

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, SEPTEMBER 14, 2010**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Steve Harris, Scott Hounsel, regular member and Johnnie Goins, regular member

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Steve Harris, Scott Hounsel, regular member and Johnnie Goins, regular member

MEMBERS ABSENT FROM HEARING: No one

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

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 14, 2010** docket.

11:45 P.M.: Executive Session

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 **August 17, 2010** public hearing minutes.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2010

MOTION: Schweitzer

I move **approval** of the Tuesday, **August 17, 2010** public hearing minutes.

SECONDED: Harris

AYES: 5 – Richmond, Schweitzer, Harris, Honsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-085

BUILDING OFFICIAL'S REPORT:

Application of Robert Baldwin for a special exception to the fence height regulations at 9400 Hathaway Street. This property is more fully described as Part of Lots 13 and 14 in city block 7/5597 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 7 foot 6 inch high fence which will require a 3 foot 6 inch special exception.

LOCATION: 9400 Hathaway Street

APPLICANT: Robert Baldwin

REQUEST:

- A special exception to the fence height regulations of 3' 6" is requested in conjunction with constructing and maintaining a 6' 1" high iron picket fence with 7' 3" high stone columns, and an approximately 6' high driveway gate flanked by approximately 6' 6" high stone wing walls and 7' 6" high stone entry columns in the site's 40' front yard setback along Hathaway Street on a site currently developed with a single family home.

(Note that this application appears to be for a proposal that would replace an existing entryway feature on the site, specifically what appears to be two solid stone wing walls of about 20 feet in length on either side of the driveway each descending down from approximately 10' high columns to 6' high on each side of the driveway – a “fence” that appears to be the result of an approved fence height special exception request by Board of Adjustment Panel A in June of 1995).

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.

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 subject site is located at the northeast corner of Hathaway Street and Deloache Avenue. The site has one front yard setback along Hathaway Street given that this frontage is the shorter of the two street frontages, and that there is no continuity of an established front yard setback along Deloache Avenue to be maintained – the area immediately east of the site is the Dallas North Tollway. The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts. The applicant has submitted a site plan and an elevation indicating a fence/wall/column/gate proposal that is to be located/limited to the site's front yard setback that would reach a maximum height of 7' 6".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is shown to be approximately 170' in length parallel to Hathaway Street, and approximately 40' in length perpendicular to Hathaway Street on the north and south sides of the property in the 40' front yard setback.
 - The fence proposal is shown to be located approximately on the property line and approximately 16' from the pavement line.
- The submitted site plan denotes a continuous line of Nellie R. Stevens Holly bushes located immediately inside the proposed fence.
- The proposal would be located on the site where no single family home has frontage – the home directly west of the site “fronts” southward to Deloache Avenue and has an approximately 7' high open wrought iron fence in its required side yard along Hathaway Street.
- The Board Administrator conducted a field visit of the site and surrounding area along Hathaway Street (generally 500 feet north and south of the site) and noted the

following visible fences that appeared to be located in a front yard setback and higher than 4' in height (Note that these locations and dimensions are approximations):

- A 5' high open wrought iron fence with 8' high stucco columns immediately north of the site with no recorded Board of Adjustment history.
- A 5' high open wrought iron fence with 6' high brick two lots north of the subject site with no recorded Board of Adjustment history.

BACKGROUND INFORMATION:

Zoning:

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

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 95-084, Property at 9400 Hathaway Street (the subject site)

On June 27, 1995, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 5' 10" subject to the following condition: compliance with the submitted site plan/elevation is required. The case report stated that the request was made in conjunction with constructing and maintaining two 9' 10" high stone columns, two 5' 4" high stone columns connected by a descending solid stone wall in the front yard along Hathaway Street. The case report stated that the length of the proposal was minimal (about 42' in length compared to an approximately 200' wide site).

Timeline:

June 27, 2010: 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 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 15, 2010: 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 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 19, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted in the original application (see Attachment A).
- August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- September 3, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Needs to comply with all C.O.D visibility requirements."

STAFF ANALYSIS:

- The request focuses on constructing and maintaining a 6' 1" high iron picket fence with 7' 3" high stone columns, and an approximately 6' high driveway gate flanked by approximately 6' 6" high stone wing walls and 7' 6" high stone entry columns in the site's 40' front yard setback along Hathaway Street on a site currently developed with a single family home.
- This application appears to be for a proposal that would replace an existing entryway feature on the site, specifically what appears to be two solid stone wing walls of about 20 feet in length on either side of the driveway each descending down from approximately 10' high columns to 6' high on each side of the driveway – a "fence" that appears to be the result of an approved fence height special exception request by Board of Adjustment Panel A in June of 1995.

- A site plan and an elevation have been submitted indicating a fence/wall/column proposal that reaches a maximum height of 7' 6". The site plan indicates that the proposal is about 170' in length to Hathaway Street, and approximately 40' in length perpendicular to Hathaway Street on the north and south sides of the property in the 40' front yard setback; and is approximately on the property line or about 16' from the pavement line.
- The submitted site plan denotes a continuous line of Nellie R. Stevens Holly bushes located immediately inside the proposed fence.
- The proposal would be located on the site where no single family home has frontage – the home directly west of the site "fronts" southward to Deloache Avenue and has an approximately 7' high open wrought iron fence in its required side yard along Hathaway Street.
- The Board Administrator conducted a field visit of the site and surrounding area along Northwest Highway (generally 500 feet north and south of the site) and noted two other visible fence above four feet high which appeared to be located in the front yard setback that have been previously described in the "General Facts" section of the case report
- As of September 7, 2010, three letters/emails had been submitted to staff in support of the proposal, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 7' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 3' 6" with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Harris**

I move that the Board of Adjustment grant application **BDA 090-085** 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: **Goins**

AYES: 5 – Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-091

BUILDING OFFICIAL’S REPORT:

Application of Robert Reeves for a variance to the front yard setback regulations at 5030 Park Lane. This property is more fully described as Lot 7 in City Block 10/5583 and is zoned R-1ac(A) which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and provide a 36.6 foot front yard setback which will require a variance of 3.4 feet.

LOCATION: 5030 Park Lane

APPLICANT: Robert Reeves

REQUEST:

- A variance to the front yard setback regulations of 3.4’ is requested in conjunction with maintaining a single family home, a portion of which is located in the site’s 40’ front yard setback.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is restricted in its developable area given its irregular shape – a lot with an area that is of a size (1.06 acres) typically found on lots zoned R-1ac(A) zoning (1 acre) but is unique and different from other lots zoned R-1ac(A) in that it is irregular in shape.

STANDARD FOR A VARIANCE:

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

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope,

that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- The minimum front yard setback on an R-1ac(A) zoned lot is 40 feet. The applicant has submitted a site plan indicating a structure that is located as close as 36.6' from the site's front property line (or 3.4' into the required 40' front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure that is located in the site's 40' front yard setback is approximately 90 square feet (or approximately 1 percent) of the denoted 8,301 square foot building footprint.
- The subject site is somewhat sloped, is irregular in shape (201' on the northeast; 285' on the southwest; 195' on the southeast; and 190' on the northwest, and according to the application is 1.06 acres in area. The site is zoned R-1ac(A) where lots are typically 1 acre in area.
- According to DCAD, the site is developed with the following:
 - a structure in "excellent" condition built in 2005 with 8,782 square feet of living area,
 - a 963 square foot attached garage; and
 - a 387 square foot attached garage.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included what the applicant described as "photographs and graphics" related to the application.

BACKGROUND INFORMATION:

Zoning:

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

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. BDA067-033, Property at 5030
Park Lane (the subject site)

On March 20, 2007, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6 feet. The board imposed the submitted revised site plan/section/elevation dated 1/19/07 as a condition to this request. The case report stated that the request was made in conjunction with constructing and maintaining the following in the site's 40' front yard setback on Park Lane on a site that was being developed with a single family home:

- An 8' high masonry wall with 9' 1 1/2" high columns;
- Two approximately 5' – 8' high gates (of unspecified materials) flanked by entry gate columns ranging in height from 10' – 11' 1/4".

Timeline:

- July 21, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 23, 2010: 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 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 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 request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 26, 2010 The applicant submitted additional information to the Board Administrator (see Attachment A).
- August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the

Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, 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 maintaining a portion of a single family home, part of which is located in the site's 40' front yard setback.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure that is located in the site's 40' front yard setback is approximately 90 square feet (or approximately 1 percent) of the denoted 8,301 square foot building footprint.
- The subject site is somewhat sloped, is irregular in shape (201' on the northeast; 285' on the southwest; 195' on the southeast; and 190' on the northwest, and according to the application is 1.06 acres in area. The site is zoned R-1ac(A) where lots are typically 1 acre in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) (Single family) 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 R-1ac(A) (Single family) zoning classification.
- If the Board were to grant the front yard variance of 3.4', imposing a condition whereby the applicant must comply with the submitted site plan, the existing structure encroaching into this setback would be limited to that what is shown on this plan which in this case is a relatively small portion of the single family home that is located 36.6' from the front property line or 3.4' into the 40' front yard setback.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Harris

I move that the Board of Adjustment grant application **BDA 090-091** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Goins

AYES: 5 – Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-062

BUILDING OFFICIAL’S REPORT:

Application of Jerry C. Moreno to appeal the nonconforming use compliance date set by the City Council on April 27, 2005 at 1623 N. Hall Street (AKA 1619 N. Hall Street). This property is more fully described as Lot 11 in City Block 3/0506 and is zoned PD-298 (Subarea 1) which requires that those uses that became nonconforming as a result of city council action on April 27, 2005, must be brought to conformance no later than April 26, 2010. The applicant requests a later conformance date for the nonconforming vehicle or engine repair or maintenance use.

LOCATION: 1623 N. Hall Street (AKA 1619 N. Hall Street)

APPLICANT: Jerry C. Moreno

REQUEST:

- An application is made for the Board of Adjustment to appeal a City Council ordinance-imposed compliance date of April 26, 2010 for a nonconforming vehicle or engine repair or maintenance use (DBA A-Auto Upholstery Paint and Body/Downtown Auto Upholstery) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

UPDATED GENERAL FACTS (September 2010):

- The Board Administrator informed the board members at their August 17th briefing and the public at the public hearing of staff's discovery the week prior to this public hearing of the fact that this application was not properly noticed/advertised, and as a result, action on this application must be delayed until the next regularly scheduled public hearing in order for staff to re-notice/re-advertise this application.
- As of September 7, 2010, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

ORIGINAL GENERAL FACTS (August 2010):

- City records indicate that a Certificate of Occupancy (CO # 9105031058) was issued on May 3, 1991, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1

may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.

- The owner of use on the site could transition the use to any use that is permitted by right in the site's PD 298 (Subarea 1) zoning classification.
- On June 7, 2010, a subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- As of August 9, 2010, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Subarea 1) (Planned Development)
North: PD No. 298 (Subarea 1) (Planned Development)
South: PD No. 298 (Subarea 1) (Planned Development)
East: PD No. 298 (Subarea 7) (Planned Development)
West: PD No. 298 (Subarea 1) (Planned Development)

Land Use:

The site is currently developed with nonconforming vehicle or engine repair or maintenance use (A-Auto Upholstery Paint and Body/Downtown Auto Upholstery). The area to the north appears to be undeveloped; the area to the east appears to be developed with commercial uses; the area to the south appears to be developed with office uses; and the area to the west appears to be 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 14, 2010: 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 11, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

June 7, 2010: A subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.

- June 7, 2010: A subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- August 3, 2010: 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 Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- August 17, 2010: The Board of Adjustment conducted a public hearing on this request and delayed action until their September 14th public hearing to allow staff to re-advertise and re-notice this application.
- August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The vehicle or engine repair or maintenance use on the subject site is a nonconforming use. City records indicate that a Certificate of Occupancy (CO # 9105031058) was issued on May 3, 1991, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to

the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.

- The Dallas Development Code states the following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recover his investment in the use (up to the date of nonconformance) by the conformance date set by this subsection of the ordinance which in this case is April 26, 2010.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- As is the case with any nonconforming use, the owner of the use could transition the nonconforming vehicle or engine repair or maintenance use on the site to any use that is permitted by right in the site's PD No. 298 (Subarea 1) zoning classification.
- As of September 7, 2010, the applicant/owner of the nonconforming use on the site had not submitted a response to the subpoena duces tecum and interrogatories.

BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2010

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-062**, hold this matter under advisement until **September 14, 2010** and order staff to re-notice and re-advertise this case.

SECONDED: **Jackson**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2010

APPEARING IN FAVOR: Jerry Moreno, 1623 N. Hall Street, Dallas, TX

APPEARING IN OPPOSITION: Michael Williamson, 3507 Bryan St., Dallas, TX

APPEARING FOR THE CITY: Charles Estee, 1500 Marilla St., 7DN, Dallas, TX

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 090-062**, on application of Jerry C. Moreno, **deny** the appeal of the compliance date requested by this applicant, because our evaluation of the property and testimony shows that the compliance date of **April 26, 2010** was reasonable and was supported by substantial evidence.

SECONDED: **Goins**

AYES: 5 – Richmond, Schweitzer, Harris, Hounsel, Goins

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Harris**

I move to adjourn this meeting.

SECOND: **Hounsel**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:17 P.M. - Board Meeting adjourned for **September 14, 2010**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

Note: For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.