

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, OCTOBER 20, 2010

Briefing:	11:00 A.M.	L1FN CONFERENCE CENTER AUDITORIUM
Public Hearing:	1:00 P.M.	L1FN CONFERENCE CENTER AUDITORIUM

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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10-20-2010

ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, OCTOBER 20, 2010
AGENDA

BRIEFING	L1FN CONFERENCE CENTER AUDITORIUM	11:00 A.M.
PUBLIC HEARING	L1FN CONFERENCE CENTER AUDITORIUM	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

Approval of the Wednesday, September 15, 2010 Board of Adjustment Public Hearing Minutes	M1
Consideration of Panel A's 2011 Public Hearing Schedule	M2

UNCONTESTED CASES

BDA 090-098	9733 Old Seagoville Road REQUEST: Application of Karl A. Crawley of Masterplan for special exceptions to the fence height and visual obstruction regulations	1
BDA 090-099	12330 – 12340 Inwood Road REQUEST: Application of Elizabeth Rader, represented by Peter Kavanagh, for a special exception to the parking regulations	2

HOLDOVER CASE

BDA 090-063	3400 Ross Avenue REQUEST: Application of Julio Hernandez for an extension of the nonconforming use compliance date	3
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REGULAR CASE

BDA 090-095

4501 Cole Avenue

4

REQUEST: Application of Robert Clayton, represented by Roger Albright, for a variance to the front yard setback regulations and for a special exception to the landscape regulations

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 September 15, 2010 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

Consideration of Panel A's 2011 Public Hearing Schedule

FILE NUMBER: BDA 090-098

BUILDING OFFICIAL'S REPORT:

Application of Karl A. Crawley of Masterplan for special exceptions to the fence height and visual obstruction regulations at 9733 Old Seagoville Road. This property is more fully described as a 29.44 acre tract in City Block 7880 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet and requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a 6-foot high which will require a 2-foot special exception to the fence height regulations, and to locate and maintain items in required visibility obstruction triangles which will require special exceptions to the visual obstruction regulations.

LOCATION: 9733 Old Seagoville Road

APPLICANT: Karl A. Crawley of Masterplan

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a public high school (H. Grady Spruce):
 1. Special exceptions to the fence height regulations of 2' are requested in conjunction with maintaining a 6' high chain link fence and constructing/maintaining 6' high chain link gates that surround/will surround a surface parking lot for the school in the site's 25' front yard setbacks along St. Augustine Drive on the west, Grady Lane on the north, and Crenshaw Drive on the east.
 2. Special exceptions to the visual obstruction regulations are requested in conjunction with maintaining portions of the 6' high chain link fence located in the four 20' visibility triangles at two driveways into the site/surface parking lot from Crenshaw Drive, and installing and maintaining two new sliding gates at these drive approaches which (if slid opened) would be located in two drive approach visibility triangles on Crenshaw Drive.

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.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Approval, subject to the following conditions:

1. Compliance with the submitted site plan is required.

2. Items in the visibility triangles are limited to open chain link and/or open metal materials.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has no objections to the requests on the condition that the items in the visibility triangles are open construction (i.e. chain link).
- The street in which the special exceptions are located is one with reduced speed School Zones.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

GENERAL FACTS (related to the fence height special exception):

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard. The portion of the site that is the focus of this application has three 25' front yard setbacks: St. Augustine Drive on the west, Grady Lane on the north, and Crenshaw Drive on the east.
The applicant has submitted a site plan document indicating a "New 6' H. Chain Line Fence & Gates @ Parking Lot Perimeter." (No fence or gate elevation has been submitted in conjunction with this request).
- The following additional information was gleaned from the submitted site plan:
 - Along St. Augustine Drive on the west side of the site: Approximately 400' in length parallel to the street, approximately 2' from the site's front property line or about 10' from the street pavement line; about 3 singles family homes front the proposal.
 - Along Grady Street on the north side of the site: Approximately 360' in length parallel to the street, approximately 23' from the site's front property line or about 32' from the street pavement line, about 5 single family homes front the proposal.
 - Along Crenshaw Street on the east side of the site: Approximately 440' in length parallel to the street, approximately 2' from the site's front property line or about 15' from the street pavement line, no homes front the proposal.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.

- On October 4, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information a letter that provided additional details about the requests made in this application.

GENERAL FACTS (related to the visual obstruction special exceptions):

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
 - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
 - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A site plan has been submitted that shows small lengths of the 6' high chain link fence located in four 20' visibility triangles on either side of two driveways into the site/parking lot from Crenshaw Street, and two "sliding gates" that would be located in two of the four 20' visibility triangles at the driveways into the site from Crenshaw Street.
- On October 4, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information a letter that provided additional details about the requests made in this application.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: R-7.5 (A) (Single family district 7,500 square feet)
South: R-1 (A) (Single family district 1 acre)
East: D (A) & R-7.5 (A) (Duplex and Single family district 7,500 square feet)
West: R-7.5 (A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a public high school (H. Grady Spruce). The areas to the north and west are developed with single family uses or undeveloped lots; the area to the east is developed with open space.

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:

- August 31, 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.
- September 16, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- September 16, 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 October 4th deadline to submit additional evidence for staff to factor into their analysis; and the October 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- September 27, 2010: The Building Inspection Senior Plans Examiner/Development Code Specialist submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "All applicable permits must be obtained."
- October 4, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 4, 2010: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "No objection to fence height. For most of the visibility triangles, I have no objection provided that the fences are open construction (i.e. chain link) and sliding gates. The vegetation at the SE corner on Crenshaw needs to be cleared (both the 20 x 20 and the 400 feet intersection sight distance need to be provide OR move the driveway. I have notified the street department about clearing the necessary ROW. Recommend the applicant call Streets at (214) 671-0737 to follow up on clearing the visibility clip."

STAFF ANALYSIS (related to the fence height special exceptions):

- These requests focus on maintaining a 6' high chain link fence and constructing/maintaining 6' high chain link gates that surround/will surround a surface parking lot for the school in the site's 25' front yard setbacks along St. Augustine Drive on the west, Grady Lane on the north, and Crenshaw Drive on the east – a 6' high fence that (according to the applicant) recently replaced a 4' high chain link fence. (Note that while the fence that is an issue in this application is located on the site, the gates that are also an issue in this application were not installed on the site at the time of the Board Administrator's field visit on September 21, 2010).
- A site plan has been submitted that indicates the following:
 - Along St. Augustine Drive on the west side of the site: Approximately 400' in length parallel to the street, approximately 2' from the site's front property line or about 10' from the street pavement line; about 3 single family homes front the proposal.
 - Along Grady Street on the north side of the site: Approximately 360' in length parallel to the street, approximately 23' from the site's front property line or about 32' from the street pavement line, about 5 single family homes front the proposal.
 - Along Crenshaw Street on the east side of the site: Approximately 440' in length parallel to the street, approximately 2' from the site's front property line or about 15' from the street pavement line, no homes front the proposal.

No fence or gate elevation has been submitted in conjunction with this request, however the site plan does denote "new 6' H. chain link fence & gates @ parking lot perimeter."

- No other fences above four (4) feet high which appeared to be located in a front yard setback were noted in a field visit of the site and surrounding area by the Board Administrator.
- As of October 12, 2010, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 2' will not adversely affect neighboring property.
- Granting these special exceptions of 2' with a condition imposed that the applicant complies with the submitted site plan would provide assurance that the fence exceeding 4' in height would be located and maintained in the locations and of the heights and materials as shown on this document.
- Note that if the board were to grant these requests and impose the submitted site plan as a condition, but deny the requests for the special exceptions to the visual obstruction regulations, notations would be made of such action on the submitted site plan whereby the location of the items in the visibility triangles would not be "excepted."

STAFF ANALYSIS (related to the visual obstruction special exceptions):

- These requests focus on maintaining small lengths of the 6' high chain link fence located in four 20' visibility triangles on either side of two driveways into the

- The Sustainable Development and Construction Department Project Engineer submitted a Review Comment Sheet that states how he generally supports these requests on the condition that the items located in the triangles be limited to that what is shown on the site plan – open chain link fence and gates.
- The applicant has the burden of proof in establishing that granting the special exceptions to the visual obstruction regulations in conjunction will not constitute a traffic hazard.
- If the Board chooses to grant these requests, subject to compliance with the submitted site plan, the 6' high chain link fence and gates would be "excepted" into the four 20' visibility triangles located at the driveways into the site from Crenshaw Street as shown on this document.
- Note that if the board were to grant these requests and impose the submitted site plan as a condition, but deny the requests for the special exceptions to the fence height regulations, notations would be made of such action on the submitted site plan whereby the height of the fence higher than 4' in the site's front yard setbacks would not be "excepted."

FILE NUMBER: BDA 090-099

BUILDING OFFICIAL'S REPORT:

Application of Elizabeth Rader, represented by Peter Kavanagh, for a special exception to the parking regulations at 12330 – 12340 Inwood Road. This property is more fully described as Lot 2A in City Block A/8401 and is zoned PD No. 252 which requires parking to be provided. The applicant proposes to construct and maintain a structure for personal service, office, medical clinic, and general merchandise or food store uses and provide 151 of the required 169 parking spaces which will require a special exception of 18 spaces.

LOCATION: 12330 – 12340 Inwood Road

APPLICANT: Elizabeth Rader
Represented by Peter Kavanagh

REQUEST:

- A special exception to the off-street parking regulations of 18 parking spaces (or a 11 percent reduction of the required off-street parking) is requested in conjunction with transitioning 6,600 square feet within an existing office structure from “office” use to a “personal service” (i.e. testing prep center) use on a site developed with two structures one of which appears to be a two-story office structure, the other is developed with a one-story retail structure/use (Fabric Factory). The applicant proposes to provide 151 of the required 169 off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception of 18 spaces shall automatically and immediately terminate if and when the office, medical clinic, general merchandise or food store, and personal service uses on the site is changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer has no objections to this request.
- The applicant has substantiated how the parking demand generated by the office, medical clinic, general merchandise or food store, and personal service uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or

(B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:
 - Office: 1 space for 333 square feet of floor area.
 - General merchandise or food store greater than 3,500 square feet: 1 space for 200 square feet of floor area.
 - Medical clinic: 1 space per 200 square feet of floor area.
 - Personal service use: 1 space per 200 square feet of floor area.The applicant proposes to provide 151 (or 89 percent) of the required 169 off-street parking spaces in conjunction with the site being developed with a combination of the uses mentioned above.
- On October 4, 2010, the applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 252 (Planned Development)
North: CR (Community Retail)
South: CR (Community Retail)
East: R-16(A) (Single family residential 16,000 sq ft)
West: PD No. 353 (Planned Development)

Land Use:

The subject site is developed with two structures one of which appears to be a two-story office structure, the other is developed with a one-story retail structure/use (Fabric Factory). The areas to the north and south are developed with retail uses; the area to the east is a tollway (The Dallas North Tollway); and the area to the west is developed as a private school (The Jesuit School).

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:

August 30, 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.

September 16, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 16, 2010: 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 October 4th deadline to submit additional evidence for staff to factor into their analysis; and the October 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 4, 2010: The applicant's representative forwarded additional information on this application to staff (see Attachment A).

October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

October 7, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- This request focuses with transitioning 6,600 square feet within an existing office structure from "office" use to a "personal service" (i.e. testing prep center) use on a site developed with two structures one of which appears to be a two-story office structure, the other is developed with a one-story retail structure/use (Fabric Factory). The applicant proposes to provide 151 of the required 169 off-street parking spaces.
- The applicant has stated that there are no proposed plans to increase the size of the two existing structures on the site, and that the special exception to the parking regulations is triggered by the plans to transition part of the square footage within the office structure (6,660 of its 22,511 square feet) to a use with a greater parking requirement. (Office use requires one space per 333 square feet; personal service use requires one space per 200 square feet).
- The Sustainable Development Department Project Engineer has no objections to this request.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing/proposed uses on the site does not warrant the number of off-street parking spaces required, and

- The special exception of 18 spaces (or an 11 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 18 spaces automatically and immediately terminates if and when the office, medical clinic, general merchandise or food store, and personal service uses are changed or discontinued, the applicant would be allowed to develop/maintain the site with these specific uses and provide only 151 of the 169 code required off-street parking spaces.

FILE NUMBER: BDA 090-063

BUILDING OFFICIAL'S REPORT:

Application of Julio Hernandez to appeal the nonconforming use compliance date set by the City Council on April 27, 2005 at 3400 Ross Avenue. This property is more fully described as a 4,750 square foot tract in City Block 0512 and is zoned PD-298 (Subarea 1) which required 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: 3400 Ross Avenue

APPLICANT: Julio Hernandez

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 (EZ Auto Repair/EZ Auto Service) 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 (October 2010):

- The Board of Adjustment Panel B conducted a public hearing on this application on August 18, 2010, and delayed action until October 20th to allow the applicant an opportunity to provide answers to a subpoena duces tecum and interrogatories sent to him by the City in June of 2010.
- On September 8, 2010, the applicant provided answers to the interrogatories and copies of the requested documents. (Attachment A is a copy of the applicant's answers).

ORIGINAL GENERAL FACTS (August 2010):

- City records indicate that a Certificate of Occupancy (CO # 0310081026) was issued on October 23, 2003, 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 6) (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 (EZ Auto Repair/EZ Auto Service). The area to the north appears to be vacant commercial use; the areas to the east, south and west appear to be developed with commercial 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 25, 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 B.
- 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 18, 2010: The Board of Adjustment Panel B conducted a public hearing on this request and delayed action until their October 20th public hearing.

September 8, 2010: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, 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:

- 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 # 0310081026) was issued on October 23, 2003, 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.
- On September 8, 2010, the applicant/owner of the nonconforming use on the site submitted a response to the subpoena duces tecum and interrogatories (see Attachment A) whereby the applicant/owner (Julio Hernandez) has stated that "Mr. Julio believes that it will require at least four years to recoup the remaining \$50,000. dollars that was invested."

1:47 P.M.: Executive Session Begins

2:03 P.M.: Executive Session Ends

BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2010

APPEARING IN FAVOR: Julio Hernandez, 3400 Ross Ave., Dallas, TX

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

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

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 090-063**, hold this matter under advisement until **October 20, 2010**.

SECONDED: **Wilson**

AYES: 5– Reynolds, Gillespie, Chernock, Wilson, Stefan

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

FILE NUMBER: BDA 090-095

BUILDING OFFICIAL'S REPORT:

Application of Robert Clayton, represented by Roger Albright, for a variance to the front yard setback regulations and for a special exception to the landscape regulations at 4501 Cole Avenue. This property is more fully described as Lot 1 in City Block L/1536 and is zoned PD No. 193 which requires a front yard setback of 10 feet and requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide a 3-foot 11-inch front yard setback, which will require a 6-foot 1-inch variance to the front yard setback regulations, and to provide an alternate landscape plan which will require a special exception to the landscape regulations.

LOCATION: 4501 Cole Avenue

APPLICANT: Robert Clayton
Represented by Roger Albright

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with two structures, one of which is a restaurant use (Taverna) with an approximately 2,100 square foot building footprint and is not part of this application; the other of which once housed a restaurant use (Chip's Hamburgers) with an approximately 1,600 square foot building footprint and is to be added to and become a new restaurant use (La Fiorentina) and is the focus of the following requests:
 1. A variance to the front yard setback regulations of 6' 1" is requested in conjunction with constructing and maintaining an approximately 380 square foot "pergola" structure, part of which is to be located in the site's 10' front yard setback along Armstrong Avenue; and
 2. A special exception to the landscape regulations is requested in conjunction with the construction and maintenance of the proposed "pergola" structure mentioned above that requires a variance to the front yard setback regulations, and other dining area expansions of one of the structures on the site shown on the submitted site plan that do not require variances.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- Staff concludes that there is no property hardship to the site that warrants a front yard variance which in this case is requested to construct and maintain a pergola structure that would attach to one of two existing commercial structures on the

- The applicant has not substantiated how either the restrictive area, shape, or slope of the site/lot preclude it from being developed in a manner commensurate with development found on other PD No. 193 (LC Subdistrict) zoned lots.

STAFF RECOMMENDATION (landscape special exception):

Approval, subject to the following conditions:

1. Compliance with the submitted site/landscape plan is required.
2. The existing sidewalk must be fully clear of obstructions at all times. Vegetation along the façade of the rear structure must be pruned back to eliminate any obstacles to clear pedestrian movement.
3. If either of the large mature canopy trees should die, or be removed, it must be replaced with a large canopy tree, approved by the Building Official, at a minimum of 4 caliper inches and in the approximate location of the original tree.
4. The landscape conditions of PD No. 193 will be required on this property for any change from the current use or redevelopment of the property.

Rationale:

- The City's Chief Arborist recommends approval of this request whereby, if the conditions mentioned above are imposed, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.
- In addition, in this particular case, the landscape materials that are proposed on the site appear to be justified (the site complies with the general planting and special planting area requirements of the ordinance) particularly given the existing site constraints (existing sidewalks, existing utility lines, public transit seating areas) that preclude the applicant from fully complying with the landscape requirements.

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,

- (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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

GENERAL FACTS (variance):

- The minimum front yard setback on a PD No. 193 (LC) zoned lot is 10 feet. The applicant has a site plan indicating that the structure that is the focus of this application is located 3' 11" from the site's front property line along Armstrong Avenue or 6' 1" into the required 10' front yard setback. (Note that an "existing patio" shown as part of the other structure on the subject site that may be a structure in the required setback is not part of this application per revisions denoted on the site plan by the applicant's representative on September 24th. Additionally note that while the site has two 10' front yard setbacks, no part of this application is to vary any structure that encroaches into the site's required 10' front yard setback along Cole Avenue).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed "pergola" structure that is to be located in the site's Armstrong Avenue 10' front yard setback is approximately 190 square feet (or approximately 1/2) of the approximately 380 square foot building footprint.
- The site is relatively flat, rectangular in shape (180' x 75'), and 13,500 square feet in area. The site is zoned PD No. 193 (LC). The site has two 10' front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the site is developed with the following:
 - a "restaurant" with 2,770 square feet built in 1920;
 - a "free standing retail store" with 2,160 square feet built in 1910.

GENERAL FACTS (landscape special exception):

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or

The applicant has submitted a site plan (in this case, alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically the established “sidewalks” and “trees” requirements of the ordinance.

- On October 12, 2010, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the landscape special exception request (see Attachment A). The memo stated the following:
 - The special exception request is triggered by new construction and renovation.
 - Deficiencies:
 1. Sidewalks – Required: 6’ wide between 5’ – 12’ from back of curb. (The sidewalks on both streets are 4’ wide, and the sidewalk on Cole extends beyond 12’).
 2. Trees – Required: One tree per 25’ of street frontage to be planted in the tree planting zone between 2.5’ – 5’ from back of curb. (In this case, 3 of the required 10 trees are provided in the tree planting zone. Tree grates are not provided).
 - Factors:
 - Existing site is conducting renovations and expansion of seating areas. The site complies with the general planting and special planting area requirements.
 - Overhead power lines exist along the Cole Avenue tree planting zone. Staff supports restricting trees from under overhead utility lines. The Armstrong tree planting zone is narrower than the PD No. 193 minimum requirement based on the placement of the existing sidewalk. Due to the goal of tree longevity, it is recommended to not plant trees in parkway area narrower than 5’ wide.
 - One large mature canopy tree exists in the front yard of the property adjacent to Cole Avenue. One large mature canopy tree exists in the side yard near the rear of the front structure. One existing live oak is in the northeast corner in an inappropriate location near a driveway and under overhead utilities.
 - An alternate plan provides for additional plantings on the north side of the property. Additional plantings would be provided near the pergola.
 - Screening shrubs are proposed for the parking lot along Armstrong.
 - The existing sidewalk alignment along Cole Avenue is the same as adjacent lots. The sidewalk alignment along Armstrong varies from the adjacent lot to the west that was constructed under a Council-approved landscape plan in PD No. 196. Sidewalk placement along Armstrong could be adjusted without problems of continuity, however, the topography of the site and location of buildings may restrict sidewalk expansion as required per PD No. 193.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 193 (LC) (Planned Development District, Light commercial)
<u>North:</u>	PD No. 193 (LC) (Planned Development District, Light commercial)
<u>South:</u>	PD No. 193 (MF-2) (Planned Development District, Multifamily)
<u>East:</u>	PD No. 193 (LC) (Planned Development District, Light commercial)
<u>West:</u>	PD No. 196 (Planned Development District)

Land Use:

The subject site is developed with two structures, one of which is a restaurant use (Taverna) and not part of this application; the other of which once housed a restaurant use (Chip's Hamburgers) and is to be added to and to become a new restaurant use (La Fiorentina) and is the focus of the requests made in this application. The areas to the north, east, and west are developed with office and retail uses; and the area to the south is 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:

August 19, 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.

September 16, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 16, 2010: 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 October 4th deadline to submit additional evidence for staff to factor into their analysis; and the October 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 27, 2010: The Building Inspection Senior Plans Examiner/Development Code Specialist submitted a review comment sheet marked "Recommends that this be denied" commenting "Property is not restrictive in its area, shape, or slope as to prevent development

commensurate with other properties of similar zoning. In fact, the property is currently well-developed.”

October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

October 12, 2010 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

STAFF ANALYSIS (variance):

- The focus of this request is to construct and maintain an approximately 380 square foot “pergola” structure to be attached to one of two existing structures on the site, and to be located 3’ 11” from the Armstrong Avenue front property line or 6’ 11” into the site’s 10’ front yard setback along Armstrong Avenue.
- The applicant’s representative has noted on the submitted site plan that the focus of this request is limited to the proposed pergola structure that would attach to the easternmost structure on the site. Additionally note that while the site has two 10’ front yard setbacks, the applicant’s representative has stated that no part of this application is to vary any structure that encroaches into the site’s required 10’ front yard setback along Cole Avenue.
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the proposed “pergola” structure that is to be located in the site’s Armstrong Avenue 10’ front yard setback is approximately 190 square feet (or approximately 1/2) of the approximately 380 square foot building footprint.
- The site is relatively flat, rectangular in shape (180’ x 75’), and 13,500 square feet in area. The site is zoned PD No. 193 (LC). The site has two 10’ front yard setbacks which is typical of any corner lot that has a street frontage and is not zoned single family, duplex, or agricultural. The site is (according to DCAD records) developed with a “restaurant” with 2,770 square feet built in 1920; and a “free standing retail store” with 2,160 square feet built in 1910.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations requested in conjunction with constructing and maintaining an approximately 380 square foot “pergola” structure that would attach to an existing commercial structure on the site 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 (a site that is developed with two structures that are both with over 2,000 square feet in area, that is relatively flat, rectangular in shape (180’ x 75’), and 13,500 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner

commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) 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 PD No. 193 (LC) zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is pergola structure that would attach to the easternmost structure on the site located 3’ 11” from the site’s Armstrong Avenue front property line (or 6’ 1” into this 10’ front yard setback). (Note that because the submitted site plan document also includes a section drawing of the proposed pergola, a granted variance with this document imposed as a condition would limit the pergola structure to an open structure that is about 8.5’ high, about 34’ long, and about 12’ wide).
- Note that if the board were to grant this request and impose the submitted site plan as a condition, but deny the request for the special exception to the landscape regulations, notations would be made of such action on the submitted site plan that the required landscape materials for the site were not “excepted.”

STAFF ANALYSIS (related to the landscape special exception) :

- This landscape special exception request is triggered with the construction and maintenance of the proposed “pergola” structure that would attach to one of two existing structures on the site.
- The applicant seeks exception from the landscape requirements in the following ways: 1) providing 4’ wide sidewalks one of which is beyond 12’ from the back of curb when 6’ wide sidewalks between 5’ – 12’ from back of curb are required; and 2) providing only 3 of the required 10 trees in their required tree planting zone between 2.5’ – 5’ from back of curb.
- The City of Dallas Chief Arborist supports the request with the imposition of 3 specific conditions that are detailed in his October 12th memo to staff (see Attachment A).
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the “sidewalks” and “trees” provisions of the PD No. 193 landscape regulations) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the conditions suggested by staff/the Chief Arborist, the site would be clearly “excepted” from compliance to the “sidewalks” and “trees” requirements of the Oak Lawn PD landscape ordinance.
- Note that if the board were to grant this request and impose the submitted site/landscape plan as a condition, but deny the request for the variance to the front yard setback regulations, notations would be made of such action on the submitted site/landscape plan stating that the required front yard setback on Armstrong Avenue was not “varied.”