

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
THURSDAY, FEBRUARY 19, 2015**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Joe Carreon, regular member, Larry Brannon, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Ross Coulter, regular member Marla Beikman, regular member and Peter Schulte, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Joe Carreon, regular member, Larry Brannon, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Ross Coulter, regular member Marla Beikman, regular member and Peter Schulte, regular member

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

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

11:07 a.m. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 19, 2015** docket.

1:10 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel B December 15, 2014 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2015

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 145-017

BUILDING OFFICIAL'S REPORT: Application of Chris Pope represented by David Greer for a special exception to the landscaping regulations at 8950 E.R.L. Thornton Freeway. This property is more fully described as Lot 6B, Block A/8475, and is zoned RR, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 8950 E R. L. Thornton Freeway

APPLICANT: Chris Pope, Panda Restaurant Group
Represented by David Greer, Bannister Engineering

REQUEST:

A request for a special exception to the landscape regulations is made to complete and maintain a restaurant with drive-thru (Panda Express) on a newly platted property, and not fully meet the landscape regulations.

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:

Approval, subject to the following conditions:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City’s Chief Arborist recommends approval of the applicant’s request because he feels the applicant has demonstrated how strict compliance with the requirements of Article X would unreasonably burden the use of the property, and he has favorably demonstrated the special exception would not negatively affect neighboring property. The Chief Arborist has also concluded that the applicant has given reasonable effort to comply with the intent of the standard ordinance provisions while working with the site constraints of the property.

BACKGROUND INFORMATION:

Zoning:

- Site: RR (Regional Retail District) with a D-1 Liquor Control Overlay
- North: RR (Regional Retail District) and LI (Light Industrial District)
- South: RR (Regional Retail District) with a D-1 Liquor Control Overlay
- East: RR (Regional Retail District) with a D-1 Liquor Control Overlay
- West: RR (Regional Retail District) with a D-1 Liquor Control Overlay

Land Use:

The subject site is currently under development. To the north is E R. L. Thornton Freeway. The area to the east is developed with retail and personal service uses; the area to the south is developed with a retail use, more specifically a general merchandise or food store greater than 100,000 square feet or more; and the area to the west is developed with retail and personal service uses.

Zoning/BDA History:

1. Z123-278, Interstate 30 and St. Francis Avenue (the subject site) On September 25, 2013, the city council granted Specific Use Permit 2048 for the sale of alcoholic beverages in conjunction with a general merchandise or food store 100,000 square feet or more for a two-year period.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on completing and maintaining a restaurant with drive-thru (Panda Express) on newly platted property, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the submitted alternate landscape plan does not fully comply with requirements for mandatory street trees.
- 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.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction on newly platted property.
- The Chief Arborist's memo lists one landscape deficiency:
 1. According to Article X regulations, the street frontage requires "one large tree for each 50 feet of frontage, with a minimum of 2 trees being provided. These trees must be located within 30 feet of the projected street curb."
 2. Regarding this application, no trees are provided along the 12' street frontage along E R. L. Thornton Freeway. However, the applicant is mitigating this effect by providing for more than the required number of site trees. The site requires a total of 7 site tree but proposes to provide 10 on the property.
- The Chief Arborist's memo lists the following factors for consideration:
 1. The newly platted property was sectioned from a larger developed and landscaped property. If the property had foregone the platting process, the new project would not have triggered Article X landscape review, because the floor area would not have increased by more than 35 percent, or by more than 10,000 square feet, whichever was less. The number of stories in a building on the lot would have not increased, either.
 2. The site's configuration near E R. L. Thornton Freeway and restrictive underground local utilities limit available safe, ground-level planting areas within 30' of the projected street curb.
 3. The plan complies with all other Article X requirements.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because the applicant has identified where strict compliance with the requirements of Article X would unreasonably burden the use of the property, and has favorably demonstrated the special exception would not negatively affect

neighboring property. The City's Chief Arborist also believes the applicant has given reasonable effort to comply with the intent of the standard ordinance provisions while working with the site restrictions placed on the property.

- 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 submitted alternate landscape plan as a condition to the request, the site would be provided exception from full compliance with the mandatory street trees as required per Article X: The Landscape Regulations.

Timeline:

January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 20, 2015: The Board Planner contacted the applicant and emailed the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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."

February 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

February 6, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Carreon**

I move that the Board of Adjustment grant application **BDA 145-017** 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 alternate landscape plan is required.

SECONDED: **Brannon**

AYES: 4 – Richardson, Carreon, Sibley, Brannon

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 145-021

BUILDING OFFICIAL’S REPORT: Application of Jimmy Baugh, represented by Robert Reeves of Robert Reeves and Associates, for a special exception to the fence height regulations at 4606 Walnut Hill Lane. This property is more fully described as part of Lot 23, Block 5543, 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 and maintain an 8 foot 6 inch high fence, which will require a 4 foot 6 inch special exception to the fence height regulations.

LOCATION: 4606 Walnut Hill Lane

APPLICANT: Jimmy Baugh
Represented by Robert Reeves of Robert Reeves and Associates

February 19, 2015 Public Hearing Notes:

- The Board Administrator circulated a revised site plan to the Board at the briefing.

REQUEST:

A request for a special exception to the fence height regulations of 4’ 6” is made to construct and maintain a 7’ high “wall faced with Lueders limestone” with 7’ 6” high columns, and an approximately 6’ – 7’ high gate flanked with 8’ 6” high entry columns on a site developed with a single family home.

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.

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.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 990-271, property at 9963 Rockbrook Lane (two lots east of the subject site)

On May 15, 2000, the Board of Adjustment Panel C granted requests for special exceptions to the single family use and fence height regulations of 2' and imposed the following conditions: to the single family use special exception: compliance with the submitted site plan is required; and applicant must submit a valid deed restriction prohibiting the additional dwelling unit of the site from being used as a rental accommodation; and to fence height special exception: 1) In conjunction with retaining the 6 foot high brick/masonry wall, a tree survey or a landscape plan documenting the trees to be retained adjacent to the existing wall must be submitted, and 2) a landscape plan documenting the retention of ivy vines on the existing wall must be submitted.

The case report stated the requests were made to maintain an existing 6' high brick wall along Walnut Hill Lane and construct/maintain an extension of this wall an additional 90 feet westward along Walnut Hill Lane, and to construct/maintain a pool house/dwelling unit structure on the site.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 7' high "wall faced with Lueders limestone" with 7' 6" high columns, and an approximately 6' – 7' high gate flanked with 8' 6" high entry columns on a site developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and elevations of the proposal in the front yard setback indicating that it reaches a maximum height of 8' 6".
- The following additional information was gleaned from the submitted site plan:
 - The fence proposal is represented as being approximately 150' in length parallel to the street including a recessed entryway feature.
 - The fence proposal is represented as being located approximately 3' from the front property line or about 11' from the pavement line.
 - The gate proposal is represented as being located approximately 17' from the front property line or about 25' from the pavement line.

- A “landscaped area” noted on the street side of the wall, and notations of “Yaupon Holly” bushes on the interior side of the wall adjacent to the proposed fence.
- The following additional landscape-related information was gleaned from the submitted elevations:
 - “3 gal boxwood,” “3 gal. miscanthus grass,” “Nellie R. Stevens Holly,” and “Tree Form Yaupon Holly.”
- The fence proposal is located on the site where three lots would have direct/indirect frontage to it – one of which (the lot northeast of the site) has an approximately 6’ high wood fence with no recorded BDA history.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other visible fences above 4 feet high which appeared to be located in a front yard setback – an approximately 5’ high solid brick fence located immediately east of the subject site with no recorded BDA history, and an approximately 6’ high solid masonry fence located two lots to the east of the subject site. The Board of Adjustment granted a fence height special exception on this adjacent property (BDA 990-271) in 2000 (see the “Zoning/BDA History” section of this case report for additional details).
- As of February 9, 2015, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4’ 6” will not adversely affect neighboring property.
- Granting this special exception of 4’ 6” with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4’ in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

- December 5, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- January 14, 2015: The Board Administrator contacted the applicant and emailed the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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.”

February 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2015

APPEARING IN FAVOR: Robert Reeves, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Carreon

I move that the Board of Adjustment in request No. **BDA 145-021**, hold this matter under advisement until **March 16, 2015**.

SECONDED: Brannon

AYES: 4 – Richardson, Carreon, Sibley, Brannon

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 145-023

BUILDING OFFICIAL’S REPORT: Application of Patrick Ongena represented by Jeff Baron for a special exception to the side yard setback regulations at 5837 Belmont Avenue. This property is more fully described as Lot 15, Block 15/1891, and is zoned CD12, which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a carport and provide a 0 foot side yard setback, which will require a 10 foot special exception to the side yard setback regulation.

LOCATION: 5837 Belmont Avenue

APPLICANT: Patrick Ongena
Represented by Jeff Baron, Jeff Baron Homes

REQUEST:

A request for a special exception to the side yard setback regulations of 10' is made to complete and maintain two carports, parts of which are to remain located in the site's eastern 10' side yard setback on a site developed with a single family home structure/use.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

BACKGROUND INFORMATION:

Zoning:

Site: CD 12 (Belmont Addition Conservation District)
North: CD 12 (Belmont Addition Conservation District)
South: CD 12 (Belmont Addition Conservation District)
East: CD 12 (Belmont Addition Conservation District)
West: CD 12 (Belmont Addition Conservation District)

Land Use:

The subject site is developed with a single family home. The area 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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on completing and maintaining two carports. The carport towards the north of the subject site is approximately 130 square feet (13' x 10'). The carport towards the south of the subject site is approximately 170 square feet (17' x 10'). Parts of both carports are located in the eastern 10' side yard setback on a site developed with a single-family home structure/use.
- In the Belmont Addition Conservation District (CD 12), the minimum side yard for main structures is five feet on one side and ten feet on the other side.
- The site has a 10' side yard setback on the eastern perimeter of the property because the western perimeter of the property has a 5' setback.
- The applicant has submitted a site plan, two elevations, and one floor plan indicating the location of the carports on the site's eastern side property line.
- The site plan, elevations, and floor plan have been reviewed by the Sustainable Development and Construction Conservation District Senior Planner and have been approved with conditions (Porte cochere contingent upon approval by the Board of Adjustment).
- The following information was gleaned from the submitted site plan:
 - The carport towards the north of the subject site is represented to be 13' in length and 10' in width (approximately 130 square feet in total area), of which approximately 91 square feet (or approximately 70 percent) would remain in the eastern side yard setback. It is represented to extend 7' into the required 10' side yard setback, being 3' from the property line to accommodate the carport eave/roof overhang.
 - The carport towards the south of the subject site is represented to be 17' in length and 10' in width (approximately 170 square feet in total area), of which approximately 119 square feet (or approximately 70 percent) would remain in the eastern side yard setback. It is represented to extend 7' into the required 10' side yard setback, being 3' from the property line to accommodate the carport eave/roof overhang.
- The following information was gleaned from the submitted elevation:
 - The carports are represented to be a maximum height of approximately 14' with brick columns and composite shingle roofs.
- The subject site is approximately 200' x 50' (or 10,000 square feet) in area.
- According to DCAD records, the "main improvement" for property addressed at 5837 Belmont Avenue is a structure built in 2014 with 2,643 square feet of living/total area; and with the following additional improvements: a 503 square foot detached garage, a 270 square foot porte cochere, and a 270 square foot porte cochere.
- The current planner conducted a field visit of the area east and west of the subject site and noted one other carport that appeared to be located in a side yard setback, a carport that has no BDA history.
- On November 21, 2014, one petition with nine signatures in support of the request was submitted with the application.

- As of February 06, 2015, no letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing the following:
 - that granting this special exception to the side yard setback regulations of 5’ will not have a detrimental impact on surrounding properties.
- Granting this request and imposing the following conditions would require the carport to be modified/maintained in the location and of the heights and materials as shown on these documents:
 1. Compliance with the submitted site plan and elevation is required.
 2. The carport structure must remain open at all times.
 3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
 4. All applicable building permits must be obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.

Timeline:

November 21, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

January 20, 2015: The Board Administrator contacted the applicant and emailed the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 28th deadline to submit additional evidence for staff to factor into their analysis; and the February 6th 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.”

February 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2015

APPEARING IN FAVOR: Jeff Baron, 5946 Palo Pinto, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Sibley

I move that the Board of Adjustment, in request No. **BDA 145-023**, on application of Patrick Ongena represented by Jeff Baron, **deny** the special exception to the side yard setback regulations **without prejudice** because our evaluation of the property and testimony shows that the special exception will have an adverse affect on neighboring property and additionally the size and location of the carport is not suitable for the area.

SECONDED: Brannon

AYES: 2 – Sibley, Brannon

NAYS: 2 - Richardson, Carreon

MOTION FAILED: 2 – 2

MOTION #2: Carreon

I move that the Board of Adjustment, in request No. **BDA 145-023**, hold this matter under advisement until **March 16, 2015**.

SECONDED: Richardson

AYES: 2 – Richardson, Carreon

NAYS: 2 - Sibley, Brannon

MOTION FAILED: 2 – 2

MOTION #3: Sibley

I move that the Board of Adjustment, in request No. **BDA 145-023**, on application of Patrick Ongena represented by Jeff Baron, **deny** the special exception to the side yard setback regulations **without prejudice** because our evaluation of the property and testimony shows that the special exception will have a detrimental impact on surrounding properties.

SECONDED: Brannon

AYES: 3 – Richardson, Sibley, Brannon

NAYS: 1 – Carreon

MOTION PASSED: 3 – 1

FILE NUMBER: BDA 134-060

BUILDING OFFICIAL'S REPORT: Application of Robert Baldwin to enlarge a nonconforming use at 200 Rock Island Street (AKA 300 Rock Island Street). This property is more fully described as part of Lot 22, Block 65/415, and is zoned PD 784 (Mixmaster Riverfront), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming tower/antenna for cellular communication use, which will require a request to enlarge a nonconforming use.

LOCATION: 200 Rock Island Street (AKA 300 Rock Island Street)

APPLICANT: Robert Baldwin

February 19, 2015 Public Hearing Notes:

- The applicant submitted additional written materials to the Board at the public hearing.

REQUEST:

A request is made to enlarge a nonconforming "tower/antenna for cellular communication" use by increasing the height of the existing monopole tower from 80' to 150'.

STANDARD FOR ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: PD 784 (Mixmaster Riverfront) (Planned Development)

North: PD 784 (Mixmaster Riverfront) (Planned Development)
South: PD 784 (Mixmaster Riverfront) (Planned Development)
East: PD 784 (Mixmaster Riverfront) (Planned Development)
West: PD 784 (Mixmaster Riverfront) (Planned Development)

Land Use:

The subject site is developed as nonconforming “tower/antenna for cellular communication” use. The areas to the north and west are undeveloped, the area to the east is developed with vacant retail use; and the area to the south is developed with commercial use.

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.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on enlarging a nonconforming “tower/antenna for cellular communication” use by increasing the height of the existing monopole tower from 80’ to 150’.
- The subject site is zoned PD 784 (Mixmaster Riverfront).
- A “tower/antenna for cellular communication” use is not permitted in PD 784 (Mixmaster Riverfront).
- A “tower/antenna for cellular communication” use could only become a *conforming* use on this property if/once it has been rezoned to a district that allows this use by the City Council through a public hearing process.
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- A document entitled “Appeal for a special exception to enlarge a nonconforming use” is included in the case file that lists the following:
 - Property address: 200 Rock Island Street (AKA 300 Rock Island Street)
 - Nonconforming use being appealed: tower/antenna for cellular communication
 - Reason the use is considered as nonconforming: change in zoning to PD 784
 - Current zoning on the property on which the use is located: PD 784 (Mixmaster Riverfront)
 - Previous zoning of the property on which the use is located: IM
 - Date that the nonconforming use became nonconforming: 09-24-08

- A copy of a Certificate of Occupancy is included in the case file for a “radio, television, or microwave tower (CO #9205111008) issued on August 7, 1992.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance date that is provided 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.
- The applicant has submitted a site plan and a “compound elevations” document. The site plan makes representation of the “existing 80’ monopole tower” in the same location as the “modified 150’ monopole tower” on the site. The submitted elevation makes a representation of the 150’ high monopole tower inside and outside fence from Rock Island Street.
- The applicant has stated that the zoning prior to the current PD 784 zoning was IM Industrial Manufacturing; and that if the property was still zoned IM, he would have been eligible to request an SUP (Specific Use Permit) for the proposed 150’ monopole since the maximum height limit in the IM zoning district was 110’. The applicant also states that prior to 1992 and the creation of the tower/antenna for cellular communication use, the cell tower would have been allowed to be constructed at any legal height due to the classification as a Utility and Public Service use within 51A-4.212.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, they can consider imposing as a condition any or all of the applicant’s submittals (site plan, elevation). If the Board were to grant the request and impose any or all of these submittals as conditions, the enlargement of the nonconforming use would be limited to what is shown on any such document.

Timeline:

October 23, 2014: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 12, 2014: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

November 12, 2014: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 26th deadline to submit additional evidence for staff to factor into their analysis; and the December 5th 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;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

November 25, 2014: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

December 2, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

December 15, 2014: The Board of Adjustment Panel C held a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on February 19, 2015.

December 17, 2014: The Board Administrator sent a letter to the applicant that noted the decision of the panel, and the February 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.

February 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

February 6, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application and beyond what was submitted at the December 15th public hearing (see Attachment B).

BOARD OF ADJUSTMENT ACTION: DECEMBER 15, 2014

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment in Appeal No. **BDA 134-060**, hold this matter under advisement until **February 19, 2015**.

SECONDED: **Schulte**

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2015

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm #B, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Brannon**

I move that the Board of Adjustment, in Appeal No. **BDA 134-060**, on application of Robert Baldwin, **grant** the request for the enlargement of the nonconforming use, because our evaluation of the property and the testimony presented shows that the enlargement does not prolong the life of the nonconforming use; would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and will not have an adverse effect on the surrounding area. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **No one**

Motion failed for lack of a second.

MOTION #2: **Richardson**

I move that the Board of Adjustment, in Appeal No. **BDA 134-060**, on application of Robert Baldwin, **deny** the request for the enlargement of the nonconforming use requested by this applicant **without prejudice**, because our evaluation of the property and the testimony presented shows that the enlargement will have an adverse effect on the surrounding area.

SECONDED: Carreon

AYES: 4 – Richardson, Carreon, Sibley, Brannon

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Sibley

I move to adjourn this meeting.

SECONDED: Carreon

AYES: 4 – Richardson, Carreon, Sibley, Brannon

NAYS: 0 –

MOTION PASSED: 4 – 0 (unanimously)

3:09 P. M. - Board Meeting adjourned for **February 19, 2015.**

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.