

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM  
WEDNESDAY, FEBRUARY 16, 2011**

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

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS ABSENT FROM HEARING: No one

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

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

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**11:10 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 16, 2011 docket.**  
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**1:04 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B January 19, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011**

**MOTION: Gillespie**

I move approval of the **Wednesday, January 19, 2011** Board of Adjustment Public Hearing minutes.

**SECONDED: Wilson**

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

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**FILE NUMBER: BDA 101-010**

**BUILDING OFFICIAL'S REPORT:**

Application of Filiberto Aguirre for a special exception to the single family regulations at 3866 Merrell Road. This property is more fully described as Lot 9 in City Block A/6419 and is zoned R-16(A) which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit which will require a special exception.

**LOCATION: 3866 Merrell Road**

**APPLICANT: Filiberto Aguirre**

**REQUEST:**

- A request for a special exception to the single family use development standard regulations is requested in conjunction with completing and maintaining a one-story, detached approximately 720 square foot “new storage building”/“studio”/dwelling unit structure on a site developed with a one-story dwelling unit/single family home structure that (according to the DCAD) has approximately 1,700 square feet of living area.

**STAFF RECOMMENDATION:**

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

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:**

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

**GENERAL FACTS:**

- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.  
The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”  
A site plan has been submitted denoting the locations of the building footprints of the “new storage bldg” and the “existing house” relative to the entire site.  
An elevation has been submitted of the second/additional dwelling unit on the site denoting a one-story structure that is 12’ 6” in height.  
A floor plan has been submitted denoting the “new storage bldg” structure with the following: “studio,” “bedroom,” “sto.,” “kit.,” and “bath” spaces. Building Inspection staff has reviewed the submitted floor plan and deemed it a “dwelling unit.”
- DCAD records indicate that the site is developed with the following:
  - a single family home built in 1954 with 1,730 square feet of living area; and
  - a 420 square foot attached garage.
- Building Inspection has commented that the structure that is the focus of this application as an “accessory structure” (as opposed to an additional “dwelling unit” structure if this special exception were to be denied) violates the code requirement that the floor area of any individual accessory structure on a lot (excluding floor area used for parking) may not exceed 25 percent of the floor area of the main building. (The structure that is the focus of this request is 135 square feet too large where the owner could bring it into compliance with this requirement by converting some of its

floor area – about 162 square feet- to a parking space with the addition of a garage door).

- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

### **Zoning:**

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

### **Land Use:**

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

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

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

### **Timeline:**

November 23, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 13, 2011: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded an email to the Board of Adjustment Chief Planner pertaining to this application stating that “the structure violates the requirement that the floor area of any individual accessory structure on a lot (excluding floor area used for parking) may not exceed 25 percent of the floor area of the main building. (The accessory structure is 135 square feet too large. The owner could convert some floor area – about 162 square feet- to a parking space with the addition of a garage door).

January 19, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 20, 2010: The Board Administrator wrote the applicant a letter that conveyed the following information given that the Board Administrator could not reach the applicant by phone:

- the panel, public hearing date and location of his public hearing on his application;
- the criteria/standard that the board will use in their decision to approve or deny the request,

- the specific accessory structure provisions from the code (S51A-4.209(6)(vii)) that would apply to existing/proposed structures on the site if the application for a special exception to the single family use development standard regulations for an additional dwelling unit were to be denied by the board of adjustment at the public hearing;
- the January 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- a general description of the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

(Note that this letter referenced a staff person who can provide assistance in Spanish).

February 3, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

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

February 4, 2011: The applicant forwarded additional information on this application to staff (see Attachment A).

### **STAFF ANALYSIS:**

- This request focuses on completing and maintaining a one-story, detached approximately 720 square foot "new storage building"/"studio"/dwelling unit structure on a site developed with a one-story dwelling unit/single family home structure that (according to the DCAD) has approximately 1,700 square feet of living area.
- The site is zoned R-16(A) (Single family district 16,000 square feet) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to complete and maintain "new storage building"/dwelling unit structure on the site hence the special exception request.
- Building Inspection staff has reviewed the submitted floor plan of the "new storage building"/dwelling unit structure and deemed it a "dwelling unit" - that is per Code definition: "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms." The submitted floor plan denotes a structure with the following: "studio," "bedroom," "sto.," "kit.," and "bath" spaces.
- This application is not like most requests for special exceptions to the single family use development standard regulations where the typical request merely centers on the function of what is proposed to be located inside a proposed "additional dwelling unit" structure. In most of these types of applications, if the board were to deny the request, the structure that is the nature of the request could be constructed and maintained with merely modifications to the function/use inside it (or to the floor plan)

since it is established by the applicant that the proposed structure complies with the applicable zoning code development standards (i.e. no application has been made for variance to setbacks or any other zoning code provision). Building Inspection has commented that the structure that is the focus in this application as an “accessory structure” (as opposed to an additional “dwelling unit” structure if this special exception were to be denied) violates the code requirement that the floor area of any individual accessory structure on a lot (excluding floor area used for parking) may not exceed 25 percent of the floor area of the main building. (The structure that is the focus of this request is 135 square feet too large where the owner could be bring it into compliance with this requirement by converting some of its floor area – about 162 square feet- to a parking space with the addition of a garage door).

- As of February 7, 2011, a petition signed by 5 neighbors/owners had been submitted to staff in support of the application and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, the Board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan and/or floor plan are necessary in assuring that the special exception will not adversely affect neighboring properties. Note that granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements including but not limited to setback and coverage requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011**

APPEARING IN FAVOR: Filiberto Aguirre, 3866 Merrell Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment, in Appeal No. **BDA 101-010** on application of Filiberto Aguirre, **deny** the request of this applicant to maintain an additional dwelling unit on the property **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the additional dwelling unit on the site will adversely affect neighboring properties.

SECONDED: **Reynolds**

AYES: 3 – Reynolds, Gillespie, Agnich

NAYS: 2 – Chernock, Wilson

MOTION PASSED 3 – 2

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**FILE NUMBER:** BDA 101-012

**BUILDING OFFICIAL'S REPORT:**

Application of Angelos Kolobotos, represented by P. Michael Jung, to restore a nonconforming use at 2628 Pennsylvania Avenue. This property is more fully described as Lots 15 and 16 in City Block 32/1309 and is zoned PD-595, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming multifamily use which will require a special exception.

**LOCATION:** 2628 Pennsylvania Avenue

**APPLICANT:** Angelos Kolobotos  
Represented by P. Michael Jung

**REQUEST:**

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a "multifamily" use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on January 7, 2011, 24 days after the application was filed on December 14, 2010, and 10 days beyond the 14 days the applicant was required to post the sign on the site and remain posted until a final decision is made on the application.

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

The Board Administrator informed the applicant on January 7, 2011 of his discovery of no signs being posted on the site on his field visit on the same day. The applicant's representative acknowledged in a January 10<sup>th</sup> email of his client's delay

in posting the sign due to a reading of dated code provision stating that signs did not have to be posted until 10 days before the hearing.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:** The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**GENERAL FACTS:**

- The Dallas Development Code defines “nonconforming use” as “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 nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code 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 nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The subject site is zoned PD No. 595 (R-5(A)) – a zoning district that permits does not permit a multifamily use.
- According to information from Dallas Central Appraisal District (DCAD), the property at 2628 Pennsylvania Avenue is developed with a structure with 2,888 square feet of living area that was constructed in 1966.
- Building Inspection has stated that these types of special exception request originate from when an owner/officer related to the property apply for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers need to submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.

- The nonconforming “multifamily” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- Given provisions set forth in the Dallas Development Code, the multifamily use can obtain “conforming use” status upon attaining a change from the current zoning district from the City Council.
- The owner of the site could develop the site to any use that is permitted by right in the site’s existing PD No. 595 (R-5(A)) zoning classification.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
North: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
South: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
East: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
West: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)

**Land Use:**

The subject site is developed with a multifamily structure this appears vacant. The area to the north is undeveloped, the area to the east is developed with a vacant multifamily structure (the property that is BDA101-013), and the areas to the south and west are developed with what appears to be single family uses.

**Zoning/BDA History:**

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| <ol style="list-style-type: none"> <li>1. BDA101-013, Property at 2632 Pennsylvania Avenue (the lot immediately northeast of the subject site)</li> </ol> | <p>On February 16, 2011, the Board of Adjustment Panel B will consider a request for a special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “multifamily” use on the subject site.</p> |
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**Timeline:**

December 14, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 19, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 20, 2011: The Board Administrator contacted the applicant's representative and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the 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."

February 3, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on January 7, 2011, 24 days after the application was filed on December 14, 2010, and 10 days beyond the 14 days the applicant was required to post the sign on the site and remain posted until a final decision is made on the application.
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification sign, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant did comply with the Dallas Development Code provision related to the posting of the notification sign on the site, the Board could consider the special exception request as scheduled on February 16, 2011.
- This special exception request is made to restore nonconforming use rights (and obtain a Certificate of Occupancy) for a nonconforming "multifamily" use that has been discontinued for six months or more.
- The applicant has the burden of proof in establishing the following related to the special exception request:

- There was a clear intent not to abandon the nonconforming “multifamily” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “multifamily” use was vacant for a period of six (6) months or more. Granting this request would restore the “multifamily” use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make the “multifamily” use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant’s representative has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011**

APPEARING IN FAVOR: P. Michael Jung, 901 Main Street, #4400, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

Having fully reviewed the evidence in Appeal No **BDA 101-012**, on application of Angela Kolobotos, represented by P. Michael Jung, and heard all testimony and facts relating to the posting of the notification signs, I find that the required signs were not posted properly and I move that the Board of Adjustment, hold this matter under advisement until **April 20, 2011**.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER: BDA 101-013

**BUILDING OFFICIAL’S REPORT:**

Application of Angelos Kolobotos, represented by P. Michael Jung, to restore a nonconforming use at 2632 Pennsylvania Avenue. This property is more fully described as Lots 17 and 18 in City Block 32/1309 and is zoned PD-595, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming multifamily use which will require a special exception.

LOCATION: 2632 Pennsylvania Avenue

APPLICANT: Angelos Kolobotos  
Represented by P. Michael Jung

**REQUEST:**

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “multifamily” use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on January 7, 2011, 24 days after the application was filed on December 14, 2010, and 10 days beyond the 14 days the applicant was required to post the sign on the site and remain posted until a final decision is made on the application.

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

The Board Administrator informed the applicant on January 7, 2011 of his discovery of no signs being posted on the site on his field visit on the same day. The applicant’s representative acknowledged in a January 10<sup>th</sup> email of his client’s delay in posting the sign due to a reading of dated code provision stating that signs did not have to be posted until 10 days before the hearing.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:** The Dallas Development Code specifies that the Board may grant a special exception to operate a

nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

### **GENERAL FACTS:**

- The Dallas Development Code defines “nonconforming use” as “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 nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code 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 nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

- The subject site is zoned PD No. 595 (R-5(A)) – a zoning district that permits does not permit a multifamily use.
- According to information from Dallas Central Appraisal District (DCAD), the property at 2632 Pennsylvania Avenue is developed with a structure with 2,820 square feet of living area that was constructed in 1966.
- Building Inspection has stated that these types of special exception request originate from when an owner/officer related to the property apply for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers need to submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- The nonconforming “multifamily” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- Given provisions set forth in the Dallas Development Code, the multifamily use can obtain “conforming use” status upon attaining a change from the current zoning district from the City Council.
- The owner of the site could develop the site to any use that is permitted by right in the site’s existing PD No. 595 (R-5(A)) zoning classification.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.

### **BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
North: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
South: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
East: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)  
West: PD No. 595(R-5(A)) (Planned Development, Single family 5,000 square feet)

**Land Use:**

The subject site is developed with a multifamily structure this appears vacant. The area to the north is undeveloped, the areas to the east and west are developed with what appears to be single family uses, and the area to the southwest is developed with a vacant multifamily structure (the property that is BDA101-012).

**Zoning/BDA History:**

1. BDA101-012, Property at 2628 Pennsylvania Avenue (the lot immediately southwest of the subject site) On February 16, 2011, the Board of Adjustment Panel B will consider a request for a special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “multifamily” use on the subject site.

**Timeline:**

- December 14, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 19, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 20, 2011: The Board Administrator contacted the applicant’s representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the 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.”

February 3, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that no notification sign was noted in any area on the site when the Board Administrator conducted his field visit on January 7, 2011, 24 days after the application was filed on December 14, 2010, and 10 days beyond the 14 days the applicant was required to post the sign on the site and remain posted until a final decision is made on the application
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of the notification sign, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant did comply with the Dallas Development Code provision related to the posting of the notification sign on the site, the Board could consider the special exception request as scheduled on February 16, 2011.
- This special exception request is made to restore nonconforming use rights (and obtain a Certificate of Occupancy) for a nonconforming "multifamily" use that has been discontinued for six months or more.
- The applicant has the burden of proof in establishing the following related to the special exception request:
  - There was a clear intent not to abandon the nonconforming "multifamily" use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the "multifamily" use was vacant for a period of six (6) months or more. Granting this request would restore the "multifamily" use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make the "multifamily" use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant's representative has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to "Nonconforming Uses and Structures").

### **BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011**

APPEARING IN FAVOR: P. Michael Jung, 901 Main Street, #4400, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

Having fully reviewed the evidence in Appeal No **BDA 101-013**, on application of Angela Kolobotos, represented by P. Michael Jung, and heard all testimony and facts relating to the posting of the notification signs, I find that the required signs were not posted properly and I move that the Board of Adjustment, hold this matter under advisement until **April 20, 2011**.

SECONDED: **Agnich**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER: BDA 101-118

**BUILDING OFFICIAL’S REPORT:**

Application of Si Il Kim for a special exception to the parking regulations at 10550 Walnut Street. This property is more fully described as Lot 3 in City Block 8445 and is zoned CR which requires parking to be provided. The applicant proposes to construct/maintain a structure for a personal service use, restaurant without drive-in service use, and general merchandise or food store less than 3500 square foot use and provide 110 of the required 146 parking spaces which will require a special exception of 36 spaces.

LOCATION: 10550 Walnut Street

APPLICANT: Si Il Kim

**February 16, 2011 Public Hearing Notes:**

- The Board Administrator circulated additional written documentation prepared by the applicant’s representative to the board at their briefing (see Attachment C).
- The board heard testimony at the public hearing and delayed action on this application until March 16<sup>th</sup> per the request of the applicant’s representative. This delay would allow the applicant an opportunity for him to “get more detailed data ready for the staff’s review.”

**REQUEST:**

- A special exception to the off-street parking regulations of 36 parking spaces (or a 25 percent reduction of the required off-street parking) is requested in conjunction with leasing vacant square footage/space within an existing approximately 24,000

square foot retail strip center with certain uses, and providing 110 of the required 146 off-street parking spaces.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Sustainable Development Department Project Engineer recommends that this request be denied since there has not been adequate information provided by the applicant (including the recently submitted parking analysis study) to justify the requested parking reduction.
- The applicant has not substantiated how the parking demand generated by the existing/proposed general merchandise, personal service, and restaurant uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use

automatically and immediately terminates if and when that use is changed or discontinued.

- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

#### **UPDATED GENERAL FACTS (February 2011):**

- The Board Administrator circulated a January 14<sup>th</sup> email from the applicant's representative to the board members at their January 19<sup>th</sup> briefing (see Attachment A). This email requested a postponement of action on the application until February 16<sup>th</sup> to allow the applicant additional time to substantiate his parking reduction request.
- The Board of Adjustment Panel B conducted a public hearing on this application on January 19<sup>th</sup>, and delayed action until February 16<sup>th</sup> to allow the applicant's representative an opportunity to provide additional information to staff/the board.
- The Sustainable Development and Construction Department Project Engineer forwarded a parking analysis study submitted by the applicant's representative (see Attachment B). (The City project engineer has indicated that he still recommends denial of the request since counts/site specific information was not included as part of this study).

#### **ORIGINAL GENERAL FACTS (January 2011):**

- The Dallas Development Code requires the following off-street parking requirement:
  - General merchandise or food store 3,500 square feet or less: 1 space for 200 square feet of floor area.
  - Personal service use: 1 space per 200 square feet of floor area.
  - Restaurant without drive-in service use: 1 space per 200 square feet of floor areaThe applicant proposes to provide 110 (or 75 percent) of the required 146 off-street parking spaces in conjunction with the site being leased/maintained with a combination of the uses mentioned above.

#### **BACKGROUND INFORMATION:**

## **Zoning:**

Site: CR (Community Retail)  
North: City of Garland  
South: CR (Community Retail)  
East: CR (Community Retail)  
West: PD No. 255 (Planned Development)

## **Land Use:**

The subject site is developed as a retail strip center. The areas to the north, east, and west are developed with retail uses; and the area to the south is developed with multifamily 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:**

- November 22, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- December 15, 2010: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- December 17, 2010: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the January 3rd deadline to submit additional evidence for staff to factor into their analysis; and the January 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January 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, and the Assistant City Attorney to the Board.

- January 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Inadequate information was provided to justify the requested parking reduction."
- January 19, 2011: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their February 16<sup>th</sup> public hearing.
- January 25, 2011: The Board Administrator sent a letter to the applicant's representative informing him of the public hearing date and the January 31<sup>st</sup> deadline to submit additional evidence to staff and the February 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.
- February 3, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.
- February 3, 2011: The Sustainable Development and Construction Department Project Engineer forwarded a parking analysis study submitted by the applicant's representative (see Attachment B). (The City project engineer has indicated to the Board Administrator that he still recommends denial of the request since counts/site specific information was not included as part of this study).

### **STAFF ANALYSIS:**

- This request focuses on leasing vacant square footage/space within an existing approximately 24,000 square foot retail strip center with certain uses, and providing 110 (or 75 percent) of the required 146 off-street parking spaces.
- The applicant has stated that there are no proposed plans to increase the size of center, and that while there are three vacant premises on the site the property has enough parking spaces to serve the whole shopping center.
- The Sustainable Development Department Project Engineer recommends that this application be denied since there has not been adequate information provided by the applicant to justify the requested parking reduction. (The City engineer has indicated that he still recommends denial of the request since counts/site specific information was not included as part of the applicants parking analysis study).
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the existing/proposed uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 36 spaces (or a 25 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 36 spaces shall automatically and immediately terminate if and when

the general merchandise or food store 3,500 square feet or less, personal service, and/or restaurant without drive-in service uses are changed or discontinued, the applicant would be allowed to develop/lease/maintain the site with these specific uses and provide only 110 of the 146 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gillespie**

I move that the Board of Adjustment in Appeal No. **BDA 101-118**, hold this matter under advisement until **February 16, 2011**.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011**

APPEARING IN FAVOR: Scott Johnson, 12700 Park Central Dr., Ste 1800, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment in Appeal No. **BDA 101-118**, hold this matter under advisement until **March 16, 2011**.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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FILE NUMBER: BDA 101-022

**BUILDING OFFICIAL’S REPORT:**

Application of Angela Elizabeth Scheuerle, represented by Santos T. Martinez of Masterplan Consultants, for a variance to the front yard setback regulations at 9702 Vinewood Drive. This property is more fully described as Lot 19A in City Block D/ 7399 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a single family structure and provide a 19.7 foot front yard setback which will require a variance of 5.3 feet.

**LOCATION:** 9702 Vinewood Drive

**APPLICANT:** Angela Elizabeth Scheuerle  
Represented by Santos T. Martinez

**February 16, 2011 Public Hearing Notes:**

- The Board Administrator circulated additional written documentation prepared by the applicant's representative to the board at their briefing.
- The board heard testimony at the public hearing and delayed action on this application until March 16<sup>th</sup>. This delay would allow staff to confirm the existence of a CUD (Community Unit Development) on this property, and any affect it may have on required setbacks on the property other than what was originally conveyed to the board.

**REQUESTS:**

- Variances to the front yard setback regulations of 5.3' are requested in conjunction with the following on a site developed with a single family home and a detached garage:
  1. maintaining an existing one-story garage, part of which is located in one of the site's two 25' front yard setbacks (Vinewood Drive); and
  2. completing and maintaining a second floor atop the existing garage, part of which is located in the same 25' Vinewood Drive front yard setback as is the existing garage.(No portion of the request is made in this application to construct/maintain any portion of a structure in the site's Oates Drive front yard setback).

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Although the site is somewhat sloped, slightly irregular in shape, and with the unique characteristic (given its single family zoning) of having two 25' front yard setbacks, the applicant has not substantiated how these physical features of the property are of a restrictive enough nature that preclude him from being able to comply with the development standards in the Dallas Development Code including but not limited to front yard setbacks particularly since the subject site is (according to the application) 0.3 acres or approximately 13,000 square feet in area, or nearly twice the area of typical lot found in R-7.5(A) zoning at 7,500 square feet.

**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:

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

### **GENERAL FACTS:**

- Single family structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.

The subject site is located at the northeast corner of Oates Drive and Vinewood Drive. Regardless of how the structures on the site may be oriented or addressed, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Oates Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25' front yard setback along Vinewood Drive, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5' side yard setback is required. However, the site's Vinewood Drive frontage is deemed a front yard setback in order to maintain the continuity of the established front yard setback established by the lots north of the site that front/are oriented westward onto Vinewood Drive.

A revised scaled site plan (see Attachment A) has been submitted denoting a portion of the "existing detached 2 car garage & proposed second story addition" structure located in the 25' Oates Drive front yard setback. The application requests a variance of 5.3' which would make the structure 19.7' from the front property line or 5.3' into this 25' front yard setback. (No encroachment is proposed in the site's Oates Drive 25' front yard setback).

- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the structure footprint to be maintained and to be completed/maintained vertically with a 2<sup>nd</sup> floor in alignment with the 1<sup>st</sup> floor of the existing structure in the site's Vinewood Drive 25' front yard setback is approximately 120 square feet in area or approximately 1/5 of the approximately 670 square foot building footprint.
- According to DCAD records, the site is developed with the following:
  - a structure built in 1999 in "very good" condition with 2,648 square feet of living area;
  - a 725 square foot detached garage; and
  - a 725 square foot room addition.
- The subject site is relatively flat, slightly irregular in shape (approximately 112' on the north; approximately 108' on the south; approximately 123' on the east; and approximately 119' on the west), and (according to the application) is "1/3" acre in

area. Staff has determined from the submitted plat that the site is approximately 13,000 square feet in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.

- The applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachments A, B, and C).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: R-7.5(A) (Single family district 7,500 square feet)  
East: R-7.5(A)(SUP 1256) (Single family district 7,500 square feet)(Specific Use Permit)  
West: R-7.5(A) (Single family district 7,500 square feet)

### **Land Use:**

The subject site is developed with a single family home and a detached garage structure currently being modified with a second story atop. The areas to the north, south, and west are developed with single family uses; and the area to the east is developed with a private school (White Rock Montessori School).

### **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:**

- December 27, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 19, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- January 19, 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 January 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 24, 2011: The Board Administrator emailed the applicant's newly designated representative the information mentioned above that was forwarded to the applicant on January 19, 2011.

January 24 & 31 and  
February 4, 2011:

The applicant's representative forwarded additional information on this application to staff (see Attachments A, B, and C).

February 3, 2011: 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 Board of Adjustment Chief Planner, the Board Administrator, and the Assistant City Attorney to the Board.

February 3, 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: "Must comply with all C.O.D visibility requirements."

### **STAFF ANALYSIS:**

- The requests focus on maintaining an existing one-story garage, part of which is located in one of the site's two 25' front yard setbacks (Vinewood Drive); and completing and maintaining a second floor atop this existing garage. (No portion of the request is made in this application to maintain and/or complete/maintain any portion of a structure in the site's Oates Drive front yard setback).
- The structure (an existing one-story garage with a second floor to be completed/maintained atop) that is the issue of this request is located on a site that has two 25' front yard setbacks. The structure that is the issue of this request is located 19.7' from the Vinewood Drive front property line whereby a variance is requested to locate/maintain/complete a structure 5.3' into the 25' Vinewood Drive front yard setback.
- Regardless of how the existing main structure on the site may be oriented or addressed, the subject site has two 25' front yard setbacks along both streets. The site has a 25' front yard setback along Oates Drive (the shorter of the two frontages which is always deemed the front yard setback on a corner lot in a single family zoning district), and a 25' front yard setback along Vinewood Drive, the longer of the two frontages of this corner lot which would typically be regarded as a side yard where a 5' side yard setback is required. The site's Vinewood Drive frontage is deemed a front yard setback nonetheless in order to maintain the continuity of the established front yard setback established by the lots north of the site that front/are oriented westward onto Vinewood Drive.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the structure footprint to be maintained and to be completed/maintained vertically with a 2<sup>nd</sup> floor in alignment with the 1<sup>st</sup> floor of the

existing structure in the site's Vinewood Drive 25' front yard setback is approximately 120 square feet in area or approximately 1/5 of the approximately 670 square foot building footprint.

- According to DCAD records, the site is developed with the following:
  - a structure built in 1999 in “very good” condition with 2,648 square feet of living area;
  - a 725 square foot detached garage; and
  - a 725 square foot room addition.
- The subject site is relatively flat, slightly irregular in shape (approximately 112' on the north; approximately 108' on the south; approximately 123' on the east; and approximately 119' on the west), and (according to the application) is “1/3” acre in area. Staff has determined from the submitted plat that the site is approximately 13,000 square feet in area. The site is zoned R-7.5(A) where lots in this zoning district are typically 7,500 square feet in area. This site has two 25' front yard setbacks; and two 5' side yard setbacks; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- The site has approximately 90' x 80' of developable area left (or an approximately 7,200 square foot area) once its setbacks are accounted for as opposed to 90' x 100' of developable area left (or an approximately 9,000 square foot area) if the site were more typical with having just one front yard setback. The site's approximately 7,200 square feet of developable space is larger than the developable space found on a more typically sized R-7.5(A) zoned lot (150' x 50') with two front yard setbacks at approximately 3,600 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the Vinewood Drive front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) 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 R-7.5(A) zoning classification.
- If the Board were to grant either one or both of the variance requests, subject to the submitted revised site plan, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure located 5.3' into the 25' Vinewood Drive front yard setback

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 16, 2011**

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

APPEARING IN OPPOSITION: Lily Arenas, 9714 Vinewood, Dallas, TX

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 101-022**, hold this matter under advisement until **March 16, 2011**.

SECONDED: **Chernock**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Chernock**

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

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

**1:44 P.M.** - Board Meeting adjourned for **February 16, 2011.**

\_\_\_\_\_  
CHAIRPERSON

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

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BOARD SECRETARY

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