

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, AUGUST 16, 2011**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member, Johnnie Goins, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member, Johnnie Goins, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossum, Asst. Director, 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 16, 2011** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **June 14, 2011** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2011

MOTION: Hounsel

I move **approval** of the Tuesday, **June 14, 2011** public hearing minutes.

SECONDED: Goins

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Gaspard

NAYS: 0 -

MOTION PASSED: 5- 0 (unanimously)

FILE NUMBER: BDA 101-028

BUILDING OFFICIAL’S REPORT:

Application of Ashley Ness for a variance to the rear yard setback regulations at 707 N. Windomere Avenue. This property is more fully described as Lot 2 in City Block 24/3475 and is zoned CD-1 which requires a rear yard setback of 3 feet. The applicant proposes to maintain a structure and provide a 0-foot rear yard setback which will require a variance of 3 feet.

LOCATION: 707 N. Windomere Avenue

APPLICANT: Ashley Ness

REQUESTS:

- The following appeals have been made in this application in conjunction with maintaining a one-story accessory structure, part of which is located in the site’s 3’ rear yard setback on a site that is developed with a single family home:
 - A special exception to the rear yard setback regulations of 3’ for tree preservation; and/or
 - A variance to the rear yard setback regulations of 3’.

On May 17, 2011, the board conducted a public hearing and heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.

On June 14, 2011, the board determined at the public hearing that the applicant had not complied with the Dallas Development Code provision related to the posting of

the notification sign on the subject site, and delayed action on the application until August 16, 2011.

STAFF RECOMMENDATION (special exception):

Denial

Rationale:

1. The City of Dallas arborist staff has investigated the trees on the property and has formed an opinion that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
2. In addition, the applicant had not substantiated how the requested special exception is compatible with the character of the neighborhood and that the value of the surrounding properties will not be adversely affected by the granting of this special exception request.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- The applicant had not substantiated how either the restrictive area, shape, or slope of the site/lot preclude it from being developed in a manner commensurate with development found on other CD (Conservation District No 1) zoned lots.

STANDARD FOR A SPECIAL TO THE REAR YARD REGULATIONS FOR TREE PRESERVATION:

The Dallas Development Code specifies that the board may grant a special exception to the minimum rear 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 the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

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:

- (A) 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;

- (B) 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
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS (related to special exception):

- Structures on lots zoned CD No. 1 are required to provide a minimum rear yard setback of 5'. However, the Code states that in a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.
The submitted site plan denotes an accessory structure adjacent to an alley that is located on the rear property line (or as much as 3' into the 3' rear yard setback).
- According to calculations taken from the site plan by the Board Administrator, about 60 square feet (or 1/10) of the existing approximately 600 square foot accessory structure is located in the site's 3' rear yard setback.
- DCAD records indicate that the site is developed a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A, B, D, and E).
- On March 7, 2011, the City of Dallas Chief Arborist submitted a memo to the Board Administrator pertaining to this request (see Attachment C). The memo stated the following:
 - The arborist staff has investigated the trees on the property and have formed an opinion that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
 - An Italian cypress and a plum tree appear to be within the influence of the probable building location if the structure was relocated within its current configuration but moved within the setback distance. Both trees are relatively young (approximately 3" caliper) and would be suitable for transplant to replacement. The trees are regarded as ornamental landscape trees of potential medium and small sizes, respectively.
 - The "preservation of large trees" is a fundamental purpose of the city's tree preservation ordinance that was established following an initial resolution by the City Council in 1990 to preserve large trees "which, once removed, can be replaced only after generations." Although the city arborists encourage citizens to protect all trees once planted in appropriate locations, the city arborists' opinion is that the preservation status is directed towards trees, if removed, that would no longer provide the significant financial value and environmental benefits to the owner *and the community* found in large established canopy trees native to, or adapted to, this region.

- All trees on single family or duplex lots which are two acres or less in size with a residential use are not protected under city ordinance. Otherwise, only trees that are 8" in diameter or greater are protected. The city anticipates that some trees must be removed for construction purposes and allows for this with building permits for construction.
- On March 15, 2011, the Board of Adjustment heard testimony on this matter at the public hearing and delayed action on this matter until May 17th for the applicant to have the opportunity to file a companion case seeking a variance for the rear yard setback rather than or in addition to a special exception.
- On April 11, 2011, the applicant submitted a revised application adding a variance request of 3' to the rear yard setback regulations in addition to the previously requested special exception request of 3' to the rear yard setback regulations to preserve a tree.
- On May 17, 2011, the board conducted a public hearing and heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.
- On June 14, 2011, the board conducted a public hearing and determined at the public hearing that the applicant had not complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site, and delayed action on the application until August 16, 2011.

GENERAL FACTS (related to variance):

- Structures on lots zoned CD No. 1 are required to provide a minimum rear yard setback of 5'. However, the Code states that in a residential district, a person need not provide a full rear yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height. Where the rear yard is adjacent to an alley, a three-foot setback must be provided. Where the rear yard is not adjacent to an alley, no setback is required.
The submitted site plan denotes an accessory structure adjacent to an alley that is located on the rear property line (or as much as 3' into the 3' rear yard setback).
- According to calculations taken from the site plan by the Board Administrator, about 60 square feet (or 1/10) of the existing approximately 600 square foot accessory structure is located in the site's 3' rear yard setback.
- DCAD records indicate that the site is developed a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The subject site is flat, rectangular in shape (50' x 150'), and (according to the application) is 0.17 acres (or 7,405 square feet) in area. The site is zoned CD No. 1 where lots in this subarea of the zoning district had been zoned R-7.5(A) until the creation of the CD in 1988.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A, B, D, and E).
- On May 17, 2011, the board conducted a public hearing and heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed

action on this application until June 14th to allow the applicant to post the notification sign on the site.

- On June 14, 2011, the board conducted a public hearing and determined at the public hearing that the applicant had not complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site, and delayed action on the application until August 16, 2011.

BACKGROUND INFORMATION:

Zoning:

Site: CD No 1 (Conservation district)
North: CD No 1 (Conservation district)
South: CD No 1 (Conservation district)
East: CD No 1 (Conservation district)
West: CD No 1 (Conservation district)

Land Use:

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

Zoning/BDA History:

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

Timeline:

January 26, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 14 & 22, 2011: 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 February 28th deadline to submit additional evidence for staff to factor into their analysis; and the March 4th 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.

The email also included a suggestion that the application possibly submit photographs of the mid-part of the site that the Board Administrator could not photograph, an amended site plan showing the location of the tree or trees that the applicant feels justifies the request since typically an applicant making this type of application shows the location, species, and caliper inch of the tree or trees that the applicant feels is worthy of preservation.

- Feb. 24 & 28, 2011: The applicant submitted additional information to the Board Administrator (see Attachments A and B).
- March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- March 3, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation not relevant in this case. If approved, recommend indemnity for the City if damage occurs to the building."
- March 7, 2011: The Chief Arborist submitted a memo to the Board Administrator (see Attachment C). This memo stated among other things that the trees within proximity to the structure (that are the nature of this request) are not worthy of preservation for a building relocation from setback requirements.
- March 7, 2011: The applicant submitted additional information to the Board Administrator (see Attachment D). (Note that this particular information was submitted after the Chief Arborist had submitted to the Board Administrator and after staff had formed their recommendation of denial of this application).
- March 15, 2011: The Board of Adjustment Panel A conducted a public hearing on this request and delayed action until their May 17th public hearing in order for the applicant to have the opportunity to file a companion case seeking a variance for the rear yard setback rather than or in addition to a special exception.
- April 18, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised application to the Board Administrator that added a request for a variance to the rear yard setback regulations of 3'.

- April 21, 2011: 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 May 2nd deadline to submit additional evidence for staff to factor into their analysis; and the May 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.
- May 3, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- May 5, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation (not relevant in this case). If approved, recommend indemnity for the City if damage occurs to the building."
- May 17, 2011: The Board of Adjustment Panel A conducted a public hearing and heard testimony at the public hearing regarding the posting of the notification sign on the site and delayed action on this application until June 14th to allow the applicant to post the notification sign on the site.
- May 18, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator at 3:37 p.m. on May 18th the following: "Ashley Ness was just in and purchased her replacement notification sign at 3:27 pm. She acknowledged that she was late."
- May 23, 2011: The Board Administrator emailed the applicant the following information:
- The 2008 ordinance that established the code provision related to the posting of notification signs.
 - An account of how the board delayed action on her request in May until June 14th where they will determine at this June 14th public hearing whether she has complied with this provision; and that if the board determines that she has complied with this provision, they will be able to either grant, deny, or delay the special exception and variance requests; however, if the board

determines that she has NOT complied with this provision, they will only be able to either deny or delay her special exception and variance requests.

- A document that provided deadlines for submittal of any additional information to staff/the board.

May 31, 2011: The applicant forwarded additional information to the Board Administrator (see Attachment E).

May 31, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.

June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "Deny – no permit, setback or standards. Tree preservation (not relevant in this case). If approved, recommend indemnity for the City if damage occurs to the building."

June 14, 2011: The Board of Adjustment Panel A conducted a public hearing and determined that the applicant had not complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site, and delayed action on the application until August 16, 2011.

June 22, 2011: The Board Administrator sent a letter to the applicant informing her of the public hearing date, the August 1st deadline to submit additional evidence to staff, and the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.

August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

STAFF ANALYSIS (related to special exception):

- The focus of this request is maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.

- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a rear yard setback on CD No. 1 zoned lot either by an application for a variance to the rear yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the rear yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site that is worthy of preservation - not property hardship. The applicant in this case had originally made only an application for a *special exception* to the rear yard setback regulations for tree preservation but added a variance to the rear yard setback regulations as a result of testimony at the public hearing in March.
- This special exception request is made to maintain an approximately 60 square foot portion of an approximately 600 square foot accessory structure in the site's 3' rear yard setback. (Although staff suggested that the applicant denote the location, size and species of the tree or trees that she feels is worthy of preservation and in turn precludes her from locating an accessory structure in compliance with rear yard setbacks, no such denotation was made on any submitted plan). The site plan shows what is assumed to be the accessory structure on the property that is located on the rear property line or 3' into the required 3' setback – no tree is denoted on the site plan.
- The City's Chief Arborist has stated among other things that the trees that are the nature of this request (a relatively young Italian cypress and a plum tree approximately 3" caliper) within proximity to the structure in question are not worthy of preservation for a building relocation from setback requirements.
- The applicant has the burden of proof in establishing the following related to the front yard special exception request:
 1. Whether the requested special exception is compatible with the character of the neighborhood.
 2. Whether the value of the surrounding properties will be adversely affected.
 3. Whether the tree is worthy of preservation.
- If the Board were to grant the rear yard special exception request of 3', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the rear yard setback would be limited to that what is shown on this plan – which in this case is a portion of an accessory structure located on the rear property line (or as much as 3' into the site's 3' rear yard setback).
- If the Board chooses to grant this request, it should be noted that the submitted site plan does not denote the location, size or species of a tree (or trees) that the applicant contends is the tree (or trees) that is worthy of preservation, and in turn a tree that precludes her from relocating the accessory structure out of the required rear yard setback. If the Board feels that this type of documentation is relevant to the approval of this type of tree preservation application, they may request that the applicant amend the submitted site plan by adding this information on the site plan.

STAFF ANALYSIS (related to variance):

- The focus of this request is maintaining a one-story accessory structure, part of which is located in the site's 3' rear yard setback on a site that is developed with a single family home.
- The Dallas Development Code allows the Board of Adjustment to consider this (or any) proposed structure encroachment in a rear yard setback on CD No. 1 zoned lot either by an application for a variance to the rear yard setback regulations with a standard largely based on the demonstration of property hardship, or by an application for a special exception to the rear yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site is worthy of preservation - not property hardship. The applicant in this case had originally only made an application for a *special exception* to the rear yard setback regulations for tree preservation but added a variance to the rear yard setback regulations as a result of testimony at the public hearing in March.
- This variance request is made to maintain an approximately 60 square foot portion of an approximately 600 square foot accessory structure in the site's 3' rear yard setback. The site plan shows what is assumed to be the accessory structure on the property that is located on the rear property line or 3' into the required 3' setback.
- DCAD records indicate that the site is developed with a single family home in "good" condition built in 1923 with 1,530 square feet of living area.
- The subject site is flat, rectangular in shape (50' x 150'), and (according to the application) is 0.17 acres (or 7,405 square feet) in area. The site is zoned CD No. 1 where lots in this subarea of the zoning district had been zoned R-7.5(A) until the creation of the CD in 1988.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the rear yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD No. 1 zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD No. 1 zoning classification.
- If the Board were to grant the variance request, subject to the submitted site plan, the structure in the rear yard setback would be limited to what is shown on this document– which in this case is a structure located on the rear property line or 3' into the required 3' rear yard setback

BOARD OF ADJUSTMENT ACTION: MARCH 15, 2011

APPEARING IN FAVOR: Ashley Ness, 707 N. Windomere Ave., Dallas, TX
 Larry Ness, 2011 Cedar Springs Rd., Dallas, TX

Stephanie Wooley, 1701 N. Collins Blvd., Ste 1100,
Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 101-028**, on application Ashley Ness, **grant** the request of this applicant for a special exception of 3 feet to the rear yard setback regulation to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: **Richmond**

AYES: 2 – Richmond, Harris

NAYS: 3 - Schweitzer, Housel, Goins

MOTION FAILED: 2– 3

MOTION #2: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **April 19, 2011**.

SECONDED: **Richmond**

AYES: 4 – Richmond, Schweitzer, Harris, Housel,

NAYS: 1 - Goins

MOTION PASSED: 4– 1

BOARD OF ADJUSTMENT ACTION: MAY 17, 2011

APPEARING IN FAVOR: Ashley Ness, 707 N. Windomere Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Housel**

Having fully reviewed the evidence in Appeal No. **BDA 101-028**, on application of Ashley Ness, and heard all the testimony and facts relating to the posting of the notification of the sign, I find that the required signs were not posted properly and I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **June 14, 2011**.

SECONDED: **Schweitzer**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: Craig Shields, 1701 N Collins Blvd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

Having fully reviewed the evidence in Appeal No. **BDA 101-028**, on application of Ashley Ness, and heard all the testimony and facts relating to the posting of the notification of the sign, I find that the required signs were not posted properly and I move that the Board of Adjustment in Appeal No. **BDA 101-028**, hold this matter under advisement until **August 16, 2011**.

SECONDED: **Hounsel**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2011

APPEARING IN FAVOR: Craig Shields, 1701 N Collins Blvd., Dallas, TX
Ashley Ness, 707 N. Windomere Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 101-028**, on application Ashley Ness, **grant** the three-foot variance to the minimum rear yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 101-028**, on application Ashley Ness, **deny** the special exception to the rear yard setback regulation to preserve an existing tree requested by this applicant with prejudice, because our evaluation of the property and the testimony shows that granting the application would not be compatible with the character of the surrounding neighborhood, or the value of surrounding properties would be adversely affected, or the tree is not worthy of preservation.

SECONDED: **Schweitzer**

AYES: 3 – Schweitzer, Hounsel, Gaspard

NAYS: 2 - Richmond, Goins

MOTION PASSED: 3– 2

FILE NUMBER: BDA 101-053(J)

REVISED BUILDING OFFICIAL’S REPORT:

Application of Baldwin Associates for a variance to the front yard setback regulations and a special exception to the landscape regulations at 2828 Lemmon Avenue East. This property is more fully described as Lot 4D in City Block 1/634 and is zoned PD-193, O-2 which requires a front yard setback of 20 feet, and requires landscaping to be provided. The applicant proposes to construct and maintain a structure and provide a 15 foot front yard setback which will require a variance of 5 feet, and an alternate landscape plan which will require a special exception to the landscape regulations.

ORIGINAL BUILDING OFFICIAL’S REPORT:

Application of Baldwin Associates for a variance to the front yard setback regulations at 2828 Lemmon Avenue East. This property is more fully described as Lot 4D in City Block 1/634 and is zoned PD-193, O-2, which requires a front yard setback of 20 feet. The applicant proposes to construct and maintain a structure and provide a 16-foot 10-inch front yard setback which will require a variance of 3 feet 2 inches.

LOCATION: 2828 Lemmon Avenue East

APPLICANT: Baldwin Associates

August 16, 2011 Public Hearing Notes:

- The Board Administrator circulated a revised site/landscape plan and a revised memo from the Chief Arborist to the board members at the briefing.

REQUESTS:

- The following appeals have been made in this application in conjunction with constructing multifamily structure, part of which is to be located in the site's Oak Grove Avenue 20' front yard setback, and where applicant proposes to not fully provide required landscaping:
 - A variance to the front yard setback regulations of 5' (amended from an original request of 3' 2"); and
 - A special exception to landscape regulations.

On June 14, 2011, the board conducted a public hearing and delayed action on this application until August 16th per the request of the applicant to allow the city to re-advertise and re-notify for a greater variance than what had been originally conveyed. Approximately one week later, the applicant amended his application (see Attachment B) by: 1) increasing his front yard variance from 3' 2" to 5'; and 2) adding a request for a special exception to the landscape regulations.

STAFF RECOMMENDATION (variance):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The applicant had substantiated how the variance is necessary to permit development of the site which is different from other lots by its irregular shape due to a partial street easement on Oak Grove Avenue.

STAFF RECOMMENDATION (special exception):

Denial

Rationale:

- The City's Chief Arborist recommends denial of the request largely because the applicant has submitted an incomplete "conceptual" landscape plan that does not allow staff to present an adequate report of deficiencies on the site.
- The applicant had not substantiated how the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

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: (A) 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;

- (B) 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
- (C) is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

GENERAL FACTS (variance):

- The minimum front yard setback for other permitted structures (other than single family or residential development tracks) for lots zoned an O-2 Office Subdistrict within PD 193 is 20 feet.
- The subject site is a lot that has street frontage on four sides.
- A site plan had been submitted showing the proposed multifamily structure providing a 16'10" setback and encroaching 3'2" into the 20' required front yard setback on a portion of the Oak Grove Avenue site near the intersection with Lemmon Avenue West. However, on June 14, 2011, the board conducted a public hearing and delayed action on this application until August 16th per the request of the applicant to allow the city to re-advertise and re-notify for a greater variance than what had been originally conveyed- that being for a structure that was providing a 15' front yard setback requiring a variance of 5'.
- The subject site appears to be flat, irregular in shape, and is approximately 3.06 acres in area.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).
- On June 14, 2011, the board conducted a public hearing and delayed action on this application until August 16th per the request of the applicant to allow the city to re-advertise and re-notify for a greater variance than what had been originally conveyed. Approximately one week later, the applicant amended his application (see Attachment B) by: 1) increasing his front yard variance from 3' 2" to 5'; and 2) adding a request for a special exception to the landscape regulations.
- A site plan had been submitted showing the proposed multifamily structure providing a 15' setback and encroaching 5' into the 20' required front yard setback on a portion of the Oak Grove Avenue site near the intersection with Lemmon Avenue West.

- The applicant submitted additional information regarding the request beyond what was submitted with the original application and at the June 14th public hearing (see Attachment C).

GENERAL FACTS (special exception):

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted “conceptual” plans/exhibits (see Attachment C) that, according to the City of Dallas Chief Arborist, addresses requirements of 51P-193.126(b)(3), Off-street parking and screening requirements that are a part of Section 26 of PD No. 193 – “Landscape, Streetscape, Screening, and Fencing Standards.”

- On August 8, 2011, the City of Dallas Chief Arborist submitted a memo to the Board Administrator pertaining to the landscape special exception request (see Attachment D). The memo stated the following:
 - Trigger: Proposed new construction.
 - Deficiencies:

The proposed plans for the loading areas do not present a complete picture of the landscape for the entire property. The submitted plans demonstrate only the specific proposed off-street loading areas. The summaries provided in the exhibits demonstrate additional items that may need to be considered. These would require special exceptions for more than just a screening element for the loading areas described in the applicant’s letter.

- Factors:
 - No full plans for construction have been submitted for review.
 - As indicated in the summary for the two loading zones, the plans submitted are “conceptual” in nature and subject to revision by engineering review.
 - As stated in 51P-193.126(a)(4), “when feasible, the Board shall require that the applicant submit and that property comply with a landscape plan as a condition to granting a special exception.”
 - The summaries and drawings in exhibit suggest the PD No. 193 requirements for street trees, garage buffer and landscape site areas may be restricted elsewhere on the property. This will not be known without a complete site landscape submittal.
- Recommendation:
 - Denial of the submitted incomplete “conceptual” landscape plan. To present an adequate report of deficiencies, all of the deficiencies indicated by the applicant in the summaries should be factored into a completed (not conceptual) landscape plan. If approved, the Board should allow discretion to

the Building Official for inspections based on the conceptual nature of the plans.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 O-2 (Planned Development – Office subdistrict)
North: PD No. 201, PD No. 305, and PD No. 375 (Planned Development)
South: PD No. 193 O-2 (Planned Development – Office subdistrict) and PD No. 193 MF-2 (Planned Development – Multifamily subdistrict)
East: PD No. 375 (Planned Development)
West: PD No. 193 O-2 (Planned Development – Office subdistrict) and PD No. 193 PDS 6 (Planned Development)

Land Use:

The subject site is currently developed with a parking lot and a vacant hospital. The areas to the north and west appear to be developed with commercial/office uses; and the area to the south is developed with a hospital use. The area to the east is under construction. The area to the northeast is developed with mixed uses (commercial and residential).

Zoning/BDA History:

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

Timeline:

- April 21, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 18, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 25, 2011: The Board Senior Planner contacted the applicant and discussed the following information:
- the public hearing date and panel that will consider the application; and the June 3rd 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.

- May 31, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Senior Planner, the Board of Adjustment Senior Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorneys to the Board.
- June 2, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with all C.O.D visibility requirements."
- June 3, 2011: The applicant submitted additional information (Attachment A).
- June 14, 2011: The Board of Adjustment Panel A conducted a public hearing on this request and delayed action until their August 16th public hearing.
- June 22, 2011: The applicant submitted a revised application and additional information (Attachment B).
- June 22, 2011: The Board of Adjustment Senior Planner sent a letter to the applicant informing him of the public hearing date, the August 1st deadline to submit additional evidence to staff, and the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- July 29, 2011: The applicant submitted additional information (Attachment C).
- August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- August 4, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Need to comply with all C.O.D visibility requirements."
- August 8, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request for a special exception to the landscape regulations (see Attachment D).

STAFF ANALYSIS (variance):

- The request focuses on constructing a multifamily structure and providing a 15' front yard setback along Oak Grove Avenue where a 20' front yard setback is required.
- The subject site appears to be flat, irregular in shape, and is approximately 3.06 acres in area.
- A 5' street easement exists on a portion of the request site on the Oak Grove Avenue frontage, near Lemmon Avenue West. Front yard setbacks are measured from the property line or right-of-way, whichever creates the greater setback. In the case of the request site, the setback line ranges from 20' from the property line and 25' from the property line where the street easement exists.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the Oak Grove Avenue front yard setback regulation will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 O-2 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD 193 O-2 zoning classification.
- If the Board were to have granted the variance request, subject to the submitted site plan, the structure in the front yard setback would have been limited to what was shown on this document.

STAFF ANALYSIS (special exception) :

- This landscape special exception request is triggered with the construction and maintenance of a multifamily structure on the site.
- The applicant seeks exception from the landscape requirements of PD No. 193, specifically the applicant has submitted a plan that addresses the requirements of the off-street parking and screening requirements of this ordinance.
- The City of Dallas Chief Arborist recommends denial of the request because of reasons that are provided in his August 8th memo to staff (see Attachment D) and described in the "General Facts" section of this case report.
- The applicant has the burden of proof in establishing the following:
 - The special exception will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the submitted "conceptual plans" as a condition, the site would be "excepted" from compliance to the landscape, streetscape, screening, and fencing requirements of the Oak Lawn PD District – plans that according to the Chief Arborist are so "conceptual" in scope that staff is

unable to provide a complete account of how the site may be deficient to these regulations – areas/ways that appear to be beyond what the applicant has specifically requested.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 101-053**, hold this matter under advisement until **August 16, 2011**.

SECONDED: **Hounsel**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2011

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

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 101-053**, on application of Baldwin Associates, **grant** the five-foot variance to the minimum front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised submitted site/landscape plan is required.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 101-053**, on application of Baldwin Associates, **grant** the request of this applicant to provide an alternate landscape plan as a special exception to the landscape requirements contained in PD 193 because our evaluation of the property and the testimony shows that this special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the revised submitted site/landscape plan is required.

SECONDED: Hounsel

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-060

BUILDING OFFICIAL’S REPORT:

Application of Diane Ragsdale of the South Dallas/Fair Park Inner City Community Development Corporation, represented by Lewis Rhone and Diane Ragsdale, to require compliance of a nonconforming use at 4909 Pacific Avenue (AKA 4907 S. Pacific Avenue). This property is more fully described as Lot 3 in City Block G/2425 and is zoned PD-595 (R-5(A)) which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming commercial amusement (inside) use.

LOCATION: 4909 Pacific Avenue (AKA 4907 S. Pacific Avenue)

APPLICANT: Diane Ragsdale of the South Dallas/Fair Park Innercity Community Development Corporation
Represented by Lewis Rhone and Diane Ragsdale

August 16, 2011 Public Hearing Notes:

- The applicant provided testimony at the public hearing of her intentions to withdrawal the application in light of the recent change in ownership of the property on which the nonconforming use was located.

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming “commercial amusement (inside)” use (Ollie’s Place) on the subject site.

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

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

(1) Amortization of nonconforming uses.

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

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

(i) The character of the surrounding neighborhood.

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

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

(iv) The hours of operation of the use.

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

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

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

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

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

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

(D) Determination of amortization period.

(i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance

with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

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

GENERAL FACTS:

- City records indicate the following:
 - The nonconforming use being appealed at 4909 Pacific Avenue: commercial amusement (inside) use.
 - Reason the use is classified as nonconforming: change in zoning.
 - Date that the nonconforming use became nonconforming: March 29, 1965 when the property zoned M-1 became MF-2; and September 26, 2001 when the property zoned MF-2 became PD 595 (R-5(A)) zoning.
 - Current zoning of the property on which the use is located: PD 595 (R-5(A)).
- City records indicate the following:
 - A Certificate of Occupancy was issued on 5-5-64 for property at 4909 S. Pacific to owner Noble Anthony for a restaurant use with what appears to be additional notations made on 5-3-65.
- City records indicate the following:
 - The Certificate of Occupancy was updated on 08-17-2009 for property at 4909 Pacific to owner Ollie Mamie Gillens; DBA: Ollies Place: Land Use: Commercial Amusement (Inside); C.O. #: 0905271033; including remarks: non-conforming use billiard hall.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."

- The subject site is zoned PD No. 595 (R-5(A)) that does not permits a “commercial amusement (inside)” use.
- The record owner of the property with the nonconforming commercial amusement (inside) use or the record owner of the nonconforming commercial amusement (inside) use could eliminate the nonconforming use status by obtaining a change in zoning from City Council.
- The record owner of the property could transition the use on the site from “commercial amusement (inside)” use to any use that is permitted by right in the site’s existing PD No. 595 (R-5(A)) zoning classification.
- On July 29, 2011, the applicant submitted information to the Board Administrator on this application beyond what was submitted with the original application (see Attachment A). This information included “a spreadsheet that shows the crime that has occurred at and around Ollie’s Place since Jan. 1, 2007.”

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 595 (R-5(A)) (Planned Development, Single Family)
North: CS and R-5(A) (Commercial Service and Single Family)
South: PD No. 595 (R-5(A)) (Planned Development, Single Family)
East: PD No. 595 (R-5(A)) (Planned Development, Single Family)
West: PD No. 595 (R-5(A)) (Planned Development, Single Family)

Land Use:

The site is currently developed with a “commercial amusement (inside)” use (Ollie’s Place). The area to the immediate north is a railroad; the areas to the south and west appear to be developed with mostly single family residential uses; and the area to the east is a combination of undeveloped land and office uses.

Zoning/BDA History:

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

Timeline:

- April 27, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- June 17, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 21, 2011: The Board Administrator wrote/sent the record owner of the property (Needom Martin, Jr.) and the record owner of the

nonconforming use (Ollie Mamie Gillens) a letter (with a copy to the applicant- Diane Ragsdale and Lewis Rhone) that informed them that a Board of Adjustment case had been filed against the nonconforming commercial amusement (inside) use on the property. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials that has been submitted in conjunction with the application by the applicant.
2. A copy of the section of the Dallas Development Code that describes the Board of Adjustment (Section 51A-3.102).
3. A copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102 (90)).
4. A copy of the sections of PD No. 595 “Use Regulations and Development Standards In The R-5(A) Single Family Subdistrict” and the Dallas Development Code that provides the purpose and main uses permitted set forth for “R-5(A)” zoning district (Section 51A-4.112 (g)).
5. A copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704).
6. A copy of the section of the Dallas Development Code that describes the Board of Adjustment hearing procedures (51A-4.703).
7. A copy of the City of Dallas Board of Adjustment Working Rules of Procedures.
8. A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed Martin and Gillens of the date, time, and location of the public hearing, and provided a deadline of August 5th to submit any information that would be incorporated into the board’s docket.

August 2, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

July 29, 2011: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The “commercial amusement (inside)” use (Ollie’s Place) on the subject site is a nonconforming use. According to city records, the use became nonconforming on March 29, 1965 when the property zoned M-1 became MF-2; and September 26, 2001 when the property zoned MF-2 became PD 595 (R-5(A)) zoning subject site is zoned PD No. 595 (R-5(A)) that does not permits a “commercial amusement (inside)” use.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The record owner of the property with the nonconforming commercial amusement (inside) use or the record owner of the nonconforming commercial amusement (inside) use could eliminate the nonconforming use status by obtaining a change in zoning from City Council.
- The record owner of the property could transition the use on the site from “commercial amusement (inside)” use to any use that is permitted by right in the site’s existing PD No. 595 (R-5(A)) zoning classification.
- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming “commercial amusement (inside)” use will have an adverse effect on nearby properties.

The purpose of the Board of Adjustment’s August 16th public hearing shall be to determine whether continued operation of the nonconforming “commercial amusement (inside)” use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2011

APPEARING IN FAVOR: Diane Ragsdale, 4907 Spring, Dallas, TX
Kristen Schulz, 2800 N. Hampton Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-060**, deny the applicant's request for expedited compliance **with prejudice** because based on the evidence and testimony presented at the public hearing, we find that continued operation of this nonconforming use will not have an adverse effect on nearby properties.

SECONDED: **Richmond**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Goins**

I move to adjourn this meeting.

SECOND: **Gaspard**

AYES: 5– Richmond, Schweitzer, Hounsel, Goins, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:43 P.M. - Board Meeting adjourned for **August 16, 2011**.

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.