

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
WEDNESDAY, JUNE 16, 2010**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member, David Wilson, regular member

MEMBERS ABSENT FROM HEARING: No one

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

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

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 16, 2010 docket.**

1:05 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 B May 19, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 16, 2010

MOTION: Wilson

I move approval of the Wednesday, **May 19, 2010** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 090-065

BUILDING OFFICIAL'S REPORT:

Application of Gabriel Hawthorne of Buford Builders for a variance to the front yard setback regulations 5915 Deloache Avenue. This property is more fully described as Lot 12 in City Block B/5616 and is zoned R-1ac(A) which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure (generator) and provide a 7 foot front yard setback which will require a variance of 33 feet.

LOCATION: 5915 Deloache Avenue

APPLICANT: Gabriel Hawthorne of Buford Builders

REQUEST:

- A variance to the front yard setback regulations of 33' is requested in conjunction with constructing and maintaining a "generator" structure on a site developed with a single family home, all of which would be located in one of the site's two 40' front yard setbacks (DeLoache Avenue).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned R-1ac(A) in that it has two 40' front yard setbacks - most residentially-zoned lots have one front yard setback. In addition to there being two front yard setbacks, the applicant has documented other physical site constraints on the lot that create hardship - a large pond on the western side of the subject site that 28 storm drains feed into for the City of Dallas, as well as property west of this pond on the subject site that is most likely in a flood plain.
- The applicant has also documented how the structure that is the issue of this variance request (a generator structure) is best to be located close to the gas supply and the house meter base – in this case, the gas main on the site runs along DeLoache Avenue so the proposed generator structure would be located just feet from it and the electric meter base for the single family house on the site behind a 7' high solid brick wall that spans across the southern border of the subject site.
- Granting the variance does not appear to be contrary to the public interest in that: the structure that is the issue of this variance request is: 1) of minimal size relative to the entire lot - an approximately 30 square foot “generator” structure on a 3+ acre site; and 2) proposed to be located on the subject site behind a 7' high solid brick wall totally out of view from passersby on DeLoache Avenue.

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:

- (A) 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;
- (B) the variance is 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) the variance is 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:

- Single family structures on lots zoned R-1ac(A) are required to provide a minimum front yard setback of 40'. The site is located at the northwest corner of DeLoache Avenue and Preston Hollow Lane. Even though the DeLoache Avenue frontage of the subject site functions as its side yard and the Preston Hollow Lane frontage functions as its front yard, the subject site has two 40' front yard setbacks along both streets – a 40' front yard setback along Preston Hollow Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single

A scaled site plan and elevation has been submitted denoting a “generator” structure that is located 7’ from the DeLoache Avenue front property line (or 33’ into the 40’ front yard setback). (No encroachment is proposed in the site’s Preston Hollow Lane 40’ front yard setback).

- According to calculations taken by the Board Administrator from the submitted site plan, the proposed approximately 30 square foot (or 9.5’ x 3’) “generator” structure to be located in the site’s DeLoache Avenue 40’ front yard setback will sit on an approximately 70’ square foot (11’ 6” x 5’ 1”) concrete base.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1970 that is in “very good” condition with 9,715 square feet of living area;
 - a 828 square foot attached garage;
 - a cabana; and
 - a tennis court.
- The subject site is zoned R-1ac(A), is flat, is irregular in shape, and (according to the application) is 3.3417 acres (or approximately 145,565 square feet) in area where lots are typically 1 acre or 43,560 square feet in area. The site has two 40’ front yard setbacks. Most residentially-zoned lots have one front yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-1 (A) (Single family district 1 acre)
North: R-1 (A) (Single family district 1 acre)
South: R-1 (A) (Single family district 1 acre)
East: R-1 (A) (Single family district 1 acre)
West: R-1 (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 90-015, Property located at 5915 DeLoache Avenue (the subject site) On March 12, 1990, the Board of Adjustment granted a request for a special exception to the fence height regulations of 4’ to erect a fence 8 feet high in the required front yard

setback. The Board imposed the following condition in conjunction with the request: “A revised site plan to be submitted.”

Timeline:

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

May 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

May 12, 2010: 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 May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 1, 2010: The applicant’s representative submitted additional information to the Board Administrator (see Attachment A).

June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, 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.

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

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a “generator” structure on a site developed with a single family home, all of which would be located in one of the site’s two 40’ front yard setbacks (DeLoache Avenue).
- The “generator” structure that is the issue of this request is to be located on a site that has two front yard setbacks – a site with one front yard setback on Preston Hollow Lane (where no structure is proposed to be located in); the other front yard setback on DeLoache Avenue (where the proposed structure that is the issue of this

- Even though the site's DeLoache Avenue frontage functions as its side yard, and is the longer of the two street frontages of the corner lot which is typically a side yard where a 10' side yard setback is required, the site's DeLoache Avenue frontage is deemed a front yard nonetheless in order to maintain the continuity of the established front yard setbacks established by the lots west of the site that front/are oriented southward onto DeLoache Avenue.
- According to calculations taken by the Board Administrator from the submitted site plan, the proposed approximately 30 square foot (or 9' 6" x 3') "generator" structure to be located in the site's DeLoache Avenue 40' front yard setback will sit on an approximately 70' square foot (11' 6" x 5' 1") concrete base.
- According to DCAD records, the site is developed with the following:
 - a structure built in 1970 that is in "very good" condition with 9,715 square feet of living area;
 - a 828 square foot attached garage;
 - a cabana; and
 - a tennis court.
- The subject site is zoned R-1ac(A), is flat, is irregular in shape, and (according to the application) is 3.3417 acres (or approximately 145,565 square feet) in area where lots are typically 1 acre or 43,560 square feet in area. The site has two 40' front yard setbacks. Most residentially-zoned lots have one front yard setback.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the DeLoache Avenue 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, subject to the submitted site plan, the structure in the front yard setback would be limited to what is shown on this document – which in this case is an approximately 30 square foot (or 9' 6" x 3') "generator" structure located as close as 7' from the DeLoache Avenue front property line (or as much as 33' into this 40' front yard setback).

BOARD OF ADJUSTMENT ACTION: JUNE 16, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment grant application **BDA 090-065** 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: **Chernock**

AYES: 4 - Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 090-070

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for a special exception to the fence height regulations at 5306 Falls Road. This property is more fully described as Lot 1 in City Block 3/5604 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 8 foot 6 inch high which will require a special exception of 4 foot 6 inches.

LOCATION: 5306 Falls Road

APPLICANT: Robert Baldwin

REQUESTS:

- Special exceptions to the fence height regulations of 4’ 6” are requested in conjunction with constructing and maintaining an 8’ high “masonry/wrought iron” fence/wall (5’ wrought iron atop a 3’ masonry base) in the site’s Falls Road front yard setback, and an alternating 8’ high solid masonry or stone fence wall with an 8’ high wrought iron fence in the site’s Meadowbrook Drive front yard setback. The site is currently developed with a single family home that appears from the submitted site plan to be planned for demolition. A fence height special exception of 4’ 6” is requested to account for columns and gates (a pedestrian gate on Falls Road, a vehicular gate on Meadowbrook Drive) that would reach 8’ 6” in height in both front yard setbacks.

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 southeast corner of Meadowbrook Drive and Falls Road. Even though the Falls Road side of the site functions as the site's front yard and the Meadowbrook Drive side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Falls Road given that this frontage is the shorter of the two street frontages, and a front yard setback along Meadowbrook Drive in order to maintain the continuity of the established front yard setback along this street given that the shorter street frontage of the corner lot at Meadowbrook Drive and Park Lane is along Meadowbrook Drive.

The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a revised site plan/elevation document indicating a fence/wall/column/gate proposal that would be located in the site's two front yard setbacks and would reach a maximum height of 8' 6".

- The following additional information was gleaned from the revised site plan for the proposal *along Meadowbrook Drive*:
 - The proposal is shown to be approximately 230' in length parallel to Meadowbrook Drive.
 - The proposal is shown to be located approximately 2' from the property line and approximately 17' from the pavement line.
 - Approximately 70' of the approximately 230' length is to be open wrought iron; the remaining 160' is to be solid stone or masonry.
- The following additional information was gleaned from the revised site plan for the proposal *along Falls Road*:
 - The proposal is shown to be approximately 150' in length parallel to Falls Road, and approximately 39' in length perpendicular to Falls Road on the east.
 - The proposal is shown to be located approximately 2' from the property line and approximately 7' from the pavement line.
- The submitted site plan/elevation document denotes a "10" landscape area in front of stone panel' on the street side of the proposals on both streets; and "large shrub screen behind iron panel (typ)" along Meadowbrook Drive. The plan also includes a "legend" indicating symbols representing "N.R. Stevens Holly (alt.) Leyland Cypress and Carolina Jessamine (alt.) Madam Galen Trumpet Vine.

- The proposal *along Meadowbrook Drive* would be located on the site where two single family homes would have direct frontage. One of these lots which has a fence that appears to be above 4' in height but outside the front yard setback; the other lot has an approximately 6' high open fence with solid base that (according to neighbors/owners in the area) is a fence that has been on that site for a number of years but recently renovated/updated.
- The proposal *along Falls Road* would be located on the site where one single family home across the street would have direct frontage – a home/lot with no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Lane (generally from Falls Road to Park Lane) and along Falls Road (generally from Meadowbrook Drive to Hollow Way Road) and noted the following additional visible fences beyond what has been described above four feet high which appeared to be located in the front yard setback beyond the two fences mentioned above. (Note that these locations and dimensions are approximations):
 - A 8' 6" high open wrought iron fence with a 13' high gate southwest of the subject site that is a result of an approved fence height special exception granted by the Board of Adjustment Panel B in March of 1997 (BDA967-203).
 - An approximately 5' – 6' high open ornamental iron fence with an approximately 9' high ornamental entry gate/columns two lots southwest of the subject site – a result of an approved fence height special exception by the Board of Adjustment in 2009 (BDA089-085).
 - An approximately 7' 4" high solid masonry fence/wall with 7' 10" high columns with five open iron fence breaks alternating within the solid wall on the lot immediately south of the subject site – a result of an approved fence height special exception by the Board of Adjustment Panel B in February of 2010 (BDA090-017).
 - An approximately 5' 4" high open ornamental iron fence with 5' 8" high brick columns; and a 6' 6" high iron gate flanked by two, 8' 10" high brick entry columns and solid brick entry wing walls (each about 12' in length) ranging in height from 6' 2" – 7' 2", 6.5' high open wrought iron fence with 8' high columns, and an 8.5' high entry gate with 8.5' high entry columns two lots northeast of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel C in September of 2009 (BDA 0896-106).
- On June 3 and 4, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a letter that provided additional details about the request; and
 - a revised site plan/elevation (and related email sent to the applicant from the Board Administrator regarding his letter and revised site plan/elevation).

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. BDA090-0237, Property at 5306 Falls Road (the subject site)
On February 17, 2010, the Board of Adjustment Panel B denied a request for a fence height special exception of 4' 4" without prejudice per the applicant's request. The case report stated that the request was made in conjunction with constructing and maintaining a 7' 4" high solid fence/wall of unspecified materials with 7' 10" high columns in the site's two 40' front yard setbacks along Falls Road and Meadowbrook Drive on a site developed with a single family home. Although a site plan/elevation document included a partial "gate elevation" that was 8' 4" in height there was no delineation of the location of a gate on the submitted site plan.
2. BDA090-017, Property at 5323 Park Lane (the lot immediately south of the subject site)
On February 17, 2010, the Board of Adjustment Panel B granted a request for a fence height special exception of 4' 4" to:
 - in the Meadowbrook Drive front yard setback parallel to the street, and perpendicular to the street on the north "side" of the site in the front yard setback:
 - A 7' 4" high solid masonry fence/wall with 7' 10" high columns with five open iron fence breaks alternating within the solid wall ;
 - An 8' 4" high "decorative wrought iron fence" on the portion of the site that is shown as a "floodway easement;" and
 - in the Park Lane front yard setback *perpendicular* to this street on the east side of the subject site:
 - An 8' 4" high "decorative wrought iron fence."
3. BDA 089-085, Property at 9635 Meadowbrook Drive (two lots)
On August 17, 2009, the Board of Adjustment Panel C granted a request for a

southwest of subject site)

special exception to the fence height regulations of 4' 9" and imposed the following condition: compliance with the submitted site plan and elevation document is required. The case report stated that the request was made in conjunction with constructing and maintaining a predominantly 5' – 6' high open ornamental iron fence with 8' 9" high open ornamental iron gate/stone entry columns in the site's 40' front yard setback

4. BDA 967-203, Property at 9707 Meadowbrook Drive (a lot southwest of the subject site)

On March 18, 1997, the Board of Adjustment Panel B granted requests for special exception to the fence height to maintain an 8' 6" fence with columns of a maximum height of 13' 4", and gates with a maximum height of 15' 3" and to the visual obstruction regulations and imposed the following conditions: 1) Compliance with the submitted revised site plan/elevation plan and submitted revised landscape plan is required; and 2) Trees and branches located on the visibility triangle at the service entry driveway and Ravine Drive must have at least 8' clearance from ground level; 3) landscape must be provided as indicated on the submitted revised landscape plan for the property adjacent to the fence on Meadowbrook Road to a distance of 3' west of the fence toward the main building, and the area east of the fence on Meadowbrook Road to the pavement line provided the applicant can obtain a license to place landscaping on the public right-of-way; if not the applicant must reapply to the Board of approval of a revised plan. The case report stated that the request were made in conjunction with constructing and maintaining an 8' 6" high open metal fence, 13' 4" high columns, and a 15' 3" high entry gate in the front yards and in drive approach visibility triangles along Meadowbrook Drive and Ravine Drive.

5. BDA 089-106, Property at 5405 Falls Road (a lot two lots northeast of the subject site)

On September 14, 2009, the Board of Adjustment Panel C granted a request for special exception to the fence height regulations of 4' 10" and imposed the submitted site plan and elevation as a condition. The case report stated that the request were made in conjunction with constructing and maintaining the following in the site's 40' front yard setback on a site

being developed with a single family home: a 5' 4" high open ornamental iron fence with 5' 8" high brick columns; and a 6' 6" high iron gate flanked by two, 8' 10" high brick entry columns and solid brick entry wing walls (each about 12' in length) ranging in height from 6' 2" – 7' 2".

Timeline:

- April 27, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 11, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 12, 2010: 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 May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, 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.
- June 3 & 4, 2010: The applicant submitted additional information to the Board Administrator (see Attachment A).
- June 4, 2010 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: "Must comply with all C.O.D visibility requirements."

STAFF ANALYSIS:

- The requests focus on constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) in the site's Falls Road front yard setback, and an alternating 8' high solid masonry or stone fence wall with an 8' high wrought iron fence in the site's Meadowbrook Drive front yard setback.. The site is currently developed with a single family home that appears from the submitted site plan to be planned for demolition. A fence height special exception of 4' 6" is requested to account for columns and gates (a pedestrian gate on Falls Road, a vehicular gate on Meadowbrook Drive) that would reach 8' 6" in height in both front yard setbacks.
- A revised site plan/elevation document has been submitted documenting the location of the proposed fence/wall/columns/gates relative to their proximity to the Meadowbrook Drive and Falls Road front property lines and pavement lines, the length of the proposals relative to the entire lot, and the proposed building materials.
- The following additional information was gleaned from the revised site plan/elevation for the proposal *along Meadowbrook Drive*:
 - The proposal is shown to be approximately 230' in length parallel to Meadowbrook Drive.
 - The proposal is shown to be located approximately 2' from the property line and approximately 17' from the pavement line.
 - Approximately 70' of the approximately 230' length is to be open wrought iron; the remaining 160' is to be solid stone or masonry.
- The following additional information was gleaned from the revised site plan/elevation for the proposal *along Falls Road*:
 - The proposal is shown to be approximately 150' in length parallel to Falls Road, and approximately 39' in length perpendicular to Falls Road on the east.
 - The proposal is shown to be located approximately 2' from the property line and approximately 7' from the pavement line.
- The submitted site plan/elevation document denotes a "10" landscape area in front of stone panel' on the street side of the proposals on both streets; and "large shrub screen behind iron panel (typ)" along Meadowbrook Drive. The plan also includes a "legend" indicating symbols representing "N.R. Stevens Holly (alt.) Leyland Cypress and Carolina Jessamine (alt.) Madam Galen Trumpet Vine.
- The proposal *along Meadowbrook Drive* would be located on the site where two single family homes would have direct frontage. One of these lots which has an fence that appears to be above 4' in height but outside the front yard setback; the other lot has an approximately 6' high open fence with solid base that (according to neighbors/owners in the area) is a fence that has been on that site for a number of years but recently renovated/updated.
- The proposal *along Falls Road* would be located on the site where one single family home across the street would have direct frontage – a home/lot with no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Lane (generally from Falls Road to Park Lane) and along Falls Road (generally from Meadowbrook Drive to Hollow Way Road) and noted a visible fences that appeared to be in front yard setbacks that have been previously

- As of June 7, 2010, no letters had been submitted to staff in support or in opposition to the proposals.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations (whereby the proposal that would reach 8' 6" in height) will not adversely affect neighboring property.
- Granting these special exceptions of 4' 6" with a condition imposed that the applicant complies with the submitted revised site plan/elevation document would require that the proposals be constructed and maintained in the locations and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 16, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment grant application **BDA 090-070** 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 revised site plan/elevation document dated 6-10-10 is required.

SECONDED: **Chernock**

AYES: 4 - Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 090-071

BUILDING OFFICIAL'S REPORT:

Application of Robert Baldwin for a special exception to the fence height regulations at 5323 Park Lane. This property is more fully described as Lot 1A in city block A/5589 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 8 foot 6 inch high fence which will require a special exception of 4 feet 6 inches.

LOCATION: 5323 Park Lane

APPLICANT: Robert Baldwin

REQUEST:

- A special exception to the fence height regulations of 4' 6" is requested in conjunction with constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) with 8' 6" high columns in the site's Park Lane front yard setback.

Note the following:

1. The submitted site plan/elevation document notes that the existing gate and gate columns above 4' in height in the site's Park Lane front yard setback parallel to this street are not part of this application. It is assumed that the existing gate and gate columns on the site are in compliance with a special exception granted by the Board of Adjustment on the subject site in 1992- BDA92-034 – see the "Zoning/BDA History" section of this case report for additional details about this request.
2. The submitted site plan/elevation document notes that the fence above 4' in height in the site's Park Lane front yard setback perpendicular to this street on the east side of the site, and the fence above 4' in height in the site's Meadowbrook Drive front yard setback are not part of this application. It is assumed that the applicant will comply with the special exception granted by the Board of Adjustment Panel B (with conditions imposed) in February of 2010- BDA090-017 - see the "Zoning/BDA History" section of this case report for additional details about this request.

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 near the northeast corner of Meadowbrook Drive and Park Lane. Even though the Park Lane side of the site functions as the site's front yard and the Meadowbrook Drive side functions as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a front yard setback along Park Lane given that this frontage is the shorter of the two street frontages, and a front yard setback along Meadowbrook Drive in order to maintain the continuity of the established front yard setback along this street given that the shorter street frontage of the corner lot at Meadowbrook Drive and Park Lane is along Meadowbrook Drive.

The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.

The applicant has submitted a site plan/elevation document indicating a fence/wall/column proposal that would be located in the site's Park Lane front yard setback and would reach a maximum height of 8' 6".

- The following additional information was gleaned from the submitted revised site plan for the proposal *in the Park Lane front yard setback*:
 - The proposal would be approximately 230' in length parallel to Park Lane, and approximately 36' in length perpendicular to Park Lane on the west side of the subject site.
 - The proposal is shown to be located approximately 10' from the property line and approximately 20' from the pavement line.
 - The site plan makes the following note regarding the proposal perpendicular to Park Lane on the west side of the site: "Existing brick wall to be replaced with proposed fence see detail 3."
 - Of the proposal's approximately 230' length parallel to Park Lane, about 40' will be solid masonry – approximately 20' on either side of the existing gate.
- The site plan on the submitted revised site plan/elevation document indicates the fence above 4' in height in the Park Lane front yard setback perpendicular to the street on the east side of the site, and the fence above 4' in height in the Meadowbrook Drive front yard setback will adhere to what was approved earlier in the year on the site by Board of Adjustment Panel B. These fences in these areas of the subject site are not part of this new application.
- The submitted site plan/elevation document denotes a "10" landscape area in front of stone panel' on the street side of the proposal. The submitted site plan/elevation document includes a partial site plan entitled: "Masonry Wall- Enlarged Planting Plan" that denotes "vine planting 5' o.c. 10" from face of wall."
- The proposal would be located on the site where two single family homes on the lots across the street would have frontage. One of these lots which has an approximately 8' high wall (that was according to an application made to the Board in 2008 "grandfathered") with approximately 8' high gates – the gates being a result of an approved fence height special exception by the Board of Adjustment in 2008 – BDA078-081; the other lot which has an approximately 8.5' high fence– a result of an approved fence height special exception by the Board of Adjustment in 2001- BDA990-354.
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (generally from Meadowbrook Drive to Hollow Way Road) and noted the following additional visible fences beyond what has been described above four feet high which appeared to be located in the front yard setback beyond the two fences mentioned above. (Note that these locations and dimensions are approximations):
 - A 6' high open wrought iron fence with 7' high brick entry columns and an 8' high open wrought iron arched gate immediately east of the subject site that is a result of an approved fence height special exception granted by the Board of Adjustment Panel B in September of 2007 (BDA067-198).
 - A 6.5' high open wrought iron fence with 8' high columns and an 8.5' high entry gate with 8.5' high entry columns two lots east of the subject site that is the result

- A 6' high open wrought iron fence with 7' high columns and a 8' high entry gate with 8.5' high entry columns three lots east of the subject site that is the result of an approved fence height special exception granted by the Board of Adjustment Panel A in September of 2000 (BDA 990-342).
- A 8' high solid wall with 7' high columns with approximately 10' high gates south of the subject site where the gates/entry gate columns are a the result of an approved fence height special exception granted by the Board of Adjustment Panel B in June of 2008 (BDA 078-081). (The applicant for BDA078-081 had represented that the wall on this site was not an issue with this request since it was "grandfathered.")

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|--|---|
| <p>1. Miscellaneous Item #3, BDA090-017, Property at 5323 Park Lane (the subject site)</p> | <p>On May 19, 2010, the Board of Adjustment Panel B waived the two year limitation imposed in conjunction with a granted a fence height special exception of 4' 4" on the subject site.</p> |
| <p>2. BDA090-017, Property at 5323 Park Lane (the subject site)</p> | <p>On February 17, 2010, the Board of Adjustment Panel B granted a request for a fence height special exception of 4' 4" to:</p> <ul style="list-style-type: none"> -in the Meadowbrook Drive front yard setback parallel to the street, and perpendicular to the street on the north "side" of the site in the front yard setback: <ul style="list-style-type: none"> - A 7' 4" high solid masonry fence/wall with 7' 10" high columns with five open iron fence breaks alternating within the solid wall ; - An 8' 4" high "decorative wrought iron |

- in the Park Lane front yard setback *perpendicular* to this street on the east side of the subject site:
 - An 8' 4" high "decorative wrought iron fence."

3. BDA090-023, Property at 5306 Falls Road (the lot immediately north of the subject site)

On February 17, 2010, the Board of Adjustment Panel B denied a request for a fence height special exception of 4' 4" without prejudice.

4. BDA 92-034, Property at 5323 Park Lane (the subject site)

On May 12, 1992, the Board of Adjustment granted a request for special exception to the fence height regulations to maintain an 8' high fence on the property and imposed the following conditions: "subject to a new landscape plan, to be submitted for approval by the board at its June 9th hearing. The revised landscape plan should have the following things: 1) clustered or singularly planted, at 25' on center, Dwarf Yaupon trees; and 2) replace some of the Savannah Holly with Dwarf Yaupons which can be planted in the beds or in the parkway. All other proposed landscaping shall remain the same." The case report described how the applicant's representative indicated that the fence would be brick with a concrete base. The wall will be 5' in height and will slope to a 6' 6" height near the gate columns. The height of the columns, including the decorative cut stone cap will be 7' 8". The applicant indicates that this will be the highest point on the fence, and the decorative fixtures will not exceed that height. Hence, the special exception of 3' 8" (The applicant's representative's amended the request)."

5. BDA 067-198, 5405 Park Lane (the lot east of the subject site)

On September 19, 2007, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' and imposed the following condition: submitted revised site plan/fence/column/gate elevation is required. The case report additionally stated that the application was made to construct and maintain generally a 6' high open wrought iron fence* with two, 7' high brick entry

columns and an 8' high open wrought iron arched gate in the site's 40' front yard setback on a site developed with a single family home but that a special exception of 7' had been requested to address a relatively small length of approximately 10' where the fence was to reach 11' in height in a recessed area on the site where there was a creek bed.

6. BDA 056-210, 5423 Park Lane (the lot two lots east of the subject site)

On September 19, 2006, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4' 6" and imposed the following conditions: 1) Compliance with the submitted revised site plan and "gate elevation" is required; and 2) No portion of the fence or gate may exceed eight-feet, six inches in height. The case report stated that the request was made for a special exception to the fence height regulations of 4' 6" where a "gate elevation" had been submitted that indicated a "6' 6" (TYP.)" high decorative iron fence with 8' high brick columns, and an 8.5' high decorative iron gate with 8.5' high entry columns. In addition, a site plan had been submitted that indicated that the fence is proposed to be located in the site's Park Lane 40' front yard setback on a site being developed with a single family home.

7. BDA 078-081, 5330 Park Lane (the lot immediately south of the subject site)

On June 25, 2008, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 7' and imposed the following conditions: 1) Compliance with the submitted revised site plan/elevation is required. The case report stated that the requests were made in conjunction with constructing/maintaining 3 arched open decorative iron gates (one gate at 8' in height along Alva Court that includes 7' high columns, and two gates at 10' in height along Park Lane) in the site's 40' front yard setbacks along Park Lane and Alva Court on a site being developed with a single family home. The case report additionally stated that the application did not include any request to remedy the existing approximately 8' high wall on the site – a wall that the applicant's representative has stated is "grandfathered."

Timeline:

- April 27, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 11, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 12, 2010: 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 May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, 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.
- June 4, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "No objection to extra fence height. Will need to comply with C.O.D. visibility and floodplain requirements if applicable."

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an 8' high "masonry/wrought iron" fence/wall (5' wrought iron atop a 3' masonry base) with 8' 6" high columns in the site's Park Lane front yard setback – a new fence/wall that would replace an existing fence/wall on the site approved by the Board of Adjustment in 1992. (The applicant is choosing to leave the existing gate "as is" – a gate that was part of the exception granted on the site in 1992).
- Although the subject site has a front yard setback along Meadowbrook Drive in addition to a front yard setback along Park Lane, there is no part of this application to address the fence higher than 4' in height in the site's Meadowbrook Drive front

- A site plan/elevation document has been submitted documenting the location of the proposed fence/wall/columns relative to their proximity to the Park Lane front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The proposal is shown to be approximately 230' in length parallel to Park Lane and approximately 36' in length perpendicular to Park Lane on the west side of the subject site, located approximately 10' from the property line or about 20' from the pavement line."
- The submitted site plan/elevation document denotes a "10" landscape area in front of stone panel' on the street side of the proposal. The submitted site plan/elevation document includes a partial site plan entitled: Masonry Wall- Enlarged Planting Plan" that denotes "vine planting 5' o.c. 10" from face of wall."
- The proposal would be located on the site where two single family homes on the lots across the street would have frontage. One of these lots which has an approximately 8' high wall (that was according to an application made to the Board in 2008 "grandfathered") with approximately 8' high gates – the gates being a result of an approved fence height special exception by the Board of Adjustment in 2008 – BDA078-081; the other lot which has an approximately 8.5' high fence– a result of an approved fence height special exception by the Board of Adjustment in 2001 - BDA990-354.
- The Board Administrator conducted a field visit of the site and surrounding area along Park Lane (generally from Meadowbrook Drive to Hollow Way Road) and noted a number of visible fences that appeared to be in front yard setbacks that have been previously described in the "General Facts" and "Zoning/BDA History" sections of the case report.
- As of June 7, 2010, no letters had been submitted to staff in support or in opposition to the proposals.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' 6" in height) 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/elevation document would require that the proposal be constructed and maintained in the location and of the heights and materials as shown on this document.

BOARD OF ADJUSTMENT ACTION: JUNE 16, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment grant application **BDA 090-071** 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/elevation document is required.

SECONDED: Chernock

AYES: 4 - Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 090-072

BUILDING OFFICIAL’S REPORT:

Application of Neil Bletsch for a variance to the side yard setback regulations at 5633 Bent Tree Drive. This property is more fully described as Lot 28 in City Block 1/8209 and is zoned R-1/2ac(A) which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a structure and provide a 1-foot side yard setback which will require a variance of 9 feet.

LOCATION: 5633 Bent Tree Drive

APPLICANT: Neil Bletsch

REQUEST:

- A variance to the side yard setback regulations of 9’ is requested in conjunction with constructing and maintaining a detached one-story garage/bath/accessory structure on a site developed with a single family home, a portion of which would be located in the site’s southern 10’ side yard setback.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is restricted in its developable area given the portion of it that lies within floodplain – an area that appears to range from about ¼ - ½ of the eastern side of the subject site. Although the site is a size that is typical to the zoning district at about ½ acre in area, the relatively large portion of the site in the floodplain is a unique physical site feature not typical to most lots zoned R-1/2ac(A) – a characteristic that precludes the applicant from locating/shifting the proposed detached accessory structure eastward to the site’s rear 30 percent of the lot where no side yard setback would be required given the structure height at 15’.

- The applicant has substantiated that granting this variance would allow the lot to be developed in a manner commensurate with development found on other lots zoned R-1/2ac(A). According to documentation submitted by the applicant, the living area of the home on the subject site is 4,048 square feet with no garage; the average living area of the ten other homes in the area is approximately 5,700 square feet with an average garage area of approximately 780 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:

- (D) 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;
- (E) the variance is 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
- (F) the variance is 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-1/2 ac(A) zoned lot is 10 feet. The applicant had submitted a site plan and elevation that indicates a 1' distance between the southern side yard property line and the eave line of the proposed structure (or a structure's eave that is located as much as 9' into the 10' southern side yard setback). The submitted elevation indicates a 2' 6" distance between the southern side property line and the wall of the accessory structure.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the detached one-story garage/bath/accessory structure (*excluding* the eave) that is to be located in the site's southern 10' side yard setback is approximately 300 square feet of the approximately 730 square foot building footprint.
- The subject site is flat, somewhat irregular in shape, and according to the application is 0.528 acres (or approximately 23,000 square feet) in area. The site is zoned R-1/2 ac(A) where lots are typically 21,780 square feet in area. The submitted zoning map indicates that approximately half of the site is located in flood plain. A submitted site plan indicates that the "line of the 100-year floodplain" that encompasses approximately ¼ of the eastern part of the subject site.
- The Dallas Development Code states that in a residential district, a person need not provide a side yard setback for a structure accessory to a residential use if the structure: does not exceed 15 feet in height; and is located in the rear 30 percent of the lot.
- According to DCAD records, the property is developed with the following:

- a single family structure built in 1985 with 3,638 square feet of living area,
- a 420 square foot attached garage; and
- a pool.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - emails that provided additional details about the request;
 - a more detailed site plan representing what could be built on the site without variances;
 - photos of the retaining wall on the site and “the low area which remains in the floodplain.”

BACKGROUND INFORMATION:

Zoning:

Site: R-1/2ac(A) (Single family district 1/2 acre)
North: R-1/2ac(A) (Single family district 1/2 acre)
South: R-1/2ac(A) (Single family district 1/2 acre)
East: R-1ac(A) (Single family district 1 acre)
West: R-1/2ac(A) (Single family district 1/2 acre)

Land Use:

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

Zoning/BDA History:

- | | |
|--|--|
| <p>1. BDA 090-035, Property at 5633 Bent Tree Drive (the subject site)</p> | <p>On March 17, 2010, the Board of Adjustment Panel B denied a request for a variance to the side yard setback regulations of 10’ without prejudice. The case report stated that the request was made to construct and maintain an accessory structure/garage on a site developed with a single family home, a portion of which would be located in the site’s southern 10’ side yard setback.</p> |
| <p>2. BDA 089-122, Property at 5633 Bent Tree Drive (the subject site)</p> | <p>On November 18, 2009, the Board of Adjustment Panel B denied a request for a variance to the side yard setback regulations of 10’ without prejudice. The case report stated that the request was made “to construct and maintain single family residential accessory structure and provide a 0 foot side yard setback, which will require a 10 foot variance to the side yard setback regulations.”</p> |

Timeline:

- April 30, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 11, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 12, 2010: 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 May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 21 & June 4, 2010 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, 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.
- No review comment sheets with comments were submitted in conjunction with this application.
- June 4, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Needs to comply. Also, will need to comply with C.O.D. floodplain requirements."

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a detached one-story garage/bath/accessory structure on a site developed with a single family home, a portion of which would be located in the site's southern 10' side yard setback.

- The submitted site plan and elevation indicate that a part of the proposed accessory structure (the structure's soffit/eave detail) would be located 1' from on the site's southern side property line or approximately 9' into the 10' side yard setback. The submitted elevation indicates a 2' 6" distance between the southern side property line and the wall of the accessory structure.
- The Dallas Development Code states that in a residential district, a person need not provide a side yard setback for a structure accessory to a residential use if the structure: does not exceed 15 feet in height; and is located in the rear 30 percent of the lot. (The applicant has stated that although the proposed structure has a height of 15 feet, the flood plain on the site precludes him from locating the accessory structure in the rear 30 percent of the lot).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the garage/bath structure (*excluding* the eave) that is be located in the site's southern 10' side yard setback is approximately 300 square feet of the approximately 730 square foot building footprint.
- The subject site is flat, somewhat irregular in shape, and according to the application is 0.528 acres (or approximately 23,000 square feet) in area. The site is zoned R-1/2 ac(A) where lots a typically 21,780 square feet in area. The submitted zoning map indicates that approximately half of the site is located in flood plain. A submitted site plan indicates that the "line of the 100-year floodplain" that encompasses approximately ¼ of the eastern part of the subject site.
- 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-1/2ac(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-1/2ac(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 what is shown on this document which in this case is a portion of a "proposed one story frame & stucco garage to match dwelling" structure located 1' from the southern side property line, or 9' into this 10' side yard setback.

BOARD OF ADJUSTMENT ACTION: JUNE 16, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment grant application **BDA 090-072** 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: Chernock

AYES: 4 - Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA 090-059

BUILDING OFFICIAL’S REPORT:

Application of Mi Suk Foster, represented by Larry Keller, to appeal the decision of the administrative official at 2520 Electronic Lane, Suite 801. This property is more fully described as a 3.442 acre tract in City Block C/6509 and is zoned IR which requires that the building official shall deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information; the application for this certificate of occupancy provided false, incomplete, or incorrect information in that the requested new land use affidavit was not supplied. The applicant proposes to appeal the decision of an administrative official to deny an application for a certificate of occupancy.

LOCATION: 2520 Electronic Lane, Suite 801

APPLICANT: Mi Suk Foster
Represented by Larry Keller

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s March 10, 2010 denial of an application made for certificate of occupancy (Certificate of Occupancy Application No. 100111058) for a use doing business as Seventh Heaven located at 2520 Electronic Lane, Suite 801. The application states that a request is made to “appeal decision of administrative official concerning the denial of certificate of occupancy” and lists in the area on the application for reason of request: “Inaccurate information was provided by the City to the Building Official.”

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification signs on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on May 5, 2010, 35 days after the application was filed on March 31, 2010, and 21 days beyond the 14 days the applicant was required to post the signs on the site and remain posted until a final decision is made on the application.

The Dallas Development Code states that “The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.” The code additionally states “If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

The applicant emailed the Board Administrator on May 13, 2010 (see Attachment B). The email states the following: “Thanks Steve. I have setup the signs again (I think this is the third time). I’m sending you photos I took yesterday just to make you feel better. I’ll also bring you hard copies of the photos with me to the hearing.” The Board Administrator responds with forwarding the applicant’s representative a copy of the “posting of sign” ordinance for him to see how it along with the circumstances that he had described (and what the administrator observed on his field visit) may preclude the board from being able to take any action other than to delay or deny the application.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- Section 51A-4.703(2) of the Dallas Development Code provides that any aggrieved person, or an officer, department, or board of the city may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. The code provides that an appeal to the board must be made within 15 days after notice of the decision of the official; that the appellant shall file with the official a written notice of appeal on a form approved by the board; and that the official shall forward the notice of appeal and the record upon which the appeal is based to the director of development services.

- The Building Official's March 10th letter to the applicant (Mi Suk Foster) and to Century Crescent PS states the following with regard to Certificate of Occupancy Application No. 100111058 at 2520 Electronic Lane Suite 801 ("the Property"):
 - On February 23, 2010, Building Inspection requested that you submit a new land use affidavit, including all main and accessory uses on the Property, within five business days. You failed to provide the requested information within this time period. The building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information. The application for this certificate of occupancy contains false, incomplete, and incorrect information because the requested new land use affidavit was not supplied. Therefore, your application for a certificate of occupancy is denied. Any use operating on the property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment C). This information included what the applicant's representative described as "the original notarized affidavits that will be Ms. Foster's statement regarding her appeal (i.e. BDA090-059)."

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: PD No. 404 (Planned Development)
West: IR (Industrial Research)

Land Use:

The subject site is developed as a structure with several suites one of which (the subject site) is doing business as Seventh Heaven. The areas to the north, east, south, and west are developed with what appears to be a mix of commercial/retail and office uses.

Zoning/BDA History:

1. BDA 089-110, Property at 2520 Electronic Lane, Suite 801 (the subject site)

On October 19, 2010, the Board of Adjustment Panel C denied the applicant's request that the Board of Adjustment reverse/overturn the Building Official's July 29, 2009 revocation of certificate of occupancy no. 0902231016 for a personal service use (Seventh Heaven) at 2520 Electronic Lane, Suite 801.

Timeline:

- March 31, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 12, 2010: The Board Administrator emailed the applicant's representative the following information (see Attachment A):
- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment;
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- May 13, 2010: The applicant's representative emailed the Board Administrator information about the posting of notification signs on the site (see Attachment B).
- May 27, 2010: The applicant's representative submitted additional information to the Board Administrator (see Attachment C).
- June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, 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.

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

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's March 10, 2010 denial of an application made for certificate of occupancy (Certificate of Occupancy Application No. 100111058) for a use doing business as Seventh Heaven located at 2520 Electronic Lane, Suite 801 be overturned/reversed by the Board of Adjustment.
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification signs on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on May 5, 2010, 35 days after

- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification signs, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of the notification signs on the site and upholds the Building Official's March 10, 2010 denial of an application made for certificate of occupancy (Certificate of Occupancy Application No. 100111058) for a use doing business as Seventh Heaven located at 2520 Electronic Lane, Suite 801, this application for this Certificate of Occupancy will remain denied.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of the notification signs on the site and reverses the Building Official's March 10, 2010 denial of an application made for certificate of occupancy (Certificate of Occupancy Application No. 100111058) for a use doing business as Seventh Heaven located at 2520 Electronic Lane, Suite 801, this application for this Certificate of Occupancy will be accepted.

BOARD OF ADJUSTMENT ACTION: JUNE 16, 2010

APPEARING IN FAVOR: Larry Keller, 222 W. Las Colinas, Ste 1650, Irving, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melissa Miles, 1500 Marilla, 7DN, Dallas, TX

MOTION #1: Chernock

Having fully reviewed the evidence in Appeal No. **BDA 090-059**, on application of Mi Suk Foster, represented by Larry Keller, and heard all testimony and facts relating to the posting of the notification signs, I find that the required signs were posted properly and move to hear the case.

SECONDED: No one

MOTION FAILED FOR LACK OF A SECOND

MOTION #2: Gillespie

Having fully reviewed the evidence in Appeal No. **BDA 090-059**, on application of Mi Suk Foster, represented by Larry Keller, and heard all testimony and facts relating to the posting of the notification signs, I find that the required signs were not posted properly and I move to **deny** the relief requested by the applicant **without prejudice**.

SECONDED: Wilson

AYES: 3 - Reynolds, Gillespie, Wilson

NAYS: 1 – Chernock

MOTION PASSED 3 – 1

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 4– Reynolds, Gillespie, Chernock, Wilson

NAYS: 0 -

MOTION PASSED 4– 0 (unanimously)

1:25 P.M. - Board Meeting adjourned for **June 16, 2010**.

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.