

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
WEDNESDAY, JANUARY 16, 2008**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Samuel Gillespie, Panel V-chair, Marla Beikman, regular member, Christian Chernock, regular member and H.B. Sorrells, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Samuel Gillespie, Panel V-chair, Marla Beikman, regular member, Christian Chernock, regular member and H.B. Sorrells, regular member

MEMBERS ABSENT FROM HEARING: No one

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

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

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 16, 2008 docket.**

1:10 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B November 14, 2007 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2008

MOTION: Gillespie

I move approval of the Wednesday, **November 14, 2007** Board of Adjustment Public Hearing minutes.

SECONDED: Chernock

AYES: 5—Cox, Gillespie, Beikman, Chernock, Sorrells

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 078-009

REQUEST: To reimburse the filing fee submitted in conjunction with a request for a special exception to the off-street parking regulations.

LOCATION: 2639 Main Street

APPLICANT: Phil Larsson

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/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.

Timeline:

- Jan. 10, 2008 The applicant submitted a letter to the board administrator requesting reimbursement of the \$2,210.00 filing fee submitted in conjunction with a request for special exception to the off-street parking regulations (see Attachment A).
- Jan. 11, 2008: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the request; and
 - the criteria/standard that the board will use in their decision to approve or deny the request.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2008

APPEARING IN FAVOR: Phil Larsson, 2639 Main Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move to reimburse the filing fee submitted in conjunction for a request for a special exception to the parking regulations.

SECONDED: **Gillespie**

AYES: 5–Cox, Gillespie, Beikman, Chernock, Sorrells

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-004(K)

BUILDING OFFICIAL'S REPORT:

Application of Amit Patel represented by Robert E. McKenzie for a special exception to the landscaping regulations at 1718 N. Cockrell Hill Road. This property is more fully described as Lot 2E in City Block F/7202 and is zoned RR, which requires mandatory

landscaping. The applicant proposes to construct a nonresidential hotel or motel use and provide an alternate landscape plan which will require a special exception.

LOCATION: 1718 N. Cockrell Hill Road

APPLICANT: Amit Patel
Represented by Robert E. McKenzie

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with the construction of a nonresidential hotel or motel use.

STAFF RECOMMENDATION:

Approval

Rationale:

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

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS:

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

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

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

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

GENERAL FACTS:

- The site is currently undeveloped.
- The applicant is requesting a special exception to the landscape requirements of Article X. More specifically, the request is for relief from street tree requirements specified under Section 51A-10.125 (b)(4), “street trees.”
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board Chief Planner pertaining to the submitted site plan (see attachment A). The memo stated the following:
 - The special exception requested is triggered by the construction of a new hotel/motel.
 - Deficiencies:
 - The proposed landscape plan is deficient only in street trees. Article X requires one street tree for each 50’ of frontage, with a minimum of two trees being provided.
 - These trees must be within 30’ of the curb.
 - Factors:
 - The Lot 2 plat was created with a 20 foot wide street linkage to the city street frontage.
 - This access will be completely paved with shared access to Lot 2F and Lot 2D on either side.
 - A water easement takes up most of the panhandle to the street.
 - There is no planting area within 30 feet of the curb inside the panhandle area.
 - Both adjacent street front lots are required to plant street trees under Article X.
 - One lot is currently fully developed and landscaped.
 - Recommendation
 - Approval

BACKGROUND INFORMATION:

Zoning:

Site: RR (Regional Retail)
North: SUP 98 (Specific Use)
South: CS (Commercial Service)
East: SUP 98 (Specific Use)
West: CS (Commercial Service)

Land Use:

The subject site is undeveloped. The areas to the west and south are developed with commercial/retail, the area to the north is undeveloped and the area to the east is developed with commercial use.

Zoning/BDA History:

This site has recently been rezoned from CS (commercial) to RR (regional retail).

Timeline:

- Nov. 15 , 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Dec. 10, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 13, 2007: The Board’s Senior Planner contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the December 27th deadline to submit additional evidence for staff to factor into their analysis and discuss at the staff review team meeting;
 - the January 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 21, 2007 Applicant’s representative submitted revised site plans to the Board’s Senior Planner.
- Dec. 27, 2007 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).
- Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- A site plan has been submitted and reviewed by the Board’s Senior Planner and the City of Dallas Chief Arborist. A review of the site plan by the Board’s Senior Planner shows the plans to include:
 - 29 three-inch caliper trees
 - 15 Live Oak (*Quercus virginiana*)
 - 14 Shumard Oak (*Quercus shumardi*)
 - 34 foundation shrubs (*Agave americana*)
 - 163 screen shrubs
 - 44 Crape Myrtle (*Lagerstroemia indica*)
 - 26 Dwarf Burford Holly (*Ilex cornuta bufordi* “nana”)
 - 66 Oleander (*Nerium oleander*)
- The site plan indicates all required landscaping will be 100% irrigated by an underground automatic sprinkler system.
- The applicant has the burden of proof in establishing the following:
 - strict compliance with the requirements of this article will unreasonably burden the use of this property;
 - the special exception will not adversely affect neighboring property; and
 - the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- If the Board chooses to approve the request, staff recommends imposing the submitted site plans as a condition.

BOARD OF ADJUSTMENT ACTION: JANAUARY 16, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Sorrells

I move that the Board of Adjustment grant application **BDA 078-004** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted landscape plan is required.

SECONDED: Chernock

AYES: 5–Cox, Gillespie, Beikman, Chernock, Sorrells

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-009(K)

BUILDING OFFICIAL'S REPORT:

Application of Phil Larsson for a special exception to the parking regulations at 2639 Main Street. This property is more fully described as Lot 25 in City Block 182 and is zoned PD-269 (Tract A), which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential commercial amusement (inside) use and provide 44 of the 57 required off-street parking spaces which will require a special exception of 13 spaces (23% reduction).

LOCATION: 2639 Main Street

APPLICANT: Phil Larsson

REQUEST:

- A special exception to the off-street parking regulations of 44 parking spaces (or 23% of the required off-street parking) is requested in conjunction with constructing and maintaining a nonresidential commercial amusement (inside) use on a site that is developed with a vacant commercial structure.

STAFF RECOMMENDATION:

Approval, subject to the following conditions:

- The special exception shall automatically and immediately terminate if and when the “commercial amusement (inside)” use is changed or discontinued.

Rationale:

- The Development Services Senior Engineer has no objections to the request based if certain conditions are met:
 1. A parking analysis showing how the 23% reduction will not increase traffic congestion, or
 2. The applicant can show the potential expected numbers of customers, numbers of staff and how and where the staff will park, carpool or use transit.

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:

- A "packed parking" agreement is on-file with the city attorney's office.
- There are two public parking lots in the immediate vicinity of the site on Main Street.
- The Dallas Development Code requires the following off-street parking requirements:
 - General commercial amusement (inside): 1 space per 100 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.

The application and Building Official's Report state that 44 (or 77 percent) of the required 57 spaces will be provided in conjunction with the proposed dinner theater.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 269 (Tract A) (Planned Development)
North: PD No. 269 (Tract A) (Planned Development)
South: PD No. 269 (Tract A) (Planned Development)
East: PD No. 269 (Tract A) (Planned Development)
West: PD No. 269 (Tract A) (Planned Development)

Land Use:

The subject site is a vacant developed commercial building. The areas to the north, south, east, and west are developed with commercial and retail 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:

- Nov. 19, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 10, 2007: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- Dec. 13, 2007: The Board Senior Planner contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the December 27th deadline to submit additional evidence for staff to factor into their analysis;
 - the January 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and

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

Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

January 4, 2008: The Development Services Senior Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "1. A parking analysis showing how the 23% reduction will not increase traffic congestion, or 2. the applicant can show the potential expected number of customers, number of staff and how and where the staff will park, carpool, or use transit."

STAFF ANALYSIS:

- The applicant proposes to provide 44 or (77 percent) of the required 57 spaces for a "commercial amusement (indoor)" use (dinner theater) on a site developed with a vacant commercial structure.
- A "packed parking agreement" signed September 26, 2007, on file with the city attorney states the property owner (Robert Merrill) "shall provide 49 off-street parking spaces for the use on the Property."
- The "packed parking agreement" states the "normal hours of operation open to the public will be :
 - Friday (doors open @ 8pm & close @ 11:45pm)
 - Saturdays (doors open @ 7pm & close at 11:45pm)"
- Granting this request, subject to the condition that the special exception of 13 spaces automatically and immediately terminates if and when the "commercial amusement (indoor)" use is changed or discontinued, would allow the development of the proposed comedy club commercial structure to be leased with this specific use.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the "commercial amusement (indoor)" use does not warrant the number of off-street parking spaces required, and
 - The special exception of 13 spaces (or 23 percent of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request if certain conditions are met.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2008

APPEARING IN FAVOR: Phil Larsson, 2639 Main St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 078-009**, on application of Phil Larsson, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 13 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the commercial amusement (inside) use on the site is changed or discontinued.

SECONDED: **Chernock**

AYES: 5—Cox, Gillespie, Beikman, Chernock, Sorrells

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 078-006(K)

BUILDING OFFICIAL'S REPORT:

Application of Trenton C. Nichols represented by Chamblee & Ryan, P.C. to appeal a decision of an administrative official at 114 W. Louisiana Avenue. This property is more fully described as Lot 7 in City Block C/4025 and is zoned CR, which limits the legal uses in a zoning district. The applicant proposes to maintain a nonconforming multifamily use for which a certificate of occupancy was denied. The applicant proposes that the board hear and decide an appeal from the decision of an administrative official made in the enforcement of the zoning ordinance of the city.

LOCATION: 114 W. Louisiana Avenue

APPLICANT: Trenton C. Nichols
Represented by Chamblee & Ryan, P.C

REQUEST:

- An application has been made requesting that the Building Official's decision be reversed or overturned. The application states that "the applicant proposes that the board hear and decide an appeal from the decision of an administrative official made

to maintain a nonconforming multifamily use for which a certificate of occupancy was denied.”

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

- On November 16, 2007, the applicant filed an appeal to the Board of Adjustment alleging that the Building Official erred in “denying the certificate of occupancy.”
- On October 24, 2007, the Building Inspection Development Code Specialist made a decision denying the application for a certificate of occupancy for a multifamily use, in a letter addressed to Ryan Jones (see Attachment B).
- The Board Senior Planner forwarded a copy of the “Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas” to the applicant’s representative (see Attachment A).
- The applicant’s representative’s letter in Attachment C claims the following:
 1. The property has been in continuous operation as a multifamily apartment building since it was purchased by Mr. Jones in 2000.
 2. A certificate of occupancy was issued on May 30, 2007 by the City of Dallas for 114 W Louisiana Avenue and later rescinded by the City.
 3. The property has been operated continuously and without interruption as a multifamily dwelling.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CS (Commercial Services)
South: R-7.5 (A) (Single family 7,500 square feet)
East: CR (Community Retail)
West: R-7.5 (A) (Single family 7,500 square feet)

Land Use:

The subject site is developed as a multifamily dwelling. The area to the north is developed with commercial use, and the areas to the west and south are developed with single family use, and east are developed with commercial use.

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:

- Nov. 16, 2007 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 10, 2007 The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 13, 2007 The Board Senior Planner contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/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 January 4th 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 January public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 13, 2007 The Board Administrator forwarded a copy of the "Outline of Procedure for Handling Appeals from Decisions of the Building Official by the Board of Adjustment of the City of Dallas" to the applicant's representative (see Attachment A).
- Dec. 28, 2007 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior 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:

- A "City of Dallas Building Inspection Application" was denied on October 24, 2007, to "for a certificate of occupancy for a multifamily use due to noncompliance with zoning regulations."

- The applicant has the burden of proof in establishing the necessary facts to show that the Building Official's decision should be overturned or reversed.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2008

APPEARING IN FAVOR: Todd Allen, Dallas, TX
Ryan Jones, 114 W. Louisiana, Dallas, TX

APPEARING IN OPPOSITION: Dan Weir, 1713 S. Ervay, Dallas, TX

APPEARING FOR THE CITY: Ray Wazny, 9117 Perimeter St., Dallas, TX
Ricardo Sinyard, 320 E Jefferson, Dallas, TX

MOTION #1: Beikman

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 078-006**, on application of Trenton C. Nichols, represented by Chamblee & Ryan, PC, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the building official and **grant** the relief requested by this applicant.

SECONDED: Sorrells
AYES: 3–Cox, Gillespie, Sorrells
NAYS: 2 – Beikman, Chernock
MOTION FAILED 3 – 2

MOTION #2: Chernock

I move to reconsider the previous motion made on this matter.

SECONDED: Gillespie
AYES: 4–Cox, Gillespie, Sorrells, Chernock
NAYS: 1 – Beikman
MOTION PASSED 4 –1

MOTION #3: Chernock

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 078-006**, on application of Trenton C. Nichols, represented by Chamblee & Ryan, PC, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the building official and **grant** the relief requested by this applicant.

SECONDED: Sorrells
AYES: 4–Cox, Gillespie, Sorrells, Chernock
NAYS: 1 – Beikman
MOTION PASSED 4 – 1

FILE NUMBER: BDA 078-010

BUILDING OFFICIAL'S REPORT:

Application of New Neighborhood Crime Watch Association, represented by Steven Sims and Tommy Brown, to require compliance of a nonconforming use at 3705 Bonnie View Road. This property is more fully described as Lot 5 in City Block 6079 and is zoned CR which limits the legal uses in a zoning district. The applicant requests that the Board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 3705 Bonnie View Road

APPLICANT: New Neighborhood Crime Watch Association
Represented by Steven Sims and Tommy Brown

January 16, 2008 Public Hearing Notes:

- The applicant submitted additional written information to the board at the public hearing (see Attachment B).

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (Motel 3) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection 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.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
 - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
 - (iii) The manner in which the use is being conducted.
 - (iv) The hours of operation of the use.
 - (v) The extent to which continued operation of the use may threaten public health or safety.
 - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) 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.

GENERAL FACTS:

- City records indicate the following:
 - On June 13, 1985, a motel certificate of occupancy was issued along with a building permit to construct a motel in an existing structure on property zoned LC with a hotel or motel use allowed by right.
 - On March 1, 1987, Ordinance No. 19455 was passed which created Chapter 51A and CR zoning which would allow a hotel or motel use with an SUP.
 - On September 30, 1987, Ordinance No. 19700 (see Exhibit A) was passed which required an SUP for a hotel or motel use in LC zoning with fewer than 50 rooms or fewer than 4 stories.
 - On July 18, 1989, Ordinance No. 20314 was passed which rezoned all property within the City of Dallas, including the subject site which was rezoned from LC (Light Commercial) to CR (Community Retail).
- 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 CR (Community Retail) that permits a "hotel or motel" use by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for "hotel or motel" use in Section 51A-4.205 (1):
 - "Hotel or motel."
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
 - (B) Districts permitted:
 - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
 - (ii) By SUP only in the CR district.
 - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
 - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community 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.

- On January 4, 2008, the applicant submitted information to the Board Administrator on this application (see Attachment A). This information included the following:
 - Dallas Police Department report lists of arrests made in the 3700 block of Bonnie View Road from as early as January of 2002 to as recent as December of 2007; and
 - Multiple pages of individual Dallas Police Department reports at locations that appear to be at or near the subject site located at 3705 Bonnie View Road.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The site is currently developed with a motel use (Motel 3). The area to the north is developed with retail uses; the area to the east is developed with church and residential uses and vacant land; the area to the south is developed with a church use and vacant land; and the area to the west appears vacant/undeveloped.

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:

- Dec. 3, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Dec. 13, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Dec. 17, 2007: The Board Administrator wrote/sent the owner of the site (Leroy Watson et al) a letter (with a copy to the applicants) that informed them that a Board of Adjustment case had been filed against their property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
 - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
 - a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
 - a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
 - a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);

- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the date, time, and location of the briefing/public hearing, and provided a deadline of January 4th to submit any information that would be incorporated into the board's docket.

Dec. 28, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior 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.

Jan. 4, 2008 The applicant submitted additional information on this application (see Attachment A).

STAFF ANALYSIS:

- The motel use (Motel 3) on the subject site is a nonconforming use. According to city records, the motel use first became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700, and again on July 18, 1989, when the City Council passed Ordinance No. 20314.
- 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 owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community 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 applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.

The purpose of the Board of Adjustment's January 16th public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: JANUARY 16, 2008

APPEARING IN FAVOR: Steven Sims, 3610 Bonnieview Rd., Dallas, TX
Tommy Brown, 611 Blue Chalk Dr., Cedar Hill, TX

APPEARING IN OPPOSITION: Leroy Watson, 3944 Kiest Meadow, Dallas, TX

MOTION: Chernock

I move that the Board of Adjustment in Appeal No. **BDA 078-010**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, based on the following factors:

- The character of the surrounding neighborhood.
- The manner in which the use is being conducted.
- The extent to which continued operation of the use may threaten public health or safety.
- The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- With the finding of fact of testimony and evidence, including Dallas Police Department reports presented by Steven Sims and Tommy Brown, a hearing date of **March 19, 2008** is set for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: Beikman

AYES: 5–Cox, Gillespie, Beikman, Chernock, Sorrells

NAYS: 0 –

MOTION PASSED 5 – 0 (Unanimously)

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Gillespie

AYES: 5– Cox, Gillespie, Beikman, Chernock, Sorrells

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

4:02 P.M. - Board Meeting adjourned for **January 16, 2008.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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