

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
MONDAY, MAY 19, 2014**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon regular member, Peter Schulte, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: Marla Beikman, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: Marla Beikman, regular member

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

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

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 19, 2014** docket.

1:10 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 C April 21, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: May 19, 2014

MOTION: Coulter

I move **approval** of the Monday, April 21, 2014 public hearing minutes.

SECONDED: Schulte

AYES: 5– Richardson, Coulter, Carreon, Schulte, Bartos

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 123-124

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment’s favorable action on a request for a variance to the front yard setback regulations of 15’ granted by Board of Adjustment Panel C on December 16, 2013.

LOCATION: 9650 Chartwell Drive

APPLICANT: Frank Richardson of Pross Design Group

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

- The Dallas Development Code states:
The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:

A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

December 16, 2013: The Board of Adjustment Panel C granted a variance to the front yard setback regulations of 15' and imposed the submitted site plan as a condition to the request (see Attach A).

May 1, 2014: The applicant sent a letter to the Board Administrator requesting an extension of the time period in which to make application for a building permit or certificate of occupancy (see Attachment B).

May 1, 2014: The Board Administrator emailed the applicant acknowledging his request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the December 16, 2013 favorable action (see Attachment C). The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date of the request; and 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;
- an attachment of materials related to BDA 123-124; and
- The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

BOARD OF ADJUSTMENT ACTION: May 19, 2014

APPEARING IN FAVOR: Frank Richardson, 5310 Harvest Hill Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schulte

I move to **approve** to extend the time period in which to file an application for a building permit or certificate of occupancy an additional **6** months beyond the 180 days from the Board of Adjustment's favorable action on a request for a variance to the front yard setback regulations of 15' granted by Board of Adjustment Panel C on December 16, 2013.

**SECONDED: No Second
Motion Failed for Lack of a Second**

MOTION #2: Coulter

I move to **approve** to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment's favorable action on a request for a variance to the front yard setback regulations of 15' granted by Board of Adjustment Panel C on December 16, 2013.

SECONDED: Bartos

AYES: 4 – Richardson, Coulter, Carreon, Bartos

NAYS: 1 – Schulte

MOTION PASSED: 4– 1

FILE NUMBER: BDA 134-040

BUILDING OFFICIAL'S REPORT: Application of Jeff Tyson for a special exception to the fence height regulations and a special exception to the visibility obstruction regulations at 5100 Brookview Drive. This property is more fully described as part of Lot 1, Block 7/5580, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence regulation, and to construct and maintain a single family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

LOCATION: 5100 Brookview Drive

APPLICANT: Jeff Tyson-One Specialty

May 19, 2014 Public Hearing Notes:

- The staff planner circulated a revised site plan submitted by the applicant to the board members at the briefing.

REQUEST:

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

1. A request for a special exception to the fence height regulations of 4' is requested to construct and maintain a fence in the site's required 40' front yard that is developed with a single family home—a 3'7" high open wrought iron fence atop a 2' high stucco base with 6' high stucco columns, and an 8' high wrought iron gate, 12'9" wide, with 8' high stucco columns.
2. A request for a special exception to the visual obstruction regulations are made to maintain portions of the aforementioned fence and columns in the east and west 20' visibility triangles of the driveway into the site from Brookview Drive.

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 partial elevation is required.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to these requests.
- The applicant has substantiated how the location of portions of a proposed 8' high fence (3'7" high open wrought iron fence atop a 2' high stucco base) with 8' high masonry columns proposed in the east and west 20' visibility triangles of the driveway into the site from Brookview Drive does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A)
North: R-1ac(A)

South: PD #815
East: R-1ac(A)
West: R-1ac(A)

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 homes.

Zoning/BDA History:

1. BDA 012-231, 5205 Brookview Drive (Lot East of the Site) On September 24, 2002, the Board of Adjustment Panel A granted a request for a special exception to the fence regulations of 4'7", needed in conjunction with constructing and maintaining a 4'8" high open iron fence, 4'10" high iron posts, two, 5'10" high open gates, and four, 8'7" high entry columns (including approximately 2' high pineapple finials).

2. BDA 89-065, 5139 Brookview Drive (Lot East of the Site) On September 12, 1989, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence regulations of 2'10", needed in conjunction with constructing and maintaining a 6'6" high fence with 6'10" high columns.

Timeline:

- February 28, 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 C.
- April 14, 2014: The Sustainable Development and Construction Department Current Planner 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.

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.

One review comment sheet with comments was submitted in conjunction with this application.

GENERAL FACTS/STAFF ANALYSIS (Fence Height):

- This request focuses on constructing and maintaining a fence in the site's 40' required front yard on a site that is developed with a single family home – a 3' 7" high open wrought iron picket fence atop a 2' high stucco base with 6' high stucco columns, and an 8' high wrought iron gate, 12' 9" wide, with 8' high stucco columns.
- 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 following additional information was gleaned from the submitted site plan and elevation:
 - The proposal in the front yard setback is represented as being approximately 92' in length parallel to Brookview Drive, and approximately 32' in length following the visibility triangle at the intersection of Brookview Drive and Inwood Road.
 - The proposed fence is represented as being located approximately on the property line.
- The proposal would be located on the site where one lot would have direct frontage, a lot which has a fence in its front yard setback.
- As of May 12, 2014, no letters have been submitted in support of the request and no 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 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 elevation would require the proposal exceeding 4' in height in the front yard setback to be constructed/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 portions of the open metal picket fence, stucco base, and two stucco columns on both sides of the driveway into the site from Brookview Drive.
- 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).
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet 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 open metal picket fence, two masonry columns, and landscape materials on both sides of the driveway into the site from Brookview Drive does not constitute a traffic hazard.

Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan and a detailed elevation would require the items as described above to be limited to and maintained in the locations, height and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: May 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Carreon

I move that the Board of Adjustment grant application **BDA 134-040D** 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 and detailed elevation is required.

SECONDED: Coulter

AYES: 5– Richardson, Coulter, Carreon, Schulte, Bartos

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 134-041

BUILDING OFFICIAL’S REPORT: Application of Jennifer Dix, represented by Samit Patel, for special exceptions to the fence height and visual obstruction regulations at 9236 Hollow Way Road. This property is more fully described as part of Lot 25, Block 7/5597, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct/maintain an 8 foot 10 inch high fence, which will require a 4 foot 10 inch special exception to the fence height regulations, and to locate/maintain items in required visibility triangles, which will require a special exception to the visual obstruction regulations.

LOCATION: 9236 Hollow Way Road

APPLICANT: Jennifer Dix
Represented by Samit Patel

REQUESTS:

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

1. A request for a special exception to the fence height regulations of 4’ 10” is made to maintain a 6’ high open metal picket fence with 8’ high brick columns, an 8’ high open metal picket vehicular gate with 8’ high brick columns, and an 8’ 10” high pedestrian gate with 8’ high brick columns parallel to the street, and an 8’ high board-on-board cedar fence perpendicular to the street in the front yard setback.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned fence and columns and landscape materials in the two 20’ visibility triangles on both sides of the two driveways into the site from Hollow Way 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 conditions:

- Compliance with the revised site plan, two revised detail plans of the north and south drive, and a detailed elevation is required.
- Any/all vegetation located in the visibility triangle at the north driveway must comply the visual obstruction regulations of the Dallas Development Code.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to these requests if the staff-suggested conditions referenced above are imposed.
- The applicant has substantiated how the location of the open metal picket fence, four masonry columns, and certain landscape materials as denoted on his submitted plans on both sides of the two driveways into the site from Hollow Way Road does not constitute a traffic hazard.

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, south, east, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 989-177, Property at 9245 Hollow Way Road (the lot immediately west of the subject site) On February 18, 1999, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 10' 4" and imposed the submitted revised site plan and elevation as a condition to the request. The case report states that the request was made to

construct/maintain a 6' 9" high wall with 6' 9" high columns, and a 12' 8" high open metal entry gate with 14' 4" high entry columns on property developed with a single family home.

Timeline:

- March 3, 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 C.
- 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 requests; 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).
- April 30 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 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 marked "Has no objections if certain conditions are met" with the following additional

comment: "subject to removing all the vegetation from visibility triangle at north drive."

GENERAL FACTS/STAFF ANALYSIS (fence height):

- This request focuses on maintaining a 6' high open metal picket fence with 8' high brick columns, an 8' high open metal picket vehicular gate with 8' high brick columns, and an 8' 10" high pedestrian gate with 8' high brick columns parallel to the street, and an 8' high board-on-board cedar fence perpendicular to the street in the 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 applicant has submitted a revised site plan and an elevation of the proposal in the front yard setback that reaches a maximum height of 8' 10".
- The following additional information was gleaned from the submitted revised site plan:
 - The proposal is represented as being approximately 145' in length parallel to the Hollow Way Road, and approximately 39' in length perpendicular to the street on the north and south sides of the site in the front yard setback.
 - The proposal is represented as being located approximately 1' from the property line or about 12' from the pavement line.
- The revised site plan denotes certain landscape materials adjacent to the existing fence some of which appear to be located in the public right-of-way.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other visible fence above 4 feet high which appeared to be located in a front yard setback that being an approximately 6' high solid brick fence located two lots to the south of the subject site – a fence with no recorded BDA history.
- One home fronts the proposal – a home that has a chain link fence virtually hidden from street view by landscape materials.
- As of May 12th, no letters have been submitted in support of or in opposition to the request.
 - The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 10" will not adversely affect neighboring property.
 - Granting this special exception of 4' 10" with a condition imposed that the applicant complies with the submitted revised site plan and elevation 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):

- These requests focus on maintaining portions of the open metal picket fence, four masonry columns, and landscape materials (a shoal creek vitex and a Nellie R. Stevens Holly at the north driveway, and a shoal creek vitex and two Nellie R.

Steven Hollys in the south) on both sides of the two driveways into the site from Hollow Way 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).
- The applicant has submitted a revised site plan, two revised detail plans of the north and south drive, and a detailed elevation denoting the items to be maintained in the 20' visibility triangles at the two drive approaches into the site from Hollow Way Road.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following additional comment: "subject to removing all the vegetation from visibility triangle at north drive."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of an open metal picket fence, four masonry columns, and landscape materials on both sides of the two driveways into the site from Hollow Way Road does not constitute a traffic hazard.
- Granting these requests with the staff-suggested conditions imposed would require the items as described above to be limited to and maintained in the locations, height and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: May 19, 2014

APPEARING IN FAVOR: Samit Patel, 2554 Hilldale Dr., Lewisville, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Schulte

I move that the Board of Adjustment, in request No. **BDA 134-041**, on application of Jennifer Dix, **grant** the request to construct and maintain an 8-foot 10-inch high fence in the property's front yard as a special exception to the fence height requirements in the Dallas Development Code. 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 revised site plan and elevation is required.

SECONDED: Bartos

AYES: 5– Richardson, Coulter, Carreon, Schulte, Bartos

NAYS: 0 –
MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Schulte

I move that the Board of Adjustment, in request No. **BDA 134-041**, on application of Jennifer Dix, **grant** the request to maintain items in the visibility triangles as special exceptions to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that these special exceptions will not constitute a traffic hazard. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted revised site plan, two revised detail plans of the north and the south drive, and the detailed elevation is required.
2. All vegetation will be kept out of the visibility triangles.

SECONDED: Bartos

AYES: 5– Richardson, Coulter, Carreon, Schulte, Bartos

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 134-044

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin for a special exception to the visual obstruction regulations at 6957 Lakeshore Drive. This property is more fully described as part of Lot 2, Block E/2820, and is zoned R-7.5(A), which requires a 20 foot visibility triangle at alley approaches. The applicant proposes to locate/maintain an item in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 6957 Lakeshore Drive

APPLICANT: Robert Baldwin

REQUEST:

A request for special exception to the visual obstruction regulations is made to locate/maintain portions of a proposed 8' high solid masonry fence with 8.5' high posts/columns in the 20' visibility triangle at where the alley on the northeast side of the site meets West Shore Drive on a site developed with a single family home.

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:

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Senior Engineer has indicated that he has no objections to this request.
- The applicant has substantiated how the location of the proposed 8' high masonry fence with 8.5' high posts/columns in the 20' visibility triangle at where the alley on the northeast side of the site meets West Shore Drive does not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

March 25, 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 C.

- 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 30, 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 8, 2014: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections.”

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on locating/maintaining portions of a proposed 8’ high masonry fence with 8.5’ high posts/columns in the 20’ visibility triangle at where the alley on the northeast side of the site meets West Shore Drive on a site developed with a single family home.
- 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 elevation has been submitted indicating portions of a proposed 8' high solid masonry fence with 8.5' high posts/columns in the 20' visibility triangle at where the alley on the northeast side of the site meets West Shore Drive.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet regarding the applicant's request 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 locate/maintain an 8.5' high solid masonry fence in the 20' visibility triangle at where the alley on the northeast side of the site meets West Shore Drive does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would require the item as described above to be limited to and maintained in the locations, height and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: May 19, 2014

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Carreon**

I move that the Board of Adjustment grant application **BDA 134-044** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development code:

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

SECONDED: **Coulter**

AYES: 5– Richardson, Coulter, Carreon, Schulte, Bartos

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 134-047

BUILDING OFFICIAL'S REPORT: Application of M. D. Robinson for a special exception to the tree preservation regulations at 4802 S. Marsalis Avenue. This property is more fully described as Lot 20, Block A/6010, and is zoned R-7.5(A), which requires mandatory tree mitigation. The applicant proposes to construct and/or maintain a structure and provide an alternate plan for tree mitigation which will require a special exception to the tree preservation regulations.

LOCATION: 4802 S. Marsalis Avenue

APPLICANT: M. D. Robinson

REQUEST:

A special exception to the tree preservation regulations is requested due to the removal of trees on a site developed as a single family home/use, and not fully complying with the Article X: Tree Preservation Regulations of the Dallas Development Code.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

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

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

STAFF RECOMMENDATION:

Denial

Rationale:

- While the Chief Arborist concludes among other things that granting the special exception would not adversely affect neighboring property since most trees remain on the property, he recommends denial of the request since he has not determined how compliance with the regulations will physically place an unreasonable burden on the property.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet)

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

Land Use:

The subject site is developed as a single family home/use. The areas to the north, south, east, and west appear to be 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:

March 25, 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 C.

April 15 & 16, 2014: The Board Administrator met the applicant on the subject site, then 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.

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 12, 2014: The Chief Arborist forwarded additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

May 12, 2014: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on not adhering to tree preservation regulation related to quantity of replacement trees that were removed on the site developed with a single family home. The applicant is requesting relief from the tree preservation regulations of 72 caliper inches where he proposes to retain 686 inches on a site where 758 inches had been prior to the construction of the single family home on the subject site.
- The Dallas Development Code requires full compliance with the Tree Preservation Regulations with new construction or with increasing non-permeable coverage by more than 2,000 square feet.
- The Dallas Development Code states that the Tree Preservation, Removal, and Replacement division of Article X applies to all property in the city except for: 1) lots smaller than two acres in size that contain single-family or duplex uses; and 2) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the article, as determined by the building official.
- The Tree Preservation Regulations of the Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with among other things quantity - the total caliper of replacement trees must equal or exceed the total caliper of protected trees removed or seriously injured.
- The Tree Preservation Regulations of the Dallas Development Code states that a property owner can comply with tree preservation regulations by mitigating the removed trees in any of the alternative methods provided for in Article X: donating trees to the Park Department, planting replacement trees on other property within one mile of the tree removal property, making payment into the Reforestation Fund, and/or granting a conservation easement area.
- The City of Dallas Chief Arborist had submitted a memo regarding this request to the Board Administrator (see Attachment B). The memo stated among other things how the request is triggered by new construction for a single family structure with the removal of protected trees.
- The City of Dallas Chief Arborist's memo identifies that the deficiency in this case is that a total of 72 inches from five protected trees were removed under authorization of a building permit for the construction of a new single family residence; and that mitigation for the property has not been completed on site or through any of the alternative methods of mitigation allowed under Article X.
- The City of Dallas Chief Arborist's memo lists several factors for consideration some of which include the following:

- The property is currently under Article X regulations for the protection of trees. Once the owner completes mitigation, and successfully completes a final inspection, the structure will be authorized for occupancy and a single family use will apply which will then exempt the property from all Article X tree protection regulations. This means that all remaining trees may be retained, or removed without a permit.
- The applicant has stated 39 large trees (686") remain on the property. He has stated that he would restrict the property "for a total ten year period of nonremoval of mature trees." In the arborist's opinion, the request suggests that the owner would abide by an imposed ruling to maintain all healthy living trees identified to remain on the property for 10 years, in place of completing the tree mitigation of 72 inches.
- Upon removing protected trees from a property, under permit, an owner must replace trees on the property equal to, or exceeding, the amount of protected inches removed. If it is determined to be "impracticable or imprudent" to replace the trees onto the property "due to inhospitable soil conditions or inadequate spaces," the owner shall comply with one or more alternative methods of mitigation listed in Section 51A-10.135: donating trees to the Park Department, planting replacement trees on other property within one mile of the tree removal property, making payment into the Reforestation Fund, and/or granting a conservation easement area.
- The current equivalent Reforestation value of 5 protected trees at 72 inches is \$6,602.00 or \$91.69 per inch. The amount would reduce in equal percentage to the rate of any inches of new trees planted on the property.
- The purpose of Article X is, in part, "to encourage the preservation of large trees which, once removed, can be replaced only after generations.
- The Chief Arborist recommends denial of the request. Even though he concludes among other things that granting the special exception would not adversely affect neighboring property since most trees remain on the property, he has not determined how compliance with the regulations will physically place an unreasonable burden on the property.
- The Chief Arborist suggests that if the Board were to grant the request, that the following conditions be applied:
 1. All trees on the property identified on the submitted site plan must be protected and maintained. The trees may not be removed without authorization of the city arborist, or in case of emergency for the protection of life and property. All tree removals must be recorded with the city arborists within 10 days of the removal.
 2. The tree protection restriction must apply for a minimum period of ten years from the date of board approval, or a duration otherwise determined by the board.
- The applicant has the burden of proof in establishing the following:
 1. Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property.
 2. The special exception will not adversely affect neighboring property.

BOARD OF ADJUSTMENT ACTION: May 19, 2014

APPEARING IN FAVOR: M.D. Robinson 4802 Marsalis Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment, in request No. **BDA 134-047**, on application of M. D. Robinson, **grant** the request to provide an alternate tree mitigation plan as a special exception to the tree preservation regulations in the Dallas Development code because our evaluation of the property and the testimony shows that strict compliance with the requirements of Article X of the Dallas Development code will unreasonably burden the use of the property and the special exception will not adversely affect neighboring property. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- All trees on the property identified on the submitted site plan must be protected and maintained. The trees may not be removed without authorization of the city arborist, or they may be removed in case of emergency for the protection of life and property. All tree removals must be recorded with the city arborist within 10 days of the removal.
- The tree protection restriction must apply for a minimum period of ten years from the date of board approval.

SECONDED: **Coulter**

AYES: 5– Richardson, Coulter, Carreon, Schulte, Bartos

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Schulte**

I move to adjourn this meeting.

SECONDED: **Coulter**

AYES: 5– Richardson, Coulter, Carreon, Schulte, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

2:05 P. M. - Board Meeting adjourned for **May 19, 2014.**

CHAIRPERSON

BOARD ADMINISTRATOR

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