

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
WEDNESDAY, JUNE 17, 2009**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner Phil Erwin, Chief Arborist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

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**10:40 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 17, 2009 docket.**

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**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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B May 20, 2009 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

**MOTION: Beikman**

I move approval of the Wednesday, **May 20, 2009** Board of Adjustment Public Hearing minutes as amended.

**SECONDED: Chernock**

**AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (Unanimously)**

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**FILE NUMBER: BDA 089-076**

**BUILDING OFFICIAL’S REPORT:**

Application of Tommy Mann of Winstead PC for a special exception to the parking regulation at 19009 Preston Road. This property is more fully described as Lot 58 in City Block 18/8736 and is zoned PD 170 (Tract 6A) which requires parking to be provided. The applicant proposes to maintain a structure for a combination of uses described in Chapter 51 as professional, personal service, and custom craft uses; retail uses; and bar and restaurant uses and provide 303 of the required total number of parking spaces not to exceed a maximum of 377 parking spaces which will require a special exception of 74 spaces.

**LOCATION: 19009 Preston Road**

**APPLICANT: Tommy Mann of Winstead PC**

**REQUEST:**

- A special exception to the off-street parking regulations of 74 parking spaces (or a 20 percent reduction of the required off-street parking) is requested in conjunction with leasing suites within an existing approximately 54,000 square foot retail center (Preston Lloyd Shopping Center) with a mix of professional, personal service and custom craft uses; retail uses; and bar and restaurant uses. The applicant proposes

This request is made essentially for two reasons:

- 1) To reinstate a request for a special exception to the off-street parking regulations of 74 spaces granted on the subject site by Board of Adjustment Panel B (BDA078-086) by amending the specific uses that were conditioned in conjunction with this request where the board imposed specific Chapter 51A uses instead of specific PD 170 Chapter 51 uses; and
- 2) To reinstate a request for special exception to the off-street parking regulations of 74 spaces granted on the subject site by Board of Adjustment Panel B (BDA078-086) by extending the one year time period imposed as a condition in conjunction with this request - that being an expiration date one year from August 13, 2008.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

The special exception shall automatically and immediately terminate if and when the combined required parking for the professional, personal service, and custom craft uses; retail uses; and bar and restaurant uses on the site exceed 377 spaces.

Rationale:

- The Development Services Senior Engineer has no objections to this request based on the parking analysis dated April 24, 2009.

**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:**

- According to a table submitted by the applicant, the Dallas Development Code requires the following off-street parking requirements for the existing/proposed uses on the subject site:
  - 1 space is required per 100 square feet of floor area for restaurant uses (without drive-in or drive through service).
  - 1 space is required per 200 square feet for professional, personal service.
  - 1 space is required per 200 square feet of floor area for retail uses.
 According to the Building Official's Report, the applicant proposes to provide 303 of the required 377 parking spaces.
- Lots located in Tract 6A of PD No. 170 should generally adhere to Shopping Center District uses and standards. The applicant has specifically selected three categories of uses within this Chapter 51 zoning district (see Attachment A) to which the parking special exception would apply:
  1. retail uses requiring 1/200 spaces or less (from a complete list of 22 uses with parking requirements that range from 1 space per 200 square feet – 1 space per 500 square feet);
  2. bar and restaurant uses requiring 1/100 spaces or less (from a complete list of 6 uses with parking requirements that range from of 1 spaces per 50 square feet – 1 space per 200 square feet); and professional,

3. personal service, and custom craft uses requiring 1/200 spaces or less (from a complete list of 24 uses with parking requirements that range from 1 space per 150 square feet – no parking requirement).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 170 (Planned Development)  
North: PD No. 170 (Planned Development)  
South: PD No. 170 (Planned Development)  
East: PD No. 765 (Planned Development)  
West: PD No. 170 (Planned Development)

**Land Use:**

The subject site is developed with a retail shopping center (Preston Lloyd Shopping Center). The areas to the north and east are developed with retail uses; and the areas to the south and west are developed with townhouse and multifamily residential uses.

**Zoning/BDA History:**

1. BDA078-086, Property at 19009 Preston Road (the subject site)  
On August 13, 2008, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 74 spaces and imposed following conditions: 1) the special exception shall automatically and immediately terminate if and when the office, personal service, restaurant without drive-in or drive through service, and general merchandise or food store less than 3,500 square feet uses on the site are changed or discontinued; and 2) the special exception shall terminate one year from today.
2. Miscellaneous Items 2 and 3, Property at 19009 Preston Road (the subject site)  
On March 18, 2009, the Board of Adjustment Panel B granted requests for waiver of the two year limitation on the request mentioned in #1 above, and a waiver of the filing fee to be submitted in conjunction with a new special exception to the off-street parking regulations of 74 spaces.

**Timeline:**

- April 24, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 21, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."
- May 21, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- May 28, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Development Services Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- June 3, 2009 The Building Inspection Development Code Specialist forwarded a review Building Official's Report on the application (see Attachment B).
- June 5, 2009 The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Based on the parking analysis dated April 24, 2009."

### **STAFF ANALYSIS:**

- This request focuses on reinstating/continuing a one-year special exception to the off-street parking regulations of 74 parking spaces granted by Board of Adjustment Panel B in August of 2008 (BDA078-086) – a request made in conjunction with leasing suites within an existing approximately 54,000 square foot retail center (Preston Lloyd Shopping Center) with a mix of professional, personal service and custom craft uses; retail uses; and bar and restaurant uses.

- In addition to this request being made to continue the previous request beyond August of 2009 (the expiration date of BDA078-086), the request is made to amend the specific uses that were conditioned in conjunction with the previous request where the board imposed specific Chapter 51A uses (office, personal service, restaurant without drive-in or drive through service, and general merchandise or food store less than 3,500 square feet uses) instead of specific PD 170 Chapter 51 uses (a mix of professional, personal service and custom craft uses; retail uses; and bar and restaurant uses).
- The proposal involves no proposed additions/increases in square footages to the existing center but is made to possibly lease existing suites within the center with uses that require more parking than the uses originally leased when the center was constructed in the mid-80's.
- The Development Services Senior Engineer has no objections to this request based on the submitted parking analysis dated April 24, 2009.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the mix of professional, personal service and custom craft uses; retail uses; and bar and restaurant uses does not warrant the number of off-street parking spaces required, and
  - The special exception of 74 spaces (or 20 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 shall automatically and immediately terminate if and when the combined required parking for the professional, personal service, and custom craft uses; retail uses; and bar and restaurant uses on the site exceed 377 spaces., the applicant would be allowed to lease existing suites within the center on the site with these specific uses and with 303 of the 377 off-street parking spaces required by the code.

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment grant application **BDA 089-076** 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 shall automatically and immediately terminate if and when the combined required parking for the professional, personal service, and custom craft uses; retail uses; and bar and restaurant uses on the site exceed 377 spaces.

SECONDED: **Gillespie**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson  
NAYS: 0 –  
MOTION PASSED 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 089-029(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Mehul Patel represented by Robert Baldwin for a variance to the parking regulation and a special exception to the visibility obstruction regulation at 1610 Cedar Springs Road. This property is more fully described as Lot 1 in City Block A/297 and is zoned PD-193 (I-2), which requires parking to be provided and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a nonresidential structure for hotel or motel use and provide 199 of the required 239 parking spaces which will require a 40 space variance (16.7% reduction) to the parking regulation and to construct a nonresidential structure in a required visibility obstruction triangle which will require a special exception to the visibility obstruction regulation.

**LOCATION:** 1610 Cedar Springs Road

**APPLICANT:** Mehul Patel  
Represented by Robert Baldwin

**REQUEST:**

- A variance to the off street parking regulation to reduce the required amount of parking by 16.7%. The applicant proposes to provide 199 of the 239 parking spaces required.
- A special exception the visibility obstruction regulation for the drive approach on Caroline St.

**STAFF RECOMMENDATION (variance to off-street parking):**

Denial

Rationale:

- The Development Services Senior Engineer recommends that this request be denied because” the parking demand study dated 4/22/09 did not clearly demonstrate that reduction of 16.7% is justified.”
- The applicant had not substantiated how the this parcel of land differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in the same PD 193 zoning.

**STANDARD FOR A VARIANCE TO THE OFF-STREET PARKING REGULATIONS:**

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; the variance is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and the variance is not granted to relieve a self-created or personal hardship; nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION (special exception to visibility obstruction):**

Approval.

Rationale:

- The Development Services Senior Engineer has no objections to the special expectation to the visibility obstruction at the drive approach on Caroline Street.

**Standard for Visual Obstruction:**

The board shall grant a special exception to the requirements of this section when, in the opinion of the board, the item will not constitute a traffic hazard.

**GENERAL FACTS:**

- The subject site is currently a parking lot. The proposed use is a hotel/motel use and restaurant.
- The site is in the Planned Develop District 193. The Dallas Development Code requires the following off-street parking:
  - 1 space per for each guest room up to 250 rooms
  - 1 space per every 100 square feet of restaurant floor area.
- The applicant proposes to provide 199 of the 239 off-street parking spaces required.
- A portion of the building will be located within the drive approaches on Caroline Street.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (I-2) (Industrial)  
North: PD 193 (I-2) (Industrial)  
South: PD 193 (I-2) (Industrial)  
East: PD 193 (PDS 24)  
West: PD 193 (MF-3) (multi-family)

**Land Use:**

The subject site is developed with a parking lot. The property to the north is developed with a parking lot. The property to the east is under construction. The property to the south is developed with a restaurant use. The property to the west is developed with a multi-family use.

**Zoning/BDA History:**

There is no case history for this site or sites in the immediate area.

**Timeline:**

January 29, 2009: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 24, 2009: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via letter:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the March public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

- March 2, 2009: The applicant's representative submitted a letter to the Board for its consideration (see attachment B).
- March 18, 2009 The Board of Adjustment, Panel B voted to hold this case under advisement until May 20, 2009.
- May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- May 8, 2009: The Development Services Senior Engineer submitted a comment sheet (see attachment).
- May 20, 2009 The Board of Adjustment Panel B voted to hold this case under advisement under June 17, 2009.
- June 2, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

**STAFF ANALYSIS:**

- The site is located in Planned Development district 193 that requires a hotel/motel use to provide 1 space per guest room up to 250 guest rooms and 1 space per 100 square feet of floor area for restaurant use.
- The applicant is seeking a parking variance of 40 spaces of 16.7% in conjunction with the construction and maintenance of a hotel/motel and restaurant use. The applicant proposes to provide 199 of the required 239 parking spaces.
- The submitted site plan illustrates the site will provide 199 off-street parking spaces in a 5 level parking garage. The proposed restaurant use is comprised of two restaurants, one on the north corner of the property and the other on the west corner.
- The total floor area of the restaurants is 8055 square feet and requires 81 parking spaces. The hotel will have 158 guest rooms and requires 158 off-street parking spaces. The applicant is proposes to provide 41 of the required 81 parking spaces for restaurant use and 158 of the required 158 parking spaces for the guest rooms.
- The applicant submitted a parking study to support the request for a variance to the required off-street parking spaces. The Development Services Senior Engineer is recommending denial of this request.

- The submitted site plan illustrates that a portion of the building will be located within the visibility obstruction triangles for the drive approach on Caroline Street. The Development Services Senior Engineer has reviewed the site plan and has no objection to the request.
- If the Board grants the variance to the off-street parking variance, staff recommends imposing the submitted site plan as a condition.
- If the Board grants the special exception to the visibility obstruction, staff recommends imposing the submitted site plan as a condition.

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

APPEARING IN FAVOR: Victoria Radar, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-029**, on application of Mehul Patel, represented by Rob Baldwin, **deny** the variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

**MOTION #2: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-029**, on application of Mehul Patel, represented by Rob Baldwin, **grant** the request of this applicant to construct and maintain a portion of a building in the two 20 foot visibility triangles (on either side to the north and to the south) of the drive approach from Caroline Street as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 089-062(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Santos T. Martinez represented by Masterplan Consultants for a variance to the off-street parking regulations at 4316 Abrams Road. This property is more fully described as a proposed replatted Lot 8A (Lot 26A, 8, & 9) in City Block A/2956 and is zoned R-7.5(A), which requires a front yard setback of 30 feet. The applicant proposes to construct and maintain a nonresidential use and provide a 10 foot front yard setback which will require a variance of 20 feet for off-street parking.

**LOCATION:** 4316 Abrams Road

**APPLICANT:** Santos T. Martinez  
Represented by Masterplan Consultants

**REQUESTS:**

The applicant seeks to develop the property with a non-residential use and seeks a variance to the off-street parking regulations.

**STAFF RECOMMENDATION (variance off-street parking):**

Approval

Rationale:

- The applicant has substantiated how this parcel of land differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5(A) zoning.

**STANDARD FOR A VARIANCE TO THE OFF-STREET PARKING REGULATIONS:**

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; the variance is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and the variance is not granted to relieve a self-created or personal hardship; nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**GENERAL FACTS:**

- The applicant is seeking a variance to the front yard setback regulations to provide parking on lots with frontage on Abrams Road.
- The property is zoned R-7.5(A) and is required to provide a 30 foot front yard setback.

**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: CR (community retail)  
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 site is developed with Wilshire Baptist Church. The properties to the north, east and west are developed with single family uses. The property to the south is developed with retail uses.

**Zoning/BDA History:**

BDA 089-002. On January 21, 2009 the Board of Adjustment Panel B, granted a special exception to the fence height regulation.

BDA 990-139. On October 19, 1999 the Board of Adjustment, granted a variance to the off-street parking regulation.

**Timeline:**

- March 26, 2009: The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 18, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- April 30, 2009: The Board Senior Planner mailed the applicant a letter that contained the following information:
- the public hearing date and panel that will consider the application;
  - the criteria and standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;

- the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the June 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

1. The subject site is currently developed with two single-family homes. The applicant is proposing to redevelop the parcels with a parking lot. This proposed development will extend the existing parking lot of Wilshire Baptist Church.
  2. The applicant is seeking a variance to the off-street parking regulations, to allow for parking within the properties' 30 foot required front yard setback. The applicant is proposing to provide a 10 foot front yard setback and seeks a variance of 20 feet.
  3. The submitted site plan illustrates an extended parking lot with solid brick wall a minimum of 7 feet and a 10 foot landscape buffer along the northern property line.
  4. The applicant has stated the property owner will maintain all required landscape and buffer materials. In addition, the applicant concludes that this additional off-street parking will provide relief to the surrounding neighborhood by allowing more vehicles to be parked on the church property.
  5. The applicant has the burden of proof in establishing the following that granting the variance to the off-street parking regulation is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R 7.5(A) zoning; and the variance is not granted to relieve a self-created or personal hardship; nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same R 7.5(A) zoning.
- If the Board votes to grant the variance to the off-street parking regulation staff recommends compliance with the submitted site plan.

### **BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

APPEARING IN FAVOR: William Cothrum, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 089-062**, on application of Santos Martinez, represented by Masterplan, **grant** the 20-foot variance to the front yard setback regulation for off-street parking because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Chernock**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

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FILE NUMBER: BDA 089-023(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Olegario Estrada represented by Raj Sharma for a variance to the side yard setback regulation, a variance to the front yard setback regulation, and a special exception to the landscaping regulations at 5224 W. Jefferson Blvd. This property is more fully described as Lot 6 in City Block 17/8342 and is zoned CR, which requires a side yard setback of 20 feet where there is residential adjacency for new construction and requires front yard setback of 25 feet and requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide a 0 foot side yard setback, which will require a 20 foot variance to the side yard setback regulation, and to construct and maintain a nonresidential structure and provide a 10 foot, 10 inch front yard setback which will require a 14 foot, 2 inch variance to the front yard setback regulation, and to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 5224 W. Jefferson Blvd.

APPLICANT: Olegario Estrada represented by Raj Sharma

**REQUESTS:**

The applicant seeks to develop the property with a non-residential use and seeks a variance to the side yard regulations; a variance to the front yard regulations on South Bagley Street, and a special exception to the landscape regulation.

**STAFF RECOMMENDATION (special exception to landscape regulation):**

Pending a review of the final submission of an alternate landscape plan to the Chief Arborist.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape 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 (variance front and side yard setback):**

Approval

Rationale:

- The variance is necessary to develop this particular property because this parcel differs from other parcels of land in the CR zoning in that it has a restrictive shape and developable area.
- Granting this variance does not appear to be contrary to the public interest.

**STANDARD FOR A VARIANCE TO THE FRONT AND SIDE YARD SETBACK REGULATION:**

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; the variance is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and the variance is not granted to relieve a self-created or personal hardship; nor for

financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The site is developed with a non-residential office use. The properties to the north, east and west are developed with retail and commercial uses. The property to the south is developed with residential use.

### **Zoning/BDA History:**

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

### **Timeline:**

- December 22, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 21, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 22, 2009: The Board Senior Planner mailed the applicant a letter that contained the following information:
- the public hearing date and panel that will consider the application;
  - the criteria and standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
  - the June 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;

- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

June 9, 2009 The Chief Arborist submitted a memorandum referencing the submitted alternate landscape plan (attachment A).

**STAFF ANALYSIS:**

6. The property is zoned CR (Community Retail) and is currently developed with an office use. The Dallas Development code requires this property to maintain a 25 foot front yard setback along South Bagley Street, due the adjacent residential zoning [R-7.5(A)]. Likewise, this parcel is also required to provide a 20 foot side yard setback due to adjacent residential zoning.
7. The applicant is seeking a variance to the front and side yard setback requirements. The applicant is proposing to provide a 10 foot and 10 inch front yard setback along South Bagley Street, which will require a 14 foot and 2 inch variance; and provide a 0 foot side yard setback (along the southern property line), which will require a 20 foot variance.
8. The applicant is not seeking a variance to the front yard setback along Jefferson Blvd.
9. The applicant has submitted an alternate landscape plan and seeks a special exception to the required landscape regulations. The Chief Arborist has reviewed the submitted plan and is withholding a recommendation until a final alternate landscape plan has been submitted.
10. The applicant has the burden of proof in establishing the following:
  1. that granting the special exception the landscape regulations is necessary because strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council;
  2. that granting the variance to the front and side yard setback regulation is necessary to permit development of specific parcel of land that differs from

- If the Board were to grant the special exception to the landscape regulations staff recommends compliance with the submitted revised alternate landscape plan.
- If the Board votes to grant the variance to front and/or side yard regulations staff recommends compliance with the submitted site plan.

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

APPEARING IN FAVOR: Santos Martinez , 900 Jackson St., #640, Dallas, TX  
 Michael Mendez, 2016 Crosbyton LN, Grand Prairie, TX  
 Violeta Mendez, 2016 Crosbyton LN, Grand Prairie, TX  
 Olegario Estrada, 1223 N Bagley, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-023**, on application of Olegario Estrada, represented by Raj Sharma, **grant** the 14-foot 2-inch variance to the South Bagley Street front yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Beikman**

**AYES:** 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (Unanimously)

**MOTION #2: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-023**, on application of Olegario Estrada, represented by Raj Sharma, **grant** the 20-foot variance to the side yard setback regulations because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Chernock**

**AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (Unanimously)**

**MOTION #3: Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-023**, on application of Olegario Estrada, represented by Raj Sharma, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council. 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 alternate landscape plant plan/plot plan is required.

**SECONDED: Beikman**

**AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (Unanimously)**

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**FILE NUMBER: BDA 089-067**

**BUILDING OFFICIAL’S REPORT:**

Application of Domingo Rodriguez for a special exception to the single family regulations at 6717 Lakewood Boulevard. This property is more fully described as part of Lots 11 & 12 in City Block Q/2802 and is zoned CD-2 (Tract III) which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit which will require a special exception to the single family zoning use regulations.

**LOCATION: 6717 Lakewood Boulevard**

**APPLICANT: Domingo Rodriguez**

**June 17, 2009 Public Hearing Notes:**

- The applicant submitted revised plans to the board at the public hearing –plans that he represented as documents showing an accessory structure/dwelling unit structure on the subject site that was in compliance with side yard setback, rear yard setback, and FAR regulations.

### **REQUEST:**

- A request for a special exception to the single family regulations has been made in conjunction with according to the application submitted on April 16, 2009 an additional dwelling unit on a site that is developed with a single family home.

Originally and up until June 4, 2009, the following appeals had been made in conjunction with this application:

1. a variance to the FAR (Floor Area Ratio) regulations of 673 square feet;
2. a variance to the side yard setback regulations of 3' 6";
3. a variance to the rear yard setback regulations of 3' 6"; and
4. a special exception to the single family regulations.

These appeals had been originally requested in conjunction with maintaining a 1 1/2-story, approximately 2,000 square foot (total living area and garage space) "accessory structure"/"dwelling unit" structure on a site developed with a 2-story single family home. The existing accessory structure had been deemed to be a dwelling unit by Building Inspection from the plans submitted in April of 2009 to be - a "dwelling unit" in this case that exceeded the square footage that was permitted relative to the size of the main structure, and a structure that was located in the western side yard and rear yard setbacks.

On June 4, 2009, the applicant withdrew three of his four original requests – those being the requests for variances (see Attachment A) leaving only a request for a special exception to the single family regulations for an additional dwelling unit. Although the Board Administrator had discussed (and emailed to the applicant) a timeframe that would give him the opportunity to submit revised/additional information by June 8<sup>th</sup> no additional information was submitted. (Staff had assumed given the applicant's withdrawal of the three variance requests that revised plans would be necessary/in the best interest of his application since it was highly likely that the originally submitted plans submitted to Building Inspection in mid-April would no longer convey his amended application.

Staff has no revised plans that represent an accessory structure that does not require the variances that were withdrawn - that being a structure shown on a revised plan that complies with FAR, side and rear yard setback regulations.

Only the original plans have been submitted with the application – plans (including a site plan, floor plan, and elevations) that show not only a need for what is left of the original application (a dwelling unit special exception) but for variances to the FAR, rear and side yard regulations that were withdrawn on June 4, 2009.

The applicant has not given staff any information about his additional dwelling unit - no information as to whether he intends to demolish the existing accessory structure on the site entirely and replace it with a new accessory structure/dwelling unit structure that complies with FAR, side yard and rear yard setback regulations, or to modify the existing accessory structure/dwelling unit structure where it would conform with FAR, side, and rear yard setback regulations.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in any single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:**

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**GENERAL FACTS:**

- Conservation District No. 2 states that only one dwelling unit may be located on a lot. The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”  
Floor plans were submitted in conjunction with the original application denoting that the first floor of the accessory structure is comprised of rooms labeled 2-car garage, storage, bath (2), closet, guest rm. s.d., nook, kitchen; and the second floor of the accessory structure is comprised of a room labeled “game rm. s.d.” whereby the Building Official has deemed it not only an “accessory structure” but a “dwelling unit” as well.
- According to DCAD records, the property is developed with the following:
  - a single family home in “very good” condition with 3,502 square feet of living area built in 1927;
  - a 484 square foot detached garage;
  - a pool, and
  - a 1,322 square foot detached servants quarters.

- The originally submitted site plan indicates that the additional “dwelling unit” structure is located 2’ 6” from the site’s western side and rear property lines, and is 44 percent of the floor area of the main structure on the site (or 19 percent beyond the 25 percent allowed by the code).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD No. 2(Conservation District)  
North: CD No. 2(Conservation District)  
South: CD No. 2(Conservation District)  
East: CD No. 2(Conservation District)  
West: CD No. 2(Conservation District)

**Land Use:**

The subject site is developed with a single family home and an accessory structure. 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:**

- April 16, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 21, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 22, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 5<sup>th</sup> 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.”
- June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Development Services Assistant Director, the Board of Adjustment

Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

June 4, 2009: The applicant submitted additional information to the Board Administrator – information that requested withdrawal of his requests for variances to the FAR, rear yard, and side yard setback regulations (see Attachment A).

June 5, 2009 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).

### **STAFF ANALYSIS:**

- This request focuses on a special exception for an additional “dwelling unit” structure on the subject site - a site developed with a single family main structure and an accessory/secondary dwelling unit structure.
- The applicant has not provided information from when he withdrew his originally submitted requests for variances to the FAR, rear yard, and side yard setback regulations on June 4, 2009 as to whether he intends to demolish the existing accessory/dwelling unit on the site entirely and replace it with a new accessory structure/dwelling unit structure, or if he intends to modify the existing accessory/dwelling unit structure where it would conform with FAR, side, and rear yard setback regulations.
- The site is zoned CD No. 2 - a zoning district that permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant has requested a special exception for an additional dwelling unit where it is yet to be determined whether he intends to modify/maintain the existing accessory/dwelling unit structure on the site or if he intends to construct/maintain a new accessory/dwelling unit structure on the site.
- This type of request generally centers on the function of what is proposed inside the structure. But in this particular case, Building Inspection had deemed that not only was the structure shown on the originally (and only) submitted plans of April of 2009 a “dwelling unit” but that the applicant would need to apply for variances to the FAR, side yard, and rear yard setback regulations in order for the structure shown to be maintained as shown on these plans - variances that the applicant had applied for but withdrew on June 4, 2009.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the board were to grant this request, there would be no plans that the board could impose as a condition since the structure shown on the only submitted plans violate FAR, side and rear yard setback regulations.

- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

APPEARING IN FAVOR: Eric Rodriguez, 323 E. Jefferson, Dallas, TX  
Ashley Martzen, 4310 Buena Vista #23, Dallas, TX

APPEARING IN OPPOSITION: Christopher Black, 6721 Lakewood, Dallas, TX

**MOTION #1: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 089-067**, on application of Eric Rodriguez, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.
- The additional dwelling unit must comply with all applicable yard, lot, and space requirements.

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

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**FILE NUMBER:** BDA 089-071

**BUILDING OFFICIAL’S REPORT:**

Application of Santos T. Martinez of Masterplan for variances to the front yard setback regulations and a special exception to the landscape regulations at 1924 N. Henderson Avenue. This property is more fully described as part of Lot 36 in City Block D/1979 and is zoned PD-462 (Subdistrict 5) which requires a minimum front yard setback of 15 feet, a maximum front yard setback of 30 feet, and requires mandatory landscaping. The applicant proposes to maintain a structure and provide a 0 foot minimum front yard setback which will require a 15 foot variance to the minimum front yard setback regulations, a 38 foot maximum front yard setback which will require an 8 foot variance to the maximum front yard setback regulations, and to provide an alternate landscape plan which will require a special exception to the landscape regulations.

**LOCATION:** 1924 N. Henderson Avenue

**APPLICANT:** Santos T. Martinez of Masterplan

**June 17, 2009 Public Hearing Notes:**

- The board administrator circulated additional information submitted by the applicant on June 12<sup>th</sup> and 15<sup>th</sup> to the board at the briefing (see Attachment D). This information included a letter that provided additional details about the request and a revised site plan.
- The applicant submitted additional documents to the board at the public hearing – documents that included copies of what appears to be emails sent from staff to an interested citizen, and a copy of an email sent from staff (code compliance) to the applicant.

**REQUESTS:**

- The following appeals have been made in this application on a site developed with a restaurant/bar (Blue Collar Bar):
  1. Variances to the minimum front yard setback regulations of 15' along Henderson Avenue and to the *maximum* front yard setback regulations of 8' along McMillan Avenue are requested in conjunction with maintaining (according to the applicant) a portion of a recently added approximately 600 square foot patio structure in the site's 15' minimum front yard setback along Henderson Avenue and not enlarging this same patio structure to a point where it reaches the 30' maximum front yard setback along McMillan Avenue. (The patio structure that is the issue to the variance requests attaches to an existing approximately 1,400 square foot structure that appears to have been partially constructed in 1935 - therefore a nonconforming structure, and partially added onto and "varied" to the front yard setback regulations by the Board of Adjustment in 1995).
  2. A special exception to the landscape regulations is requested in conjunction with essentially amending an alternate landscape plan that was imposed as a condition to a request for a special exception to the landscape regulations by the Board of Adjustment in 1995 (BDA95-120) – a plan imposed as a condition to a structure on the subject site without the recently added patio that is out of compliance with the minimum and maximum front yard setback regulations.

**STAFF RECOMMENDATION (variances):**

Denial of both variances

- There is no property hardship to the site that warrants variances to the minimum and maximum front yard setback regulations which in this case is requested to maintain a patio structure inside the minimum 15' front yard setback on N. Henderson Avenue and outside the maximum 30' front yard setback on McMillan Avenue.
- Although the site is triangular in shape (114' x 116' x 163'), and is (according to DCAD) 1,686 square feet in area with two street frontages (which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural) none of these features preclude the lot from being developed in a manner commensurate

- The applicant had not substantiated how the physical features of this site (even with its triangular shape and two front yard setbacks) constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 462 (Subdistrict 5) zoning classification while simultaneously complying with code development standards including but not limited to minimum and maximum front yard setback regulations.
- Although the applicant contends “that property hardship creates extreme limitations for any establishment to conduct business at this location,” the Board of Adjustment granted a front yard variance in 1995 for an addition to (at that time) an existing restaurant structure – Alfredo’s (without the additional recently added patio structure that is the nature of this application); and contends that the “outside dining area is comparable to establishments located across the street and along Henderson Avenue within this same planned development district,” the applicant has only provided names of these specific businesses, and not provided information as to whether these “comparable” outside dining areas are located in required setbacks, or have been legally permitted.
- The applicant has not substantiated how the variances are not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION (landscape special exception):**

Denial

Rationale:

- The City’s Chief Arborist recommends denial of the request based on what has been shown on the submitted revised site plan.
- The applicant has not substantiated: 1) how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and 2) that the special exception will not adversely affect neighboring property.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; the variance is

necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

### **STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape 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.

### **GENERAL FACTS (related to the front yard variance):**

- Given the subject site's non-residential zoning and the fact that it is a corner lot, the site has two front yard setbacks - one along N. Henderson Avenue, the other along McMillan Avenue. Structures on lots zoned PD No. 462 (Subdistrict 5) are required to provide a minimum front yard setback of 15' and a *maximum* front yard setback of 30 feet.

The PD No. 462 *maximum* front yard setback provision was established in the 1996 to encourage new development close to the street in order to promote a more urban/pedestrian environment.

The applicant has submitted a revised site plan indicating a patio and main structure that are located on the site's N. Henderson Avenue front property line (or as much as 15' into the minimum 15' front yard setback). The site plan indicates a main structure that is located on the site's McMillan Avenue front property line (or as much as 15' into the 15' front yard setback), however, the revised site plan denotes that the "area of request" is only for the "patio" located in the N. Henderson Avenue front yard setback since the main structure is a combination of structure that is either a nonconforming structure or a "varied" addition to this nonconforming structure.

The patio structure that is the "area of request" issue with regard to the 15' minimum front yard setback along Henderson Avenue is also an "area of request" issue with regard to the 30' maximum front yard setback along McMillan Avenue – in order for

the patio structure to be in compliance with this maximum setback, it would have to be added onto by 8' towards the McMillan Avenue front property line. (Currently the patio structure is 38' away (or 8' short) of meeting the 30' maximum front yard setback along McMillan Avenue.

- According to a document submitted by the applicant, the area of the patio structure that is the nature of the variance request located in the site's minimum 15' front yard setback is 161 square feet of the 593 square foot patio structure building footprint.
- The site is flat, is triangular in shape (114' x 116' x 163'), and is (according to DCAD) 1,686 square feet in area. The site is zoned PD No. 462 (Subdistrict 5). The site has two 15' minimum front yard setbacks and two 30' maximum front yard setbacks – the two front yard setbacks on the site with two street frontages is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- According to DCAD records, the property is developed with a 638 square foot restaurant built in 1935.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a revised site plan;
  - a letter that provided additional information related to the requests;
  - a site plan indicating a dedicated utility easement; the required 15' front yard setback area; and the legal building area.

#### **GENERAL FACTS (related to the landscape special exception):**

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.  
A revised site plan (that is assumed to serve as the applicant's alternate landscape plan) has been submitted that according to the City of Dallas Chief Arborist is not meeting the conditions of an alternate landscape plan approved by the Board of Adjustment in November of 1995 (BDA95-120).
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment C). The memo stated the following:
  - The applicant is requesting relief from the conditions of an alternate landscape plan approved by the Board of Adjustment on November 14, 1996- BDA95-120.
  - Trigger:
    - Revision of the approved alternate landscape plan based on site plan changes.
  - Deficiencies:
    - The site is not in compliance with the approved alternate landscape plan of November 1995. One live oak tree was required per the approved plan.
  - Factors for consideration:
    - The amended Article X landscape and tree preservation ordinance was enacted in May of 1994.
    - The property became subject to Article X in 1995 with the application for a building permit.

- Application was made in 1995 for a special exception to the landscape requirements of Article X. The Board of Adjustment approved an alternate landscape plan. The site has been subject to the conditions of the Board since the dated of approval.
- The proposed landscape plan calls for the planting of one “new site tree” in proximity of McMillan Avenue, and five additional shrubs along the foundation of the building. An area of “existing landscaping” is also provided at the corner of McMillan Avenue and N. Henderson Avenue.
- Recommendation
  - Denial of the submitted landscape plan.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a revised site plan;
  - a letter that provided additional information related to the requests;
  - a site plan indicating a dedicated utility easement; the required 15’ front yard setback area; and the legal building area.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 462 (Subdistrict 5) (Planned Development)  
North: PD No. 462 (Subdistrict 5) (Planned Development)  
South: PD No. 462 (Subdistrict 5) (Planned Development)  
East: MF-2(A) & CR (Multifamily & Community Retail)  
West: PD No. 462 (Subdistrict 5) (Planned Development)

**Land Use:**

The subject site is developed with a bar/restaurant use (Blue Collar Bar). The area immediately north is developed as a surface parking lot; and the areas immediately east, south, and west are developed with retail uses.

**Zoning/BDA History:**

1. BDA 95-120, Property at 1924 N. Henderson Avenue (the subject site)
 

On November 14, 1995, the Board of Adjustment took the following actions: 1) granted a request for a variance to front yard setback regulations of 15’; 2) denied a request for a special exception to the off-street parking regulations of 3 spaces without prejudice; and 3) granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition. The case report stated that the requests were made in conjunction with constructing

and maintaining a 672 square foot addition to an existing 723 square foot retail use (Alfredo's Café).

**Timeline:**

- April 24, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 21, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- May 26, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the June 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- May 29 & June 1, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- June 5, 2009 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B). This revised Building Official's Report was in response to the discovery made at the staff review team meeting that the structures shown on the revised site plan did not comply with the 30' maximum front yard setback along McMillan Avenue, and the applicant's added variance request.

June 9, 2009

The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the landscape special exception request (see Attachment C).

**STAFF ANALYSIS (related to variances):**

- The requests for variances to the minimum front yard setback regulations of 15' along Henderson Avenue and to the *maximum* front yard setback regulations of 8' along McMillan Avenue are requested in conjunction with maintaining (according to the applicant) a recently added 593 square foot patio structure which is partially (approximately 160 square feet) in the site's 15' minimum front yard setback along Henderson Avenue (a 161 square foot portion) and not providing this same structure to a point where it reaches the 30' maximum front yard setback along McMillan Avenue.
- The site is flat, is triangular in shape (114' x 116' x 163'), and is (according to DCAD) 1,686 square feet in area. The site is zoned PD No. 462 (Subdistrict 5). The site has two 15' minimum front yard setbacks and two 30' maximum front yard setbacks – the two front yard setbacks on the site with two street frontages is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the minimum and maximum front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 462 zoning classification.
  - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 462 zoning classification.
- If the Board were to grant the variances to the minimum front yard setback regulations of 15' and to the maximum front yard setback regulations of 8', imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure encroaching into these setbacks would be limited to that what is shown on the submitted revised plan which in this case is a patio structure that is located on the site's Henderson Avenue front property line and 38' from the site's McMillan Avenue front property line.

**STAFF ANALYSIS (related to the landscape regulations):**

- The request focuses on essentially amending an alternate landscape plan that was imposed as a condition to a request for a special exception to the landscape regulations by the Board of Adjustment in 1995 (BDA95-120) - a plan imposed as a

- A revised site plan (that is assumed to serve as the applicant's alternate landscape plan) has been submitted that according to the City of Dallas Chief Arborist is not meeting the conditions of an alternate landscape plan approved by the Board of Adjustment in November of 1995 (BDA95-120) – a plan that the Chief Arborist does not support.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the condition that the applicant must comply with the submitted revised site plan, the site would be “excepted” from the landscape materials shown on the site plan that was imposed as a condition with requests for a front yard variance and a landscape special exception granted by the Board of Adjustment in 1995.

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

**APPEARING IN FAVOR:** Santos Martinez , 900 Jackson St., #640, Dallas, TX  
 David McQuaid, 1925 Moser Ave., Dallas, TX  
 Elizabeth Ho, 5950 Sherry Lane, Dallas, TX  
 David Pedack, 3427 Ranken St, Dallas, TX

**APPEARING IN OPPOSITION:** Bruce Richardson, 5607 Richmond, Dallas, TX

**MOTION #1: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 089-071**, on application of Santos Martinez, represented by Masterplan, **deny** the variance to the McMillan Avenue maximum front yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Beikman**

**AYES:** 3– Reynolds, Gillespie, Beikman

**NAYS:** 2 – Chernock, Wilson

**MOTION PASSED 3–2**

**MOTION #2: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 089-071**, on application of Santos Martinez, represented by Masterplan, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

**SECONDED: Beikman**

**AYES: 4– Reynolds, Gillespie, Beikman, Chernock**

**NAYS: 1 – Wilson**

**MOTION PASSED 4 – 1**

**MOTION #3: Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 089-071**, on application of Santos Martinez, represented by Masterplan, **deny** the variance to the Henderson Avenue minimum front yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

**SECONDED: Beikman**

**AYES: 3– Reynolds, Gillespie, Beikman,**

**NAYS: 2 – Chernock, Wilson**

**MOTION PASSED 3 – 2**

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**FILE NUMBER: BDA 089-043**

**BUILDING OFFICIAL’S REPORT:**

Application of Glen Oaks Homeowners' Association, represented by Carolyn Arnold, to require compliance of a nonconforming use at 150 W. Ann Arbor Avenue. This property is more fully described as Lot 2 in City Block B/5992 and is zoned RR which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming hotel or motel use.

**LOCATION: 150 W. Ann Arbor Avenue**

**APPLICANT: Glen Oaks Homeowners' Association  
Represented by Carolyn Arnold**

**June 17, 2009 Public Hearing Notes:**

- The applicant (i.e. members of the Glen Oaks Homeowners' Association) submitted additional written documentation to the board at the public hearing – documentation that included a document entitled “Latest Reviews of Sunbelt Motel,” and photographs of the subject site and surrounding area.

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming (according to DCAD) 33-unit motel use (Sunbelt Motel) on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES:** SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(iii) The manner in which the use is being conducted.

(iv) The hours of operation of the use.

(v) The extent to which continued operation of the use may threaten public health or safety.

(vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

(vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

(viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

(ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
  - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
  - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - (cc) Any return on investment since inception of the use, including net income and depreciation.
  - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

**GENERAL FACTS:**

- City records indicate the following:
  - On August 10, 1984, a motel certificate of occupancy was issued on property zoned SC (Shopping Center) with a hotel or motel use allowed by right.
  - On September 30, 1987, Ordinance No. 19700 was passed which required an SUP for a hotel or motel use in SC zoning with fewer than 50 rooms or fewer than 4 stories.
  - On July 18, 1989, Ordinance No. 20314 was passed which rezoned all property within the City of Dallas including the subject site which was rezoned from SC (Shopping Center) to RR (Regional Retail). RR zoning required an SUP for a motel with less than 80 rooms.
  - On November 12, 2003, Ordinance No. 25435 was passed which required an SUP for motel that has 60 or fewer guest rooms regardless of district.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned RR (Regional Retail) that permits a "hotel or motel" use that has 60 or fewer guest rooms by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):

- “Hotel or motel.”
  - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
  - (B) Districts permitted:
    - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
    - (ii) By SUP only in the CR district.
    - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
    - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site’s existing RR (Regional Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- On April 3, 2009, the applicant submitted information to the Board Administrator on this application (see Attachment A). This attachment included a cover sheet that was entitled “Crime Records, 1/1/05 - 3/18/09, 150 W. Ann Arbor, Non-conforming use, For case file, April 2009 Docket, Zoning BDA, Panel B.”
- On April 15, 2009, the Board of Adjustment conducted a public hearing on this request at which time the Board Administrator circulated written documentation to the Board at the briefing that had been submitted by the attorney representing the motel owner (see Attachment B - information being a “motion to strike petition and motion to strike evidence;” and submitted additional written documentation to the Board at the public hearing (see Attachment C) - information that was documentation about a use northwest of the subject site- The School Community Guidance Center & Learning Alternative Center for Empowering Youth (LACEY).
- On April 15, 2009, the Board of Adjustment delayed action on the application until June 17, 2009.
- On May 20, 2009, a “subpoena duces tecum and interrogatories” document that was prepared by the attorney for the owner of the motel on the subject site to the applicant (Carolyn Arnold – President of the Glen Oaks Homeowner’s Association) was signed by Board of Adjustment Chairperson Darlene Reynolds (see Attachment D).
- On June 5, 2009, the attorney for the owner of the motel on the subject site submitted a document to the Board Administrator (see Attachment E). This document included the following:
  - a cover letter that provided additional details about the application, and an explanation of additional attachments contained in the document;
  - a copy of a letter written by the motel owner’s attorney to the applicant;
  - four letters that are represented by the motel owner’s attorney as area businesses (visited by the property owner) that support the subject use; and

- a copy of the motel owner's process server's "affidavit of due diligence" to attempt to serve the "subpoena duces tecum and interrogatories" to Carolyn Arnold, President, Glen Oaks Homeowner's Association at 83 Timber Dell, Dallas, Texas 75232 on four occasions, all to no avail.
- On June 5, 2009, a representative/member of the Glen Oaks Homeowner's Association hand-delivered a document to the Board of Adjustment Chief Planner (see Attachment F). This document included the following:
  - a letter that provided additional details about the application;
  - a document regarding neighborhoods from Keep Dallas Beautiful, and certain pages printed from Forward Dallas.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: RR (Regional Retail)  
North: RR (Regional Retail)  
South: RR (Regional Retail)  
East: RR (Regional Retail)  
West: RR (Regional Retail)

**Land Use:**

The site is currently developed with a 33-unit motel use (Sunbelt Motel). The areas to the immediate north and west are surface parking lots; and the areas to the immediate east and south are developed with commercial uses. The School Community Guidance Center & Learning Alternative Center for Empowering Youth (LACEY) is located northwest of the subject site.

**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:**

- Feb. 25, 2009: 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, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 23, 2009: The Board Administrator wrote/sent the owner of the site (Bipan B. Patel) a letter (with a copy to the applicant's representative) that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the purpose and main use permitted set forth for “regional retail (RR)” districts (Section 51A-4.122 (c));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the date, time, and location of the briefing/public hearing, and provided a deadline of April 3rd to submit any information that would be incorporated into the board’s docket.

March 31, 2009: 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 Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Historic Preservation Senior Engineer submitted a Review Comment Sheet marked “Has no objections.”

April 3, 2009 The applicant submitted additional information on this application (see Attachment A).

April 15, 2009 The Board of Adjustment conducted a public hearing on this request where additional written information was submitted/circulated to the board (see Attachments B and C). The board delayed action until their June 17<sup>th</sup> public hearing.

May 20, 2009 The Chairperson of Board of Adjustment Panel B signed a “subpoena duces tecum and interrogatories” document that was prepared by the attorney for the owner of the motel on the subject site to the applicant (Carolyn Arnold – President of the Glen Oaks

Homeowner's Association) was signed by Board of Adjustment Chairperson Darlene Reynolds (see Attachment D).

June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Development Services Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

June 5, 2009 The attorney for the owner of the motel on the subject site submitted a document to the Board Administrator (see Attachment E).

June 5, 2009 A representative/member of the Glen Oaks Homeowner's Association hand-delivered a document to the Board of Adjustment Chief Planner (see Attachment F).

#### **STAFF ANALYSIS:**

- The 33-unit motel use (Sunbelt Motel) on the subject site is a nonconforming use. According to city records, the motel use first became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700, again on July 18, 1989, when the City Council passed Ordinance No. 20314; and again on November 12, 2003, when the City Council passed Ordinance No. 25435.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing RR (Regional Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- The applicant has the burden of proof in establishing the following:
  - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.
- As in the Board of Adjustment's initial public hearing conducted on April 15<sup>th</sup>, the purpose of the June 17<sup>th</sup> public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby

**BOARD OF ADJUSTMENT ACTION: APRIL 15, 2009**

APPEARING IN FAVOR: Carolyn Arnold, 835 Timer Dey, Dallas, TX  
Tina Young, 525 Meadow Heath LN, Dallas, TX  
Larry Duncan, 5415 Banting Way, Dallas, TX  
Emille Betterson, 5418 Cherry Glen LN, Dallas, TX

APPEARING FOR THE CITY: Theresa O'Donnell, 1500 Marilla, 5DN, Dallas, TX

APPEARING IN OPPOSITION: Thomas Keen, 555 Republic Dr #200, Plano, TX 75025

**5:27 PM: Executive Session Begins**

**5:42 PM: Public Hearing Resumes**

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 089-043**, hold this case under advisement until **June 17, 2009**.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

**BOARD OF ADJUSTMENT ACTION: JUNE 17, 2009**

APPEARING IN FAVOR: Carolyn Arnold, 835 Timber Dell, Dallas, TX  
Lenora Casmore, 1007 Brook Valley Ln., Dallas, TX  
Barbara Sanders, 823 Timber Dell, Dallas, TX  
Shrona LaCour, 905 Timber Dell LN., Dallas, TX  
Joannia Johnson, P.O. Box 763012, Dallas, TX  
John W. Moore, P.O. Box 763012, Dallas, TX  
Cleal Neal, P.Box 763012, Dallas, TX

APPEARING IN OPPOSITION: Thomas Keen, 555 Republic Dr #200, Plano, TX 75025

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 089-043**, **deny** the applicant's request for expedited compliance **without prejudice** because based on the evidence

and testimony presented at the public hearing, we find that continued operation of this nonconforming use will not have an adverse effect on nearby properties.

**SECONDED: Chernock**

**AYES: 4– Reynolds, Gillespie, Beikman, Chernock**

**NAYS: 1 – Wilson**

**MOTION PASSED 4 – 1**

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**MOTION: Beikman**

I move to adjourn this meeting.

**SECONDED: Gillespie**

**AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Wilson**

**NAYS: 0 -**

**MOTION PASSED 5 – 0 (unanimously)**

**5:45 P.M.** - Board Meeting adjourned for **June 17, 2009.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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