

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, MAY 20, 2009**

<b>Briefing:</b>	<b>10:30 A.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>
<b>Public Hearing:</b>	<b>1:00 P.M.</b>	<b>L1FN CONFERENCE CENTER AUDITORIUM</b>

**Purpose:** To take action on the attached agenda, which contains the following:

- 1) Zoning Board of Adjustment appeals of cases the Building Official has denied.
- 2) And any other business that may come before this body and is listed on the agenda.

**\*All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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05-20-2009

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, MAY 20, 2009  
AGENDA

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BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	10:30 A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Kyra Blackston, Senior Planner**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Wednesday, April 15, 2009</b> Board of Adjustment Public Hearing Minutes	M1
BDA 089-053	3326 Mingo Street <b>REQUEST:</b> Of George D. King, Jr., represented by Ernie Ray, III, to reimburse the filing fees submitted in conjunction with requests for variances to the off-street parking and loading regulations	M2

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**UNCONTESTED CASES**

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BDA 089-048K	4525 Catina Lane <b>REQUEST:</b> Application of Tariq Jalil for a special exception to the fence height regulations	1
BDA 089-054	1924 Greenville Avenue (AKA: 1920 Greenville Avenue) <b>REQUEST:</b> Application of Jimmie Baugh, represented by Roger Albright, for a special exception to restore/reinstate a nonconforming alcoholic beverage establishment use	2

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**HOLDOVER CASE**

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BDA 089-029(K)	1610 Cedar Springs Road <b>REQUEST:</b> Application of Meहुल Patel represented by Robert Baldwin for a variance to the parking regulations	3
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**REGULAR CASES**

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BDA 089-053	3326 Mingo Street <b>REQUEST:</b> Application of George D. King, Jr., represented by Ernie Ray, III, for variances to the off-street parking and off-street loading regulations	4
BDA 089-057(K)	4341 Beechwood Lane <b>REQUEST:</b> Application of Larry and Jill Meletio for a special exception to the visibility obstruction regulations	5
BDA 089-058(K)	11306 Hillcrest Road <b>REQUEST:</b> Application of Robert G. Kipp, Jr. represented by Joshua Correa for a special exception to the visibility obstruction regulations	6

## EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B April 15, 2009 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

**REQUEST:** To reimburse the filing fees to be submitted in conjunction with requests for variances to the off-street parking and loading regulations

**LOCATION:** 3326 Mingo Street

**APPLICANT:** George D. King, Jr., represented by Ernie Ray, III

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers and reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter requesting a reimbursement of the filing fees submitted in conjunction with the requests for variances to the off-street parking and loading regulations, and copies of financial statements given to the Texas Department of Housing and Community Affairs (see Attachment A).

**Timeline:**

March 6, 2009 The applicant submitted a letter requesting a reimbursement of the filing fee submitted in conjunction with the requests for a variances to the off-street parking and loading regulations.

March 19, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 16, 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests for the fee reimbursement and variance requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

**FILE NUMBER:** BDA 089-048(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Tariq Jalil for a special exception to the fence height regulations at 4525 Catina Lane. This property is more fully described as Lot 7 in City Block A/5534 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:** 4525 Catina Lane

**APPLICANT:** Tariq Jalil

**REQUESTS:**

Special exceptions to the fence height regulations to construct and maintain a fence that is 9 foot and 6 inches in height in a required front yard setback.

**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:**

- This property is zoned R1ac(A), which restricts development to one dwelling unit.
- The applicant proposes to construct and maintain a fence that exceeds four feet in height in the 40 ' required front yard setback.

**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 currently under construction. The areas to the north, east, south, and west are developed with single family uses.

**Zoning/BDA History:**

BDA 078-099. On August 9, 2008, the Board of Adjustment, Panel B, granted a special exception to the single family regulations to allow for an additional dwelling unit.

**Timeline:**

February 26, 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.

April 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

April 24, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the May 8<sup>th</sup> 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 May public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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 zoned R-1ac (A) which restricts the height of fence in the front yard setback to four feet. The applicant proposes to construct a fence ranging in height from 6 foot to 9 foot and 6 inches in height.
- The proposed fence is 9 foot and 6 inches in height and runs approximately 180 feet parallel to the front property line and 75 feet perpendicular to the front property line.
- The submitted elevation illustrates a stucco fence 2 feet and 6 inches in height with an addition 3 feet and 6 inches of open wrought iron, and stucco columns with capstones ranging from 7 foot and 6 inches to 9 foot and 6 inches in height.
- 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.

**FILE NUMBER:** BDA 089-054

**BUILDING OFFICIAL'S REPORT:**

Application of Jimmie Baugh, represented by Roger Albright, for a special exception to restore/reinstate a nonconforming alcoholic beverage establishment use at 1924 Greenville Avenue (AKA: 1920 Greenville Avenue). This property is more fully described as being a 0.279 acre part of Lot 29 & 30 in City Block 1907 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to restore/reinstate a nonconforming alcoholic beverage establishment use which will require a special exception to the nonconforming use regulations.

**LOCATION:** 1924 Greenville Avenue (AKA: 1920 Greenville Avenue)

**APPLICANT:** Jimmie Baugh  
Represented by Roger Albright

**REQUEST:**

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for an "alcoholic beverage establishment" use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:** The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**GENERAL FACTS:**

- The Dallas Development Code defines "nonconforming use" as "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 nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code 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 nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

- The subject site is zoned CR (Community Retail) – a zoning district that permits an “alcoholic beverage establishment” use by SUP (Specific Use Permit) only.
- According to information from Dallas Central Appraisal District (DCAD), the property at 1920 Greenville Avenue is developed with a “retail strip” with 10,467 square feet that was constructed in 1930.
- According to the Building Inspection, a CO (Certificate of Occupancy) was first issued for an alcoholic beverage establishment use on the subject site on March 17, 1983 when the site was zoned LC (Light Commercial). The use appears to have become a nonconforming use with the adoption of Chapter 51A on February 4, 1987 when the LC Chapter 51 zoning classification was eliminated out of the new code and transitioned to a less cumulative CR (Community Retail) zoning district. The previous/last use at 1924 Greenville Avenue was a nonconforming alcoholic beverage establishment use that was issued on March 14, 2006 – a carry over from when the first CO was issued for this specific use in 1983 when it was permitted by right.
- Building Inspection has stated that these types of special exception request originate from when an owner/officer related to the property apply for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers need to submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- Building Inspection has stated that they do not know how long in excess of six months the use was discontinued, however the applicant’s representative has provided documentation of “Termination of Lease and Bill of Sale” between the Owner/Landlord and tenant doing business as Stout dated July 15, 2008.
- The nonconforming “alcoholic beverage establishment” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.

- Given provisions set forth in the Dallas Development Code, an “alcoholic beverage establishment” use can obtain “conforming use” status upon attaining a SUP from the City Council.
- The owner of the site could develop the site to any use that is permitted by right in the site’s existing CR (Regional Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- The applicant’s representative submitted additional documentation to staff beyond that submitted with the original application (see Attachment A). This information included a letter that outlined the following attachments included in the documentation:
  - Certificate of Occupancy issued March 8, 1983 for the use of 1924 Greenville Avenue at a nightclub (“Poor David’s Pub”).
  - City of Dallas Memo dated January 13, 1989 addressing the issue that GR uses are permitted at 1924 Greenville Avenue and that 1924 Greenville Avenue has adequate parking.
  - Selected portions of Ordinance No. 21735 dated June 23, 1993 that imposed for the first time a SUP requirement for bar, lounge or tavern uses in CR (f/k/a GR zoning).
  - Certificate of Occupancy issued March 17, 2006 reflecting the continued use of 1924 Greenville as a non-conforming bar doing business as Stout.
  - Issuance Certificate date March 4, 2006 reflecting Stout Bard located at 1924 Greenville being owned by Green Derby, L.P.
  - July 15, 2008 Termination of Lease between Owner/Landlord and Tenant doing business as Stout.
  - July 21, 2008 offer for 1924 Greenville for lease as bar/lounge on website of Owner’s Broker.
  - Clean and Show Permit issued by the City of August 8, 2008 allowing the property to be shown to prospective tenants.
  - Two page outline of some of the various steps taken by Owner to lease the property as a bar, lounge, tavern use between July 21, 2008 and March 9, 2009 (Leasing Agent Chris Bryant, now deceased).
  - November 14, 2008 Renovation Asbestos Survey performed to comply with the City of Dallas Code for future tenants as outlined in No. 8 above.
  - Lease dated January 1, 2009 (a date less than six months after discontinuance of the bar use by Stout) between Owner and Applicant herein showing the only allowed use to be bar/tavern and containing Dress Code.
  - Business Plan submitted by Applicants to Owner for bar use with weekly music by local and Texas bands (much like the original Poor David’s Pub in this location from 1983 to 2006).
  - Application for CO filed March 10, 2009 by new tenant for non-conforming alcoholic beverage establishment use.

- January 21, 2005 approval of BDA Case No. 045-133 granting special exceptions to reinstate the non-conforming rights for an alcoholic beverage use at 3606 Greenville, Suite A and supporting documentation.
- January 21, 2005 approval of BDA Case No. 045-136 granting special exceptions to reinstate the non-conforming rights for an alcoholic beverage use at 3606 Greenville, Suite B and supporting documentation.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CR (Community Retail)  
North: CR (Community Retail)  
South: CR (Community Retail)  
East: CR (Community Retail)  
West: CR (Community Retail)

### **Land Use:**

The subject site is developed with a commercial/retail structure this is currently vacant. The areas to the north, south, and west are developed with retail uses; and the area to the east is developed with a surface parking lot.

### **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:**

- March 25, 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.
- April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 17, 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May 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.

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

May 6, 2009 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

### **STAFF ANALYSIS:**

- This special exception request is made to restore nonconforming use rights (and obtain a Certificate of Occupancy) for a nonconforming "alcoholic beverage establishment" use that has been discontinued for six months or more.
- The "alcoholic beverage establishment" use on the subject site is a nonconforming use that appears to have become a nonconforming use in 1989 during the city-wide zoning transition program.
- The applicant has the burden of proof in establishing the following related to the special exception request:
  - There was a clear intent not to abandon the nonconforming "alcoholic beverage establishment" use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the "alcoholic beverage establishment" use was vacant for a period of six (6) months or more. Granting this request would restore the "alcoholic beverage establishment" use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning (SUP) and obtain approval from City Council in order to make an "alcoholic beverage establishment" use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to "Nonconforming Uses and Structures").

**FILE NUMBER:** BDA 089-029(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Mehul Patel represented by Robert Baldwin for a variance to the parking regulations at 1610 Cedar Springs Road. This property is more fully described as Lot 1 in City Block A/297 and is zoned PD-193 (I-2), which requires parking to be provided. The applicant proposes to construct a nonresidential structure for hotel or motel use and provide 199 of the required 239 parking spaces which will require a variance of 40 spaces (16.7% reduction).

**LOCATION:** 1610 Cedar Springs Road

**APPLICANT:** Mehul Patel  
Represented by Robert Baldwin

**REQUEST:**

- A variance to the off street parking regulations is requested to reduce the required amount of parking by 16.7% by providing 199 of the 239 parking spaces required.
- A special exception to the visibility obstruction regulation is requested for the drive approach on Caroline St.

**STAFF RECOMMENDATION (variance to off-street parking):**

Denial

Rationale:

- The Development Services Senior Engineer recommends that this request be denied because "the parking demand study dated 4/22/09 did not clearly demonstrate that reduction of 16.7% is justified."
- The applicant had not substantiated how the this parcel of land differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in the same PD 193 zoning.

**STANDARD FOR A VARIANCE TO THE OFF-STREET PARKING REGULATIONS:**

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor are for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: 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; the variance is necessary to permit development of specific parcel of land that differs from other parcels of land by being of such 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 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.

**STAFF RECOMMENDATION (special exception to visibility obstruction):**

Approval.

Rationale:

- The Development Services Senior Engineer has no objections to the special expectation to the visibility obstruction at the drive approach on Caroline Street.

**Standard for Visual Obstruction:**

The board shall grant a special exception to the requirements of this section when, in the opinion of the board, the item will not constitute a traffic hazard.

**GENERAL FACTS:**

- The subject site is currently a parking lot. The proposed use is a hotel/motel use and restaurant.
- The site is in Planned Development District 193. The Dallas Development Code requires the following off-street parking:
  - 1 space per for each guest room up to 250 rooms
  - 1 space per every 100 square feet of restaurant floor area.
- The applicant proposes to provide 199 of the 239 off-street parking spaces required.
- A portion of the building will be located within the drive approaches on Caroline Street.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 193 (I-2) (Industrial)  
North: PD 193 (I-2) (Industrial)  
South: PD 193 (I-2) (Industrial)  
East: PD 193 (PDS 24)  
West: PD 193 (MF-3) (multi-family)

**Land Use:**

The subject site is developed with a parking lot. The property to the north is developed with a parking lot. The property to the east is under construction. The property to the south is developed with a restaurant use. The property to the west is developed with a multi-family use.

**Zoning/BDA History:**

There is no case history for this site or sites in the immediate area.

**Timeline:**

January 29, 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.

February 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 24, 2009: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via letter:

- 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 March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the March 6<sup>th</sup> 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 March public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation

Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

March 2, 2009: The applicant's representative submitted a letter to the Board for its consideration (see attachment B).

March 18, 2009 The Board of Adjustment, Panel B voted to hold this case under advisement until May 20, 2009.

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

May 8, 2009: The Development Services Senior Engineer submitted a comment sheet (see attachment).

#### **STAFF ANALYSIS:**

- The site is located in Planned Development district No. 193 that requires a hotel/motel use to provide 1 space per guest room up to 250 guest rooms and 1 space per 100 square feet of floor area for restaurant use.
- The applicant is seeking a parking variance of 40 spaces or 16.7% in conjunction with the construction and maintenance of a hotel/motel and restaurant use. The applicant proposes to provide 199 of the required 239 parking spaces.
- The submitted site plan illustrates the site will provide 199 off-street parking spaces in a 5 level parking garage. The proposed restaurant use is comprised of two restaurants, one on the north corner of the property and the other on the west corner.
- The total floor area of the restaurants is 8055 square feet and requires 81 parking spaces. The hotel will have 158 guest rooms and requires 158 off-street parking spaces. The applicant is proposes to provide 41 of the required 81 parking spaces for restaurant use and 158 of the required 158 parking spaces for the guest rooms.
- The applicant submitted a parking study to support the request for a variance to the required off-street parking spaces. The Development Services Senior Engineer is recommending denial of this request.
- The submitted site plan illustrates that a portion of the building will be located within the visibility obstruction triangles for the drive approach on Caroline Street. The Development Services Senior Engineer has reviewed the site plan and has no objection to the request.
- If the Board grants the variance to the off-street parking regulations, staff recommends imposing the submitted site plan as a condition.
- If the Board grants the special exception to the visibility obstruction regulations, staff recommends imposing the submitted site plan as a condition.



**FILE NUMBER:** BDA 089-053

**BUILDING OFFICIAL'S REPORT:**

Application of George D. King, Jr., represented by Ernie Ray, III, for variances to the off-street parking and off-street loading regulations at 3326 Mingo Street. This property is more fully described as Lot 1A in City Block B/2628 and is zoned MF-2(A) which requires off-street parking and off-street loading to be provided. The applicant proposes to construct structures for a retirement housing use and provide 140 of the required 218 parking spaces which will require a variance of 78 spaces to the off-street parking regulations, and provide 1 small off-street loading space instead of the required 1 medium and 1 large off-street loading space which will require a variance to the off-street loading regulations.

**LOCATION:** 3326 Mingo Street

**APPLICANT:** George D. King, Jr.  
Represented by Ernie Ray, III

**REQUESTS:**

- The following appeals have been made in this application on a site that is partially developed with a church (Brethren Baptist Church):
  1. A variance to the off-street parking regulations of 78 parking spaces (or a 36% reduction of the required off-street parking) is requested in conjunction with constructing and maintaining a retirement housing complex (Carpenter's Point) on the subject site. The applicant proposes to provide 140 of the required 218 parking spaces.
  2. A variance to the off-street loading regulations is requested in conjunction with constructing and maintaining a retirement housing complex on the site and providing 1 small loading space instead of the required 1 medium and 1 large off-street loading space.

**STAFF RECOMMENDATION:**

Denial of both requests

Rationale:

- The applicant had not substantiated how a literal enforcement of the code provisions would result in unnecessary hardship whereby the variances are necessary to permit development of the subject site in that it is different 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 MF-2(A) zoning.

### **STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is 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; 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 the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

### **GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirements for retirement housing:
  - 0.7 spaces per dwelling unit or suite, plus one space per 300 square feet of floor area not in a dwelling unit or suite. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to Section 51A-4.305.

The application materials and Building Official's Report state that 78 (or 36 percent) of the required 218 spaces are requested to be varied.

- The Dallas Development Code requires the following off-street loading requirements for retirement housing:
  - 0 to 50,000 square feet – none
  - 50,000 – 100,000 square feet – 1
  - 100,000 – 300,000 square feet – 2
  - Each additional 200,000 square feet or fraction thereof – 1 additional.

The Dallas Development Code required that the first required off-street loading space must be of the medium or large size and at least 40 percent of the required off-street loading must be of the medium or large size except for single retail or personal service uses over 60,000 square feet and hotels and motels.

The application materials and Building Official's Report state that 1 small loading space is to be provided as opposed to the required 1 medium and 1 large off-street loading space.

- The Dallas Development Code allows the Board of Adjustment two different ways in which to consider reducing required off-street parking on a site each with its own different standard in which to grant the request. One way the board can consider a reduction to the off-street parking requirement is by a variance to the off-street

parking regulations - an option in any circumstance. The other way the board can consider a reduction to the off-street parking requirement is by a special exception to the off-street parking regulations - an option that is only available in certain zoning districts and/or when the amount of off-street parking to be reduced is 25 percent or less than the required off-street parking.

- In this particular case, the applicant must seek a variance to the off-street parking regulations given that the applicant seeks a 36 percent reduction of the off-street parking requirement.
- The site appears to be relatively flat, is rectangular in shape (approximately 500' x 350') and is approximately 4 acres in area. The site is zoned MF-2 (A).
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter that provided additional details about the requests.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: MF-2 (Multifamily)  
North: R-5(A) & NS(A) (Single family 5,000 square feet & Neighborhood Service)  
South: MF-2 (Multifamily)  
East: D(A) (Duplex)  
West: R-5(A) (Single family 5,000 square feet)

#### **Land Use:**

The subject site is partially developed with a church use (Brethren Baptist Church). The area to the north is developed with single family uses and undeveloped land; the area to the east is developed with commercial uses and a cemetery; the area to the south is undeveloped; and the area to the west is developed with single family uses.

#### **Zoning/BDA History:**

1. Miscellaneous Item #2, BDA089-053, Property at 3326 Mingo Street (the subject site) On May 20, 2009, the Board of Adjustment Panel B will consider reimbursing the filing fee submitted in conjunction with the application on the subject site.

#### **Timeline:**

- March 6, 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.
- April 16, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- April 16, 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the May 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the requests; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May 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.
- March 5, 2009 The Development Services Senior Engineer submitted a review comment sheet with the following comments: "1) There is no supporting documentation study to support the request for reduction of parking spaces. 2) No objection to the off-street loading space requirement."

### **STAFF ANALYSIS:**

- These requests focus on the applicant's proposal to construct/maintain a retirement housing complex where 140 (or 64 percent) of the required 218 off-street parking spaces and 1 of the required 2 loading spaces will be provided.
- The applicant's representative has submitted a letter stating that if the retirement housing project were built with open outdoor corridors (like most apartment complexes) the project would be able to comply with the off-street parking requirement since only 136 spaces would be required and 140 spaces are proposed to be provided. (According to the applicant's representative, adding the corridors in the complex raises the parking requirement from 136 to 218 spaces).
- The Development Services Senior Engineer has submitted a review comment sheet with the following comments: 1) There is no supporting documentation study to support the request for reduction of parking spaces. 2) No objection to the off-street loading space requirement."
- The site appears to be relatively flat, is rectangular in shape (approximately 500' x 350') and is approximately 4 acres in area. The site is zoned MF-2 (A).
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the off-street parking and loading 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 off-street parking and loading variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) (Multifamily) zoning classification.
- The off-street parking and loading variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2(A) (Multifamily) zoning classification.

**FILE NUMBER:** BDA 089-057(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Larry and Jill Meletio for a special exception to the visibility obstruction regulations at 4341 Beechwood Lane. This property is more fully described as Lot 71 in City Block 5542 and is zoned R-10(A), which requires a 45 foot visibility triangle at street intersections. The applicant proposes to maintain vegetation at a single family residential structure in a required visibility obstruction triangle which will require a special exception.

**LOCATION:** 4341 Beechwood Lane

**APPLICANT:** Larry and Jill Meletio

**REQUEST: REQUESTS:**

Special exceptions to the visibility obstruction regulations are requested in conjunction with maintaining vegetation in the properties 45 foot visibility triangle at the street intersection and 20 foot visibility triangles at the driveway approaches.

**STAFF RECOMMENDATION (visibility obstruction special exception):**

Denial.

Rationale:

- The Development Services Senior Engineer recommends this request be denied (see attachment).

**Standard for Visual Obstruction:**

The board shall grant a special exception to the requirements of this section when, in the opinion of the board, the item will not constitute a traffic hazard.

**GENERAL FACTS:**

- The Dallas Development Code requires parcels to maintain a 45 foot visibility triangle at intersections and 20 foot visibility triangles at drive approaches.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-10 (A) (Single family residential 10,000 square feet).  
North: R-10 (A) (Single family residential 10,000 square feet).  
South: R-10 (A) (Single family residential 10,000 square feet).  
East: R-1ac (A) (Single family residential 1 acre).  
West: R-10 (A) (Single family residential 10,000 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:**

B 94-090. On August 9, 1994, the Board of Adjustment granted a variance to the setback regulations for enclosed off-street parking.

### **Timeline:**

- March 19, 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.
- April 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- April 24, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
  - the May 8<sup>th</sup> 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 May public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

- May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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.
- May 7, 2009 : The Development Services Senior Engineer submitted a review comment sheet recommending denial special exception to the visibility obstruction regulations.

**STAFF ANALYSIS:**

- The property is developed with a single family structure that is located at the corner of Beechwood Lane and Huntington Road.
- The applicant proposes to maintain vegetation that is located within the 45 visibility triangle at the intersection of Beechwood Lane and Huntington Road.
- The applicant proposes to maintain vegetation in the 20 foot visibility drive approaches on Beechwood Lane.
- The Development Services Senior Engineer recommends denial of the special exception for visibility obstruction.
- If the Board grants the special exception to the visibility obstruction regulations, staff recommends imposing the submitted site plan and elevation as a condition.

**FILE NUMBER:** BDA 089-058(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Robert G. Kipp, Jr. represented by Joshua Correa for a special exception to the visibility obstruction regulations at 11306 Hillcrest Road. This property is more fully described as Lot 1 in City Block 10/7331 and is zoned R-16(A), which requires a 20 foot visibility triangle at driveway approaches and requires a 45 foot visibility triangle at street intersections. The applicant proposes to maintain vegetation at a single family residential structure in required visibility obstruction triangles which will require special exceptions.

**LOCATION:** 11306 Hillcrest Road.

**APPLICANT:** Robert G. Kipp, Jr.  
Represented by Joshua Correa

**REQUEST: REQUESTS:**

Special exceptions to the visibility obstruction regulations are requested in conjunction with maintaining vegetation in the properties 45 foot visibility triangle at the street intersection and 20 foot visibility triangles at the driveway approaches.

**STAFF RECOMMENDATION (visibility obstruction special exception):**

Denial.

Rationale:

- The Development Services Senior Engineer recommends this request be denied (see attachment).

**Standard for Visual Obstruction:**

The board shall grant a special exception to the requirements of this section when, in the opinion of the board, the item will not constitute a traffic hazard.

**GENERAL FACTS:**

- The Dallas Development Code requires parcels to maintain a 45 foot visibility triangle at intersections and 20 foot visibility triangles at drive approaches.

**BACKGROUND INFORMATION:**

## **Zoning:**

Site: R-1ac(A) (Single family residential 1 acre).  
North: R-1ac(A) (Single family residential 1 acre).  
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:**

There is no zoning or Board of Adjustment case history for this site or properties in the immediate area.

## **Timeline:**

- March 18, 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.
- April 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- April 24, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained 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 May 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
  - the May 8<sup>th</sup> 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 May public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

May 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May 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.

May 7, 2009 : The Development Services Senior Engineer submitted a review comment sheet recommending denial special exception to the visibility obstruction regulations.

### **STAFF ANALYSIS:**

- The property is developed with a single family structure that is located at the corner of Northaven Road and Hillcrest Road.
- The applicant proposes to maintain vegetation that is located within the 45 visibility triangle at the intersection of Northaven (Midbury Dr.) Road and Hillcrest Road. The applicant has submitted a site plan showing a 20 foot visibility triangle provided at the intersection of Northaven Road and Hillcrest Road.
- The applicant proposes to maintain vegetation in the 20 foot visibility drive approaches on Northaven Road and Hillcrest Road.
- The Development Services Senior Engineer recommends denial of the special exception for visibility obstruction.
- If the Board grants the special exception to the visibility obstruction regulations, staff recommends imposing the submitted site plan and elevation as a condition.