

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, AUGUST 14, 2012**

MEMBERS PRESENT AT BRIEFING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: Johnnie Goins, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, , Todd Duerksen, Development Code Specialist, Lloyd Denman, Bldg. Official and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: Johnnie Goins, regular member

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, David Cossum, Assistant Director, Bert Vandenberg, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Lloyd Denman, Bldg. Official and Trena Law, Board Secretary

11:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 14, 2012** 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 **June 19, 2012** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

MOTION: **Schweitzer**

I move **approval** of the Tuesday, **June 19, 2012** public hearing minutes.

SECONDED: **Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 112-077

REQUEST: To reimburse the filing fee submitted in conjunction with a request for a special exception to the fence height regulations – BDA 112-077

LOCATION: 4205 Briar Creek Lane

APPLICANT: Jon Paul Moore

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in **substantial financial hardship** to the applicant.

The Dallas Development Code further states:

- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
- In making this determination, the board may require the production of financial documents.

Timeline:

- May 14, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" – BDA 112-077, an application for a special exception to the fence height regulations, part of which included a letter requesting "partial reimbursement for the \$600 application fee" (see Attachment A).
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2012: 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the provision from the Dallas Development Code allowing the board to grant a special exception to the fence height regulations (51A-4.602(a)(6)) and to reimburse the filing fee (51A- 1.105 (b)(6)) (Please feel free to submit any documentation that shows how payment of the fee results in substantial financial hardship, (i.e. additional financial documents as in but not limited to copies of 1040's, W-4's, bank statements - all with account numbers redacted); and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 3, 2012: Staff discovered an error with meeting notification requirements on this application for Panel C's August 13th hearing. Given this error and that this property had no previous history with a board of adjustment panel, the Board of Adjustment Secretary randomly re-assigned this application to Board of Adjustment Panel A to be heard at their public hearing to be held on August 14th. The Board Administrator informed the applicant of this new hearing date.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Jon Paul Moore, 4205 Briar Creek Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move to **deny** the request of the applicant to reimburse the filing fee submitted in conjunction with a request for a special exception to the fence height regulations.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-061

BUILDING OFFICIAL’S REPORT:

Application of Tim Cogswell for a variance to the height regulations at 2737 N. Harwood Street. This property is more fully described as Lot 2 in City Block 2/928 and is zoned PD-193 (HC), which limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a single family residential structure with a building height of 42 feet, which will require a variance of 6 feet.

LOCATION: 2737 N. Harwood Street

APPLICANT: Tim Cogswell

REQUEST:

- A variance to the height regulations of 6’ is requested in conjunction with constructing and maintaining a three-story single family home, part of which would exceed the 36’ maximum height permitted for single family structures on properties zoned PD 193 (HC Subdistrict) on a site that is currently undeveloped.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

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

Rationale:

- The subject site is unique and different from most lots zoned PD 193 (HC) given its slope – a slope that necessitates a relatively small variance to the height of a single family home that is proposed on the undeveloped parcel of land.

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 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.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (HC) (Planned Development, Heavy Commercial)
North: PD 193 (PDS 79) (Planned Development, Planned Development)
South: PD 193 (PDS 79) (Planned Development, Planned Development)
East: PD 193 (PDS 79) (Planned Development, Planned Development)
West: PD 193 (PDS 79) (Planned Development, Planned Development)

Land Use:

The subject site is currently undeveloped. The areas to the north, east, south, and west are developed with a mix of office and residential uses.

Zoning/BDA History:

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

Timeline:

- March 30, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 17, 2012: 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 May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 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 requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

- May 31, 2012: The applicant requested that this application be postponed from Board of Adjustment Panel A's June 19th hearing to Panel A's August 14th hearing.
- July 17, 2012: 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 July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd 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.
- July 27, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a three-story single family home, part of which would exceed the 36' maximum height permitted for single family structures on properties zoned PD 193 (HC Subdistrict) on a site that is currently undeveloped.
- The maximum height of single family on properties zoned PD 193 (HC) is 36 feet. (The maximum height of other structures on properties zoned PD 193 (HC) is 240 feet).
The application and Building Official's report states that a variance is sought for a single family structure that would reach 42' in height.
- The applicant has submitted a series of revised documents including a site plan, floor plans that denote that the total square footage of the home (total AC, autos, and balcony) is 3,552 square feet, elevations, and a contour map (see Attachment A).
- The site is sloped southwestward-northeastward, virtually rectangular in shape (approximately 115' x 27'), and according to the application, 0.07 acres (or approximately 3,000 square feet) in area. The site is zoned PD 193 (HC).
- DCAD records indicate that there are "no improvements" at 2737 N. Harwood Street.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to height 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 PD 193 (HC Subdistrict) 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 PD 193 (HC Subdistrict) zoning classification.
- If the Board were to grant the height variance request of 6', and impose the submitted revised site plan and revised elevations as a condition to this request, the proposed structure would be required to be constructed and maintained as shown on these submitted documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR:

APPEARING IN OPPOSITION:

MOTION: **Agnich**

I move that the Board of Adjustment grant application **BDA 112-061** 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 revised site plan and revised elevations are required.

SECONDED: **Nolen**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-076

BUILDING OFFICIAL’S REPORT:

Application of Alan Hoffmann for special exceptions to the fence height and visual obstruction regulations at 8606 Groveland Drive (AKA 2004 Lakeland Drive). This property is more fully described as Lot 1 in City Block 17/5244 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20-foot visibility triangle at driveways and alleys, and a 45-foot visibility triangle at street intersections. The applicant proposes to construct and/or maintain an 8-foot high fence, which will require a special exception to the fence height regulations of 4 feet, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 8606 Groveland Drive (AKA 2004 Lakeland Drive)

APPLICANT: Alan Hoffman

August 14, 2012 Public Hearing Notes:

- The applicant testified at the public hearing that he may intend to add a sliding gate on the property as shown on his submitted site plan and elevation. The Sustainable Development and Construction Department Engineering Division Assistant Director stated that this would not affect his “has no objections” regarding the applicant’s requests for special exceptions to the visual obstruction regulations.

REQUESTS:

- The following appeals had been made on a site that is developed with a single family home:
 1. special exceptions to the fence height regulations of up to 4’ in conjunction with maintaining a 6’ and 8’ high wood fence located in one of the site’s two front yard setbacks (Groveland Drive), and
 2. special exceptions to the visual obstruction regulations in conjunction with maintaining an existing:
 - 4’ high open wrought iron fence in the 45’ visibility triangle at the intersection of Lakeland Drive and Groveland Drive;
 - 6’ and 8’ high solid wood fence in the two 20’ visibility triangles on either side of the driveway into the site from Groveland Road, and
 - 8’ high solid wood fence in the 20’ visibility triangle at the intersection of a dedicated alley (but not in use) at Groveland Road.

(No part of this application is made to construct/maintain any fence higher than 4’ in the site’s Lakeland Drive front yard setback).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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 (fence height special exceptions):

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

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Has no objections” to the requests.
- The applicant has substantiated how the location an existing 4’ high open wrought iron fence in the 45’ visibility triangle at the intersection of Lakeland Drive and Groveland Drive; and portions of the existing 6’ and 8’ high solid wood fence in the two 20’ visibility triangles on either side of the driveway into the site from Groveland Road, in the 20’ visibility triangle at the intersection of a dedicated alley do not constitute traffic hazards.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-16(A) (Single family district 16,000 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

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

Zoning/BDA History:

1. BDA 090-109, Property at 2000 Lakeland Drive (the subject site) On November 16, 2010, the Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations

of 20' and imposed the submitted site plan as amended at the public hearing as a condition. The case report stated that the request was made in conjunction with constructing and maintaining a single family home structure on an undeveloped site, part of which would be located in the one of the site's two 25' front yard setbacks (Groveland Drive). The case report stated that the portion of the home to be located in the front yard setback was for a "porch."

Timeline:

- May 25, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 17, 2012: 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 July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd 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.
- July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

GENERAL FACTS/STAFF ANALYSIS (fence height special exception):

- This request focuses on maintaining a 6' and 8' high wood fence located in one of the site's two front yard setbacks (Groveland Drive) on a site developed with a single

family home. No part of this application is made to construct/maintain any fence in the site's Lakeland Drive front yard setback.

- The subject site is located at the east corner of Lakeland Drive and Groveland Drive and has two frontages of unequal length, the shorter (Lakeland Drive) is a front yard per code, the longer (Groveland Drive) is a front yard given the continuity of the front yard setbacks to the northeast of the subject site.
- The seven lots to the northeast of the subject site "fronting" onto Groveland Avenue makes the longer frontage of the subject site (typically a side yard where a 9' high fence can be erected/maintained by right) a front yard setback where only a 4' high fence can be erected/maintained by right.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard. The applicant had submitted a site plan and elevation document indicating that the proposal in the Groveland Road front yard setback reaches a maximum height of 8 feet.
- The following additional information was gleaned from the submitted site plan:
 - About 40' in length parallel along Groveland Drive (and approximately 25' in length perpendicular), approximately on the property line or about 12' from the pavement line where no single family home fronts this proposal.
- No single family home "fronts" to the fence since the home directly across Groveland Drive "fronts" southwesterly to Lakeland Drive.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4-foot high located in a front yard setback.
- As of August 6, 2012, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation document would require the proposal exceeding 4' in height in the Groveland Drive front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- These requests focus on maintaining an existing 4' high open wrought iron fence in the 45' visibility triangle at the intersection of Lakeland Drive and Groveland Drive; and an existing 6' and 8' high solid wood fence in the two 20' visibility triangles on either side of the driveway into the site from Groveland Road, and an existing 8' high solid wood fence in the 20' visibility triangle at the intersection of a dedicated alley (but not in use) at Groveland Road.
- The Dallas Development Code states the following with regard to visibility triangles: 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 intersections and 20-foot visibility triangles at drive approaches); and

- between 2.5 – 8 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).

A site plan and elevation document have been submitted indicating an existing 4' high open wrought iron fence in the 45' visibility triangle at the intersection of Lakeland Drive and Groveland Drive; and portions of the existing 6' and 8' high solid wood fence in the two 20' visibility triangles on either side of the driveway into the site from Groveland Road, and portions of the existing 8' high solid wood fence in the 20' visibility triangle at the intersection of a dedicated alley (but not in use) at Groveland Road.

- The Sustainable Development and Construction Department Engineering Division Assistant Director 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 will not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the items as described in this case report to be limited to the locations, heights, and materials of those items as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Alan Hoffman, 9010 Groveland, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 112-076**, on application of Alan Hoffmann, **grant** the request of this applicant to construct and/or maintain an 8-foot-high fence on the property as a special exception to the height requirement for fences in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: **Nolen**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 112-076**, on application of Alan Hoffmann, **grant** the request to maintain items in the following visibility triangles (at the intersection of Lakeland Drive and Groveland Drive, on either side of the driveway abutting Groveland Road; and at the intersection of the dedicated alley at Groveland

Road) as a special exception to the visual obstruction regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Agnich

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-077

BUILDING OFFICIAL’S REPORT:

Application of Jon Paul Moore for a special exception to the fence height regulations at 4205 Briar Creek Lane. This property is more fully described as lot 16 in City Block G/2956 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and maintain an 8-foot high fence which will require a special exception to the fence height regulations of 4 feet.

LOCATION: 4205 Briar Creek Lane

APPLICANT: Jon Paul Moore

REQUEST:

- A special exception to the fence height regulations of 4’ is requested along with constructing and maintaining an approximately 8’ high solid redwood board-on-board fence in the site’s Mockingbird Lane 20’ required front yard. This site is developed with a single family home. (No part of this application is made to construct and/or maintain a fence higher than 4’ in the site’s Briar Creek Lane required front yard).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-7.5(A) (Single family district 7,500 square feet)
West: D(A) (Duplex)

Land Use:

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

Zoning/BDA History:

1. Miscellaneous Item #2, BDA 112-077, Property at 4205 Briar Creek Lane (the subject site) On August 14, 2012, the Board of Adjustment Panel A will consider reimbursing the filing fee made in conjunction with this application.

Timeline:

- May 14, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2012: 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 July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd 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.
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the

Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

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

August 3, 2012: Staff discovered an error with meeting notification requirements on this application for Panel C's August 13th hearing. Given this error and that this property had no previous history with a board of adjustment panel, the Board of Adjustment Secretary randomly re-assigned this application to Board of Adjustment Panel A to be heard at their public hearing to be held on August 14th. The Board Administrator informed the applicant of this new hearing date.

August 3, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

GENERAL FACT /STAFF ANALYSIS:

- This request focuses on constructing and maintaining an 8' high solid board-on-board wood fence in the site's Mockingbird Lane 20' required front yard.
- The subject site is a corner lot zoned R-7.5(A) with two street frontages of unequal distance. The site is located at the west corner of Briar Creek Lane and Mockingbird Lane. Even though the Briar Creek Lane frontage appears to function as its front yard and the Mockingbird Lane frontage appears to function as its side yard, the subject site has two required front yards created by platted building lines: a 30' required front yard along Briar Creek Lane and a 20' required front yard along Mockingbird Lane.
- The site has a required front yard along Briar Creek Lane as the shorter of the two frontages is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district. The site's Mockingbird Lane frontage is deemed a front yard as well to maintain the continuity of the established front yard setback along this street because the lots immediately south and west front Mockingbird Lane and have front yard setbacks along this street.
- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant had submitted a scaled site and partial elevation that shows the proposal in the Mockingbird Lane required front yard reaching a maximum height of 8 feet.
- The following additional information was gleaned from the submitted site plan:
 - Approximately 100' in length parallel to Mockingbird Lane (and approximately 20' in length perpendicular on the east and west sides of the site in the required front yard), approximately on the Mockingbird Lane front property line or approximately 18' from the pavement line where three homes would have direct/indirect frontage to the proposal.

- If it were not for the lots immediately south and west of the subject site that actually front onto Mockingbird Lane, the proposed 8' high fence that is the issue in this application could be constructed/maintained by right since this frontage of the corner subject site is the longer of the subject site's two street frontages.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other *front yard* fences higher than 4' were noted in the immediate area. However, a fence higher than 4' was noted immediately northeast – a fence about 9' in height that appears to be located in this property's side yard.
- As of August 6, 2012, one petition signed by 18 neighbors/owners (including the applicant/owner of the subject site) along with 10 letters had been submitted to staff in support of the request or no letters had been submitted opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 8' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the Mockingbird Lane required front yard to be constructed/maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR:

APPEARING IN OPPOSITION:

MOTION: **Agnich**

I move that the Board of Adjustment grant application **BDA 112-077** 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 and elevation is required.

SECONDED: **Nolen**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-083

BUILDING OFFICIAL'S REPORT:

Application of Michael Hampton of Lend Lease for a special exception to the off-street parking regulations at 10811 Webb Chapel Road. This property is more fully described as Lot 5A in City Block 1/6434 and is zoned CR, which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a general merchandise or food store less than 3500 square feet use and a motor vehicle fueling station use and provide 14 of the required 17 parking spaces, which will require a special exception of 3 spaces.

LOCATION: 10811 Webb Chapel Road

APPLICANT: Michael Hampton of Lend Lease

REQUEST:

- A special exception to the off-street parking regulations of 3 parking spaces (or an 18 percent reduction of the 17 off-street parking spaces that are required) is requested in conjunction with replacing an existing convenience store/fuel station use (Shamrock) with a new 3,000 square foot convenience store/fuel station/general merchandise or food store 3,500 square feet or less use (7-Eleven). The applicant proposes to provide 14 (or 82 percent) of the required 17 off-street parking spaces in conjunction with constructing and maintaining the proposed use with its proposed square footage.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.

- (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
 - 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
 - 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the fuel station and general merchandise or food store 3,500 square feet or less uses are changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the proposed fuel station and general merchandise or food store 3,500 square feet or less uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections" to the request.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: NO(A) (Neighborhood Office)
East: R-10(A) (Single family residential 10,000 square feet)
West: CR (Community Retail)

Land Use:

The subject site is currently developed with a convenience store/fuel station (Shamrock). The areas to the north and west are developed with retail uses; the area to the south is developed with office uses; and the area to the east is 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:

- June 28, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 19, 2012: 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 July 25th deadline to submit additional evidence for staff to factor into their analysis; and the August 3rd 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.
- July 23, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).
- July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."

July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on replacing an existing convenience store/fuel station use (Shamrock) with a new 3,000 square foot convenience store/fuel station/general merchandise or food store 3,500 square feet or less use (7-Eleven) and providing 14 (or 82 percent) of the required 17 off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirements:
 - General merchandise or food store 3,500 square feet or less: 1 space per 200 square feet of floor area.
 - Motor vehicle fueling station: two spaces
- The applicant has prepared a parking study indicating that proposed project is forecasted to generate similar parking demand as experienced at five other 7-Eleven sites in the same local market where the peak parking demand never exceeded the proposed 14 parking spaces proposed to be provided on the subject site.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Has no objections."
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed fuel station and general merchandise or food store 3,500 square feet or less uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 3 spaces (or an 18 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 3 spaces shall automatically and immediately terminate if and when the fuel station/general merchandise or food store 3,500 square feet or less uses are changed or discontinued, the applicant would be allowed to develop the site with these specific uses and provide only 14 of the 17 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR:

APPEARING IN OPPOSITION:

MOTION: Agnich

I move that the Board of Adjustment grant application **BDA 112-083** 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 3 off-street parking spaces shall automatically and immediately terminate if and when the general merchandise or food store 3,500 square feet or less use or the fuel station use is changed or discontinued.

SECONDED: Nolen

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-068

BUILDING OFFICIAL’S REPORT:

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1809 Rock Island Street. This property is more fully described as Lot 15 and part of Lot 16 in City Block 73/7342 and is zoned PD-784, which requires that the building official 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: 1809 Rock Island Street.

APPLICANT: Tommy Mann of Winstead, PC

August 14, 2012 Public Hearing Notes:

- The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:
 1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a “summary of issues under consideration” (see Attachment A).
 2. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of the Chapter 52 of the Dallas City Code (see Attachment B).
 3. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001” (see Attachment C).
 4. The applicant submitted a document entitled “Linda Henry Testimony” (see Attachment D).

5. The applicant submitted a document entitled "Olen Ray Long Testimony" (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14th hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to revoke the existing certificate of occupancy for the property.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) states 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).

BACKGROUND INFORMATION:

Zoning:

Site: PD 784 (Planned Development)
North: PD 784 (Planned Development)
South: PD 784 (Planned Development)
East: PD 784 (Planned Development)
West: PD 784 (Planned Development)

Land Use:

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

Zoning/BDA History:

1. BDA 101-069, Property at 1809 Rock Island Street (the subject site) On August 14, 2012, the Board of Adjustment Panel A will consider an appeal made requesting that the Board of

Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy.

2. BDA 101-070, Property at 1803 Rock Island Street (the property immediately north of the subject site)

On August 14, 2012, the Board of Adjustment Panel A will consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy.

Timeline:

- June 3, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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."
- July 28, 2011: The applicant requested postponement of the application from Panel A's August 16th hearing to Panel A's September 20th hearing.
- August 11, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 1st deadline to submit additional evidence for staff to factor into their analysis; and the September 9th 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.”

August 25, 2011: The applicant requested postponement of the application from Panel A’s September 20th hearing to Panel A’s October 18th hearing.

September 26, 2011: The applicant requested postponement of the application from Panel A’s October 18th hearing to Panel A’s November 15th hearing.

October 28, 2011: The applicant requested postponement of the application from Panel A’s November 15th hearing to Panel A’s January 17, 2012 hearing.

December 17, 2011: The applicant requested postponement of the application from Panel A’s January 17, 2012 hearing to Panel A’s February 14, 2012 hearing.

December 20, 2011: Application was postponed indefinitely.

June 22, 2012: The applicant indicated that he was ready to proceed with this request.

June 22, 2012: 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 August 3rd 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.

July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.

August 3, 2012: The applicant forwarded additional information on this application to staff.

GENERAL FACTS/STAFF ANALYSIS:

- The Building Official's May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding "Revocation of certificate of occupancy no. 0110101005 ("the CO") for a petroleum product storage and wholesale use at 1809 Rock Island Street ("the Property") owned by Buckley Oil Company ("Buckley Oil)" is included in this case report. The letter states among other things that:
 - 1) The CO for a petroleum product storage and wholesale use on the Property is hereby revoked and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - 2) The building official shall revoke a certificate of occupancy if the building official determines that a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes.
 - 3) The Fire Department has determined that because of the many Dallas Fire and Construction Code violations on the Property (described in this letter), the use or occupancy is being operated in a manner that is of substantial danger of injury or adverse health impact to persons and property.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled "Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas' Exhibits 1 through 43." (A cover memo attached stated that "by copy of this letter, a copy of same is being delivered to counsel of record." In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
- On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
- If the Board of Adjustment upholds the Building Official's May 18, 2011 decision, certificate of occupancy # 0110101005 on the property located at 1809 Rock Island Street will remain revoked.
- If the Board of Adjustment overturns/reverses the Building Official's May 18, 2011 decision, certificate of occupancy # 01101005 on the property located at 1809 Rock Island Street will be reinstated.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

MOTION #1: **Hounsel**

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the applicant.

SECONDED: **Schweitzer**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: **Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: **Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

Break: 2:07 P.M.

Resumed: 2:17 P.M.

MOTION#4: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-068**, hold this matter under advisement until **October 16, 2012**.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-069

BUILDING OFFICIAL'S REPORT:

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1809 Rock Island Street. This property is more fully described

as Lot 15 and part of Lot 16 in City Block 73/ 7342 and is zoned PD-784, which requires that the building official deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy would be 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 to deny an application for a certificate of occupancy.

LOCATION: 1809 Rock Island Street.

APPLICANT: Tommy Mann of Winstead, PC

August 14, 2012 Public Hearing Notes:

- The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:
 1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a “summary of issues under consideration” (see Attachment A).
 2. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of the Chapter 52 of the Dallas City Code (see Attachment B).
 3. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001” (see Attachment C).
 4. The applicant submitted a document entitled “Linda Henry Testimony” (see Attachment D).
 5. The applicant submitted a document entitled “Olen Ray Long Testimony” (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14th hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s May 18th decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy.

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).

BACKGROUND INFORMATION:

Zoning:

Site: PD 784 (Planned Development)
North: PD 784 (Planned Development)
South: PD 784 (Planned Development)
East: PD 784 (Planned Development)
West: PD 784 (Planned Development)

Land Use:

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

Zoning/BDA History:

1. BDA 101-068, Property at 1809 Rock Island Street (the subject site) On August 14, 2012, the Board of Adjustment Panel A will consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to) to revoke the existing certificate of occupancy for the property.
2. BDA 101-070, Property at 1803 Rock Island Street (the property immediately north of the subject site) On August 14, 2012, the Board of Adjustment Panel A will consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy.

Timeline:

- June 3, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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."
- July 28, 2011: The applicant requested postponement of the application from Panel A's August 16th hearing to Panel A's September 20th hearing.
- August 11, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 1st deadline to submit additional evidence for staff to factor into their analysis; and the September 9th 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."
- August 25, 2011: The applicant requested postponement of the application from Panel A's September 20th hearing to Panel A's October 18th hearing.
- September 26, 2011: The applicant requested postponement of the application from Panel A's October 18th hearing to Panel A's November 15th hearing.
- October 28, 2011: The applicant requested postponement of the application from Panel A's November 15th hearing to Panel A's January 17, 2012 hearing.
- December 17, 2011: The applicant requested postponement of the application from Panel A's January 17, 2012 hearing to Panel A's February 14, 2012 hearing.

- December 20, 2011: Application was postponed indefinitely.
- June 22, 2012: The applicant indicated that he was ready to proceed with this request.
- June 22, 2012: 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 August 3rd 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.
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.
- August 3, 2012: The applicant forwarded additional information on this application to staff.

GENERAL FACTS/STAFF ANALYSIS:

- The Building Official's May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding "Denial of certificate of occupancy application nos. 100802063 and 1008021064 ("the applications") for a petroleum product storage and wholesale use at 1803 and 1809 Rock Island Street ("the Properties") owned by Buckley Oil Company ("Buckley Oil")" is included in this case report. The letter states among other things that:
 1. The applications for the Properties are denied and any use operating on the Properties without a certificate of occupancy is an illegal land use that must immediately cease operating.
 2. The building official is required to deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with code, and that past inspections of the Properties by the Fire Department have revealed many different Fire and Construction Code violations which have not been corrected.
 3. The building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information and that the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented.

4. The building official shall deny an application for a certificate of occupancy if the building official determines that the applicant does not possess a required city license, permit, or registration to operate the use or occupancy. Past inspections of the Properties by the Fire Department have revealed that Buckley Oil does not possess required city permits.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled "Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas' Exhibits 1 through 43." (A cover memo attached stated that "by copy of this letter, a copy of same is being delivered to counsel of record." In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
 - On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
 - If the Board of Adjustment upholds the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1809 Rock Island Street will remain denied.
 - If the Board of Adjustment overturns/reverses the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1809 Rock Island Street will be approved.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

MOTION #1: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the applicant.

SECONDED: Schweitzer

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Agnich

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: **Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: **Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

Break: 2:07 P.M.

Resumed: 2:17 P.M.

MOTION#4: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-069**, hold this matter under advisement until **October 16, 2012**.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-070

BUILDING OFFICIAL’S REPORT:

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1803 Rock Island Street. This property is more fully described as part of Lot 16 in City Block 73/7342 and is zoned PD-784, which requires that the building official deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy would be 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 to deny an application for a certificate of occupancy.

LOCATION: 1803 Rock Island Street.

APPLICANT: Tommy Mann of Winstead, PC

August 14, 2012 Public Hearing Notes:

- The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:
 1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a “summary of issues under consideration” (see Attachment A).
 2. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of the Chapter 52 of the Dallas City Code (see Attachment B).
 3. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001” (see Attachment C).
 4. The applicant submitted a document entitled “Linda Henry Testimony’ (see Attachment D).
 5. The applicant submitted a document entitled “Olen Ray Long Testimony’ (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14th hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s May 18th decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) states 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).

BACKGROUND INFORMATION:

Zoning:

Site: PD 784 (Planned Development)
North: PD 784 (Planned Development)
South: PD 784 (Planned Development)

East: PD 784 (Planned Development)
West: PD 784 (Planned Development)

Land Use:

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

Zoning/BDA History:

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|---|---|
| 1. BDA 101-068, Property at 1809 Rock Island Street (the property immediately south of the subject site) | On August 14, 2012, the Board of Adjustment Panel A will consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official’s May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to to revoke the existing certificate of occupancy for the property. |
| 2. BDA 101-069, Property at 1809 Rock Island Street (the property immediately south of the subject site) | On August 14, 2012, the Board of Adjustment Panel A will consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official’s May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy. |

Timeline:

- June 3, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th 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.”

July 28, 2011: The applicant requested postponement of the application from Panel A’s August 16th hearing to Panel A’s September 20th hearing.

August 11, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 1st deadline to submit additional evidence for staff to factor into their analysis; and the September 9th 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.”

August 25, 2011: The applicant requested postponement of the application from Panel A’s September 20th hearing to Panel A’s October 18th hearing.

September 26, 2011: The applicant requested postponement of the application from Panel A’s October 18th hearing to Panel A’s November 15th hearing.

October 28, 2011: The applicant requested postponement of the application from Panel A’s November 15th hearing to Panel A’s January 17, 2012 hearing.

December 17, 2011: The applicant requested postponement of the application from Panel A’s January 17, 2012 hearing to Panel A’s February 14, 2012 hearing.

December 20, 2011: Application was postponed indefinitely.

June 22, 2012: The applicant indicated that he was ready to proceed with this request.

June 22, 2012: 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 August 3rd 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.”

- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.
- August 3, 2012: The applicant forwarded additional information on this application to staff.

GENERAL FACTS/STAFF ANALYSIS:

- The Building Official’s May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding “Denial of certificate of occupancy application nos. 100802063 and 1008021064 (“the applications”) for a petroleum product storage and wholesale use at 1803 and 1809 Rock Island Street (“the Properties”) owned by Buckley Oil Company (“Buckley Oil”)” is included in this case report. The letter states among other things that:
 1. The applications for the Properties are denied and any use operating on the Properties without a certificate of occupancy is an illegal land use that must immediately cease operating.
 2. The building official is required to deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with code, and that past inspections of the Properties by the Fire Department have revealed many different Fire and Construction Code violations which have not been corrected.
 3. The building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information and that the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented.
 4. The building official shall deny an application for a certificate of occupancy if the building official determines that the applicant does not possess a required city license, permit, or registration to operate the use or occupancy. Past inspections of the Properties by the Fire Department have revealed that Buckley Oil does not possess required city permits.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled “Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas’ Exhibits 1 through 43.” (A cover memo attached stated that “by copy of this letter, a copy of same is being delivered to counsel of record.” In addition, discs of this information were mailed to the board

members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).

- On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
- If the Board of Adjustment upholds the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1803 Rock Island Street will remain denied.
- If the Board of Adjustment overturns/reverses the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1803 Rock Island Street will be approved.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

MOTION #1: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the applicant.

SECONDED: Schweitzer

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Agnich

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: Hounsel

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Nolen

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: Agnich

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -
MOTION PASSED: 5- 0 (unanimously)

Break: 2:07 P.M.
Resumed: 2:17 P.M.

MOTION #4: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-070**, hold this matter under advisement until **October 16, 2012**.

SECONDED: **Agnich**
AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich
NAYS: 0 -
MOTION PASSED: 5- 0 (unanimously)

MOTION: **Hounsel**

I move to adjourn this meeting.

SECONDED: **Schweitzer**
AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Agnich
NAYS: 0 -
MOTION PASSED 5- 0 (unanimously)

2:17 P. M. - Board Meeting adjourned for **August 14, 2012**.

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.