

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, APRIL 20, 2011**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member, David Wilson, regular member, Paula Leone, regular member, and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Sam Gillespie, Panel Vice Chair

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Christian Chernock, regular member, David Wilson, regular member, Paula Leone, regular member, and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Sam Gillespie, Panel Vice Chair

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

11:01 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 20, 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 B March 16, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2011

MOTION: Leone

I move approval of the **Wednesday, March 16, 2011** Board of Adjustment Public Hearing minutes.

SECONDED: Gaspard

AYES: 5– Reynolds, Chernock, Wilson, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-034

BUILDING OFFICIAL'S REPORT:

Application of John Fazio, represented by Mark Arthur Shekter, for a special exception to the fence height regulations at 4723 Royal Lane. This property is more fully described as Lot 4 in City Block 1/5503 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain a 10-foot high which will require a special exception of 6 feet.

LOCATION: 4723 Royal Lane

APPLICANT: John Fazio
Represented by Mark Arthur Shekter

REQUEST:

- A special exception to the fence height regulations of 6' is requested in conjunction with constructing and maintaining the following in the site's 40' front yard setback on a lot being developed with a single family home:
 - parallel to the street in the front yard setback: an 8' high open iron wrought fence with 9' high cast stone columns, and two 10' high arched open wrought iron entry gates with 9' 6" high cast stone columns;

- perpendicular to the street in the front yard setback: an 8' high combination solid cast stone/open wrought iron fence (open wrought iron fence atop a 2' 4" high solid cast stone base) with 9' 6" high cast stone columns.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
The applicant had submitted a site plan and elevation indicating that the proposal in the required front yard setback reaches a maximum height of 10'.
- The following additional information was gleaned from the submitted site plan:
 - The proposal is approximately 180' in length parallel to the street and approximately 16' - 28' in length *perpendicular* to the street on the east and west sides of the site (respectively) in the front yard setback.
 - The fence proposal is shown to be located approximately 12' – 24' from the site's front property line or about 22' – 34' from the curb line.
- The submitted site plan denotes a number of "trees" labeled as 13" – 26" located on either side of the proposed fence, and a "bermed landscape area" located between the proposed fence and the Royal Lane pavement line.
- Three single family homes "front" to the proposal on the subject site, one of which appears to have a fence higher than 4' in height in its front yard setback. The lot immediately southwest of the site has an approximately 8' high combination solid stucco/open wrought iron fence in its front yard setback that appears to be the result of an approved fence height special exception from 2006- BDA 056-225.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences above four (4) feet high in the immediate area which appeared to be located in a front yard setback beyond what was previously described:
 - an approximately 7' high open metal fence immediately west of the site almost completely hidden by a tall hedge that appears to be a result of an approved fence height special exception from November of 1988- BDA 88-119; and
 - an approximately 7' high solid stucco wall two lots southeast of the site that appears to be the result of an approved fence height special exception from April of 2003- BDA 023-067.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 88-119, Property at 4707 Royal Lane (the lot immediately west of subject site) On November 8, 1988, the Board of Adjustment followed the staff recommendation and granted a request for a special exception to the fence height regulations to maintain a 6'10" open metal fence with brick columns, subject to a site plan and a landscape plan.
2. BDA 056-225, Property at 10770 Lennox Lane (the lot immediately southwest of subject site) On November 13, 2006, the Board of Adjustment Panel C granted a request for a special exception to the fence height regulations of 5' and imposed the following as a condition to the request: Compliance with the submitted revised site plan, Option B elevation, and landscape plan is required. The case report stated that the request was made in conjunction constructing and maintaining an 8' high solid stucco fence with 9' high stucco columns and a sliding gate to be located in the site's Lennox Lane and Royal Lane 40' front yard setback on a site developed with a single family home.
3. BDA 978-230, Property at 4720 Royal Lane (the lot immediately south of subject site) On September 22, 1998, the Board of Adjustment Panel A denied a request for a special exception to the fence height regulations of 4' without prejudice. The case report stated that the request was made in conjunction with requested in conjunction with constructing and maintaining an 8' high solid masonry wall.
4. BDA 023-067, Property at 10770 On April 21, 2003, the Board of Adjustment

Strait Lane (two lots immediately southeast of subject site)

Panel C granted a request for a special exception to the fence height regulations of 3' 8" along Royal Lane and imposed the following the submitted site plan, landscape plan, and fence elevations as a condition to the request. The case report stated that the request was made in conjunction with maintaining a 6' 5" high solid stucco wall with 7' 8" high stucco columns in the site's Royal Lane front yard setback.

Timeline:

February 24, 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.

March 17, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 17, 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 April 4th deadline to submit additional evidence for staff to factor into their analysis; and the April 8th 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.

April 5, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the 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, and the Assistant City Attorney to the Board.

April 7, 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." (Note that no item is represented on the submitted site plan as being located in a 20' visibility triangle).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an 8' high open iron wrought fence with 9' high cast stone columns, and two 10' high arched open wrought iron entry gates with 9' 6" high cast stone columns on the site parallel to the street; and constructing and maintaining an 8' high combination solid cast stone/open wrought iron fence (open wrought iron fence atop a 2' 4" high solid cast stone base) with 9' 6" high cast stone columns perpendicular to the street on the two sides of the site in the front yard setback on a property being developed with a single family home.
- The submitted site plan and elevation documents the location, height, and materials of the fence over 4' in height in the required front yard setback. The site plan indicates that the proposal is about 180' in length parallel to the street and approximately 16' - 28' in length *perpendicular* to the street on the east and west sides of the site (respectively) in the front yard setback. The plan shows the fence to be located approximately 12' - 24' from the site's front property line or about 22' - 34' from the curb line.
- The submitted site plan denotes a number of "trees" labeled as 13" - 26" located on either side of the proposed fence, and a "bermed landscape area" located between the proposed fence and the Royal Lane pavement line.
- Three single family homes "front" to the proposal on the subject site, one of which appears to have a fence higher than 4' in height in its front yard setback. The lot immediately southwest of the site has an approximately 8' high combination solid stucco/open wrought iron fence in its front yard setback that appears to be the result of an approved fence height special exception from 2006- BDA 056-225.
- The Board Administrator conducted a field visit of the site and surrounding area and noted two other fences above four (4) feet high in the immediate area which appeared to be located in a front yard setback beyond what was previously described in the "General Facts" section of this case report.
- As of April 11, 2011, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 6' will not adversely affect neighboring property.
- Granting this special exception of 6' with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal exceeding 4' in height in the front yard setback would be maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2011

APPEARING IN FAVOR: Mark Shekter, 3624 Oak Lawn, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 101-034**, on application of John Fazio, represented by Mark Arthur Shekter, **grant** the request of this applicant to construct and maintain an ten-foot high fence as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not

adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Chernock

AYES: 5– Reynolds, Chernock, Wilson, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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.

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 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.
- Building Inspection has forwarded the following information about this request (see Attachment A):
 1. The nonconforming use to be reinstated: multifamily dwelling (the use as stated on the last valid Certificate of Occupancy).
 2. Reason the use is classified as nonconforming: Use not allow under current zoning.
 3. Date the nonconforming use was discontinued: Fall 2007.

4. Date that the use became nonconforming: September 26, 2001 (date current PD created)
5. Current zoning of the property on which the use is located: PD 595 (R-5(A)).
6. Previous zoning of the property on which the use is located: Unknown.

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:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA101-013, Property at 2632 Pennsylvania Avenue (the lot immediately northeast of the subject site) | <p>On February 16, 2011, the Board of Adjustment Panel B delayed consideration on 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 until April 20, 2011.</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 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;
- 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.

February 16, 2011: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their April 20th public hearing per the request of the applicant's representative.

April 5, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the 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, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- 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)

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2011

APPEARING IN FAVOR: Michael Jung, 4400 Bank of America Plaza, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 101-012**, on application of Angela Kolobotos, represented by P. Michael Jung, **grant** the request of this applicant for a special exception to the provision found in Section 51A-4.704(a)(2) of the Dallas Development Code providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the property has shown that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

SECONDED: **Wilson**

AYES: 5– Reynolds, Chernock, Wilson, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

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.

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 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.
- Building Inspection has forwarded the following information about this request (see Attachment A):
 1. The nonconforming use to be reinstated: multifamily dwelling (the use as stated on the last valid Certificate of Occupancy).
 2. Reason the use is classified as nonconforming: Use not allowed under current zoning.
 3. Date the nonconforming use was discontinued: Fall 2007.
 4. Date that the use became nonconforming: September 26, 2001 (date current PD created)
 5. Current zoning of the property on which the use is located: PD 595 (R-5(A)).
 6. Previous zoning of the property on which the use is located: Unknown.

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 delayed consideration on 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 until April 20, 2011.

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 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;
 - 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.

February 16, 2011: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their April 20th public hearing per the request of the applicant's representative.

April 5, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the 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, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- 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)

BOARD OF ADJUSTMENT ACTION: APRIL 20, 2011

APPEARING IN FAVOR: Michael Jung, 4400 Bank of America Plaza, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 101-013**, on application of Angela Kolobotos, represented by P. Michael Jung, **grant** the request of this applicant for a special exception to the provision found in Section 51A-4.704(a)(2) of the Dallas Development Code providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the property has shown that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

SECONDED: **Leone**

AYES: 5– Reynolds, Chernock, Wilson, Leone, Gaspard

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION: Gaspard

I move to adjourn this meeting.

SECONDED: Chernock

AYES: 5– Reynolds, Chernock, Wilson, Leone, Gaspard

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

1:30 P.M. - Board Meeting adjourned for **April 20, 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.