

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, AUGUST 17, 2009**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten and Alex Salinas, alternate member

MEMBERS ABSENT FROM BRIEFING: Elizabeth Wahlquist, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten and Alex Salinas, alternate member

MEMBERS ABSENT FROM HEARING: Elizabeth Wahlquist, regular member

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

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

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 17, 2009** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C June 15, 2009 public hearing minutes.

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

MOTION: **Maten**

I move **approval** of the Monday, **June 15, 2009** public hearing minutes.

SECONDED: **Moore**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

REQUEST: To reimburse the \$1,200.00 filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations

LOCATION: 10408 Coppedge Lane

APPLICANT: David M. Gross

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers and reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.

- The applicant submitted a letter requesting a reimbursement of the \$1,200.00 filing fee submitted in conjunction with the requests for special exceptions to the fence height and visual obstruction regulations (see Attachment A).

Timeline:

July 31, 2009 The applicant sent an email to the Board Administrator stating that “Leif Sanberg told me I would be refunded my money.” The Board Administrator emailed the applicant a response informing him that the board of adjustment can react to an applicant’s request for them to reimburse a filing fee when the city council-appointed board members conclude at a public hearing that payment of the filing fee results in substantial financial hardship to the applicant. The email also conveyed that the Board Administrator had observed times where the board reacts to such a request in situations where the applicant is before the board of adjustment to remedy an existing structure that is somewhat/mostly/entirely a result of a permit issued in error by the City. The Board Administrator’s email concluded by stating that the only way that he was aware of the applicant getting his filing fee refunded was having it reimbursed through this public hearing process with the board of adjustment which in his case is August 17th, and that if he wished for the board to consider reimbursing the filing fee, that his request must be made no later than noon, Wednesday, August 5th.

August 3, 2009: The applicant submitted a letter to the Board Administrator stating among other things how he wanted him to place a fee reimbursement request on the board’s August 17th docket (see Attachment A).

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2009

APPEARING IN FAVOR: David Gross, 10408 Coppedge Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move to reimburse the filing fee submitted in conjunction with requests for special exceptions to the fence height and visual obstruction regulations.

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-085

BUILDING OFFICIAL'S REPORT:

Application of Randall Underwood for a special exception to the fence height regulations at 9635 Meadowbrook Drive. This property is more fully described as Lot 1 in City Block 1/5589 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot, 9 inch fence in a required front yard setback which will require a special exception of 4 feet, 9 inches.

LOCATION: 9635 Meadowbrook Drive

APPLICANT: Randall Underwood

REQUEST:

- A special exception to the fence height regulations of 4' 9" is requested in conjunction with constructing and maintaining a predominantly 5' – 6' high open ornamental iron fence with 8' 9" high open ornamental iron gate/stone entry columns in the site's 40' front yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and an elevation document indicating a fence/column/gate proposal that would be located in the site's front yard setback and would reach a maximum height of 8' 9".
- The following information was gleaned from the submitted site plan:
 - The proposal would be approximately 285' in length parallel to Meadowbrook Drive with a recessed entryway, approximately 40' in length perpendicular to Meadowbrook Drive in the front yard setback on the south, and approximately 12' in length perpendicular to Meadowbrook Drive in the front yard setback on the north.

- Most of the proposed fence is shown to be located approximately on the property line or about 8' – 11' from the pavement line.
- The proposed gate is shown to be located approximately 22' from the property line or about 33' from the pavement line.
- The proposal is located on a site where no single family home would have direct/indirect frontage since the house on the lot immediately across the street to the east “fronts” south to Park Lane. This lot has an open chain link fence that appears to be from 4' – 6' in height all of which is heavily screened with landscape materials.
- The Board Administrator conducted a field visit of the site and surrounding area along Meadowbrook Drive (approximately 500 feet north and south of the site) and noted the following additional fence/walls beyond the one described above which appeared to be located in the front yard setback (Note that these locations and dimensions are approximations):
 - an approximately 4' – 6' high solid stucco wall immediately south of the site (which appears to have been “excepted” by the board in 1991- BDA91-027); and
 - an approximately 8' 6” high open metal fence with stone base and an approximately 12' high entry immediately north of the site (which appears to have been “excepted” by the board in 1997- BDA967-203).
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - five letters in support of the request from neighbors/owners; and
 - photos of other fences in the area.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 067-062, Property at 9635 Meadowbrook Drive (the subject site)

On April 16, 2007, the Board of Adjustment Panel C granted a request for a special exception to the single family regulations (for an additional dwelling unit) and imposed the following conditions: 1) Compliance with the submitted site plan and elevations is required; and 2) The property must be deed

restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations. The case report stated that the request was made in conjunction with constructing and maintaining a second dwelling unit on a site developed with a single family use.

2. BDA 91-027, Property at 5200 Park Lane (the lot immediately south of the subject site)

On June 11, 1991, the Board of Adjustment granted a request for a special exception to the fence height regulations to allow a 6' fence, subject to the submitted site plan.

3. BDA 967-203, Property at 9707 Meadowbrook Drive (the lot immediately north of the subject site)

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

4. BDA 990-354, Property at 9610 Meadowbrook Drive (the lot immediately southeast of the subject site)

On January 16, 2001, the Board of Adjustment Panel B granted requests for special exceptions to the fence height and visual obstruction regulations and imposed the following conditions: Compliance with the submitted revised elevation and newly revised planting plan is required. The case

report stated that the request were made in conjunction with constructing and maintaining an 8.5 high approximately 12' long masonry wall, an 8' high approximately 40' long open metal fence, and an 8' high open metal sliding gate in the site's Meadowood Drive front yard setback.

5. BDA 92-034, Property at 5323 Park Lane (the lot immediately east of the subject site)

On May 12, 1992 , the Board of Adjustment granted a request for special exception to the fence height regulations to maintain an 8' high fence on the property and imposed the following conditions: subject to a new landscape plan, to be submitted for approval by the board at its June 9th hearing. The revised landscape plan should have the following things: 1) clustered or singularly planted, at 25' on center, Dwarf Yaupon trees; and 2) replace some of the Savannah Holly with Dwarf Yaupons which can be planted in the beds or in the parkway. All other proposed landscaping shall remain the same.

Timeline:

- June 20, 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.
- July 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 14, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 28, 2009 The Building Inspection Development Code Specialist forwarded additional information to the Board Administrator that had been submitted to him by the applicant (see Attachment A).

July 28, 2009

The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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 Development Services Senior Engineer, 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.

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a predominantly 5' – 6' high open ornamental iron fence with 8' 9" high open ornamental iron gate/stone entry columns in the site's 40' front yard setback on a site developed with a single family home.
- A site plan and an elevation document has been submitted indicating the location of the proposed fence/gate/columns in the front yard setback relative to their proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The site plan indicates that the fence is to be located approximately on the front property line or about 8' – 11' from the pavement line; that the proposed vehicular gate is to be located approximately 22' from the front property line or about 33' from the pavement line. The proposal is shown to be about 285' long parallel to Meadowbrook Drive, approximately 40' in length perpendicular to the street on the south side of the site, and approximately 12' long parallel to the street on the north side of the site.
- The proposal is located on a site where no single family home would have direct/indirect frontage since the lot immediately across the street to the east "fronts" south to Park Lane. This lot has an open chain link fence that appears to be from 4' – 6' in height all of which is heavily screened with landscape materials.
- Two other fence/walls higher than 4' were noted by the Board Administrator in a field visit of the site and surrounding area (approximately 500 feet north and south of the site). A 4' - 6' high solid stucco wall was noted immediately south of the site (which appears to have been "excepted" by the board in 1991- BDA91-027); and an approximately 8' 6" high open metal fence with stone base was noted immediately north of the site (which appears to have been "excepted" by the board in 1997- BDA967-203).
- As of August 10, 2009, five letters had been submitted to staff in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' 9" in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 9" with a condition imposed that the applicant complies with the submitted site plan and elevation document would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Salinas**

I move that the Board of Adjustment grant application **BDA 089-085** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-100(K)

BUILDING OFFICIAL’S REPORT:

Application of Andrew Chiles for a special exception to the side yard setback regulations at 830 Thomasson Drive. This property is more fully described as Lot 15 in City Block 2/3835 and is zoned CD-13 (Subarea 2), which requires a side yard setback of 8 feet. The applicant proposes to construct a single family residential accessory structure and provide a 2 foot side yard setback which will require a special exception of 6 feet for tree preservation.

LOCATION: 830 Thomasson Drive

APPLICANT: Andrew Chiles

REQUEST:

- A special exception to the side yard setback for tree preservation.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The Chief arborist has reviewed this application and has made a visual inspection of the tree in question. The Chief Arborist has concluded the tree is worthy of preservation.
- Granting this variance does not appear to be contrary to the public interest.

STANDARD FOR A SPECIAL EXCEPTION FOR TREE PRESERVATION:

The board may grant a special exception to the minimum side yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

GENERAL FACTS:

- Structures on lots zoned CD-13 (Subarea 2) are required to provide a minimum side yard setback of 8 feet.
- According to DCAD, the site was developed in 1926 with a residential structure that is 1,593 square feet.
- The applicant submitted a site plan and elevations showing the proposed construction will be 2 feet from the side property line.

BACKGROUND INFORMATION:

Zoning:

Site: CD-13 (subarea 2) (Single family conservation district)
North: CD-13 (subarea 2) (Single family conservation district)
South: CD-13 (subarea 2) (Single family conservation district)
East: CD-13 (subarea 2) (Single family conservation district)
West: CD-13 (subarea 2) (Single family conservation district)

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, east and west are developed with single family structures.

Zoning/BDA History:

On June 30, 2009 Historic Conservation Staff conditionally approved the application for appropriateness of the structure as long as the applicant received approval from the Board of Adjustment for a special exception to the side yard setback.

Timeline:

- July 2, 2009 The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- July 23, 2009 The Board of Adjustment Senior Planner contacted the applicant and shared the following information by telephone:
- the public hearing date and panel that will consider the application;
 - the criteria or standard that the board will use in their decision to approve or deny the request;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the August 5th 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 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 August public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. 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 Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The site is developed with a single family structure. According to DCAD this site, that is in average condition, developed in 1926 and is approximately 1,593 square feet.
- The applicant is seeking a special exception to the side yard setback in order to construct an accessory structure and maintain a tree on the property.
- The submitted site plan illustrates the accessory structure will be constructed 2 feet from the northern side yard.
- The Chief Arborist submitted a memorandum with an analysis of this case and has concluded that the tree in question, pecan tree that is 33” in diameter is worthy of preservation (see attachment).

- The Chief Arborist has visited the subject site and visually inspected the tree in question. The Chief arborist has concluded the tree appears to be in a healthy growing condition and has been continually maintained by the property owner.
- The applicant has the burden of proof in establishing that granting the special exception to the side yard is necessary to preserve a tree, the development is compatible with the neighborhood, and surrounding properties will not be adversely affected.
- Should the Board choose to grant the request for the special exception to the side yard, staff recommends a condition of compliance with the submitted site plan and elevation.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Salinas**

I move that the Board of Adjustment grant application **BDA 089-100** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted revised site plan is required.

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-091

BUILDING OFFICIAL’S REPORT:

Application of Ed Simons of Masterplan for a variance to the front yard setback regulations and for a special exception to the fence height regulations at 4430 Abbott Avenue. This property is more fully described as Lot 1 in City Block A/2022 and is zoned PD-193(D) which requires a front yard setback of 25 feet and limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct structures and provide a 0 foot front yard setback which will require a 25 foot variance to the front yard setback regulation, and to construct a 10 foot, 6 inch high fence which will require a special exception of 6 feet, 6 inches to the fence height regulations.

LOCATION: 4430 Abbott Avenue.

APPLICANT: Ed Simons of Masterplan

REQUESTS:

- The following appeals were made in this application on an undeveloped site:
 1. Variances to the front yard setback regulations of up to 25' were requested in conjunction with constructing and maintaining a stair/concrete porch "structure," a pool "structure," what appears to be a second floor deck "structure," and a portion of the proposed main single family residential structure in the site's 25' front yard setback on Cragmont Avenue;
 2. A variance to the front yard setback regulations of 5' was requested in conjunction with constructing and maintaining a stair "structure" in the site's 25' front yard setback on Abbott Avenue – the same stair "structure" that is located in the site's Cragmont Avenue front yard setback mentioned above;
 3. A special exception to the fence height regulations of 6' 6" was requested in conjunction with according to the application constructing/maintaining a "10' 6" high wall in the front yard along Cragmont."

Note: The applicant submitted an August 4th letter (see Attachment D) stating that he had failed to post the required notification signs on the site in accordance with the Dallas Development Code. As a result of this admission by the applicant, the code states "If the board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice."

STAFF RECOMMENDATION (variances):

No staff recommendation is made on this request given the applicant's admission that he failed to post the required notification signs on the site in accordance with provisions set forth in the Dallas Development Code.

STAFF RECOMMENDATION (fence height special exception):

No staff recommendation is made on this request given the applicant's admission that he failed to post the required notification signs on the site in accordance with provisions set forth in the Dallas Development Code.

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 FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS (related to the front yard variances and to the fence height special exception):

- The subject site is located at the northeast corner of Abbott Avenue and Cragmont Avenue. Even though the Abbott Avenue side of the site appears in plan form to function as the site's front yard and the Cragmont Avenue side appears in plan form to function as one of the site's two side yards, the site has two front yard setbacks along both street frontages. The site has a 25' front yard setback along Abbott Avenue given that this frontage is the shorter of the two street frontages, and a 25' front yard setback along Cragmont Avenue given that the continuity of the established setback must be maintained on this street since houses face Cragmont Avenue immediately east of the subject site.
- The minimum front yard setback on a D Duplex Subdistrict zoned lot in PD 193 is 25 feet.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The applicant had submitted a revised site plan and a revised elevation indicating that denotes a "stucco wall" and one dimension – that being a height of "8' 9." The application however mentioned a 6' 6" special exception for a 10' 6" high wall – dimensions that appeared to correspond with a height that appeared to be conveyed on the submitted revised elevation.
- The applicant submitted an additional letter beyond what was submitted with the original application and what was discussed at the July 28th staff review team meeting (see Attachment D). This letter stated among other things the following: "I understand that the fact that I failed to post the notice signs within 14 days of the board application requires that the case be delayed for one month or denied. The signs have been posted since July 13th. I am briefing the Oak Lawn Committee today. Please forward my request that the board postpone this case until the September hearing date."

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

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (D Subdistrict) (Planned Development Duplex)
North: PD No. 193 (D Subdistrict) (Planned Development Duplex)
South: PD No. 193 (D Subdistrict) (Planned Development Duplex)
East: PD No. 193 (D Subdistrict) (Planned Development Duplex)
West: PD No. 193 (R-7.5 Subdistrict) (Planned Development Single family)

Land Use:

The subject site is undeveloped. The areas to the north, east, south, and west are developed with residential 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:

June 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.

July 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 13, 2009: The Board Administrator conducts a field visit of the site (19 days after the application was filed on June 24, 2009) and observes no notification signs posted on the subject site. The Board

Administrator leaves a message with the applicant informing him of his observation.

- July 14, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th 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."
- July 16 & 24, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A and C).
- July 16, 2009 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).
- July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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 Development Services Senior Engineer, 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.
- August 4, 2009 The applicant submitted additional information to the Board Administrator (see Attachment D). This information includes a letter that states among other things the following: "I understand that the fact that I failed to post the notice signs within 14 days of the board application requires that the case be delayed for one month or denied. The signs have been posted since July 13th. I am briefing the Oak Lawn Committee today. Please forward my request that the board postpone this case until the September hearing date."

STAFF ANALYSIS:

- No analysis is provided on the applicant's requests for variances or special exception given the applicant's August 4th admission that he failed to post the required notification signs on the site in accordance with provisions set forth in the Dallas Development Code.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Salinas**

I move that the Board of Adjustment, in Appeal No. **BDA 089-091**, hold this matter under advisement until **September 14, 2009**.

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-096

BUILDING OFFICIAL’S REPORT:

Application of David M. Gross for special exceptions to the fence height and visual obstruction regulations at 10408 Coppedge Lane. This property is more fully described as Lot 1 in City Block 5/6414 and is zoned R-16(A) which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at the intersection of an alley and a street. The applicant proposes to construct an 8 foot, 9 inch fence which will require a special exception of 4 feet, 9 inches to the fence height regulations, and to maintain an item in a required visibility triangle which will require a special exception to the visual obstruction regulations.

LOCATION: 10408 Coppedge Lane

APPLICANT: David M. Gross

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a single family home:
 1. A special exception to the fence height regulations of up to 4’ 9” is requested in conjunction with maintaining a predominantly 8’ 7” high solid cedar board-on-board fence located in the site’s 40’ Merrell Road front yard setback.
 2. A special exception to the visual obstruction regulations is requested in conjunction with maintaining a portion of this predominantly 8’ 7” high solid cedar board-on-board fence located in the 20’ visibility triangle located where the alley on the east side of the property intersects with Merrell Road.

STAFF RECOMMENDATION (fence height special exception):

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

STAFF RECOMMENDATION (visual obstruction special exception):

Denial

Rationale:

- The City's Development Services Senior Engineer recommends that the request be denied given that he feels that "the fence limits the sight distance of vehicles going southbound on the alley and waiting to enter onto Merrell Road, thus may constitute a traffic hazard."

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS (related to the fence height special exception):

- The subject site is located at the northeast corner of Coppedge Lane and Merrell Road. Even though the Merrell Road "side" of the subject site functions as its side yard and the Coppedge Lane "side" functions as its front yard, the subject site has two 40' front yard setbacks (created by a platted building line) along both streets. The site's Merrell Road frontage is deemed a front yard only because the Merrell Road frontage of the lot immediately to the east (at the northwest corner of Crestover Drive and Merrell Road) is deemed a front yard since the Merrell Road frontage is the shorter of the two frontages on this site. (If the Merrell Road frontage on the lot immediately east of the subject site were 18' longer, the Merrell Road frontage on it and the subject site would become side yards where the owner of this site and the applicant on the subject site could maintain 9' high fences by right without a need to apply to the board for a fence height special exception to maintain as requested in this application an 8' high fence).
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The applicant has submitted a site plan and a revised elevation document indicating that the proposal in the 40' Merrell Road front yard setback reaches a maximum

height of 8' 9". (No fence is proposed to be constructed/maintained in the subject site's 40' Coppedge Lane front yard setback).

- The following additional information was gleaned from the submitted site plan:
 - The existing fence located in the Merrell Road front yard setback over 4' in height is approximately 50' in length parallel to the street and approximately 40' in length *perpendicular* to the street.
 - The existing fence is located on the site's Merrell Road front property line or about 11' from the curb line.
- The following additional information was gleaned from the revised elevation document:
 - The existing fence located in the Merrell Road front yard setback over 4' in height is shown to be predominantly 8' 7" in height but noted to be anywhere from 8' 4" to 8' 9" in height depending on grade.
- No single family home "fronts" to the existing fence on the subject site since the homes on the south side of Merrell Road "front" either west to Coppedge Lane or east to Crestover Drive.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback. Several fences were noted along Merrell Road in the immediate area at heights that appeared similar to that which is on the subject site - fences that are assumed to be in compliance with the 9' maximum fence height allowed for fences in *side* yard setbacks.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised elevation document; and
 - a letter that provides additional details about the request.

GENERAL FACTS (related to the visual obstruction special exception):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A site plan and a revised elevation document have been submitted that show portions of the predominantly 8' 7" high solid cedar board-on-board fence located in the site's 20' visibility triangle located where the alley on the east side of the site intersects with Merrell Road.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised elevation document; and
 - a letter that provides additional details about the request.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|--|---|
| 1. Miscellaneous Item #2, BDA089-096, Property at 10408 Coppedge Lane (the subject site) | On August 17, 2009, the Board of Adjustment Panel C will consider reimbursing the filing fee submitted in conjunction with the application on the subject site. |
|--|---|

Timeline:

- | | |
|--------------------------|---|
| June 19, 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. |
| July 9, 2009: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C. |
| July 14, 2009: | The Board Administrator contacted the applicant and shared the following information via phone and email: <ul style="list-style-type: none"> • an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th 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." |
| July 28 & August 3, 2009 | The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A). |
| July 28, 2009 | The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

July 30, 2009 The Development Services Senior Engineer forwarded a Review Comment Sheet marked "Recommends that this be denied" commenting: "The fence limits the sight distance of vehicles going southbound on the alley and waiting to enter onto Merrell Road, thus may constitute a traffic hazard."

STAFF ANALYSIS (related to the fence height special exception):

- This request focuses on maintaining a predominantly 8' 7" high solid cedar board-on-board fence located in the site's 40' Merrell Road front yard setback – a fence that according to the applicant is a replacement fence that the City issued a permit for on May 27, 2009, then red-tagged on June 12, 2009.
- The fence that is the issue of this request is located on a site that has two front yard setbacks – one front yard setback on Coppedge Lane (where no fence is existing over 4' in height or proposed); the other front yard setback on Merrell Road (where the existing fence is located that is the issue of this request – a fence that reaches 8' 9" at its highest point).
- Regardless of the way the subject site's Merrell Road frontage functions as the site's side yard, this Merrell Road frontage is technically deemed a front yard setback merely because of the dimensions of the lot immediately to the east. If the Merrell Road frontage of the lot to the east of the subject site were 18' longer, it and the subject site would have side yard setbacks whereby a 9' high fence would be allowed by right.
- A site plan and a revised elevation document have been submitted documenting that location, height, and materials of the fence over 4' in height in the Merrell Road front yard setback. The site plan shows the fence to be approximately 50' in length parallel to Merrell Road and approximately 40' in length *perpendicular* to the street. The revised elevation document shows that the fence is comprised of wood cedar board-on-board material, and ranges from 8' 4" – 8' 9" in height.
- No single family home "fronts" to the existing fence on the subject site since the homes on the south side of Merrell Road "front" either west to Coppedge Lane or east to Crestover Drive.
- As of August 10, 2009, no letters had been submitted in support or in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 9" (whereby the existing solid cedar board-on-board fence that reaches a maximum 8' 9" in height in the site's Merrell Road front yard setback) will not adversely affect neighboring property.
- Granting this special exception of 4' 9" with a condition imposed that the applicant complies with the submitted site plan and revised elevation document would assure that the existing fence exceeding 4' in height would be maintained in the location and of the height and material as shown on these documents.

- Note that if the board were to grant this request and impose the submitted site plan and revised elevation document as conditions, and deny the request for the special exception to the visual obstruction regulations, notations would be made of such action on the submitted plans whereby the location of the fence in the triangle would not be “excepted.”

STAFF ANALYSIS (related to the visual obstruction special exception):

- This request focuses on maintaining a portion of an approximately 8’ 7” high solid cedar board-on-board wood fence located in the 20’ visibility triangle located where the alley on the east side of the site intersects with Merrell Road – a fence that according to the applicant is a replacement fence that the City issued a permit for on May 27, 2009, then red-tagged on June 12, 2009.
- A site plan has been submitted that shows that about 5’ of the fence length along the alley, and about 5’ of the fence length along Merrell Road is located in the 20’ visibility triangle.
- A revised elevation document has been submitted that shows that the fence is comprised of wood cedar board-on-board material, and ranges from 8’ 4” – 8’ 9” in height.
- The Development Services Senior Engineer submitted a Review Comment Sheet marked “Recommends that this be denied” commenting “The fence limits the sight distance of vehicles going southbound on the alley and waiting to enter onto Merrell Road, thus may constitute a traffic hazard.”
- The applicant has the burden of proof in establishing that granting the special exception to the visual obstruction regulations and allowing the maintenance of a portion of the existing approximately 8’ 7” high solid board-on-board cedar wood fence in the 20’ drive approach visibility triangle on the subject site will not constitute a traffic hazard.
- If this request is granted, subject to compliance with the submitted site plan and revised elevation document, the existing solid board-on-board cedar wood fence would be “excepted” into this visibility triangle on the subject site.
- Note that if the board were to grant this request and impose the submitted site plan and revised elevation document as conditions, and deny the request for the special exception to the fence height regulations, notations would be made of such action on the submitted plans whereby the height of the fence higher than 4’ in the site’s Merrell Road front yard setback would not be “excepted.”

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2009

APPEARING IN FAVOR: David Gross, 10408 Coppedge Lane, Dallas, TX
Edith Swann, 10306 Betty Jane LN, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 089-096**, on application of David M. Gross, **grant** the request of this applicant to construct and maintain an 8-foot-tall fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Maten

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION#2: Moore

I move that the Board of Adjustment, in Appeal No. **BDA 089-096**, on application of David M. Gross, **grant** the request of this applicant to construct and maintain a fence in a visibility triangle 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 and revised elevation is required.

SECONDED: Maten

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-080

BUILDING OFFICIAL’S REPORT:

Application of Waraporn Songmuang, represented by Henry Wade, to appeal the decision of an administrative official at 2110 W. Northwest Highway (Suite B). This property is more fully described as an approximately 5.87 acre tract of land in City Block 6487 and is zoned IR which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant

proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 2110 W. Northwest Highway (Suite B)

APPLICANT: Waraporn Songmuang
Represented by Henry Wade

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's April 21, 2009 revocation of certificate of occupancy no. 0809051084 for a personal service use (Aloha) at 2110 W. Northwest Highway, Suite B.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:
Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- The Building Official's April 21st letter to OTR, Inc., and Waraporn Songmuang states the following:
 - This letter is to inform you that certificate of occupancy no. 0809051084 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.
 - Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.
 - Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.

- On August 6, 2009, the applicant’s representative on this application and BDA 089-081 forwarded additional document to the Board Administrator regarding this appeal and BDA 089-081 (see Attachment A). This document was divided into the following sections:
 - attorney letter;
 - affidavit;
 - photos; and
 - employment contract.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA 089-081, Property at 2110 W. Northwest Highway, Suite A – dba Cleopatra (the subject site) | <p>On August 17, 2009, the Board of Adjustment Panel C will consider an appeal requesting that the Board of Adjustment reverse/overturn the Building Official’s April 21, 2009 decision to revoke certificate of occupancy no. 0808291072 on the subject site.</p> |
|---|--|

Timeline:

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|-----------------------|---|
| <p>May 4, 2009:</p> | <p>The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.</p> |
| <p>July 9, 2009:</p> | <p>The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.</p> |
| <p>July 14, 2009:</p> | <p>The Board Administrator emailed the applicant’s representative the following information:</p> <ul style="list-style-type: none"> • an attachment providing the public hearing date and panel that will consider the application; the July 27th deadline to submit |

- the outline of procedure for appeals from decisions of the building official to the board of adjustment;
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

July 28, 2009

The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Trinity River Corridor Senior Planner submitted a review comment sheet marked “Recommends that this be denied.”

August 6, 2009

The applicant’s representative submitted additional information pertaining to this application and BDA089-081 (see Attachment A).

STAFF ANALYSIS:

- The applicant is requesting that the Building Official’s revocation of certificate of occupancy no. 0809051084 for a personal service use (Aloha) at 2110 W. Northwest Highway, Suite B on April 21, 2009 be overturned/reversed.
- If the Board of Adjustment upholds the Building Official’s decision, the certificate of occupancy no. 0809051084 for a personal service use (Aloha) on the subject site will remain revoked.
- If the Board of Adjustment reverses the Building Official’s decision, the certificate of occupancy no. 0809051084 for a personal service use (Aloha) on the subject site will be reinstated.

1:26 p.m.: Break

1:39 p.m.: Resumed

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

APPEARING IN FAVOR: Henry Wade, 415 Copperstone Trl, Coppell TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melissa Miles, 1500 Marilla 7DN, Dallas, TX
 Thomas Peterson, 1400 S. Lamar, Dallas, TX

MOTION: Maten

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 089-080**, on application of Waraporn Songmuang, represented by Henry Wade, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by the applicant **with** prejudice.

SECONDED: Moore

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-081

BUILDING OFFICIAL’S REPORT:

Application of Jimmy Gibson, represented by Henry Wade, to appeal the decision of an administrative official at 2110 W. Northwest Highway (Suite A). This property is more fully described as an approximately 5.87 acre tract of land in City Block 6487 and is zoned IR which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 2110 W. Northwest Highway (Suite A)

APPLICANT: Jimmy Gibson
Represented by Henry Wade

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s April 21, 2009 revocation of certificate of occupancy no. 0808291072 for a personal service use (Cleopatra) at 2110 W. Northwest Highway, Suite A.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

GENERAL FACTS:

- The Building Official's April 21st letter to OTR, Inc., and Promwaing Phaiboon states the following:
 - This letter is to inform you that certificate of occupancy no. 0808291072 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.
 - Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.
 - Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.
- On August 6, 2009, the applicant's representative on this application and BDA 089-080 forwarded additional document to the Board Administrator regarding this appeal and BDA 089-080 (see Attachment A). This document was divided into the following sections:
 - attorney letter;
 - affidavit;
 - photos; and
 - employment contract.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

- | | |
|---|---|
| 1. BDA 089-080, Property at 2110 W. Northwest Highway, Suite B – dba Aloha (the subject site) | On August 17, 2009, the Board of Adjustment Panel C will consider an appeal requesting that the Board of Adjustment reverse/overturn the Building Official’s April 21, 2009 decision to revoke certificate of occupancy no. 0809051084 on the subject site. |
|---|---|

Timeline:

- | | |
|----------------|--|
| May 4, 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. |
| July 9, 2009: | The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. |
| July 14, 2009: | The Board Administrator emailed the applicant’s representative the following information: <ul style="list-style-type: none">• an attachment providing the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; the August 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;• the outline of procedure for appeals from decisions of the building official to the board of adjustment;• the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.” |
| July 28, 2009 | The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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 Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board. The Trinity River Corridor Senior Planner submitted a review comment sheet marked “Recommends that this be denied.” |
| August 6, 2009 | The applicant’s representative submitted additional information pertaining to this application and BDA089-080 (see Attachment A). |

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's revocation of certificate of occupancy no. 0808291072 for a personal service use (Cleopatra) at 2110 W. Northwest Highway, Suite A be overturned/reversed.
- If the Board of Adjustment upholds the Building Official's decision, the certificate of occupancy no. 0808291072 for a personal service use (Cleopatra) on the subject site will remain revoked.
- If the Board of Adjustment reverses the Building Official's decision, the certificate of occupancy no. 0808291072 for a personal service use (Cleopatra) on the subject site will be reinstated.

1:37 p.m.: Break

1:40 p.m.: Resumed

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

APPEARING IN FAVOR: Henry Wade, 415 Copperstone Trl, Coppell TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melissa Miles, CAO, 1500 Marilla 7DN, Dallas, TX
 Timothy Prokof, Police Dept., 1400 S. Lamar, Dallas, TX
 Jerry Dodd, Police Dept., 1400 S. Lamar, Dallas, TX
 Stephen Wright, Police Dept., 1400 S. Lamar, Dallas, TX

MOTION: **Moore**

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 089-081**, on application of Jimmy Gibson, represented by Henry Wade, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by the applicant **with** prejudice.

SECONDED: **Maten**

AYES: 4–Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Maten

I move to adjourn this meeting.

SECONDED: Moore

AYES:4 –Boyd, Moore, Maten, Salinas

NAYS: 0 - None

MOTION PASSED: 4 – 0 (Unanimously)

3:04: P. M. - Board Meeting adjourned for **August 17, 2009.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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