

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, APRIL 18, 2010**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Scott Jackson, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Steve Harris, regular member

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Scott Jackson, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Steve Harris, regular member

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 **April 20, 2010** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **March 16, 2010** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2010

MOTION: Schweitzer

I move **approval** of the Tuesday, **March 16, 2010** public hearing minutes.

SECONDED: Gabriel

AYES: 5 – Richmond, Schweitzer, Gabriel, Jackson, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

City attorney briefing on certain Dallas Development Code standards regarding applications to the Board of Adjustment.

***This was not an action item.**

FILE NUMBER: BDA 090-043

BUILDING OFFICIAL'S REPORT:

Application of Arthur Lee Johnson, Sr., for a special exception for the handicapped at 7110 Larchway Drive. This property is more fully described as Lot 2 in City Block C/ 6640 and is zoned R-7.5(A) and has a 30 foot platted building line from the front property line. The applicant proposes to construct and maintain a carport for a handicapped person and provide a 14 foot setback which will require a special exception of 16 feet.

LOCATION: 7110 Larchway Drive

APPLICANT: Arthur Lee Johnson, Sr.

REQUEST:

- A special exception for the handicapped is requested in conjunction with constructing and maintaining a carport at a single family home, part of which would be located in the site's 30' front yard setback.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit.

STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED: Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

GENERAL FACTS:

- Generally a 25' front yard setback is required in the R-7.5(A) zoning district. But because the subject site is located in a subdivision with a 30' platted building line, the front yard setback on the subject site is 30 feet.

A revised survey plat/site plan has been submitted that denotes that the proposed carport is located 14' from the site's front property line or 16' into the 30' front yard setback.

Materials have been submitted indicating a "Single car carport 12' x 20' and a Two-car carport 20' x 20'." (The revised site plan indicates a slight discrepancy in the dimensions of the carport – that being a carport that is 20' 3" wide and 19' 6" long).

- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:

"(h) "Handicap" means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,

- 2. a record of having such an impairment, or
- 3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment B). This information included a letter from the Department of Veterans Affairs stating among other things that “Arthur L. Johnson is rated 100 percent disabled on account of service-connected disability.”

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- February 18, 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.
- March 19, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 23, 2010: The Board Administrator contacted the applicant and mailed him the following information (see Attachment A):
 - the public hearing date and panel that will consider the application; the April 5th deadline to submit additional evidence for staff to factor into their analysis; and the April 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
- information related to the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 31, 2010 The applicant submitted additional information to the Board Administrator (see Attachment B).

April 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, 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.

Upon further review of the applicant's submitted materials, it was determined that the originally submitted survey plat/site plan required amending. Staff revised the originally submitted survey plat/site plan that conveyed an 18' 6" long carport located 15' from the front property line to a 19' 6" long carport located 14' from the front property line (see Attachment C).

April 9, 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: "If the neighborhood does not object then I have no objection."

STAFF ANALYSIS:

- This request focuses on a special exception for the handicapped to allow the construction and maintenance of a carport that would be located 14' from the front property line (or 16' into the required 30' front yard setback).
- Unlike most requests where the board is considering a structure that encroaches into a setback via a variance (where property hardship must be demonstrated) or via a special exception for a carport (where lack of detrimental impact on neighboring property must be demonstrated), the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit.
- In this particular case, the applicant has submitted a letter from an Assistant Director and Acting Veterans Service Center Manager for the Department of Veteran Affairs stating that "records of the Department of Veteran Affairs (VA) disclose that Arthur L.

Johnson (the applicant) is rated 100 percent disabled on account of service-connected disability.”

- The applicant has the burden of proof in establishing the following:
 - The special exception (which in this case is requested to construct and maintain a carport in a front yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and
 - there is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that compliance with the submitted revised site plan/survey plat is required, and that the special exception expires when a handicapped person no longer resides on the property, the carport could be retained of the size and location shown on this plan for as long as the applicant or any other handicapped person resides on the site.

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2010

APPEARING IN FAVOR: Veronica Berry, 7110 Larchway Dr., Dallas, TX
Arthur Johnson, 7110 Larchway Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-043**, on application of Arthur Lee Johnson, Sr., **grant** the request of this applicant to construct carport in the front yard setback as a special exception to the requirements contained in the Dallas Development Code, because our evaluation of the property and the testimony presented to us, and the facts that we have determined show that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. 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 survey plat/site plan is required.
- The special exception expires when a handicapped person no longer resides on the property.
- All applicable building permits must be obtained.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Jackson, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-032

BUILDING OFFICIAL'S REPORT:

Application of Sangwan Anuson, represented by William A Bratton, to appeal the decision of the administrative official at 2110 W. Northwest Highway (Suite A). This property is more fully described as an approximately 4.35 acre tract of land in City Block 6487 and is zoned IR, which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 2110 W. Northwest Highway (Suite A)

APPLICANT: Sangwan Anuson
Represented by William A Bratton

April 20, 2010 Public Hearing Notes:

- The Board Administrator informed the Board at their public hearing that a notification sign had been purchased by a person with the application during staff's briefing on the application earlier in the day.

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's December 30, 2009 revocation of certificate of occupancy no. 0910201087 for a personal service use (Cleopatra) at 2110 W. Northwest Highway, Suite A. The applicant states that "the information that a massage establishment is being operated at 2110 W. NW Hwy Suite A without a proper license is false and the certificate of occupancy was not fraudulently obtained."

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on February 5th -21 days after the application was submitted on January 15th, and 2) that the notification sign has not picked up/purchased at Dallas City Hall as of April 12th – 87 days after the application was submitted on January 15th.

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.”

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 December 30th letter to OTR, Inc., Jimmy G. Gibson, and Sangwan Anuson states the following:
 - This letter is to inform you that certificate of occupancy no. 0910201087 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.
 - Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required

to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.

- 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.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: MU-3 (Mixed Use)
West: IM (Industrial Manufacturing)

Land Use:

The subject site is developed as a commercial structure with a use doing business as Cleopatra. The areas to the north, east, and west are developed with commercial/retail uses; and the area to the south is undeveloped.

Zoning/BDA History:

1. BDA 090-033, Property at 2110 W. Northwest Highway, Suite B – dba Aloha (the subject site)
On April 20, 2010, the Board of Adjustment Panel A will consider an appeal requesting that they reverse/overturn the Building Official's December 30, 2009 decision to revoke certificate of occupancy no. 0909251080 on the subject site.
2. BDA 089-081, Property at 2110 W. Northwest Highway, Suite A – dba Cleopatra (the subject site)
On August 17, 2009, the Board of Adjustment Panel C affirmed the Building Official's April 21, 2009 decision to revoke certificate of occupancy no. 0808291072 on the subject site.
3. BDA 089-080, Property at 2110 W. Northwest Highway, Suite B – dba Aloha (the subject site)
On August 17, 2009, the Board of Adjustment Panel C affirmed the Building Official's April 21, 2009 decision to revoke certificate of occupancy no. 0809051084 on the subject site.

Timeline:

January 15, 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.

January 25, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

January 25, 2010: The Board Administrator wrote the applicant’s representative a letter stating among other things how he had failed to remit payment for the required notification sign, and that failure to post the required notification sign would result in either the postponement or denial of the appeal.

February 9, 2010: The Board Administrator wrote the applicant’s representative a letter stating among other things how his application had been rescheduled to be heard at Panel A’s April 20 hearing (from the previously scheduled March 16th hearing) given his plans to be out of the city during the week of March 15-19 on a prepaid, prearranged trip.

March 22, 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 April 5th deadline to submit additional evidence for staff to factor into their analysis; and the April 9th 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; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, 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 revocation of certificate of occupancy no. 0910201087 for a personal service use (Cleopatra) at 2110 W. Northwest Highway, Suite A on December 30, 2009 be overturned/reversed.
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on February 5th -21 days after the application was submitted on January 15th, and 2) that the notification sign has not been picked up/purchased at Dallas City Hall as of April 12th – 87 days after the application was submitted on January 15th.
- 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 sign, 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 sign on the site and upholds the Building Official's December 30th decision, the certificate of occupancy no. 0910201087 for a personal service use (Cleopatra) at 2110 W. Northwest Highway, Suite A will remain revoked.
- 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 sign on the site and reverses the Building Official's December 30th decision, the certificate of occupancy no. 0910201087 for a personal service use (Cleopatra) at 2110 W. Northwest Highway, Suite A will be reinstated.

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2010

APPEARING IN FAVOR: William Bratton, 2828 Routh Street, Dallas, TX

APPEARING IN OPPOSITION: Melissa Miles, 1500 Marilla, 7DN, Dallas, TX

MOTION: **Schweitzer**

Having fully reviewed the evidence in Appeal No. **BDA 090-032**, on application of Sangwan Anusan represented by William Bratton, 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 **with prejudice**.

SECONDED: **Jackson**

AYES: 4– Richmond, Schweitzer, Gabriel, Jackson,

NAYS: 1 - Gaspard

MOTION PASSED: 4– 1

FILE NUMBER: BDA 090-033

BUILDING OFFICIAL'S REPORT:

Application of Huy Nguyen, represented by William A. Bratton, to appeal the decision of the administrative official at 2110 W. Northwest Highway (Suite B). This property is more fully described as an approximately 4.35 acre tract of land in City Block 6487 and is zoned IR, which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 2110 W. Northwest Highway (Suite B)

APPLICANT: Huy Nguyen
Represented by William A. Bratton

April 20, 2010 Public Hearing Notes:

- The Board Administrator informed the Board at their public hearing that a notification sign had been purchased by a person with the application during staff's briefing on the application earlier in the day.

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's December 30, 2009 revocation of certificate of occupancy no. 0909251080 for a personal service use (Aloha) at 2110 W. Northwest Highway, Suite B. The applicant states that "the information that a massage establishment is being operated at 2110 W. NW Hwy Suite B without a proper license is false and the certificate of occupancy was not fraudulently obtained."

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on February 5th -21 days after the application was submitted on January 15th, and 2) that the notification sign has not picked up/purchased at Dallas City Hall as of April 12th – 87 days after the application was submitted on January 15th.

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.”

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 December 30th letter to OTR, Inc., Jimmy G. Gibson, and Huy Nguyen states the following:
 - This letter is to inform you that certificate of occupancy no. 0909251080 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.
 - Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development

Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.

- 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.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: MU-3 (Mixed Use)
West: IM (Industrial Manufacturing)

Land Use:

The subject site is developed as a commercial structure with a use doing business as Cleopatra. The areas to the north, east, and west are developed with commercial/retail uses; and the area to the south is undeveloped.

Zoning/BDA History:

1. BDA 090-032, Property at 2110 W. Northwest Highway, Suite A – dba Cleopatra (the subject site) On April 20, 2010, the Board of Adjustment Panel A will consider an appeal requesting that they reverse/overturn the Building Official's December 30, 2009 decision to revoke certificate of occupancy no. 0910201087 on the subject site.
2. BDA 089-081, Property at 2110 W. Northwest Highway, Suite A – dba Cleopatra (the subject site) On August 17, 2009, the Board of Adjustment Panel C affirmed the Building Official's April 21, 2009 decision to revoke certificate of occupancy no. 0808291072 on the subject site.
3. BDA 089-080, Property at 2110 W. Northwest Highway, Suite B – dba Aloha (the subject site) On August 17, 2009, the Board of Adjustment Panel C affirmed the Building Official's April 21, 2009 decision to revoke certificate of occupancy no. 0809051084 on the subject site.

Timeline:

January 15, 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.

January 25, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

January 25, 2010: The Board Administrator wrote the applicant's representative a letter stating among other things how he had failed to remit payment for the required notification sign, and that failure to post the required notification sign would result in either the postponement or denial of the appeal.

February 9, 2010: The Board Administrator wrote the applicant's representative a letter stating among other things how his application had been rescheduled to be heard at Panel A's April 20 hearing (from the previously scheduled March 16th hearing) given his plans to be out of the city during the week of March 15-19 on a prepaid, prearranged trip.

March 22, 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 April 5th deadline to submit additional evidence for staff to factor into their analysis; and the April 9th 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; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

April 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, 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 revocation of certificate of occupancy no. 0909251080 for a personal service use (Aloha) at 2110 W. Northwest Highway, Suite B on December 30, 2009 be overturned/reversed.

- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on February 5th -21 days after the application was submitted on January 15th, and 2) that the notification sign has not picked up/purchased at Dallas City Hall as of April 12th – 87 days after the application was submitted on January 15th.
- 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 sign, 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 sign on the site and upholds the Building Official’s December 30th decision, the certificate of occupancy no. 0909251080 for a personal service use (Aloha) at 2110 W. Northwest Highway, Suite B will remain revoked.
- 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 sign on the site and reverses the Building Official’s December 30th decision, the certificate of occupancy no. 0909251080 for a personal service use (Aloha) at 2110 W. Northwest Highway, Suite B will be reinstated.

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2010

APPEARING IN FAVOR: William Bratton, 2828 Routh Street, Dallas, TX

APPEARING IN OPPOSITION: Melissa Miles, 1500 Marilla, 7DN, Dallas, TX

MOTION: **Schweitzer**

Having fully reviewed the evidence in Appeal No. **BDA 090-033**, on application of Huy Nguyen represented by William Bratton, 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 **with prejudice**.

SECONDED: **Gabriel**

AYES: 4– Richmond, Schweitzer, Gabriel, Jackson,

NAYS: 1 - Gaspard

MOTION PASSED: 4– 1

MOTION: Gaspard

I move to adjourn this meeting.

SECOND: Schweitzer

AYES: 5– Richmond, Schweitzer, Gabriel, Jackson, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:25 P.M. - Board Meeting adjourned for **April 20, 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.