

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
TUESDAY, JANUARY 21, 2014**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Acting Vice Chair, Larry French, regular member, Lindsey Williams, regular member, Hector Leija, regular member and Mark Rieves, regular member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Acting Vice Chair, Larry French, regular member, Lindsey Williams, regular member, Hector Leija, regular member and Mark Rieves, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Laura Morrison, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director of Engineering, Neva Dean, Interim Asst. Director, Chris Caso, Asst. City Attorney and Trena Law, Board Secretary

11:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 21, 2014** docket.

1:05 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.

12:32 P.M. : Executive Session Begins
12:42 P.M.: Executive Session Ends

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A **November 19, 2013** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 21, 2014

MOTION: French

I move **approval** of the Tuesday, **November 19, 2013** public hearing minutes.

SECONDED: Rieves

AYES: 5– Nolen, French, Williams, Leija, Rieves

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 123-072

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 from the Board of Adjustment’s favorable action on the request for a variance to the front yard setback regulations of 11’ granted by Board of Adjustment Panel A on August 20, 2013.

LOCATION: 2235 Madera Street

APPLICANT: Robert V. Hunt
Represented by Brittany Harris

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

- The Dallas Development Code states:
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:

August 20, 2013: The Board of Adjustment Panel A granted a variance to the front yard setback regulations of 11', and imposed the submitted site plan as a condition to this request. The case report stated that request was made in conjunction with made in conjunction with replacing an existing approximately 1,100 square foot, one-story single family home built in (according to DCAD) 1922 with a two-story single family home with about a 3,100 square foot building footprint, part of which would be located in the site's Madera Avenue 25' front yard setback on the northeast side of the subject site. (No part of the proposed single family home was represented to be located in the site's Glencoe Avenue 25' front yard setback on the southwest). (See Attachment A for a copy of the case materials related to this application).

December 19, 2013: The Board Administrator emailed the applicant's representative acknowledging her December 18th request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy beyond the 180 days that the applicant had to do so from the August 20, 2013 favorable action (see Attachment B). The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date of the request; and 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;
- an attachment of materials related to BDA 123-072; and
- The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

BOARD OF ADJUSTMENT ACTION: JANUARY 21, 2014

APPEARING IN FAVOR: Brittany Harris, 5811 Gaston Ave., Dallas, TX

APPEARING IN OPPOSITION: No on

MOTION: **French**

I move that the Board of Adjustment extend the time period 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 from the Board of Adjustment's favorable action on the request for a variance to the front yard setback regulations of 11' granted by Board of Adjustment Panel A on August 20, 2013.

SECONDED: **Leija**

AYES: 5 – Nolen, French, Williams, Leija, Rieves

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 134-006

BUILDING OFFICIAL'S REPORT: Application of Whitney Barlow, represented by Audra Buckley, for a special exception to the off-street parking regulations at 2713 Canton Street. This property is more fully described as Lot 10A, Block 4/186, and is zoned PD-269 (Tract A), which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for an inside commercial amusement (live music venue) use and provide 320 of the required 409 off-street parking spaces, which will require an 89 space special exception to the off-street parking regulations.

LOCATION: 2713 Canton Street

APPLICANT: Whitney Barlow
Represented by Audra Buckley

REQUEST:

A special exception to the off-street parking regulations of 89 spaces is requested in conjunction with leasing and maintaining an existing approximately 41,000 square foot vacant structure with an inside commercial amusement (live music venue) use and providing 320 (or 78 percent) of the 409 off-street parking spaces required by code.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and

nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A).

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- The special exception of 89 spaces shall automatically and immediately terminate if and when the inside commercial amusement (live music venue) use that would normally need no more than 409 required parking spaces is changed or discontinued.
- Compliance with the recommendations of the Traffic Management Plan (TMP) submitted by the applicant dated 10-28-13 is required.

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to the applicant's request with the condition that the applicant complies with the recommendations of the Traffic Management Plan (TMP) submitted by the applicant dated 10-28-13.

BACKGROUND INFORMATION:

Zoning:

Site: PD 269 (Tract A) (Planned Development)
North: PD 269 (Tract A) (Planned Development)
South: PD 269 (Tract A) (Planned Development)
East: PD 269 (Tract A) (Planned Development)
West: PD 269 (Tract A) (Planned Development)

Land Use:

The subject site is developed with a vacant, approximately 41,000 square foot structure. The area immediately north is a surface parking lot and retail uses; and the areas to the east, south, and west are developed with a mix of residential and nonresidential uses.

Zoning/BDA History:

- | | |
|---|---|
| 1. Z134-126, Property on north side of Canton Street, east of Henry Street (the subject site) | An application for an SUP (Specific Use Permit) for a live music venue and dance hall use is scheduled before the City Plan Commission on January 23, 2013. |
|---|---|

Timeline:

- November 11, 2013: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- December 11, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- December 12, 2013: 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 December 30th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th 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 requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 6, 2014: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

- January 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director and Senior Engineer, the Assistant Building Officials, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- January 8, 2014: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official's Report on this application to the Board Administrator (see Attachment B).
- January 9, 2014: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "comply with recommendations of the Traffic Management Plan (TMP) submitted by the applicant dated 10-28-13."
- January 10, 2014: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment C).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on leasing and maintaining an existing approximately 41,000 square foot vacant structure with an inside commercial amusement (live music venue) use and providing 320 (or 78 percent) of the 409 off-street parking spaces required by code.
- While PD 269 specifies off-street parking requirements for certain uses permitted in the zoning district, does not provide a specific off-street parking requirement for the proposed inside commercial amusement use. As a result, the PD ordinance states that the off-street parking requirement for this use is that what is provided in Chapter 51. Chapter 51 requires the following off-street parking requirement:
 - Inside commercial amusement: one space per 100 square feet of floor area.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that he has no objections to the applicant's request with the condition that the applicant complies with recommendations of the Traffic Management Plan (TMP) submitted by the applicant dated 10-28-13.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed inside commercial inside (live music venue) use does not warrant the number of off-street parking spaces required, and
 - The special exception of 89 spaces (or a 22 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

- If the Board were to grant this request, and impose the condition that the special exception of 89 spaces shall automatically and immediately terminate if and when the inside commercial amusement (live music venue) use is changed or discontinued, the applicant would be allowed to maintain the structure with the proposed use, providing 320 of the 409 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: JANUARY 21, 2014

APPEARING IN FAVOR: Audra Buckley, 416 S. Ervay, Dallas, TX

APPEARING IN OPPOSITION: No on

MOTION: Williams

I move that the Board of Adjustment grant application **BDA 134-006** 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:

- The special exception of 89 off-street parking spaces automatically and immediately terminates if and when the inside commercial amusement (live music venue) use is changed or discontinued.
- Compliance with the submitted Traffic Management Plan dated October 28, 2013 is required.

SECONDED: French

AYES: 5 – Nolen, French, Williams, Leija, Rieves

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

FILE NUMBER: BDA 134-003

BUILDING OFFICIAL'S REPORT: Application of Joseph Santarelli for a variance to the side yard setback regulations at 7110 N. Janmar Drive. This property is more fully described as Lot 6, Block B/7494, and is zoned R-16(A), which requires a 10 foot side yard setback. The applicant proposes to construct and/or maintain a structure and provide a 3 foot side yard setback, which will require a 7 foot variance to the side yard setback regulations.

LOCATION: 7110 N. Janmar Drive

APPLICANT: Joseph Santarelli

REQUESTS:

The following appeals have been made on a site currently developed with a two story single family home and a detached split-level accessory garage/cabana structure:

1. a variance to the side yard setback regulations of 7' is requested to remedy/address the existing detached accessory garage/cabana structure located 3' from the site's eastern side property line or 7' into this 10' side yard setback.
2. a variance to the side yard setback regulations of 7' is requested to add/align a "workout area" room and sauna/steam room atop the existing detached split-level accessory garage/cabana structure.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff recommends denial of these requests since the applicant has not addressed how the variances are necessary to permit development of this parcel of land that differs from other parcels of land by its 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 R-16(A) zoning.
- While the subject site is moderately sloped and slightly irregular in shape, the applicant has not provided documentation to show how either or both of these features preclude him from developing it in a manner commensurate with the development of other parcels of land in the same R-16(A) zoning.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A)(Single family district 16,000 square feet)

North: R-16(A)(Single family district 16,000 square feet)

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

October 15, 2013: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

December 11, 2013: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 12, 2013: 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 December 30th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 30, 2013: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

January 7, 2014: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Interim Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director and Senior Engineer, the Assistant Building Officials, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on remedying/addressing the existing detached split-level accessory garage/cabana structure located 3' from the site's eastern side property line or 7' into this 10' side yard setback, and adding/aligning a "workout area" room and sauna/steam room atop this existing accessory structure.
- Structures on lots zoned R-16(A) are required to provide a minimum side yard setback of 10'.
- A revised site plan has been submitted denoting a portion of the existing structure and new addition located as close as 3' away from the site's eastern side property line or as much as 7' into this 10' side yard setback.
- According to DCAD records, the "main improvement" at 7110 N. Janmar Drive is a structure built in 1956 with 5,098 square feet of living area and total area. According to DCAD records, the "additional improvements" at this address are a 216 square foot cabana, a 600 square foot detached garage, and a pool.
- It appears from calculations taken from the submitted revised site plan by the Board Administrator that approximately 175 square feet (or approximately 20 percent) of the approximately 900 square foot accessory structure building footprint is located in the site's eastern 10' side yard setback.
- The subject site is slightly sloped, slightly irregular in shape, and approximately 16,800 square feet in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The applicant states that granting the requested variances will not change the existing building footprint.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side 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 are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document – which is a structure located as close as 3' from the eastern side property line or as much as 7' into this 10' side yard

BOARD OF ADJUSTMENT ACTION: JANUARY 21, 2014

APPEARING IN FAVOR: Joseph Santarelli, 9081 6th St., Frisco, TX

APPEARING IN OPPOSITION: No on

MOTION: **French**

I move that the Board of Adjustment, in Appeal No. **BDA 134-003**, on application of Joseph Santarelli, **deny** the 7-foot variance to the side yard setback regulations **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Rieves**

AYES: 5– Nolen, French, Williams, Leija, Rieves

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

MOTION: **Williams**

I move to adjourn this meeting.

SECONDED: **Rieves**

AYES: 5–Nolen, French, Williams Leija, Rieves

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

1:28 P. M.: - Board Meeting adjourned for **January 21, 2014.**

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.