north, south, east, 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:

February 20, 2014: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 14, 2014: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

April 14, 2014: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 30th deadline to submit additional evidence for staff to factor into their analysis; and the May 9th 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."

April 29, 2014: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 6, 2014 : The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Interim Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Senior Engineer, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining 6' high solid masonry fence with 7' high masonry columns, and a 6' maximum high vehicular and pedestrian gates in the site's 40' front yard setback along Briarwood Lane on a site developed with a single family home/use.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- Structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'.
- The site is located on the west corner of Briarwood Lane and Shadywood Lane. The site has one front yard setback. The site has a 40' front yard setback along Briarwood Lane because it is the shorter of the two frontages. The site has a 10' side yard setback along Shadywood Lane, the longer of the two frontages where a 9' high fence can be erected by right. The site's Shadywood Lane frontage is a side yard since it is the longer of the two frontages of the property and there is no continuity of an established front yard setback to maintain along Shadywood Lane.
- The applicant has submitted a site plan and partial elevation of the proposal in the front yard setback that reaches a maximum height of 7.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 190' in length parallel to the curved Briarwood Lane.
 - The proposal is represented as being located approximately 4' from the front property line or about 16' from the pavement line.
- The applicant has submitted a revised site plan with notations of certain landscape materials adjacent to the proposal of which includes a row of "30 gal. chindo viburnum 6' tall" between the proposed fence and the front property line.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high which appeared to be located in a front yard setback. (Note that several tall fences were noted on the eastern side of Briarwood Lane adjacent to the site, however, it appears that many if not all of these lots' Briarwood Lane frontages are side yards where 9' high fences can be constructed and maintained by right.
- No home fronts the proposal.
- As of May 12, 2014, no letters have been submitted in support of the application and two letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 3' will not adversely affect neighboring property.
- Granting this special exception of 3' with a condition imposed that the applicant complies with the submitted site plan and partial elevation would require the proposal exceeding 4' in height to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MAY 20, 2014

APPEARING IN FAVOR:

Jorie Brown, 1417 W. Main, Carrollton, TX
 Lori Wales, 4989 Shadywood Lane, Dallas, TX
 Allen Nixon, 4207 Irvin Simmons, Dallas, TX
 James Wales, 4989 Shadywood Lane, Dallas, TX

APPEARING IN OPPOSITION:

Rue Henry, 4803 Shadywood, Dallas, TX
 Robert Ted Enloeh, 8823 Briarwood, Dallas, TX
 Joe Werner, 4400 Bluffview, Dallas, TX
 Star Boetticher, 4716 Cherokee Tr., Dallas, TX
 Pat White, 4714 Wildwood Rd, Dallas, TX
 Nancy Kenty, 8723 Canyon Dr., Dallas, TX
 Carl Schwalm, 4807 Bluffview, Dallas, TX
 Darlene Cass, 8707 Briarwood, Dallas, TX

MOTION #1: French

I move to suspend the rule and accept the evidence that is being presented to us today.

SECONDED: Rieves

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

MOTION #2: Rieves

I move that the Board of Adjustment, in Appeal **No. BDA 134-045**, on application of Peter F. Hennessey, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: French

AYES: 4 – Nolen, French, Rieves, Lewis

NAYS: 1 - Leija

MOTION PASSED: 4 – 1

MOTION: Rieves

I move to adjourn this meeting.

SECONDED: French

AYES: 5 – Nolen, French, Leija, Rieves, Lewis

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

2:31 P. M.: - Board Meeting adjourned for **May 20, 2014.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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