

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JANUARY 19, 2010**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 19, 2010** docket.

1:00 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **November 17, 2009** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2010

MOTION: Harris

I move **approval** of the Tuesday, **November 17, 2009** public hearing minutes.

SECONDED: Gabriel

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 089-099

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days the applicant has to do so from the Board of Adjustment's favorable action on a request for variance to the off-street parking regulations of 4 spaces granted by Board of Adjustment Panel A on September 15, 2009.

LOCATION: 3818 Cedar Springs Road

APPLICANT: Ed Simons of Masterplan

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

The Board of Adjustment Working Rules of Procedure states that a panel may not extend the time period for making application for a building permit or certificate of

occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The Board of Adjustment Working Rules of Procedure state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
 - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

Sept. 15, 2009 The Board of Adjustment Panel A granted a request for variance to the off-street parking regulations of 4 spaces. The case report stated that the request was made in conjunction with transitioning/leasing approximately 1,450 square feet of vacant office use space/suite within an existing 5,350 square foot structure/four-suite center to any of the 21 uses listed in the “retail use” category in PD No. 193. The case report stated that the applicant proposed to provide 21 (or 84%) of the required 25 parking spaces that were required for leasing the entire existing center/structure with retail uses.

Sept. 22, 2009 The Board Administrator wrote the applicant a letter documenting the September 15th action of the board, and noting to “Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board.”

Dec. 15, 2009 The applicant submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy an additional one year (or 12 months) beyond the 180 days they had to do so from the September 15, 2009 favorable action (see Attachment A).

Dec. 17, 2009: 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 4th deadline to submit additional evidence for staff to factor into their analysis; and the January 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.”

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2010

APPEARING IN FAVOR: Ed Simons, 900 Jackson Street, #640, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment on Miscellaneous Item #2 9BDA 089-099) extend the time period in which to file an application for a building permit or certificate of occupancy to **March 15, 2011**.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-016

BUILDING OFFICIAL’S REPORT:

Application of Robert Baldwin for a variance to the front yard setback regulations at 6310 LBJ Freeway. This property is more fully described as Lot 1 in City Block A/7444 and is zoned LO-1, which requires a front yard setback of 15 feet. The applicant proposes to maintain a structure and provide a 9 foot front yard setback which will require a variance of 6 feet.

LOCATION: 6310 LBJ Freeway

APPLICANT: Robert Baldwin

REQUEST:

- A variance to the front yard setback regulations of 6' is requested in conjunction with maintaining a circa 1970's office structure that is part of a larger office park complex (Concourse Office Park) that will become located in the site's 15' front yard setback along LBJ Freeway once the State of Texas has taken a portion of the subject site for the widening of the freeway.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The size of the subject site will be reduced due to TXDOT right-of-way/street widening that will occur along the subject site's northern frontage (LBJ Freeway side of the site). The site's depth will be reduced as a result of this approximately 9' to 18' widening.
- Granting the variance does not appear to be contrary to the public interest in that the variance would only remedy an existing circa 1970's structure that will become located in the site's 15' front yard setback along LBJ Freeway once the State of Texas has taken a portion of the subject site for the widening of the freeway. The variance would allow the structure to be rebuilt into the setback if it were ever intentionally destroyed by the owner.

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:

- The minimum front yard setback on an LO-1(A) zoned lot is 15 feet. The applicant has submitted a site plan document indicating a “2 story brick building 22.335 SQ. FT. 6320 LBJ FREEWAY” structure that is located 20’ from the existing property line and 9’ from the “proposed property line” or where the existing structure would be as much as 6’ into the 15’ front yard setback. Although the submitted site plan indicates another structure that encroaches into the 15’ setback from the proposed property line, the applicant has written that this structure is not part of his variance request since “this building has a much more severe encroachment and the current agreement with TXDOT is to reconfigure this building to bring it into compliance with the front yard setback requirements.”
- The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the existing structure that would be located in the site’s 15’ front yard setback after widening is approximately 380 square feet (or approximately 63’ x 6’ in area or approximately 4 percent) of the 10,400 square foot building footprint.
- The site is somewhat irregular in shape (approximately 750’ on the north; approximately 820’ on the south; approximately 518’ on the east; and approximately 472’ on the west), and is (according to the application) 7.8 acres in area. The site is zoned LO-1(A) and has three front yard setbacks since it is located on a corner with three street frontages - a characteristic typical of any lot with more than one street frontage not zoned single family, duplex, or agricultural.
- According to DCAD records, the property is developed two office buildings built in 1972, one with 19,400 square feet and the other with 20,700 square feet.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request, and an aerial photograph of the subject site.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	LO-1(A) (SUP 1068) (Limited Office, Specific Use Permit – microwave tower)
<u>North:</u>	R-16(A) (Single family district 16,000 square feet)
<u>South:</u>	R-16(A) (Single family district 16,000 square feet)
<u>East:</u>	NO(A) & R-16(A) (Neighborhood Office and Single family district 16,000 square feet)
<u>West:</u>	NO(A) (Neighborhood Office)

Land Use:

The subject site is developed with an office park use (Concourse Office Park). The area to the north is the LBJ Freeway, the area to the east is developed with office and residential uses; the area to the south is developed with residential uses; and the area to the west is developed with office uses.

Zoning/BDA History:

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| 1. BDA 92-021, Property at 6310-6390 LBJ Freeway (the subject site) | On February 11, 1992, the Board of Adjustment considered denied a request for a variance to the height regulations of 80'. The case report stated that request was made to permit the placement of a 150' high flag pole on the premise. |
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Timeline:

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| Nov. 13, 2009: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| Dec. 15, 2009: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A. |
| Dec. 15, 2009: | The Board Administrator emailed the applicant's representative the following information: <ul style="list-style-type: none">• an attachment that provided the public hearing date and panel that will consider the application; the January 4th deadline to submit additional evidence for staff to factor into their analysis; and the January 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." |
| Dec. 23, 2009 | The applicant submitted additional information to the Board Administrator (see Attachment A). |
| January 5, 2010: | 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 Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board. |

January 8, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Will need to comply with C.O.D. driveway and visibility requirements when construction is being completed."

STAFF ANALYSIS:

- This variance request focuses on maintaining a circa 1970's office structure that is part of a larger office park complex (Concourse Office Park) – an existing structure that will become located in the site's 15' front yard setback along LBJ Freeway once the State of Texas has taken (according to the applicant) an approximately 9' – 18' wide swath of the subject site for the widening of the freeway bordering the north side of the subject site.
- Although the structure that is the issue of this variance request would be deemed a nonconforming structure once the widening has occurred for the freeway right-of-way (that is a structure that does not conform to the regulations of the code but was lawfully constructed under the regulations in force at the time of construction), an application has been made for variance to remedy the structure's pending nonconformity since the applicant states that it is "very hard to get commercial loans and financing and most banks will not loan money on a nonconforming structure because if it is destroyed, there is a good chance that it cannot be rebuilt." The variance would allow the owner to renovate, remodel, repair, rebuild the structure in the setback if it were ever intentionally destroyed.
- The submitted site plan indicates that about 380 square feet (or an area that is approximately 63' x 6' in area or approximately 4 percent) of the total 10,400 square foot building footprint would be located in the front yard setback once the right-of-way/street widening has occurred.
- The site is somewhat irregular in shape (approximately 750' on the north; approximately 820' on the south; approximately 518' on the east; and approximately 472' on the west), and is (according to the application) 7.8 acres in area. The site is zoned LO-1(A) and has three front yard setbacks since it is located on a corner with three street frontages - a characteristic typical of a lot with multiple street frontages not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the 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 variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same LO-1(A) (Limited Office) zoning classification.

- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same LO-1(A) (Limited Office) zoning classification.
1. If the Board were to grant the front yard variance of 6', imposing a condition whereby the applicant must comply with the submitted site plan document, the structure permitted to encroach into the front yard setback would be limited to that shown on the submitted site plan which in this case is a structure that would be located 9' from the front property line or 6' into the site's LBJ Freeway 15' front yard setback.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 090-016** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted plan is required.

SECONDED: **Jackson**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-019

BUILDING OFFICIAL'S REPORT:

Application of Brand-Sayers Architects, represented by Paul Sayers, for variances to the sidewalk regulations at 1410 Jackson Street. This property is more fully described as a 1.110 acre tract in City Block 79 and is zoned CA-1(A)-SP which requires that a building with a floor area ratio of 15:1 or less to have an average sidewalk width of 15 feet and a minimum sidewalk width of 9 feet that is unobstructed by any structure or planting. The applicant proposes to construct a structure and provide, relative to Jackson Street, an average sidewalk width of 9 feet 6 inches and a minimum sidewalk width of 4 foot 6 inches which will require a 5 foot 6 inch variance to the average sidewalk width and a 4 foot 6 inch variance to the minimum sidewalk width, and provide,

relative to Browder and Wood Streets (Browder Street Mall), an average sidewalk width of 14 foot 9 inches and a minimum sidewalk width of 8 feet which will require a 3 inch variance to the average sidewalk width and a 1 foot variance to the minimum sidewalk width regulations.

LOCATION: 1410 Jackson Street

APPLICANT: Brand-Sayers Architects
Represented by Paul Sayers

REQUESTS:

- The following appeals have been made in conjunction with constructing and maintaining a four-tier parking garage on a site partially developed with a multi-story office structure (AT&T), and not providing the required 15' wide average sidewalk width nor the required minimum 9' wide unobstructed sidewalk along two of the four streets that border the subject site:
 1. Along Jackson Street – a variance to the average sidewalk regulations of 5' 6" is requested since an average 9' 6" wide sidewalk is proposed to be provided, and a variance to the minimum sidewalk width regulations of 4' 6" is requested since a 4' 6" wide unobstructed sidewalk is proposed to be provided; and
 2. Along Browder Street - a variance to the average sidewalk regulations of 3" is requested since an average sidewalk of 14' 9" is proposed to be provided, and a variance to the minimum sidewalk width regulations of 1' is requested since an 8' wide unobstructed sidewalk is proposed to be provided.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan dated January 4, 2010 is required.

Rationale:

- Granting the variances do not appear to be contrary to the public interest in that the parking garage triggering the requests essentially replaces a parking structure in the same building footprint where new sidewalks would essentially replace/restore the sidewalks that were in place prior to the demolition of the former garage structure.
- The size of the subject site and additional loss of site area if the applicant were to comply with the sidewalk regulations would have a significant negative impact on the functionality of the proposed replacement garage and the ability to continue to use the site for its intended purpose as a parking garage structure for the office building on the subject site.

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:

- (D) 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;
- (E) 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
- (F) 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:

- The Dallas Development Code provides that sidewalks for lots zoned CA-1(A)-SP must be constructed and maintained in accordance with the following regulations:
 - a building with a floor area ratio of more than 15:1 is subject to the requirements of the CA-1(A)-CP district in Subparagraph (ii).
 - a building with a floor area ratio of 15:1 or less must have an average sidewalk width of 15 feet and a minimum sidewalk width of nine feet that is unobstructed by any structure or planting.

The applicant has submitted a site plan dated "01/04/2010" and a document dated January 6, 2010 (see Attachment A) indicating an average sidewalk width along Jackson Street to be 9' 6" (which is 4' 6" less than the require 15' average), and an average sidewalk width along Browder Street to be 14' 9" (which is 3" less than the required average); and an unobstructed sidewalk width along Jackson Street of 4' 6" (which is 4' 6" less than the required 9' width), and an unobstructed sidewalk width along Browder Street of 8' (which is 1' less than the required 9' width).

- The site is virtually rectangular in shape (approximately 190' x 250'), and is (according to the application) 1.1 acres in area. The site is zoned CA-1(A)-SP.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the requests, an updated site plan, and photos of the site and surrounding area.

BACKGROUND INFORMATION:

Zoning:

Site: CA-1(A)-SP (Central Area)
North: PD No. 619 (Planned Development District)
South: CA-1(A)-SP (Central Area)

East: CA-1(A)-SP (Central Area)
West: CA-1(A)-SP (Central Area)

Land Use:

The subject site is developed with a multi-story office structure. The areas to the north, east, south, and west are developed with a mix of office, retail, and residential 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:

- Nov. 20, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 15, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 15, 2009: 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 4th deadline to submit additional evidence for staff to factor into their analysis; and the January 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."
- January 5, 2010: 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 Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- January 6 & 9, 2010 The applicant submitted additional information to the Board Administrator (see Attachment A).

- January 6, 2010 The Board of Adjustment Chief Planner forwarded an amended Building Official's Report that reflected additional variance needs (that being variances to the minimum sidewalk requirements) that were identified at the January 5th staff review team meeting (see Attachment B).
- January 8, 2010 The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections" with the following comments: "Matches existing and both sides."

STAFF ANALYSIS:

- This application for four variances to the sidewalk regulations focuses on constructing and maintaining a parking garage that (according to the applicant) essentially replaces a parking structure that had previously occupied this site in the same building footprint where new sidewalks would essentially replace/restore the sidewalks that were in place prior to the demolition of the former garage structure.
 - The new parking garage structure which triggers the four sidewalk variance requests would (according to the applicant) align with adjacent buildings.
 - The site is virtually rectangular in shape (approximately 190' x 250'), and is (according to the application) 1.1 acres in area. The site is zoned CA-1(A)-SP.
 - The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 CA-1(A) SP (Central Area) 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 CA-1(A) SP (Central Area) zoning classification.
2. If the Board were to grant the sidewalk variances, imposing a condition whereby the applicant must comply with the submitted site plan dated 01/04/2010, the sidewalks would be required to be provided at the widths as shown on this plan.

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 090-019** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: **Jackson**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-123

BUILDING OFFICIAL’S REPORT:

Application of Bill Hardy, represented by Phillip Robertson, to appeal the decision of the administrative official at 11308 Emerald Street, Suite 104. This property is more fully described as an approximately .56 acre tract 1 in City Block 6547 and is zoned IM which requires a certificate of occupancy for its use. 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; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of the administrative official in the revocation of a certificate of occupancy.

LOCATION: 11308 Emerald Street, Suite 104

APPLICANT: Bill Hardy
Represented by Phillip Robertson

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s August 25, 2009 revocation of certificate of occupancy no. 0601301088 for a personal service use (Elegant Facial Spa) at 11308 Emerald Drive, Suite 104.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- Section 51A-4.703(2) of the Dallas Development Code provides that any aggrieved person, or an officer, department, or board of the city may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. The code provides that an appeal to the board must be made within 15 days after notice of the decision of the official; that the appellant shall file with the official a written notice of appeal on a form approved by the board; and that the official shall forward the notice of appeal and the record upon which the appeal is based to the director of development services.
- The Building Official's August 25th letter to Aeion, LLC, Stanley Carpenter, and Bill Hardy states the following:
 - This Dallas Police Department has informed me that you are operating a massage establishment at the Property and are engaged in an illegal business under other state penal laws. A state issued massage establishment license is required to legally operate a massage establishment. Further, an application for a City of Dallas certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment.
 - The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is 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, or any state laws or regulations; or a required license to operate the use has not been issued.
 - Your certificate of occupancy is hereby revoked unless you furnish my office with a valid state massage establishment license for the property by September 9, 2009.
 - Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.
- The Board of Adjustment conducted a public hearing on this application on November 17, 2009 where the Board Administrator circulated a November 11th email from the applicant's representative to the board members at the morning briefing – an email that stated he would be unable to attend the hearing since he would be in a jury trial on this date (see Attachment A). The board moved to delay action on the matter until their January hearing.

BACKGROUND INFORMATION:

Zoning:

Site: IM (Industrial Manufacturing)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The subject site is developed as a commercial structure with a use doing business as Elegant Facial Spa. The areas to the north, south, and west are developed with a mix of commercial/retail, office, and warehouse uses; and the area to the east is undeveloped/vacant.

Zoning/BDA History:

1. BDA 089-101, Property at 11308 Emerald Street, Suite 102 (A suite located to the north on the subject site).

On September 15, 2009, the Board of Adjustment Panel A denied an appeal to reverse/overturn the Building Official's May 15, 2009 revocation of certificate of occupancy no. 0708221075 for a personal service use (Moon Night) at 11308 Emerald Street, Suite 102. The applicant had alleged that this revocation was based "on an incorrect finding that the premise being used as a massage establishment without proper license from state. "

2. BDA 089-120, Property at 11309 Emerald Street, Suite C (The property immediately west of the subject site).

On November 17, 2009, the Board of Adjustment Panel A denied an appeal to reverse/overturn the Building Official's April 28, 2009 revocation of certificate of occupancy no. 0806101011 for a personal service use (Blue Star) at 11309 Emerald Street Suite C. The applicant had alleged that this revocation was based "on an incorrect finding that the premise being used as a massage establishment without proper license from state. "

Timeline:

- Sept. 23, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 22, 2009: 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 November 2nd deadline to submit additional evidence for staff to factor into their analysis; and the November 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.
- Nov. 3, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Nov. 17, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their January public hearing.
- Dec. 17, 2009: 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 4th deadline to submit additional evidence for staff to factor into their analysis; and the January 8th deadline to submit additional evidence to be incorporated into the Board’s docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 5, 2010: 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 Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's revocation of certificate of occupancy No. 0601301088 for a personal service use (Elegant Facial Spa) at 11308 Emerald Drive, Suite 104 be overturned/reversed.
- If the Board of Adjustment upholds the Building Official's decision, the certificate of occupancy No. 0601301088 for a personal service use (Elegant Facial Spa) located at 11308 Emerald Drive, Suite 104 will remain revoked.
- If the Board of Adjustment reverses the Building Official's decision, the certificate of occupancy No. 0601301088 for a personal service use (Elegant Facial Spa) located at 11308 Emerald Drive, Suite 104 will be reinstated.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 17, 2009

APPEARING IN FAVOR: No one

APPEARING FOR THE CITY: Melissa Miles, Asst. City Atty., 1500 Marilla St., 7DN, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION#1: Jackson

Because the case was called in due order and the applicant or the applicant's representative has failed to appear in Appeal No. **BDA 089-123**, on application of Bill Hardy, represented by Phillip Robertson, I move to **deny** the relief requested by the applicant **without prejudice**.

SECONDED: No one

MOTION#2: Harris

I move that the Board of Adjustment in Appeal No. **BDA 089-123**, hold this matter under advisement until **January 19, 2010**.

SECONDED: **Gabriel**

AYES: 2 – Gabriel, Harris,

NAYS: 3 - Richmond, Schweitzer, Jackson

MOTION FAILED: 3–2

1:40 P.M.: Executive Session Begins

1:50 P.M.: Executive Sessions Ends

MOTION#3: Harris

I move that the Board of Adjustment in Appeal No. **BDA 089-123**, hold this matter under advisement until **January, 2010**.

SECONDED: Gabriel

AYES: 3– Gabriel, Harris, Jackson

NAYS: 2 - Richmond, Schweitzer

MOTION PASSED: 3–2

BOARD OF ADJUSTMENT ACTION: JANUARY 19, 2010

APPEARING IN FAVOR: Phillip Robertson, 6116 N Central Expwy, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melissa Miles, Asst. City Atty., 1500 Marilla St., 7DN, Dallas, TX
Det. Jay Norman, 1400 S Lamar St., Dallas, TX
Det. David Clark, 1400 S. Lamar St., Dallas, TX

MOTION: Harris

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 089-123**, on application of Bill Hardy, represented by Phillip Robertson, 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 building official and **deny** the relief requested by the applicant **with prejudice**.

SECONDED: Gabriel

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: Schweitzer

I move to adjourn this meeting.

SECONDED: Gabriel

AYES: 5– Richmond, Schweitzer, Gabriel, Harris, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:49 P.M. - Board Meeting adjourned for **January 19, 2010**.

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.