

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, AUGUST 18, 2009**

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

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

11:03 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 18, 2009** docket.

11:55 A.M. Executive Session Begins

12:05 P.M. Executive Session Ends

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 16, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

MOTION: Harris

I move **approval** of the Tuesday, **June 16, 2009** public hearing minutes.

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-086(K)

BUILDING OFFICIAL’S REPORT:

Application of Baron Ablon for a special exception to the fence height regulations at 5511 Royal Lane. This property is more fully described as Lot 24 in City Block 7/6389 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 9 foot, 6 inch fence in a required front yard setback which will require a special exception of 5 feet, 6 inches.

LOCATION: 5511 Royal Lane

APPLICANT: Baron Ablon

REQUESTS:

A special exception to the fence height regulations of 5 foot and 6 inches is requested to construct a fence that is 9 feet and 6 inches in a required front yard.

STAFF RECOMMENDATION (fence height special exception):

the request: compliance with the submitted site/landscape and elevation plan is required. The case report states the request was made to complete and maintain a maximum 5' high combination solid brick and open metal fence with 5' 2" high columns, and that although the fence appears to be higher than 5', the fence was technically measured from the inside grade which resulted in a maximum fence/column height of only 5' 2". (The way in which a fence is measured was amended in the Dallas Development Code in 1998 whereby the height of a fence in single family and duplex districts is now measured to the top of the fence to the level of the ground inside and outside of any fence and is the greater of these two measurements).

3. BDA 056-250, 5514 Royal Lane

On November 13, 2006 the Board of Adjustment, Panel C, granted a request for a special exception to the fence height regulations of 4 feet, 9 inches. The board imposed the condition of compliance with the submitted site plan/elevation, fence elevation, and site plan with landscaping materials is required.

BDA 089-098, 5527 Royal Lane

A request to the Board of Adjustment for a special exception to the fence height regulation is scheduled to be heard by Panel B on September 16, 2009.

Timeline:

- June 24, 2009: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 23, 2009: The Board Senior Planner contacted the applicant's representative by telephone and email and the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 27th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

July 28, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- The applicant proposes to construct and maintain a solid masonry and wood fence that varies in height from 4 feet and 6 inches to 9 feet and 6 inches in height.
- The proposed fence runs 155 feet parallel to the front property line.
- During the site visit the senior planner observed multiple fences over four-feet high in the front yards of the neighboring properties.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move that the Board of Adjustment grant application **BDA 089-086** 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: Harris

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-087(K)

BUILDING OFFICIAL’S REPORT:

Application of Richard Malouf represented by Robert Baldwin for a special exception to the fence height regulations at 10711 Strait Lane. This property is more fully described as Lot 12 in City Block 3/5522 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot, 6 inch fence in a required front yard setback which will require a special exception of 4 feet, 6 inches.

LOCATION: 10711 Strait Lane

APPLICANT: Richard Malouf
Represented by Robert Baldwin

REQUESTS:

A special exception to the fence height regulations of 4 foot and 6 inches is requested to construct a fence that is 8 feet and 6 inches in a required front yard.

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The site is zoned R 1ac(A) and front yard setback of 40 feet.
- The applicant proposes to maintain an 8 foot 6 inch high fence.
- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single family residential 1 acre).
North: R-1ac(A) (Single family residential 1 acre).
South: R-1ac(A) (Single family residential 1 acre).
East: R-1ac(A) (Single family residential 1 acre).
West: R-1ac(A) (Single family residential 1 acre).

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures.

Zoning/BDA History:

1. BDA 023- 103, 10777 Strait Lane On August 18, 2003, the Board of Adjustment Panel C denied a request for a special exception to the fence height regulations of 4' 11.5" with prejudice. The case report states that this request was made to maintain generally a 7' 3" high solid stucco wall with approximately 9' high stucco columns. (This decision was appealed to District Court. On August 15, 2005, the owners and the City of Dallas filed a "Joint Notice of Nonsuit Without Prejudice" in which both parties hereby dismissed their suit and related counterclaims without prejudice).

2. BDA 023-067, 10777 Strait Lane

On April 21, 2003, the Board of Adjustment Panel C granted a request for a special exception to the fence regulations of 3' 8" along Royal Lane, needed in conjunction with maintaining a 6' 5" high solid stucco wall with 7' 8" high stucco columns (subject to compliance with the submitted site plan, landscape plan, and fence elevations) and denied a request for a special exception to the fence regulations of 5' along Strait Lane without prejudice (needed generally to maintain an existing fence/wall along Strait Lane).

3. BDA 84-286, 10777 Strait Lane

On October 23, 1984, the Board of Adjustment took the following actions: "grant a fence variance as noted: along Strait Lane: a 7' wrought iron fence with brick columns (per elevation on Strait Lane side) with 7' 8" brick columns with 4 entry columns with an 8' height (12' to 18" of brick with wrought iron on top). Along Royal Lane: a 7' solid brick in configuration of the exhibit A as marked with landscaping as noted. The board denied the variance requested in the side yard for light on tennis court."

4. BDA 990 -344, 10710 Strait Lane

On October 10, 2000, the Board of Adjustment Panel C followed the staff recommendation and granted a request for a special exception to the fence regulations of 2.5', needed in conjunction with constructing and maintaining an open wrought iron fence with 6.5' high masonry columns and a 6.5' high open metal entry gate. The Board imposed the following conditions: the fence must not exceed 6.5' in height, and must be made of open wrought-iron material; and compliance with the submitted site/landscape plan is required.

5. BDA 001-172, 10660 Strait Lane)

On March 27, 2001, the Board of Adjustment Panel A followed the staff recommendation and granted a request for a special exception to the fence regulations of 6', needed in conjunction with constructing and maintaining a maximum 7' high combination open fence with solid masonry base and a 10' high PVC-coated metal tennis court fence, and a special exception to allow a 2nd electrical meter on a site.

6. BDA 034-126, 10735 Strait Lane

On February 24, 2004, the Board of Adjustment Panel C denied a request for a special exception to the fence regulations of 2' 6" without prejudice. The case report states that the request was made in conjunction with constructing and maintaining a 5' 6" high open wrought iron fence with 6' 6" high stone columns and 6' 6" high arched entry gates.

7. BDA 023-142, 10735 Strait Lane

On November 17, 2003, the Board of Adjustment Panel C denied a request for a special exception to the fence regulations of 3' 11" without prejudice. The case report states that the request was made in conjunction with constructing and maintaining a 6' high open wrought iron fence with 7' high columns and 7' 11' high entry gates.

Timeline:

- June 9, 2009: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 23, 2009: The Board Senior Planner contacted the applicant's representative by telephone and email and the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the July 27th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

July 28, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- The applicant proposes to construct and maintain an open wrought iron fence that is eight-feet in height with solid columns eight-feet and six-inches in height. The illustrated entry gate is not included with the request since it will not be constructed within the 40 foot front yard setback.
- The proposed fence runs 245 feet parallel to the front property line.
- During the site visit the senior planner observed multiple fences over four-feet high in the front yards of the neighboring properties.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 089-087** 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: **Harris**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-092(K)

BUILDING OFFICIAL’S REPORT:

Application of Santos T. Martinez of Masterplan for a special exception to the landscaping regulations at 6619 Webster Street. This property is more fully described as Lots 14, 13, & part of Lot 12 in City Block K/2601 and is zoned CR, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 6619 Webster Street.

APPLICANT: Santos T. Martinez of Masterplan

REQUEST:

- The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulation.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- The special expectation to the landscape regulations will automatically and immediately terminate if and when the “nursery, garden shop, or plant sales” use is discontinued.

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City's Chief Arborist recommends approval (see attachment A) of this request for the following reasons:
 - Strict compliance with the ordinance will unreasonably burden the use of the property;
 - The special exception will not adversely affect neighboring properties; and
 - The requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

Section 51A-10.100 specifies that the board of adjustment may grant a special exception to the requirements of the landscape article upon making a special finding of evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of this property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

- (1) The extent to which there is residential adjacency.
- (2) The topography of the site.
- (3) The extent to which landscaping exists for which no credit is given under this article.
- (4) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping. (Ord. Nos. 22053, 25155)

GENERAL FACTS:

- The subject site is currently undeveloped. The proposed use of the site is for a "nursery, garden shop, or plant sales" use.
- The site has an irregular shape and has access from both Lemmon Avenue and Webster Street.
- The applicant is requesting a special exception to the landscape requirements of Article X. More specifically, the request is for relief from buffer requirements specified under Section 51A-10.125 (b)(1), "Perimeter landscape buffer strip and street tree requirements."

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: PD 67 (Planned Development District)
South: IR (Industrial/Research District)
East: PD 67 (Planned Development District)
West: CR (Community Retail)

Land Use:

The subject site is currently undeveloped. The property to the north is developed with a single family structure. The property to the south is undeveloped. The property to the east is developed with a church. The property to the west is developed with a retail use.

Zoning/BDA History:

BDA 990-134.

Timeline:

- June 24, 2009: The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 23, 2009: The Board’s Senior Planner contacted the applicant’s representative by telephone and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the March public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

July 28 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

August 11, 2009 The Chief arborist submitted an analysis of the landscape plan and recommended approval (see attachment A).

STAFF ANALYSIS:

- The subject site is currently undeveloped. The property is zoned Community Retail and the proposed use of the site is for ‘nursery, garden shop, or plant sales’ use.
- The special exception to the landscape regulations request is triggered by a proposal for new development. The submitted plan is deficient in perimeter landscape buffer strip, street trees, and screening of off-street parking.
- A site plan has been submitted and reviewed by the Board’s Senior Planner and the City of Dallas Chief Arborist. A review of the site plan by the Board’s Senior Planner shows the plans to include:
 - 6 foot tall solid wooden fence along the northern property line.
 - 6 Live Oak trees located within the required 10 foot buffer to the north of the property.
 - 2 Red Oak trees at the northeast corner of the property along Webster Avenue.
 - 27 Evergreen Shrubs (holly) along the eastern property line.
 - Removal and/or reduction of three of the access drives along Webster Avenue.
- A review of the site plan by chief arborist was completed and included the following information:
 - Trigger—new construction.
 - Deficiencies—the proposed plan complies with Article X landscape requirements with the exception of
 - 1) landscape buffer strip to the east
 - 2) 8 street trees
 - 3) partial screening of off-street parking along Webster Ave.
 - Factors:
 - The proposed use of the site is for a nursery, garden shop, or plant sales.

- The northern portion of the property will be comprised of a greenhouse, and brick pavers that will be used for pedestrian use and landscape plant display.
 - The outdoor landscape display areas add to the overall effect of landscaping for the site.
 - Recommendation—Approval.
- The applicant has the burden of proof in establishing the following:
 - strict compliance with the requirements of this article will unreasonably burden the use of this property;
 - the special exception will not adversely affect neighboring property; and
 - the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- If the Board chooses to approve the request the staff recommends imposing the following conditions:
 1. the submitted site plans
 2. the special exception to the landscape regulations will automatically and immediately terminate, if and when the “nursery. Garden shop, or plant sales” is discontinued.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move that the Board of Adjustment grant application **BDA 089-092** 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 alternate landscape plan is required.
- The special exception to the landscape regulations will automatically and immediately terminate if and when the “nursery, garden shop, or plan sales” use is discontinued.

SECONDED: Harris

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-073

BUILDING OFFICIAL'S REPORT:

Application of Ed Simons of Masterplan for a special exception for the handicapped at 3303 Hall Court. This property is more fully described as Lot 2A in City Block H/1320 and is zoned PD-193 (MF-2) which requires a front yard setback of 20 feet. The applicant proposes to construct a structure and provide a 4 foot setback which will require a special exception of 16 feet.

LOCATION: 3303 Hall Court

APPLICANT: Ed Simons of Masterplan

August 18, 2009 Public Hearing Notes:

- The Board of Adjustment delayed action on this application until September 15, 2009, and encouraged the applicant to consider the following: 1) whether he or the owner would be amenable to any or all of the conditions suggested in a letter from the Oak Lawn Committee; and 2) whether the owner could further substantiate that he is "handicapped" as referenced in Chapter 51A- "as that term is defined in the Federal Fair Housing Amendments Act of 1988."

REQUEST:

- A special exception for the handicapped is requested in conjunction with constructing and maintaining an approximately 340 square foot (approximately 34' x 10') swimming pool structure located 4' from the site's Hall Street front property line or 16' into the 20' front yard setback on a site developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

1. Compliance with the submitted revised survey plat/site plan is required.
2. The special exception expires when a handicapped person no longer resides on the property.
3. All applicable building permits must be obtained.

Rationale:

- Staff concludes that the proposed swimming pool structure is needed to afford a handicapped person (in this case, the applicant who according to doctors' assessments has arthritis where water therapy would help his medical condition) equal opportunity to use and enjoy his dwelling unit. There appears to be no other location for the pool for the applicant/handicapped person other than in the 20' Hall Street front yard setback given that there is only a 20' distance between the Hall

Street front property line and the existing structure, a 15' distance between the Hall Court front property line and the existing single family structure, and approximately 3' and 11' distances between the side property lines and the existing structure.

STANDARD FOR A SPECIAL EXCEPTION TO AFFORD A HANDICAPPED PERSON EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING: Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

GENERAL FACTS:

- Structures on residential development tracts zoned in MF-2 (Multifamily) Subdistrict of PD No. 193 are required to provide a 20' front yard setback.
A revised survey plat/site plan has been submitted indicating a pool structure that is approximately 34' long and 10' wide is located 4' from the site's Hall Street front property line or 16' into the 20' front yard setback.
- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.
A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:
“(h) “Handicap” means, with respect to a person -
 1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
 2. a record of having such an impairment, or
 3. being regarded as having such an impairment,but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised survey plat/site plan;
 - a letter that provides additional information about the request,
 - letters from doctors that describe the medical condition of the owner of the site;
 - emails and documents related to the proposal.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-2) (Planned Development District, Multifamily)
North: PD No. 193 (MF-2) (Planned Development District, Multifamily)
South: PD No. 193 (MF-2) (Planned Development District, Multifamily)
East: PD No. 193 (MF-2) (Planned Development District, Multifamily)
West: PD No. 193 (MF-2) (Planned Development District, Multifamily)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- April 23, 2009 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 14, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
- 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 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- July 16 & 24, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building

Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on a special exception for the handicapped to allow the construction/maintenance of an approximately 320 square foot swimming pool structure 4' away from the site's Hall Street front property line (or 16' into the required 20' front yard setback).
- Unlike most requests where the board is considering to allow a structure that is encroaching into a setback via a variance (where property hardship must be demonstrated), the board is to consider this structure that would encroach into a front yard setback via a special exception for the handicapped based solely on whether the Board concludes that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit.
- Two medical doctors have submitted a letter concerning the applicant's arthritic condition and stating how either the swimming pool would help to improve his medical condition or how the pool is "Medically Necessary to help his medical condition."
- The applicant has the burden of proof in establishing the following:
 - The special exception (which in this case is requested to construct/maintain a swimming pool structure in the site's Hall Street front yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and
 - there is a person with a "handicap" (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that: 1) compliance with the submitted survey plat/site plan is required, 2) that the special exception expires when a handicapped person no longer resides on the property, and 3) all applicable building codes must be obtained, the swimming pool could be constructed and maintained of the size and location shown on this plan (*upon obtaining all necessary building permits required by the building code*) for as long as the applicant or any other handicapped person resides on the property.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

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

APPEARING IN OPPOSITION: No one

MOTION#1: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-073**, on application of Ed Simons, **deny** the special exception for the handicapped requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the special exception is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

SECONDED: NO ONE
MOTION FAILED FOR LACK OF A SECOND

MOTION#2: Schweitzer

I move that the Board of Adjustment in Appeal No. **BDA 089-073**, hold this matter under advisement until **September 15, 2009**.

SECONDED: Gabriel
AYES: 4 – Richmond, Schweitzer, Gabriel, Jackson
NAYS: 1 - Harris
MOTION PASSED: 4– 1

FILE NUMBER: BDA 089-088(K)

BUILDING OFFICIAL'S REPORT:

Application of Randy Edwards represented by Robert Baldwin for a special exception to the fence height regulations at 5233 Stonegate Road. This property is more fully described as Lot 6 in City Block B/5668 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 7 foot, 7 inch fence in a required front yard setback which will require a special exception of 3 feet, 7 inches.

LOCATION: 5233 Stonegate Road

APPLICANT: Randy Edwards
Represented by Robert Baldwin

REQUESTS:

A special exception to the fence height regulations of 3 foot and 7 inches is requested to construct a fence that is 7 feet and 7 inches in a required front yard.

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The site is zoned R 16(A) and has a front yard setback of 35 feet.
- The applicant proposes to maintain a 7 foot 7 inch high fence.
- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

BACKGROUND INFORMATION:

Zoning:

Site: R-16 (A) (Single family residential 16,000 square feet).
North: R-16 (A) (Single family residential 16,000 square feet).
South: R-16 (A) (Single family residential 16,000 square feet).
East: R-16 (A) (Single family residential 16,000 square feet).
West: R-16 (A) (Single family residential 16,000 square feet).

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures.

Zoning/BDA History:

BDA 045-128. On January 18, 2005, the Board of Adjustment, Panel A, granted the request to maintain an additional dwelling unit on the property located at 5222 Farquhar Drive.

Timeline:

- June 22, 2009: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 23, 2009: The Board Senior Planner contacted the applicant's representative by telephone and email and the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the July 27th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- July 28, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- The applicant proposes to construct and maintain a solid board on board fence that is seven-feet and seven-inches in height.
- The proposed fence runs 120 feet parallel to the front property line.

- During the site visit the senior planner did not observe any other fences over four-feet in the neighboring properties' front yards.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition Ave., Dallas, TX

APPEARING IN OPPOSITION: Dave Perry-Miller, 5232 Stonegate, Dallas, TX
David Chance, 5212 Farquhar Ln, Dallas, TX
John Lamb, 5232 Stonegate, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 089-088**, hold this matter under advisement until **September 15, 2009**.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-095

BUILDING OFFICIAL'S REPORT:

Application of Virginia Lannen, represented by Carolynne Smith, for a special exception to reduce the requirement that at least 75 percent of the frontage of a building at street level (excluding docking and loading areas, driveways, exit ramps, and entrance ramps) is occupied by, or made available exclusively for use by retail and personal service uses, financial institution without drive-in window, or transportation uses that extend at least 50 feet into the building to no less than 50 percent at 1222 Commerce Street. This property is more fully described as a .41 acre tract in City Block 71 and is zoned PD-619 (Subdistrict A) which states that any use that is not a retail and personal service use, a financial institution without drive-in window, or a transportation use, and is located in a building in Subdistrict A is not permitted if, at the time of the request for a certificate of occupancy, less than 75 percent of the frontage of that building at street level (excluding docking and loading areas, driveways, exit ramps, and entrance ramps) is occupied by, or is made available exclusively for use by, retail and personal service uses, financial institution without drive-in window, and/or transportation uses that extend at least 50 feet into the building. The applicant proposes to locate/lease a public or private school

use that would occupy 50 percent of the building frontage, which will require a special exception.

LOCATION: 1222 Commerce Street

APPLICANT: Virginia Lannen
Represented by Carolynne Smith

REQUEST:

- A special exception to the minimum 75 percent retail/personal service/financial institution without drive-in window/transportation street level frontage use requirement for structures in Subdistrict A of PD No. 619 is requested in conjunction with locating/leasing a public or private school use (The Pegasus School of Liberal Arts and Sciences – a public charter school) or non-retail/personal service/financial institution without drive-in window/transportation use on the ground floor of an existing building that is primarily used as a multi-story multifamily tower (The Manor House). The applicant proposes to lease the ground floor of the existing structure on the site with a 50 percent retail/personal service/financial institution without drive-in window/transportation use frontage (or a 50 percent non-retail/personal service/financial institution without drive-in window/transportation use frontage) for its street level frontage along Field Street (99' 9" of the 200' to be a public or private school/*non-retail/personal service/financial institution without drive-in window/transportation use*).

STAFF RECOMMENDATION:

Approval

Rationale:

- The applicant has substantiated how strict compliance with the requirements of that section will unreasonably burden the use of the property. In this case, the applicant states how configuring the roughly 2,800 square feet of the first floor if the applicant were to comply with the 75 percent requirement so that it could be utilized in coordination with the 12,000 square feet in the basement would limit the accessibility and use of the remainder of the first floor whereby using the full 5,500 square feet would facilitate the coordination and access between the two floors of the school.
- The applicant has substantiated how the special exception will not adversely affect neighboring property. In this case, that applicant states how the location of the school on the street level of Field Street is on “the quiet end of Field Street” and faces a blank wall of the AT & T Building; existing neighborhood sandwich shop and convenience store will most likely benefit from enhanced business and activity created by the school use; and students at the school are supervised by teachers and staff.

- The applicant has substantiated how the proposed use will not discourage street level activity. In this case, the applicant states how the use will bring new and additional activity to the area whereby the entrance to the building on Field Street will enliven it from a situation where currently there is no entrance to the structure on this street. In addition, the applicant states how over 50 percent of the students utilized DART and walk to either the train stations or bus stops, and where during the day, many of the junior and seniors walk to El Centro College to attend dual-credit classes.

STANDARD FOR A SPECIAL EXCEPTION TO REDUCE THE MINIMUM 75 PERCENT REQUIREMENT FOR A RETAIL AND PERSONAL SERVICE USE, A FINANCIAL INSTITUTION WITHOUT DRIVE-IN WINDOW, OR A TRANSPORTATION USE LOCATED IN A BUILDING IN SUBDISTRICT A OF PD NO. 619:

The board may grant a special exception to reduce the minimum 75 percent requirement in Subsection A of 51P-619.106.4 Restrictions on Uses in Subdistrict A – Pedestrian-oriented uses including retail and personal service use, a financial institution without drive-in window, or a transportation use to no less than 50 percent upon making a special finding from the evidence presented that:

- A) strict compliance with the requirements of that section will unreasonably burden the use of the property;
- B) the special exception will not adversely affect neighboring property; and
- C) the proposed use will not discourage street level activity.

In determining whether to grant this special exception, the board shall consider the following factors: the location of the site, and the extent to which existing or proposed amenities will compensate for the reduction of retail and personal service uses, financial institution without drive-in window, and/or permitted transportation use in the subdistrict.

GENERAL FACTS:

- PD No. 619 states that any use that is not a retail and personal service use, a financial institution without drive-in window, or a transportation use, and is located in Subdistrict A is not permitted if, at the time of the request for a certificate of occupancy, less than 75 percent of the frontage of that building at street level (excluding docking and loading areas, driveways, exit ramps, and entrance ramps) is occupied by, or is made available exclusively for use by, or is made available exclusively for use by, retail and personal service uses, financial institution without drive-in window, and/or transportation uses that extend at least 50 feet into the building. (The 50-foot measurement is made perpendicularly from the façade of the building having frontage.)
The applicant has submitted a document entitled “Site Plan and Zoning Diagram” that denotes the following:
 - Field Street frontage = 200’. Non-retail use = 99’- 9”. (50%).

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 619 (Subdistrict A and B) (Planned Development)
North: PD No. 619 (Subdistrict A and B) (Planned Development)
South: PD No. 619 (Subdistrict A and B) (Planned Development)
East: PD No. 619 (Subdistrict A and B) (Planned Development)
West: PD No. 619 (Subdistrict A and B) (Planned Development)

Land Use:

The subject site is developed with a structure that is primarily used as a multifamily structure (The Manor House). The areas immediately north and south are developed with retail/residential uses; and the areas to the east and west are developed with office 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 29, 2009: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 13, 2009: The Board Administrator contacted the applicant's representative and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

July 27, 2009 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Trinity River Corridor Senior Planner submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- The request focuses on locating/leasing a public or private school use (The Pegasus School of Liberal Arts and Sciences – a public charter school) or a non-retail/personal service/financial institution without drive-in window/transportation use on the ground floor of an existing building that is primarily used as a multi-story multifamily tower (The Manor House) in a zoning district that requires that at least 75 percent of the uses in the subdistrict (in this case the street level of all structures in the district) be "pedestrian-oriented" or specifically retail and personal service, financial institution without drive-in window, or transportation use whereby only 50 percent of the structure's ground floor on Field Street is proposed to be leased as "pedestrian-oriented" or retail/personal service/financial institution without drive-in window/transportation uses.
- The site plan and zoning diagram document has been submitted that denotes the following: Field Street frontage = 200'. Non-retail use = 99'- 9". (50%).
- The applicant has the burden of proof in establishing the following:
 - that strict compliance with the requirements of that section will unreasonably burden the use of the property;
 - the special exception will not adversely affect neighboring property; and
 - the proposed use will not discourage street level activity.

***Bert Vanderberg, Asst. City Attorney recused himself and did not hear this matter.**

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

APPEARING IN FAVOR: Richard Lannen, 7015 E. Grand Avenue, Dallas, TX
Jeff Barnes, 4416 Stanford, Dallas, TX

APPEARING IN OPPOSITION: Zachary Brazzel, 1300 Jackson St., #3, Dallas, TX

MOTION: Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-095**, on application of Virginia Lannen, represented by Carolynne Smith, **grant** the request of this applicant to allow a public or private school to occupy 50 percent of the building's street level frontage as a special exception to Section 51P-619.106.4 of the Dallas Development Code which prohibits a use other than retail and personal service uses, financial institution without drive-in window, and transportation uses to occupy more than 25 percent of a building's street level frontage in Subdistrict A of PD 619 because we find, based on the evidence and testimony presented to us that, strict compliance with the requirements of Section 51P-619.106.4 will unreasonably burden the use of the property, the special exception will not adversely affect neighboring property, and the proposed use will not discourage street level activity.

SECONDED: Gabriel

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 089-101

BUILDING OFFICIAL'S REPORT:

Application of Phaiboon Promniang, represented by William A. Bratton III, to appeal the decision of an administrative official at 11308 Emerald Street, Suite 102 . This property is more fully described as an approximately 0.560 acre tract of land in City Block 6547 and is zoned IM which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of the administrative official in the revocation of a certificate of occupancy.

LOCATION: 11308 Emerald Street, Suite 102

APPLICANT: Phaiboon Promniang
Represented by William A. Bratton III

August 18, 2009 Public Hearing Notes:

- The Board Administrator circulated a copy of an August 12, 2009 faxed letter that he had received from the applicant's representative to the board members at their briefing. This letter requested a delay on the hearing on this application for approximately two weeks to assure his availability since he was almost certain that a jury trial that he was involved with beginning on August 17, 2009 would go to trial and would extend past the current scheduled time for hearing on this application.

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 15, 2009 revocation of certificate of occupancy no. 0708221075 for a personal service use (Moon Night) at 11308 Emerald Street, Suite 102. The applicant alleges that this revocation was based "on an incorrect finding that the premise being used as a massage establishment without proper license from state. "

Note however that on July 29, 2009, the Building Inspection Development Code Specialist emailed the Board Administrator the following information: "The Cert Mail green card for the letter sent notifying the applicant of the requirement to post the notification sign was rec'd and signed by the applicant on 07/13/09. And 14 days later, the deadline for obtaining and posting the notification signs would have been Monday 07/27/09. So..., too late." (Note that the Board Administrator forwarded a copy of this email to the applicant's representative on August 6, 2009).

As a result of this point made by the Building Inspection Development Code Specialist pertaining to the posting of required notification signs, the Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs code – a provision that states "If the board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice. "

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

GENERAL FACTS:

- The Building Official's May 15th letter to Aeion, LLC, Stanley F Carpenter PC, and Phaiboon Promniang states the following:
 - This letter is to inform you that certificate of occupancy no. 0708221075 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.
 - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.
 - Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.
 - Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.
- On July 29, 2009, the Building Inspection Development Code Specialist emailed the Board Administrator the following information: "The Cert Mail green card for the letter sent notifying the applicant of the requirement to post the notification sign was rec'd and signed by the applicant on 07/13/09. And 14 days later, the deadline for obtaining and posting the notification signs would have been Monday 07/27/09. So..., too late." (Note that the Board Administrator forwarded a copy of this email to the applicant's representative on August 6, 2009).
- The Dallas Development Code states that "The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public." The code additionally states "If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted

within 24 hours after the case is postponed and comply with all other requirements of this section.”

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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 19, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 16, 2009: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the July 27th deadline to submit additional evidence for staff to factor into their analysis; and the August 7th 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;
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

July 28, 2009

The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

The Trinity River Corridor Senior Planner submitted a review comment sheet marked "Recommends that this be denied."

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's revocation of certificate of 0708221075 for a personal service use (Moon Night) at 11308 Emerald Street, Suite 102 on May 15, 2009 be overturned/reversed.
- On July 29, 2009, the Building Inspection Development Code Specialist emailed the Board Administrator the following information: "The Cert Mail green card for the letter sent notifying the applicant of the requirement to post the notification sign was rec'd and signed by the applicant on 07/13/09. And 14 days later, the deadline for obtaining and posting the notification signs would have been Monday 07/27/09. So..., too late." (Note that the Board Administrator forwarded a copy of this email to the applicant's representative on August 6, 2009).
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs. The Dallas Development Code states that "The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public." The code additionally states "If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section."
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs and uphold the Building Official's decision, the certificate of occupancy no. 0708221075 for a personal service use (Moon Night) on the subject site will remain revoked.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs and

reverse the Building Official's decision, the certificate of 0708221075 for a personal service use (Moon Night) on the subject site will be reinstated.

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melissa Miles, Asst. City Atty, 1500 Marilla, 5DN

MOTION: **Harris**

I move that the Board of Adjustment in Appeal No. **BDA 089-101**, hold this matter under advisement until **September 15, 2009**.

SECONDED: **Gabriel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Harris**

I move to adjourn this meeting.

SECOND: **Schweitzer**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:59 P.M. - Board Meeting adjourned for **August 18, 2009**.

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.