

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, NOVEMBER 15, 2010**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair Joel Maten, regular member, Ross Coulter, regular member and Bob Richard, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair Joel Maten, regular member, Ross Coulter, regular member and Bob Richard, regular member

MEMBERS ABSENT FROM HEARING: No one

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

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

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 15, 2010** docket.

1:01 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C October 18, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2010

MOTION: Coulter

I move **approval** of the Monday, **October 18, 2010** public hearing minutes.

SECONDED: Maten

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Adoption of Board of Adjustment Panel C’s 2011 public hearing schedule.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2010

MOTION: Moore

I move to adopt Board of Adjustment Panel C’s 2011 public hearing schedule.

SECONDED: Maten

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-112

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for a special exception to the parking regulations at 11661 Preston Road. This property is more fully described as Lot 4 in City Block 6383 and Lots 8A and 8B in City Block 7/6383, and is zoned CR which requires parking to be provided. The applicant proposes to construct and maintain a structure for certain commercial, institutional, office, retail and personal service uses, and provide 923 of the required 937 parking spaces which will require a special exception to the parking regulations of 14 spaces.

LOCATION: 11661 Preston Road.

APPLICANT: Robert Baldwin

REQUEST:

- A special exception to the off-street parking regulations of 14 parking spaces (or a 1.5 percent reduction of the required off-street parking) is requested in conjunction with transitioning square footage within an existing shopping center (Preston Forest Village) and providing 923 of the required 937 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 14 spaces shall automatically and immediately terminate if and when the certain commercial, institutional, office, retail and personal service uses specified/listed by the applicant in his submitted document entitled “BDA090-112- Limited Community Retail (CR) Use, Uses Permitted Under Parking Special Exception.” are changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request given documentation provided by the applicant showing that a “1.5% reduction is adequate.”
- The applicant has substantiated how the parking demand generated by his list of certain commercial, institutional, office, retail and personal service uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.

- (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
 - 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires differing off-street parking requirements for the existing and proposed uses at the existing shopping center. The applicant has provided a list of uses that he specifically wants to add or retain at this center (see Attachment A). This list includes the following:
 - certain commercial and business center uses with parking requirements ranging from 1 space per 200 square feet of floor area -1 space per 300 square feet of floor area;
 - a certain institutional and community service use with a parking requirement of 1 space per 500 square feet of floor area;
 - certain office uses with parking requirements ranging from 1 space per 200 square feet of floor area -1 space per 333 square feet of floor area ; and
 - certain retail and personal services uses with parking requirements ranging from 1 space per 50 square feet of floor area (commercial amusement inside) -1

space per 500 square feet of floor area (furniture store and nursery, garden shop, or plant sales use).

The applicant proposes to provide 923 (or 98.5 percent) of the required 937 off-street parking spaces in conjunction with the site being developed with a combination of the uses mentioned above.

- On October 22 and 29, 2010, the applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: R-16 (A) (Single family district 16,000 square feet)
East: CR (Community Retail)
West: R-16 (A) (Single family district 16,000 square feet)

Land Use:

The subject site is developed as a shopping center (Preston Forest Village). The areas to the north and east are developed with retail uses; and the areas to the south and west are developed with single family uses.

Zoning/BDA History:

1. BDA 978-121, Property at 11661 Preston Road (the subject site)

On June 15, 1998, the Board of Adjustment Panel C denied a request for a special exception to the off-street parking regulations of 32 spaces (or a 4 percent reduction to the off-street parking requirements where 845 of 877 spaces were to be provided) and a variance to the off-street parking regulations were denied without prejudice. The case report stated that the special exception was requested in conjunction with transitioning vacant retail space in the center, and that the variance was requested with regard to not providing the CR-off street parking requirement related to aisle width given the dimensions of aisle widths on the south and west sides of the shopping center. (Staff recommended denial of both requests since the board's rules precluded staff from administering the applicant's request to withdraw the

application since the withdraw request was made after the board had conducted public hearings on this application in January, March, and April of 1998).

2. BDA 056-005, Property at 11700 Preston Road (the property immediately east of the subject site)

On November 15, 2005, the Board of Adjustment Panel A granted a special exception to the off-street parking regulations of 211 (or 18% of the required off-street parking) requested in conjunction with providing 943 (or 82% of the total required 1,154 off-street parking spaces). The board imposed the following conditions in conjunction with this request: 1) The special exception shall automatically and immediately terminate if and when the retail, restaurant, and office uses on the site are changed or discontinued; 2) That there will be a reassessment in 3 years to determine whether the special exception is still warranted; 3) Between 2 years 9 months and 2 years 11 months, the owner shall commission at the owner's expense, a parking impact study and a traffic impact study; 4) At 2 years 11 months, the owner shall submit at the owner's expense the parking impact study and the traffic impact study to the Engineering Division of Development Services for review; and 5) At 3 years the Engineering Division of Development Services shall recommend to the applicant (owner) whether reassessment is necessary. If reassessment is recommended, the owner shall immediately at the owner's expense, submit this matter for reassessment to the Board of Adjustment. The case report stated that the special exception was requested in conjunction with request is made to: accommodate the move of the Whole Foods Market location from the west side of Preston Road to the former Minyard's location in the subject site: the Preston Forest Shopping Center at the southeast corner of Preston Road and Forest Lane; and allow the existing approximately 42,500

square foot vacant grocery store space to be expanded by approximately 8,300 square feet. (With the proposed supermarket, the center would provide about 227,000 square feet of retail, restaurant, and office uses). The case report noted that the proposed approximately 8,300 square foot expansion to one of the tenants/spaces in the shopping center accounts for 42 of the 211 spaces sought in this special exception request. The remaining 169 parking spaces sought to be “excepted” in this request appears to reflect an existing shopping center that is “underparked.”

Timeline:

Sept. 20, 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.

October 21, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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.”

October 22, 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 November 1st deadline to submit additional evidence for staff to factor into their analysis; and the November 2nd 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.

October 22 & 29, 2010: The applicant forwarded additional information on this application to staff (see Attachment A).

November 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans

Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

November 3, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections" commenting "Documentation for a 1.5% reduction is adequate."

STAFF ANALYSIS:

- This request focuses with transitioning square footage within an existing shopping center (Preston Forest Village). The applicant proposes to provide 923 (or 98.5 percent) of the required 937 off-street parking spaces within the existing center that has, according to the applicant, about 171,000 square feet of nonresidential uses.
- The applicant has stated that while there are no proposed plans to increase the size of the center, the 1.5 percent parking reduction request is triggered by plans to convert a former grocery store space in the center that has been divided into smaller spaces that will house a variety of different users, some of which require higher parking provisions than the former grocery store use (or general merchandise or food store use) that required 1 space per every 200 square feet of floor area.
- The Sustainable Development Department Project Engineer has no objections to this request given documentation provided by the applicant showing that a "1.5% reduction is adequate."
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing/proposed uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 14 spaces (or a 1.5 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 14 spaces shall automatically and immediately terminate if and when the certain commercial, institutional, office, retail and personal service uses specified/listed by the applicant in his submitted document entitled "BDA090-112-Limited Community Retail (CR) Use, Uses Permitted Under Parking Special Exception." are changed or discontinued, the applicant would be allowed to develop/maintain the site with these specific uses and provide only 923 of the 937 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 090-112** 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.

- The special exception of 14 spaces shall automatically and immediately terminate if and when the commercial, institutional, office, retail and personal service uses specified/listed by the applicant in his submitted document entitled “BDA 090-112- Limited Community Retail (CR) Use, Uses Permitted Under Parking Special Exception” are changed or discontinued.

SECONDED: Moore

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-102

BUILDING OFFICIAL’S REPORT:

Application of Cruz Gutierrez for a special exception to the fence height regulations at 4111 Middlefield Road. This property is more fully described as a 5.02 acre portion of Tract 1 in City Block 8780 and is zoned A(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot high fence which will require a special exception of 2 feet.

LOCATION: 4111 Middlefield Road

APPLICANT: Cruz Gutierrez

REQUEST:

- A special exception to the fence height regulations of 2’ is requested in conjunction with maintaining a 6’ high chain link fence on a site that is developed with an agricultural use.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The Dallas Development Code states that a 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 and a partial fence elevation indicating the proposal that would exceed 4’ in height in the site’s front yard setback. The site plan and partial elevation indicate a fence proposal that would be located in the site’s front yard setback and would reach a maximum height of 6’.
- The following additional information was gleaned from the submitted site plan:
 - The proposal would be approximately 92’ in length parallel to Middlefield Road.
 - The proposal is shown to be located on the front property line or about 6’ from what appears to be the street pavement line.
- The proposal is located on the site where one single family home would have partial frontage to it - property with a fence in its front yard setback that appears to be 4’ in height or less.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences in the area that appeared to be over 4’ in height and located in a front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: A(A) (Agricultural)
North: A(A) (Agricultural)
South: A(A) (Agricultural)
East: A(A) (Agricultural)
West: A(A) (Agricultural)

Land Use:

The subject site is developed with an agricultural use. The areas to the north, east, south, and west appear to be developed with single family uses and/or open fields.

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA 090-103, Property at 4045 Middlefield Road (two lots immediately northwest of the subject site) | On November 15, 2010, the Board of Adjustment Panel C will consider a request for a special exception to the fence height regulations of 2’ made in conjunction with constructing and maintaining a 6’ high open |
|--|--|

chain link fence in the front yard setback on a site developed with a single family home.

2. BDA 090-067, Property at 4111 Middlefield Road (the lot immediately northwest of the subject site)

On June 14, 2010, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 10' and imposed the following condition: compliance with the submitted site plan and elevation is required provided. The case report stated that the request was made in conjunction with maintaining a 14' high metal entry feature (two metal poles on either side of the driveway with metal crossing bar), and constructing and maintaining an 8' high open metal gate flanked by two approximately 20' long, 6' high flanking wing walls (4' open iron picket fence atop a 2' solid brick base), and a 6' high approximately 80' long open metal fence in the site's 50' front yard setback on a site developed with a single family home.

3. BDA 87-213, Property at 4111 Middlefield Road (a part of the subject site)

On August 25, 1987, the Board of Adjustment provided a termination date of April 30, 1988 for a nonconforming business of landscaping materials (sand, stone, gravel, etc.) and for a mining operation on the subject property.

Timeline:

- Sept. 16, 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.
- October 21, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- October 21, 2010: The Board Administrator spoke with the applicant and shared the following information via email:
- the public hearing date and panel that will consider the application; and
 - the criteria/standard that the board will use in their decision to approve or deny the request.

November 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

October 27, 2010 The Assistant Director in Code Compliance submitted a review comment sheet marked "Has no objections."

November 3, 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: "Comply with all C.O.D visibility requirements."

STAFF ANALYSIS:

- The request focuses on maintaining what has been represented on submitted plans as a 6' high open chain link fence on a site that is developed with an agricultural use.
- A site plan and a partial elevation has been submitted showing the existing fence to be about 92' long parallel to the street, showing the fence to be located approximately on the front property line (or about 6' from the pavement line), and showing the fence to be open chain link and 6' in height.
- No other fences in the area that appeared to be over 4' in height and located in a front yard setback were noted in a field visit of the site and surrounding area conducted by the Board Administrator.
- As of November 8, 2010, 10 letters had been submitted to staff in support and no letters had been submitted in opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence reaches 6' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and the partial elevation document would assure that the fence would be maintained in the location and of the height and material as shown on these documents.

1:10 P.M.: Break

1:15 P.M.: Resumed

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2010

APPEARING IN FAVOR: Cruz Gutierrez, 4045 Middlefield, Dallas, TX

APPEARING IN OPPOSITION: Betty Baty, 4011 Middlefield, Dallas, TX

APPEARING FOR THE CITY: Claudia Ibarra, 1500 Marilla 7DN, Dallas, TX

MOTION: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 090-102**, on application of Cruz Gutierrez, **grant** the request of this applicant to construct and maintain a six-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Maten

AYES: 4–Boyd, Moore, Maten, Richard

NAYS: 1 – Coulter

MOTION PASSED: 4– 1

FILE NUMBER: BDA 090-103

BUILDING OFFICIAL’S REPORT:

Application of Cruz Gutierrez for a special exception to the fence height regulations at 4045 Middlefield Road. This property is more fully described as Lot 16B in City Block 8780 and is zoned A(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot high fence which will require a special exception of 2 feet.

LOCATION: 4045 Middlefield Road

APPLICANT: Cruz Gutierrez

REQUEST:

- A special exception to the fence height regulations of 2’ is requested in conjunction with constructing and maintaining a 6’ high chain link fence on a site that is developed with a single family use.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The Dallas Development Code states that a 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 and a partial fence elevation indicating the proposal that would exceed 4' in height in the site's front yard setback. The site plan and partial elevation indicate a fence proposal that would be located in the site's front yard setback and would reach a maximum height of 6'.
- The following additional information was gleaned the submitted site plan:
 - The proposal would be approximately 125' in length parallel to Middlefield Road.
 - The proposal is shown to be located on the front property line or about 8' – 10' from what appears to be the street pavement line.
- The proposal is located on the site where no single family homes would have frontage to it.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences in the area that appeared to be over 4' in height and located in a front yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: A(A) (Agricultural)
North: A(A) (Agricultural)
South: A(A) (Agricultural)
East: A(A) (Agricultural)
West: A(A) (Agricultural)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, and west appear to be developed with single family uses and/or open fields.

Zoning/BDA History:

1. BDA 090-102, Property at 4111 Middlefield Road (two lots immediately southeast of the subject site) On November 15, 2010, the Board of Adjustment Panel C will consider a request for a special exception to the fence height regulations of 2' made in conjunction with

maintaining a 6' high open chain link fence in the front yard setback on a site developed with an agricultural use.

2. BDA 090-067, Property at 4111 Middlefield Road (the lot immediately southeast of the subject site)

On June 14, 2010, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 10' and imposed the following condition: compliance with the submitted site plan and elevation is required provided. The case report stated that the request was made in conjunction with maintaining a 14' high metal entry feature (two metal poles on either side of the driveway with metal crossing bar), and constructing and maintaining an 8' high open metal gate flanked by two approximately 20' long, 6' high flanking wing walls (4' open iron picket fence atop a 2' solid brick base), and a 6' high approximately 80' long open metal fence in the site's 50' front yard setback on a site developed with a single family home.

3. BDA 87-213, Property at 4111 Middlefield Road (a part of the lot immediately southeast of the subject site)

On August 25, 1987, the Board of Adjustment provided a termination date of April 30, 1988 for a nonconforming business of landscaping materials (sand, stone, gravel, etc.) and for a mining operation on the subject property.

Timeline:

- Sept. 16, 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.
- October 21, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- October 21, 2010: The Board Administrator spoke with the applicant and shared the following information via email:
- the public hearing date and panel that will consider the application; and
 - the criteria/standard that the board will use in their decision to approve or deny the request.

November 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

October 27, 2010 The Assistant Director in Code Compliance submitted a review comment sheet marked "Has no objections."

November 3, 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: "Comply with all C.O.D visibility requirements."

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 6' high open chain link fence on a site that is developed with a single family use.
- A site plan and a partial elevation has been submitted showing the proposed fence to be about 125' long parallel to the street, showing the proposed fence to be located approximately on the front property line (or about 8' – 10' from the pavement line), and showing the proposed fence to be open chain link and 6' in height.
- No other fences in the area that appeared to be over 4' in height and located in a front yard setback were noted in a field visit of the site and surrounding area conducted by the Board Administrator.
- As of November 8, 2010, 10 letters had been submitted to staff in support and no letters had been submitted in opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposed fence would reach 6' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted site plan and the partial elevation document would assure that the proposal would be constructed and maintained in the location and of the height and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2010

APPEARING IN FAVOR: Cruz Gutierrez, 4045 Middlefield, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Claudia Ibarra, 1500 Marilla, 7DN, Dallas, TX

MOTION: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 090-103**, on application of Cruz Gutierrez, **grant** the request of this applicant to construct and maintain a six-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Maten

AYES: 4–Boyd, Moore, Maten, Richard

NAYS: 1 – Coulter

MOTION PASSED: 4– 1

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Moore

AYES: 5–Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

1:30 P. M. - Board Meeting adjourned for **November 15, 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.