

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, APRIL 16, 2018**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, and Ryan Behring, regular member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Cheri Gambow, regular member, Robert Agnich, regular member, and Ryan Behring, regular member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., David Navarez, Project Engineer, Charles Trammell, Development Code Specialist, Shombray Irby, Acting Board Secretary and Elaine Hill, Board Secretary

STAFF PRESENT AT HEARING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Kanesia Williams, Asst. City Atty., David Navarez, Project Engineer, Charles Trammell, Development Code Specialist, Shombray Irby, Acting Board Secretary, Elaine Hill, Board Secretary, Neva Dean Assistant Director

11:15 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's April 16, 2018 docket.

1:03 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, March 19, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2018

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA178-044(OA)

BUILDING OFFICIAL'S REPORT: Application of Steve Chambers for special exceptions to the visual obstruction regulations at 5947 Morningside Avenue. This property is more fully described as Lot 12, Block D/2865, and is zoned CD 11, which requires a 20 foot visibility triangle at alleys and at driveway approaches. The applicant proposes to maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5947 Morningside Avenue

APPLICANT: Steve Chambers

REQUESTS:

Requests for special exceptions to the visual obstruction regulations are made to maintain a 6' 2" high solid wood fence with a 6' high swing wood gate in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street, and in the 20' visibility triangle at where the alley meets Concho Street on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d)(3) of the Dallas Development Code states that the Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located in the visibility triangles do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: CD 11 (Conservation District)
North: CD 11 (Conservation District)
South: CD 11 (Conservation District)
East: CD 11 (Conservation District)
West: CD 11 (Conservation District)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- These requests for special exceptions to the visual obstruction regulations focus on maintaining a 6' 2" high solid wood fence with a 6' high swing wood gate in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street, and in the 20' visibility triangle at where the alley meets Concho Street on a site developed with a single family home.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
 - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

- The property is located in Conservation District 11 which requires the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A site plan and site plan/elevation have been submitted indicating portions of a 6'2" high solid wood fence with a 6' high swing wood gate in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street, and indicating portions of a 6'2" high solid wood fence with a 6' high swing wood gate located in the 20' visibility triangle at where the alley meets Concho Street.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting the requests for special exceptions, to the visual obstruction regulations, to maintain a 6' 2" high solid wood fence with a 6' high swing wood gate in the two 20' visibility triangles on both sides of the driveway into the site from Concho Street, and in the 20' visibility triangle at where the alley meets Concho Street, do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items to be maintained in the 20' drive approach visibility triangles into the site from Concho Street and in the 20' visibility triangle where the alley meets Concho Street, to that what is shown on these documents – a 6' 2" high solid wood fence and a 6' high wood swing gate.

Timeline:

- February 22, 2018: 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 13, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 14, 2017: The Sustainable Development and Construction Department Senior Planner emailed the applicant/owner the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 28th deadline to submit additional evidence for staff to factor into their analysis; and the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standards that the board will use in their decision to approve or deny the requests; and
 - The Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

April 3, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

April 4, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

BOARD OF ADJUSTMENT ACTION: APRIL 16, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Gambow**

I move that the Board of Adjustment **grant** the following application listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the application satisfies all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit:

BDA 178-044 – Application of Steve Chambers, for a special exception from visual obstruction regulations contained in the Dallas Development Code, is **granted**, subject to the following condition:

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

SECONDED: **Agnich**

AYES: 4 - Richardson, Gambow, Agnich, Behring

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-046(SL)

BUILDING OFFICIAL’S REPORT: Application of Jackson Walker, represented by Jonathan G. Vinson, to appeal the decision of the administrative official at 4513 Gaston Avenue. This property is more fully described as Lot 2, Block 1/769, and is zoned PD 362 (Subarea 3A), (H/72), which requires that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 4513 Gaston Avenue

APPLICANT: Jackson Walker
Represented by Jonathan G. Vinson

REQUEST:

A request is made “to appeal the decision of the Building Official per letter dated February 2, 2018, to reverse a November 28, 2017, determination letter (copy attached) confirming legal nonconforming rights for the use”.

Note that another application is made on this property where the same applicant is requesting a special exception to restore/reinstate nonconforming use rights for a “group residential facility” use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) from Board of Adjustment Panel C on April 16, 2018: BDA178-039.

The applicant is aware of the fact that if the Board grants this request (BDA178-046) and reverses the decision of the Building Official that the request for a special exception to restore/reinstate nonconforming use rights for a “group residential facility” use on the subject site (BDA178-039) will not be necessary.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov’t Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

Zoning:

Site: PD 362 (Subarea 3A)(H/72) (Planned Development)(Historic)
North: R-7.5(A)(H/72) (Single family residential 7,500 square feet)(Historic)
South: PD 362 (Subarea 3)(H/72) (Planned Development)(Historic)
East: PD 362 (Subarea 3)(H/72) (Planned Development)(Historic)
West: PD 362 (Subarea 3)(H/72) (Planned Development)(Historic)

Land Use:

The subject site is developed with, according to DCAD, an apartment built in 1910. The areas to the north and east are developed with single family uses, the area to the south is developed with multifamily uses, and the area to the west is developed with a vacant retail use.

Zoning/BDA History:

1. BDA178-039, Property at 4513 Gaston Avenue (the subject site) On April 16, 2018, the Board of Adjustment Panel C will hold a public hearing to consider a request for a special exception to restore/reinstate nonconforming use rights for a “group residential facility” use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use.

GENERAL FACTS/STAFF ANALYSIS:

- The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

March 1, 2018: 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 13, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- March 13, 2018: The Board Administrator emailed the applicant the following information:
- an attachment that provided the appeal date and panel that will consider the appeal; the March 28th deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of appeal); and the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- March 26, 2018: The Sustainable Development and Construction Department Chief Planner Historic Preservation emailed the Board Administrator/Chief Planner the following: "BDA178-039 and BDA178-046 for 4513 Gaston Avenue, the Applicant has been working with the Landmark Commission on proposed renovations to the exterior of the existing structure and additions to the rear".
- March 28, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- April 3, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- April 6, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment B).
- April 6, 2018: The assistant city attorney assisting the administrative official submitted documentation on this appeal to the Board Administrator (see Attachment C).

BOARD OF ADJUSTMENT ACTION: APRIL 16 , 2018

APPEARING IN FAVOR: Jonathan Vinson, 2323 Ross Ave, Dallas, TX
Caleb Parette, 5034 Leameadow Dr. Garland, TX
Lisa Kroencke, 1304 Redwood Cr., Dallas, TX,
Mary Shuford, 1302 Redwood Circle, Dallas, TX

APPEARING IN OPPOSITION: Patricia Simon, 4519 Gaston Ave. Dallas, TX

APPEARING FOR THE CITY: Sonia Syed 1500 Marilla Ave. 7 DN, Dallas, TX
Keisha Kaye, 320 E. Jefferson Blvd. Dallas, TX

MOTION: Gambow

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 178-046, on application of Jackson Walker, represented by Jonathan G. Vinson, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment affirm the decision of the administrative official and deny the relief requested by the applicant.

SECONDED: Agnich

AYES: 4 - Richardson, Gambow, Agnich, Behring

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA178-039(SL)

BUILDING OFFICIAL'S REPORT: Application of Jackson Walker, represented by Jonathan G. Vinson, for a special exception to restore a nonconforming use at 4513 Gaston Avenue. This property is more fully described as Lot 2, Block 1/769, and is zoned PD 362 (Subarea 3A)(H/72), which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming group residential facility use, which will require a special exception to the nonconforming use regulations.

LOCATION: 4513 Gaston Avenue

APPLICANT: Jackson Walker
Represented by Jonathan G. Vinson

REQUEST:

A request for a special exception to restore/reinstate nonconforming use rights for a “group residential facility” use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use.

Note that another application is made on this property where the same applicant is requesting “to appeal the decision of the Building Official per letter dated February 2, 2018, to reverse a November 28, 2017, determination letter (copy attached) confirming legal nonconforming rights for the use” from Board of Adjustment Panel C on April 16, 2018: BDA178-046.

The applicant is aware of the fact that this request (BDA178-039) will not be necessary if the Board grants the other appeal filed on this property (BDA178-046) and reverses the decision of the Building Official.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:

Section 51A-4.704(a)(2) of the Dallas Development Code states 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 this provision only if the owner can show that there was a clear intent not to abandon the use even though the use was discontinued for 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.

Zoning:

- Site: PD 362 (Subarea 3A)(H/72) (Planned Development)(Historic)
- North: R-7.5(A)(H/72) (Single family residential 7,500 square feet)(Historic)
- South: PD 362 (Subarea 3)(H/72) (Planned Development)(Historic)
- East: PD 362 (Subarea 3)(H/72) (Planned Development)(Historic)
- West: PD 362 (Subarea 3)(H/72) (Planned Development)(Historic)

Land Use:

The subject site is developed with, according to DCAD, an apartment built in 1910. The areas to the north and east are developed with single family uses, the area to the south is developed with multifamily uses, and the area to the west is developed with a vacant retail use.

Zoning/BDA History:

1. BDA178-046, Property at 4513 Gaston Avenue (the subject site) On April 16, 2018, the Board of Adjustment Panel C will hold a hearing to consider an appeal of an administrative official, more specifically the Building Official's revocation of a certificate of occupancy for a group residential facility on the subject site.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on restoring/reinstating nonconforming use rights for a "group residential facility" use on the subject site that was discontinued for a period of six months or more in order for the applicant to obtain a Certificate of Occupancy (CO) for this use.
- 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 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 also 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 site is zoned PD 362 (Subarea A)(H/72) that permits a "group residential facility" use only with a Specific Use Permit (SUP).
- Within this case file is a November 28, 2017 letter from the Chief Planner with Building Inspection to a person who is now the applicant stating among other things that the group residential facility use on the property was a nonconforming use, and based on documentation provided, the property "has maintained its nonconforming land use status and will not be required to obtain a specific use permit".
- According to DCAD records, the "improvements" for the property addressed at 4513 Gaston Avenue is a 7,004 square foot "apartment" constructed in 1910.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies 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 six months since the issuance of the last valid CO. The owners/officers must submit documents and

records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.

- 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 “group residential facility” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming “group residential facility” use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code as any other nonconforming use in the city. (The applicant 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”).
- The applicant could make an application for an SUP that, if approved by the City Council, would make the “group residential facility” use on the property a conforming use.

Timeline:

February 16, 2018: 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 13, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

March 13, 2018: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 28th deadline to submit additional evidence for staff to factor into their analysis; and the April 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- 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.”

March 26, 2018: The Sustainable Development and Construction Department Chief Planner Historic Preservation emailed the Board Administrator/Chief Planner the following: "BDA178-039 and BDA178-046 for 4513 Gaston Avenue, the Applicant has been working with the Landmark Commission on proposed renovations to the exterior of the existing structure and additions to the rear".

March 28, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

April 3, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

April 6, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment B)

BOARD OF ADJUSTMENT ACTION: APRIL 16,2018

APPEARING IN FAVOR: Jonathan Vinson,2323 Ross Ave. Dallas, TX
Caleb Parette, 5034 Leameadow Dr. Garland, TX
Lisa Kroencke, 1304 Redwood Cr., Dallas, TX
Mary Shuford, 1304 Redwood Cr., Dallas, TX

APPEARING IN OPPOSITION: Jim Anderson,4706 Swiss Ave., Dallas, TX
Patricia Simon, 4519 Gaston Ave., Dallas, TX
Frances McGee, 1003 Moreland Ave., Dallas, TX
Paul Sanders, 617 N. Carroll, Dallas, TX

MOTION #1: Behring

I move that the Board of Adjustment in Appeal No. BDA 178-039, hold this matter under advisement until 06/18/18.

SECONDED: Agnich

AYES: 1 - Behring,

NAYS: 3 - Richardson, Gambow, Agnich

MOTION FAILED: 1 – 3

MOTION #2: Agnich

I move that the Board of Adjustment, in Appeal No. BDA 178-039, on application of Jackson Walker, represented by Jonathan G. Vinson, **grant** the request to restore a nonconforming group residential facility as a special exception to the nonconforming use regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that there was a clear intent NOT to abandon the use even though the use was discontinued for six months or more.

SECONDED: Behring

AYES: 3 - Gambow, Agnich, Behring

NAYS: 1 - Richardson

MOTION FAILED: 3 – 1

MOTION #3: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 178-039, on application of Jackson Walker, represented by Jonathan G. Vinson, **deny** the special exception to restore a nonconforming group residential use without prejudice, because our evaluation of the property and the testimony does not show there was a clear intent not to abandon the use, which was discontinued for six months or more.

SECONDED: Agnich

AYES: 4 - Richardson, Gambow, Agnich, Behring

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MOTION: Richardson

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 4 – Richardson, Gambow, Agnich, Behring

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

5:04 P. M. - Board Meeting adjourned for **April 16, 2018**

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.