

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, MAY 16, 2012**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member David Wilson, regular member, and Paula Leone, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Christian Chernock, regular member David Wilson, regular member, and Paula Leone, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Andrew Gilbert, Asst. City Attorney, Casey Burgess, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Lloyd Denman, Bldg., Official, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Andrew Gilbert, Asst. City Attorney Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Lloyd Denman, Bldg., Official, and Trena Law, Board Secretary

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 16, 2012 docket.**

1:02 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 April 18, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

MOTION: Leone

I move approval of the **Wednesday, April 18, 2012** Board of Adjustment Public Hearing minutes.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-049

BUILDING OFFICIAL’S REPORT:

Application of Erich Ransleben for a variance to the side yard setback regulations at 10746 St. Michaels Drive. This property is more fully described as Lot 2 in City Block 1/7288 and is zoned R-16(A), which requires a side yard setback of 10 feet. The applicant proposes to construct/maintain a structure and provide a 3 foot 6 inch side yard setback, which will require a variance of 6 feet 6 inches.

LOCATION: 10746 St. Michaels Drive.

APPLICANT: Erich Ransleben

REQUEST:

- A variance to the side yard setback regulations of 6’ 6” is requested in conjunction with constructing and maintaining a swimming pool/spa “structure,” a portion of which is located in the site’s southern 10’ side yard setback on a property developed with a single family home.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with submitted site plan is required.

Rationale:

The applicant has substantiated how the subject site is unique and different from most lots zoned R-16(A) given its slope – a physical condition to the property that creates hardship where the applicant cannot developed this parcel of land given its slope with a swimming pool/spa “structure” that reaches in places given the slope of the site approximately 2’ above grade.

STANDARD FOR A VARIANCE:

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

- not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- The minimum side yard setback on an R-16(A) zoned lot is 10 feet. The applicant has submitted a site plan and elevation indicating a swimming pool/ spa “structure” that in places is approximately 2’ above grade and that is to be located 3’ 6” from the site’s southern side property line (or 6’ 6” into the required 10’ side yard setback).
- The site is sloped westward to eastward to a creek bed on the eastern side of the subject site. The property is irregular in shape (five-sided), and is (according to the application) 0.5 acres (or approximately 22,000 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- According to DCAD records, the property at 10746 St. Michaels has the following improvements:
 - “main improvement” built in 1969 with 4,475 square feet of living area, and
 - “additional improvement” – 552 square foot attached garage.

BACKGROUND INFORMATION:

Zoning:

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

West: R-16(A) (Single family district 16,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

March 20, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 17, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests;
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence; and
- a picture that he photographed on the property from the alley northward in March of 2012 with the note that if/when the board grants a variance, they typically impose the applicant's submitted site plan as a condition to the request. (The Board Administrator advised the applicant's representative with this in mind, to please note that his submitted plan should be an accurate representation of what he is seeking variance for, and to make any amendments to the plan that he feels is necessary with submittal of any revised plan (if he deem necessary) to Todd Duerksen and him no later than noon April 27th).

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable

Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a swimming pool/spa “structure,” a portion of which is located in the site’s southern 10’ side yard setback on a property developed with a single family home.
- According to calculations made by the Board Administrator from the submitted site plan, approximately 215 square feet (or about 1/3) of the approximately 660 square foot swimming pool/spa “structure” is to be located in the site’s southern 10’ side yard setback.
- The site is sloped westward to eastward to a creek bed on the eastern side of the subject site. The property is irregular in shape (five-sided), and is (according to the application) 0.5 acres (or approximately 22,000 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) (Single family) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) (Single family) zoning classification.
- If the Board were to grant the side yard variance of 6’ 6”, imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into this setback would be limited to that shown on the site plan. which is an approximately 660 square foot swimming pool/spa “structure” that is to be located 3’ 6” from the southern side property line or 6’ 6” into this 10’ side yard setback.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Chernock**

I move that the Board of Adjustment grant application **BDA 112-049** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-053

BUILDING OFFICIAL’S REPORT:

Application of Ken Conway for a special exception to the landscape regulations at 10379 Plano Road (AKA 10670 Markison Road). This property is more fully described as Tract 1.3 in City Block B/8090 and is zoned IR, which requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 10379 Plano Road (AKA 10670 Markison Road)

APPLICANT: Ken Conway

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 31,000 square foot warehouse structure (Interstate Wire Company) on a site currently under development, and not fully meeting the landscape regulations.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City’s Chief Arborist supports the request given that an existing major 52’-wide ATMOS gas transmission easement with underground gas main on the site precludes the applicant from locating street trees in the code-required location on the site, and that the site complies with all other Article X mandatory and design standard requirements.

- The applicant has substantiated how strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the 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, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, does not comply with street tree requirements of Article X: The Landscape Regulations.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's request (see Attachment A). The memo states how this request is triggered by new construction on the site and how the alternate plan proposes trees to be planted adjacent to the interior perimeter of an existing major 52'-wide ATMOS gas transmission easement with underground gas main on the site as opposed to the required location of within 30' of the projected street curb. The Chief Arborist supports the applicant's landscape special exception request in that the utility has restricted all large trees from planting within the easement and has allowed minimal intrusion with small trees, and complies with all other Article X mandatory and design standard requirements.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial/Research)
North: IR (Industrial/Research)
South: IR (Industrial/Research)
East: IR (Industrial/Research)
West: IR (Industrial/Research)

Land Use:

The site is currently under development. The areas to the north, east, south, and west are developed with warehouse and commercial uses.

Zoning/BDA History:

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| 1. BDA 956-146, Property at 10425 Plano Road (the property immediately north of the subject site) | On January 23, 1996, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition to the request. The case report stated that the request was made in conjunction with maintaining a new 159,000 square foot warehouse facility (Markinson Distribution Center) with the applicant not being able to fully comply with landscape regulations related to TU's electric power poles on the property. |
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Timeline:

- March 28, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 19, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

May 4, 2012: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining an approximately 31,000 square foot warehouse structure (Interstate Wire Company) on site currently under development, and not fully meeting the landscape regulations.
- A landscape plan has been submitted that the City of Dallas Chief Arborist supports in that an existing major 52'-wide ATMOS gas transmission easement with underground gas main on the site precludes the applicant from locating street trees in the code-required location on the site, and that the site complies with all other Article X mandatory and design standard requirements.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be "excepted" from full compliance with the street tree requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: Chernock

I move that the Board of Adjustment grant application **BDA 112-053** 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: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-055

BUILDING OFFICIAL’S REPORT:

Application of Gladys Bowens and Dallas Cothrum for a special exception to the landscape regulations at 530 E. Camp Wisdom Road. This property is more fully described as Tract 1 in City Block 6630 and is zoned R-7.5(A), which requires mandatory landscaping. The applicant proposes to construct/maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 530 E. Camp Wisdom Road

APPLICANT: Gladys Bowens and Dallas Cothrum

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with expanding the electrical substation on the site with a new control enclosure of about 1,000 square feet and adding about 3,000 square feet of impervious coverage on the site, and not fully meeting the landscape regulations.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised landscape plan is required.

Rationale:

- The City’s Chief Arborist supports the request given the existing/proposed use of the site (an electric substation use), existing conditions on the site (overhead utility lines, existing vegetation to be retained on the west side of the site, existing wooded floodplain on the south side of the site), and that revised alternate landscape plan shows compliance with design standards for screening of off-street parking and for understory preservation with the maintenance of the understory vegetation in the southern end of the lot contiguous to the wooded creek.
- The applicant has substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the 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, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

GENERAL FACTS:

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The applicant has submitted a revised alternate landscape plan (see Attachment A) that, according to the City of Dallas Chief Arborist, does not comply with the street tree and the 10' wide perimeter landscape buffer strip along the west property line with residential adjacency requirements of Article X: The Landscape Regulations.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant's request (see Attachment B). The memo states how this request is triggered by new construction of floor area with the expansion of an electric substation use on the site and how the alternate plan proposes to not:
 1. plant required large trees under overhead transmission or distribution lines based on demands for continued maintenance and reliability of electric services to the public - smaller compatible trees are to be planted in lieu of the code- required large trees), and
 2. provide the mandatory 10'-wide perimeter landscape buffer strip along the west property line - an existing "vegetated line" is proposed to be retained on the west side of the property that provides a screen to the nearby residential community in lieu of the code-required buffer strip.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A)(SUP 188) (Single family residential 7,500 square feet, Specific Use Permit)
North: R-7.5(A)(SUP 187) (Single family residential 7,500 square feet, Specific Use Permit)

South: R-7.5(A)(SUP 1578) (Single family residential 7,500 square feet, Specific Use Permit)
East: R-7.5(A) (Single family residential 7,500 square feet)
West: R-7.5(A)(SUP 1578) (Single family residential 7,500 square feet, Specific Use Permit)

Land Use:

The site is developed with an electrical substation. The areas to the north, east, and south appear to be undeveloped; and the area to the west is developed with multifamily 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:

- March 29, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 19, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- April 26, 2012: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

May 7, 2012: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS:

- This request focuses on expanding the electrical substation on the site with a new control enclosure of about 1,000 square feet and adding about 3,000 square feet of impervious coverage on the site, and not fully meeting the landscape regulations.
- A revised landscape plan has been submitted that the City of Dallas Chief Arborist supports given the existing/proposed use of the site (an electric substation use), existing conditions on the site (overhead utility lines, existing vegetation to be retained on the west side of the site, existing wooded floodplain on the south side of the site), and that revised alternate landscape plan shows compliance with design standards for screening of off-street parking and for understory preservation with the maintenance of the understory vegetation in the southern end of the lot contiguous to the wooded creek.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
 - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted revised landscape plan as a condition to the request, the site would be “excepted” from full compliance with the street tree and the 10’ wide perimeter landscape buffer strip requirements of Article X: The Landscape Regulations.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

MOTION: **Chernock**

I move that the Board of Adjustment grant application **BDA 112-055** 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 revised landscape plan is required.

SECONDED: **Wilson**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-059

BUILDING OFFICIAL'S REPORT:

Application of Richard Hobaugh for special exceptions to the fence height regulations at 4511 Watauga Road. This property is more fully described as Lot 1A in City Block R/4987 and is zoned PD-455, which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain an 8 foot high fence in required front yard setbacks which will require special exceptions of 4 feet.

LOCATION: 4511 Watauga Road

APPLICANT: Richard Hobaugh

May 16, 2012 Public Hearing Notes:

- The applicant and opposing property owners submitted additional written documentation to the Board at the public hearing.

REQUESTS:

- Requests for special exceptions to the fence height regulations of 4' have been made in this application to construct and maintain a fence/wall in the site's two front yard setbacks that would exceed 4' in height (a 7' 4" high combination ornamental iron/stone column fence/wall with 7' 4" high open metal gates and 8' high stone columns in the Watauga Road front yard setback, and a 7' 4" high solid stone wall with 8' high stone columns in the Midway Road front yard setback) on a site developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The subject site is a corner lot zoned PD No. 455 with two street frontages of unequal distance. The site is located at the north corner of Watauga Road and Midway Road. Even though the Midway Road frontage of the subject site appears to function as its front yard and the Watauga Road frontage appears to function as its side yard, the subject site has two 30' front yard setbacks along both streets. The

site has a 30' front yard setback along Midway Road (the shorter of the two frontages that is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a 30' front yard setback along Watauga Road (the longer of the two frontages of this corner lot of unequal frontage distance), which would typically be regarded as a side yard where a 9' high fence could be maintained by right. The site's Watauga Road frontage is deemed a front yard to maintain the continuity of the established front yard setback along this street created by a number of properties immediately northeast of the subject site that front south and have front yard setbacks along Watauga Street.

- 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.
- A scaled site plan and two elevation documents have been submitted indicating that the proposal in the required front yard setbacks reaches a maximum height of 8'.
- The following additional information was gleaned from the submitted site plan:
 - Along Watauga Road:
 - Approximately 370' in length parallel to the street and approximately 30' in length perpendicular on the west side of the site in the front yard setback.
 - Approximately on the front property line or approximately 12' from the pavement line.
 - Along Midway Road:
 - Approximately 25' in length parallel to the street and approximately 30' in length perpendicular on the north and south sides of the site in the Midway Road front yard setback.
 - Approximately on the front property line. (No dimension can be given with regard to the fence/wall location relative to the Midway Road pavement line since the site plan has no pavement line indicated on it).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 455 (Planned Development District)
North: PD No. 455 (Planned Development District)
South: PD No. 455 (Planned Development District)
East: PD No. 455 (Planned Development District)
West: R-10(A) (Single family district 10,000 square feet)

Land Use:

The subject site is developed with a single family home. The area to the north appears to be undeveloped; and the areas to the east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 067-016, Property at 4506 On January 17, 2007, the Board of

Watauga Road (the property immediately south of the subject site)

Adjustment Panel B denied a request for a special exception to the fence height regulations of 5' 6" without prejudice. The case report stated that the request was made in conjunction with constructing and maintaining a 6' high open wrought iron fence and gate with 6' high columns and a maximum 9' 6" high open wrought iron fence/solid retaining wall in the site's Canyon Road/ Watauga Road 30' front yard setbacks on a site developed with a single family home.

Timeline:

March 29, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

April 19, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

The Board Administrator also wrote the applicant the following:

- that as he and the applicant had spoken about, the applicant had directed him to proceed with his application to be scheduled for a May public hearing "as is" - just a fence height special exception, and not to delay scheduling it until June which allow him time to determine if this application should be not only for a fence height special exception but a front yard variance, too.
- That as he and the applicant had spoken about, the Board would be informed that the applicant is fully aware that the application made for a fence height special exception to be scheduled for May 2012 would not remedy any existing/proposed noncompliance of any structure to setback requirements, and that if that discovery is made, the applicant would remedy the noncompliance or make a separate

application for a variance to the setback regulations for a later date beyond May of 2012;

- That has he and the applicant had discussed, that he see the importance of having your architect amend the submitted “fence site plan” by delineating the pavement line and location of Midway Road on the western side of your property with submitting any amended plans with the Midway Road delineation to staff no later than Friday, April 27th.

May 1, 2012:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- Special exceptions to the fence height regulations have been made to construct/maintain a 7’ 4” high combination ornamental iron/stone column fence/wall with 7’ 4” high open metal gates and 8’ high stone columns in the Watauga Road front yard setback, and a 7’ 4” high solid stone wall with 8’ high stone columns in the Midway Road front yard setback.
- Details related to the length and location of the proposal relative to the entire site, property and pavement lines as represented on the submitted site plan and elevations are provided in the “General Facts” section of this case report.
- One single family home “fronts” on the Watauga Road side of the subject site, and no home “fronts” on the Midway Road side of the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high in a front yard setback.
- As of May 7, 2012, no letters had been submitted to staff in support or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 4’ will not adversely affect neighboring property.
- Granting these special exceptions of 4’ with a condition imposed that the applicant complies with the submitted site plan and elevations would require the proposal exceeding 4’ in height in the front yard setbacks to be constructed and maintained in the locations and of the heights and materials as shown on these documents.
- Lastly, the applicant is aware that his request for special exceptions to the fence height regulations will not provide relief to any existing or proposed noncompliant issues on the subject site pertaining to the City’s setback regulations.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: Richard Hobaugh, 8613 Timber Dr, NRH, TX
Brian Ramon, 2607 Vinson, Dallas, TX

APPEARING IN OPPOSITON: Pat White, 4714 Wildwood Rd., Dallas, TX
Leslie Krakon, 4605 Watauga Rd., Dallas, TX
Chandler Lindsley, 4604 Watauga Rd., Dallas, TX
John Alexander, 4811 Bluffview, Dallas, TX
Carl Schwalm, 4807 Bluffview, Dallas, TX
Nancy Kenty, 8723 Canyon Dr., Dallas, TX

MOTION #1: Leone

I move that the Board of Adjustment suspend the rules and accept the evidence that is being presented today.

SECONDED: Chernock

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 112-059**, on application of Richard Hobaugh, **deny** the special exception along Midway Road and along Watauga Road **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Wilson

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-016

BUILDING OFFICIAL’S REPORT:

Application of Mini-Roll, Inc. to require compliance of a nonconforming use at 13943 C. F. Hawn Freeway. This property is more fully described as Tract 282 in City Block 8820 and is zoned CS, which limits the legal uses in a zoning district. The applicant requests that the Board establish a compliance date for a nonconforming outside sales use.

LOCATION: 13943 C. F. Hawn Freeway

APPLICANT: Mini-Roll, Inc.

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming “outside sales” use (Kleberg Flea Market) 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:
 - The nonconforming use being appealed at 13943 C. F. Hawn Freeway: outside sales use.
 - Reason the use is classified as nonconforming: it existed prior to annexation.
 - Date that the nonconforming use became nonconforming: 4-1-78, Consolidation
 - Current zoning of the property on which the use is located: CS, D-1
 - Previous zoning of the property on which the use is located: N/A - Consolidation
- City records indicate the following:
 - A Certificate of Occupancy was issued on 09-16-2011 for property at 13943 C. F. Hawn Freeway to owner Rachel Barnes for an outside sales use with remarks: "Nonconforming outside sales (flea market), existing prior to annexation/consolidation. One 22' x 50' metal bldg on-site. No parking allowed on site until approved parking surface has been permitted and approved."
- 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 Commercial Service (CS) district that permits an “outside sales” use with a Specific Use Permit (SUP).
- The record owner of the property with the nonconforming “outside sales” use could eliminate the nonconforming use status by obtaining a Specific Use Permit (SUP) from City Council.
- The record owner of the property could transition the use on the site from “outside sales” use to any use that is permitted by right in the site’s existing Commercial Service (CS) zoning classification.
- The Board of Adjustment Panel B determined at their March 21, 2012 public hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming “outside sales” use would have an adverse effect on nearby properties, and set a hearing date May 16, 2012 for the purpose of establishing a compliance date for this nonconforming use.
- All information submitted by the applicant related to whether continued operation of the nonconforming “outside sales” use would have an adverse effect on nearby properties has been retained in the case file and is available for review upon request.
- Written documentation submitted by the owner of the nonconforming use (Rachel Barnes) to the Board at the March 21, 2012 public hearing has also been retained in the case file and is available for review upon request.
- On April 2, 2012, a subpoena duces tecum and interrogatories was delivered to the owner of the nonconforming “outside sales” use of the site/property (Rachel Barnes and Kleberg Flea Market, Inc. c/o Rachel Barnes, President).
- On April 27, 2012, the Assistant City Attorney (Andrew M. Gilbert) assisting with this application forwarded to the Board Administrator a copy of an April 24, 2012 letter that he had written to the record owner of the property/nonconforming use (Rachel Barnes) (see Attachment A). The letter that was signed/agreed upon by Rachel Barnes stated how she comported with her understanding of the agreement that she has agreed to a voluntary compliance date of July 2, 2012 and will surrender her certificate of occupancy for a nonconforming outside sales use on or before that date; and that she further agrees to waive any appeal of the determination of the City’s board of adjustment and will not seek to re-establish the nonconforming outside sales use at any future date.

BACKGROUND INFORMATION:

Zoning:

Site: CS (Commercial Service)
North: R-10(A) (Single family residential, 10,000 square feet)
South: CS (Commercial Service)
East: CS (Commercial Service)
West: CS (Commercial Service)

Land Use:

The site is currently developed with an “outside sales” use (Kleberg Flea Market). The areas to the east and west are developed with commercial/retail uses; the area to the north is developed with single family uses; and the area to the south is a freeway (C. F. Hawn Freeway).

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:

November 22, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 12, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 24, 2012: The Board Administrator wrote/sent the record owner of the property (Rachel Barnes) a letter (with a copy to the applicant- Mini-Roll, Inc. c/o Debbie Leonard) that informed her that a Board of Adjustment case had been filed against the nonconforming “outside sales” use on the property. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials that has been submitted in conjunction with the application by the applicant.
2. A copy of the section of the Dallas Development Code that describes the Board of Adjustment (Section 51A-3.102).
3. A copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102 (90)).
4. A copy of the section of the Dallas Development Code that provides the purpose and main uses permitted set forth for “Commercial service” zoning district (Section 51A-4.123 (a)).
5. A copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “outside sales” use (Section 51A-4.210 (21)).”
6. A copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704).
7. A copy of the section of the Dallas Development Code that describes the Board of Adjustment hearing procedures (Section 51A-4.703).
8. A copy of the City of Dallas Board of Adjustment Working Rules of Procedures.
9. A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed Ms. Barnes of the date, time, and location of the public hearing, and provided a deadline of March 9th to submit any information that would be incorporated into the board's docket.

March 6, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Sustainable Development and Construction Department Building Inspection Division Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorneys to the Board.

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

March 21, 2012: The Board of Adjustment Panel B conducted a public hearing on this application and determined that based on the evidence and testimony presented to them, that continued operation of the nonconforming "outside sales" use would have an adverse effect on nearby properties, and set a hearing date May 16, 2012 for the purpose of establishing a compliance date for this nonconforming use.

April 2, 2012: A subpoena duces tecum and interrogatories was delivered to the owner of the nonconforming "outside sales" use of the site/property (Rachel Barnes and Kleberg Flea Market, Inc. c/o Rachel Barnes, President).

April 27, 2012: The Assistant City Attorney (Andrew M. Gilbert) assisting with this application forwarded to the Board Administrator a copy of an April 24, 2012 letter that he had written to the record owner of the property/nonconforming use (Rachel Barnes) (see Attachment A). The letter that was signed/agreed upon by Rachel Barnes stated how she comported with her understanding of the agreement that she has agreed to a voluntary compliance date of July 2, 2012 and will surrender her certificate of occupancy for a nonconforming outside sales use on or before that date; and that she further agrees to waive any appeal of the determination of the City's board of adjustment and will not seek to re-establish the nonconforming outside sales use at any future date.

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development

and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The “outside sales” use (Kleberg Flea Market) on the subject site is a nonconforming use. According to city records, the use became nonconforming on April 1, 1978 upon “consolidation.”
- 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 record owner of the property with the nonconforming “outside sales” use could eliminate the nonconforming use status by obtaining a Specific Use Permit (SUP) from City Council.
- The record owner of the property could transition the use on the site from “outside sales” use to any use that is permitted by right in the site’s existing CS (Commercial Service) zoning classification.
- The Board of Adjustment Panel B determined at their March 21, 2012 hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming “outside sales” use would have an adverse effect on nearby properties, and set a hearing date May 16, 2012 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment’s May 16, 2012 public hearing is to establish 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. (The Dallas Development Code states that 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).
- The Dallas Development Code states that 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 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.
- On April 27, 2012, the Assistant City Attorney (Andrew M. Gilbert) assisting with this application forwarded to the Board Administrator a copy of an April 24, 2012 letter that he had written to the record owner of the property/nonconforming use (Rachel Barnes) (see Attachment A). The letter that was signed/agreed upon by Rachel Barnes stated how she comported with her understanding of the agreement that she has agreed to a voluntary compliance date of July 2, 2012 and will surrender her certificate of occupancy for a nonconforming outside sales use on or before that date; and that she further agrees to waive any appeal of the determination of the City's board of adjustment and will not seek to re-establish the nonconforming outside sales use at any future date.

BOARD OF ADJUSTMENT ACTION: MARCH 21, 2012

APPEARING IN FAVOR: Debbie Leonard, 815 Roaring Springs, Grand Prairie, TX
Doug Combs, 2187 S Woody Road, Dallas, TX

APPEARING IN OPPOSITION: Rachel Barnes, 13908 Vida Lane, Dallas, TX
Nancy Perez, P.O. Box 14978, Wylie, TX
Marvin Brock, 521 Thomas Trail, Seagoville, TX
Keith Alexander, 406 Lemont Ave, Dallas, TX

MOTION #1 Wilson

I move that the Board of Adjustment in Appeal No. BDA 112-016 suspend the rules and accept the evidence that is presented today.

SECONDED: Agnich

AYES: 5– Reynolds, Chernock, Wilson, Gaspard, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

MOTION#2: Chernock

I move that the Board of Adjustment in Appeal No. **BDA 112-016**, 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 with the finding of fact that surrounding zoning being residential and commercial retail.
- The degree of incompatibility of the use with the zoning district in which it is located with the finding of fact that there is R-10 Single Family to the north and commercial service to the south, east, and west.

- The manner in which the use is being conducted with the finding of fact that there is not proper consideration for parking and public thoroughfare traffic, creating public traffic hazards and emergency vehicle access to surrounding property and fire hydrants.
- The hours of operation of the use with the finding of fact that the weekend hours of operation are severely impacting adjacent business use on weekends and not allowing neighbors sufficient access to public streets on weekends for purposes of ingress and egress into the neighborhood.
- The extent to which continued operation of the use may threaten public health or safety with the finding of fact that there is excessive standing water without proper drainage, excessive traffic on thoroughfare which could inhibit emergency vehicle access and parking in front of hydrants further inhibiting fire department access.
- The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor with the finding of fact that there is not proper paving and excessive standing water and trash.
- The extent to which public disturbances may be created or perpetuated by continued operation of the use with the finding of fact of traffic congestion and illegal parking.
- The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use with the finding of fact of illegal parking on adjacent property and traffic congestion on public streets.

As a result of these findings, I move to set a hearing date of **May 16, 2012** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: Gaspard

AYES: 5– Reynolds, Chernock, Wilson, Gaspard, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITON: No one

APPEARING FOR THE CITY: Andrew Gilbert, Asst. City Atty., 1500 Marilla St.,
Dallas, TX

MOTION #1: Chernock

I move that the Board of Adjustment, in Appeal No. **BDA 112-016**, provide a compliance date of **May 16, 2012** for the nonconforming outside sales use currently being operated on the property located at 13943 C.F. Hawn Freeway, because the facts and testimony show that the owner's actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner's certificate of occupancy for the outside sales use be revoked on **May 16, 2012**, unless the outside sales use becomes a conforming use.

SECONDED: **Wilson**

AYES: 4 – Reynolds, Chernock, Wilson, Leone

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

MOTION #2: **Reynolds**

I move that the Board of Adjustment, in Appeal No. **BDA 112-016** to reconsider the previous motion made on this case.

SECONDED: **Gillespie**

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

NAYS: 0 –

MOTION PASSED 5 – 0(unanimously)

MOTION #3: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 112-016**, provide a compliance date of **July 2, 2012** for the nonconforming outside sales use currently being operated on the property located at 13943 C.F. Hawn Freeway, because the facts and testimony show that the owner’s actual investment in the use, before the time that the use became nonconforming, can be amortized within this time period. I further move that the owner’s certificate of occupancy for the outside sales use be revoked on **July 2, 2012**, unless the outside sales use becomes a conforming use.

SECONDED: **Wilson**

AYES: 4 –Gillespie, Chernock, Wilson, Leone

NAYS: 1 – Reynolds

MOTION PASSED 4 – 1

FILE NUMBER: BDA 112-034

BUILDING OFFICIAL’S REPORT:

Application of Roberto Torres, represented by Ramon Aranda, for special exceptions to the fence height and visual obstruction regulations at 9903 Laneyvale Avenue. This property is more fully described as Lot 51 in City Block C/6682 and is zoned R-5(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at alley and driveway approaches and a 45 foot visibility triangle at street intersections. The applicant proposes to maintain a 7 foot high fence in a required front yard, which will require a 3 foot special exception to the fence height regulations, and to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

LOCATION: 9903 Laneyvale Avenue

APPLICANT: Roberto Torres
Represented by Ramon Aranda

May 16, 2012 Public Hearing Notes:

- The board of adjustment delayed action on the application until August 15th to allow the applicant an opportunity to possibly submit a revised application, and/or to possibly submit a revised proposal (i.e. a revised site plan and /or elevation, or any other related documents to this application) beyond his requests for special exceptions to the fence height and visual obstruction regulations to address any fence over 4' in height in required front yard setbacks and any item located in required visibility triangles on the subject site.
- The applicant was advised at the public hearing that any amendment/addition that he intended to make to his application, and/or any revised site plans/elevations that he intended to make beyond what he had submitted to date should be addressed with/submitted to city staff no later than 5:00 p.m., Friday, July 27th.

REQUESTS:

- The following appeals had been made in this application on a site that is developed with a single family home:
 1. special exception to the fence height regulations of up to 3' are requested in conjunction with modifying and maintaining according to the submitted revised elevation (see Attachment A) an existing "5' brick, stone & wrought iron fence" with a 7' high archway over a pedestrian gate along Laneyvale Avenue and along a portion of Algonquin Drive, and a 6' high wood fence along another portion of Algonquin Drive, both of which are located in the site's two 20' front yard setbacks, and
 2. special exceptions to the visual obstruction regulations are requested in conjunction with maintaining according to the submitted revised site plan and revised elevations (see Attachment A) portions of the aforementioned existing 5' high open wrought iron fence with stone base located in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue (about 10' of length on either side of the driveway).

Note: On May 4, 2012, the applicant's representative emailed a revised site plan and revised elevations to the Board Administrator (see Attachment A) with the following amendments to the original application:

- a. The originally requested existing 5' high open wrought iron fence with stone base located in the 45' visibility triangle at Laneyvale Avenue/Algonquin Drive intersection has been amended to show a 2' 6". Given these amendments, the applicant is requesting that the Board deny this request for a special exception to the visual obstruction regulations to locate/maintain any/all items in the 45' visibility triangle at Laneyvale Avenue/Algonquin Drive intersection without prejudice.
- b. The existing shrubs that the Board Administrator noted on his field trip that are located on either side of the driveway into the site from Laneyvale Avenue are not part of the revised requests for special exceptions to the visual obstruction

regulations to maintain items located in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue since a notation has been made on the submitted revised site plan that "(2) 7' high bushes to be removed."

STAFF RECOMMENDATION (fence height special exceptions):

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):

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of these requests as originally submitted.
- While the applicant's representative has submitted a revised site plan and elevations (*after* the Sustainable Development and Construction Department Project Engineer had reinstated his original recommendation in April) that he says removes any item out of the required 45' visibility triangle at Laneyvale Avenue and Algonquin Drive (hence, requests that *this* special exception be denied without prejudice), the applicant had not substantiated how the location of the existing 5' high open wrought iron fence with stone base located in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue does not constitute a traffic hazard.

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 (fence height special exceptions):

- On April 18, 2012, the Board delayed action on this application until May 16th to allow the applicant an opportunity to meet with an opposing property owner and possibly submit a revised proposal to the Board.
- The subject site is a corner lot zoned R-5(A) with two street frontages of unequal distance. The site is located at the northeast corner of Laneyvale Avenue and Algonquin Drive. Even though the Laneyvale Avenue frontage of the subject site appears to function as its front yard and the Algonquin Drive frontage appears to function as its side yard, the subject site has two 20' front yard setbacks along both

streets. The site has a 20' front yard setback along Laneyvale Avenue (the shorter of the two frontages which is always deemed the front yard setback on a corner lot of unequal frontage distance in a single family zoning district), and a 20' front yard setback along Algonquin Drive (the longer of the two frontages of this corner lot of unequal frontage distance), which would typically be regarded as a side yard where a 9' high fence could be maintained by right). The site's Algonquin Drive frontage is deemed a front yard to maintain the continuity of the established front yard setback along this street created by a number of properties immediately north of the subject site that front west and have front yard setbacks along Algonquin Street.

- 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 applicant had submitted with the original application a scaled site plan and two "NTS" or (Not To Scale) elevations indicating that the proposal in the required front yard setbacks reaches a maximum height of 7'- in this case the 7' maximum height being an archway over a pedestrian gate along Laneyvale Avenue.
- The following additional information was gleaned from the originally submitted site plan:
 - Along Laneyvale Avenue:
 - Approximately 72' in length parallel to the street and approximately 20' in length perpendicular on the east side of the site in the front yard setback.
 - Approximately on the front property line or approximately 10' from the pavement line.
 - Along Algonquin Drive:
 - Approximately 105' in length parallel to the street and approximately 20' in length perpendicular on the north side of the site in the front yard setback.
 - Approximately on the front property line or approximately 10' from the pavement line.
- On May 4, 2012, the applicant's representative emailed a revised site plan and revised elevations to the Board Administrator (see Attachment A). Note that staff could not glean certain dimensions from these emailed reduced plans.

GENERAL FACTS (visual obstruction special exceptions):

- On April 18, 2012, the Board delayed action on this application until May 16th to allow the applicant an opportunity to meet with an opposing property owner and possibly submit a revised proposal to the Board.
- 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 scaled site plan and two "NTS" or (Not To Scale) elevations had been submitted with the original application that showed a 5' high open wrought iron fence with stone base located in the 20' visibility triangles on either side of the driveway into the site

from Laneyvale Avenue (about 10' of length on either side of the driveway) and in the 45' visibility triangle at Laneyvale Drive and Algonquin Drive (about 27' lengths on both streets).

- On May 4, 2012, the applicant's representative emailed a revised site plan and revised elevations to the Board Administrator (see Attachment A). Note that staff could not glean certain dimensions from these emailed reduced plans.

BACKGROUND INFORMATION:

Zoning:

Site: R-5(A) (Single family district 5,000 square feet)
North: R-5(A) (Single family district 5,000 square feet)
South: R-7.5(A) (Single family district 7,500 square feet)
East: R-5(A) (Single family district 5,000 square feet)
West: R-5(A) (Single family district 5,000 square feet)

Land Use:

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

Zoning/BDA History:

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

Timeline:

- January 20, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 20, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- March 21, 2012: 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 March 30th deadline to submit additional evidence for staff to factor into their analysis; and the April 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

- March 221, 2012: The Board Administrator emailed the applicant's representative the following information:
- A picture of shrubs that he photographed on the property, and a request that if these shrubs were something his client intended to request that the board consider in the triangles, to add them to his site plan and elevation no later than March 30th – otherwise it would be noted in the staff report that these existing shrubs are not part of the applicant's request.
- (Note that no such request/amendment was made to the application and/or submittals).
- April 3, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.
- April 5, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "No objection to fence height or alley visibility triangle – however, both the lack of a 45 x 45 at the street/street and the 20 x 20 at the drive are traffic hazards."
- April 18, 2012: The Board delayed action on this application until May 16th to allow the applicant an opportunity to meet with an opposing property owner and possibly submit a revised proposal to the Board.
- May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.
- May 4, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "No objection to fence height or alley visibility triangle – however, both the lack of a 45 x 45 at the street/street and the 20 x 20 at the drive are traffic hazards."

May 4, 2012: The applicant's representative submitted revised materials to the Board Administrator *after* the Sustainable Development and Construction Department Project Engineer submitted his updated review comment sheet marked "Recommends that this be denied." (see Attachment A).

STAFF ANALYSIS (fence height special exceptions):

- These revised requests focus on modifying/maintaining (according to the submitted revised elevation) an existing "5' brick, stone & wrought iron fence" with a 7' high archway over a pedestrian gate along Laneyvale Avenue and along a portion of Algonquin Drive, and a 6' high wood fence along another portion of Algonquin Drive, both of which are located in the site's two 20' front yard setbacks on a property developed with a single family home.
- The originally submitted site plan and "not to scale" elevations documented the location, height, and materials of the fence over 4' in height in the site's two front yard setbacks. The originally submitted site plan showed the fence along Laneyvale Avenue to be approximately 72' in length parallel to the street and approximately 20' in length *perpendicular* to Laneyvale Avenue on the east side of the site in the front yard setback; and to be located approximately on the front property line or about 10 from the pavement line; and showed the fence along Algonquin Drive to be approximately 105' in length parallel to the street and approximately 20' in length *perpendicular* to Algonquin Drive on the north side of the site in the front yard setback; and to be located approximately on the front property line or about 10 from the pavement line.
- On May 4, 2012, the applicant's representative emailed a revised site plan and revised elevations to the Board Administrator (see Attachment A). Note that staff could not glean certain dimensions from these emailed reduced plans.
- No single family home "fronts" on the Laneyvale Avenue side of the subject site (the property immediately south of the site fronts westward to Algonquin Drive and has a side yard along Laneyvale Avenue and what appears to be an 8' high solid fence in its side yard across from the subject site); and three single family homes "front" on Algonquin Drive, none with fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above 4 feet high, which appeared to be located in a front yard setback. (One approximately 8' high solid fence was noted immediately south of the subject site – a fence that appears to be in compliance with the Development Code since this property's Laneyvale Avenue frontage is a *side yard*).
- As of May 8, 2012, no letters had been submitted to staff in support of the request and one letter had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of up to 3' will not adversely affect neighboring property.
- Granting these special exceptions of up to 3' with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations would require the proposal exceeding 4' in height in the front yard setbacks to be modified/maintained in the location and of the heights and materials as shown on these revised documents.

STAFF ANALYSIS (visual obstruction special exceptions):

- These revised requests focus on maintaining according to the submitted revised site plan and revised elevations portions of the aforementioned existing 5' high open wrought iron fence with stone base located in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue (about 10' of length on either side of the driveway).
- The applicant's representative has submitted a revised site plan and elevations that removes existing shrubs that the Board Administrator noted on his field trip that are located on either side of the driveway into the site from Laneyvale Avenue, and he says removes any item out of the required 45' visibility triangle at Laneyvale Avenue and Algonquin Drive.
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain aforementioned items in the drive approach visibility triangles do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan and revised elevations would require that the items in the 20' visibility triangles on either side of the driveway into the site from Laneyvale Avenue to be limited to the location, height, and materials of those items as shown on these revised documents.

BOARD OF ADJUSTMENT ACTION: APRIL 18, 2012

APPEARING IN FAVOR: Ramon Aranda, 2946 So. Sunbeck Circle, Farmers Branch

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment in Appeal No. **BDA 112-034**, hold this matter under advisement until **May 16, 2012**.

SECONDED: **Gillespie**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: Ramon Aranda, 2946 So. Sunbeck Circle, Farmers Branch

APPEARING IN OPPOSITON: No one

MOTION: **Wilson**

I move that the Board of Adjustment in Appeal No. **BDA 112-034**, hold this matter under advisement until **August 15, 2012**.

SECONDED: Leone

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 112-050

BUILDING OFFICIAL’S REPORT:

Application of Santos T. Martinez, Masterplan, for variances to the front yard setback regulations and a special exception to the visual obstruction regulations at 2911 Routh Street. This property is more fully described as Lots 7-10 in City Block 952 and is zoned PD-193(GR), which requires a front yard setback of 10 feet, and a 45 foot visibility triangle at street intersections. The applicant proposes to construct/maintain a structure and provide 0 foot front yard setbacks, which will require variances to the front yard setback regulations of 10 feet, and to locate/maintain items in a required visibility triangle which will require a special exception to the visual obstruction regulations.

LOCATION: 2911 Routh Street

APPLICANT: Santos T. Martinez, Masterplan

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with existing retail/restaurant uses (Sunstone Yoga and PrimeBar) and a vacant restaurant use (The Place at Perry’s) that is being transitioned to a bar/restaurant use (Kung Fu Saloon- Dallas):
 1. Variances to the front yard setback regulations of 10’ are requested in conjunction with:
 - a) Demolishing the existing concrete “patio” and steps at the entrance (of the former Perry’s Restaurant/proposed Kung Fu Saloon) and replacing it with a “new wooden patio and stairs,” almost all of which would be located in the site’s two 10’ front yard setbacks along Routh Street and Cedar Springs Road
 - b) constructing and maintaining a “small balcony near the entrance along Routh Street”;
 - c) addressing and remedying the nonconforming aspect of the existing nonconforming structure that is located in the site’s two front yard setbacks along McKinney Avenue and Boll Street;
 2. A special exception to the visual obstruction regulations is requested to construct, locate, and maintain portions of the aforementioned “new wooden patio and stairs” in the required 45’ visibility triangle at the intersection of Routh Street and Cedar Springs Road.

STAFF RECOMMENDATION (variance):

Denial

Rationale:

- Although the site is irregular in shape, the applicant had not substantiated how either the shape of the lot or its area or slope precludes it from being developed in a manner commensurate with development found on other PD 193 (GR Subdistrict) zoned lots.

STAFF RECOMMENDATION (visual obstruction special exception):

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommends denial of this request stating that the applicant's proposal makes an existing visibility problem worse, and that the acute angle of the intersection contributes to the traffic hazard problem.
- The applicant had not substantiated how the location of the items shown on his submitted revised site plan and his elevation in the 45' visibility triangle at the intersection of Routh Street and Cedar Springs Road does not constitute a traffic hazard.

STANDARD FOR A VARIANCE:

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

- (A) 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) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) 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 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 (variances):

- The subject site is located at the intersection of Routh Street and Cedar Springs Road. Because the property with two street frontages is zoned PD 193 (GR), it has two 10' front yard setbacks along both streets.
- The minimum front yard setback on a PD 193 (GR) zoned lot is 10 feet.
- The applicant has submitted a revised site plan and an elevation indicating that portions of an existing structure and portions of an approximately 330 square foot "proposed new wooden patio and stairs" structure will be located on the site's Routh Street and Cedar Springs Road front property lines or 10' into the 10' front yard setbacks, and a "proposed new wooden balcony" will be located on the Routh Street front property line or 10' into this 10' front yard setback. (The dimensions of the balcony are not clearly noted on the revised plan but *appear* to be approximately 13' in length and approximately 2' in width).
- The applicant has made variance requests for not only the proposed addition to be located in the Routh Street and Cedar Springs Road front yard setbacks but also for the existing nonconforming structure (which according to DCAD records constructed in 1950) that is located in both these front yard setbacks – areas that the applicant has represented impacts over 2,500 square feet of existing floor area as well as accessibility ramps into the building. (The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent).
- The site is flat, irregular in shape (five-sided), and according to the amended application, 0.1656 acres in area. The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- DCAD records indicate that the improvements at 2911 Routh Street is a "retail strip" with 7,672 square feet built in 1950.
- On April 27, 2012, the applicant submitted additional information to the staff beyond what was submitted with the original application (see Attachment A).

GENERAL FACTS (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).
- On April 27, 2012, the applicant submitted additional information to the staff beyond what was submitted with the original application (see Attachment A).
- The submitted revised site plan indicates that approximately 1/3 of the "proposed new wooden patio and stair" structure is to be located in the 45' visibility triangle at the intersection of Routh Street and Cedar Springs Road.
- The submitted elevation denotes certain characteristics related to the patio and stairs. While the heights of the patio and stairs are denoted, the building materials

are not other than the general label on the elevation stating “Proposed New Wooden Deck and Stairs.”

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (GR) (Planned Development District, General Retail)
North: PD 193 (LC) (Planned Development District, Light commercial)
South: PD 193 (GR) (Planned Development District, General Retail)
East: PD 9 (Planned Development District)
West: PD 193 (GR) (Planned Development District, General Retail)

Land Use:

The subject site is developed with a vacant restaurant use (The Place at Perry’s) along with other existing retail/restaurant uses (Sunstone Yoga and PrimeBar) The areas to the north, east, south, and west are a mix of office, retail, and 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:

- March 26, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- April 17, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- April 18, 2012: 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 April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- April 24, 2012: The Board Administrator emailed the applicant the following additional information after a more in depth review of the applicant’s submittals:

- With the understanding that the code states that the applicant has the burden of proof in establishing the necessary facts to warrant favorable action of the board, the Board Administrator found certain things in the submittals precluded him from comprehensively conveying what was being requested from the board in this application.
- The observation that if/when the board grants variances, they almost always impose the applicant's submitted site plan as a condition to the request. With this in mind, the applicant may want to consider the importance of how a clearly noted site plan that conveys the issue at hand in terms of what structure/structures are requested to be varied in the setback may be in the process.
- The observation that if/when the board grants visual obstruction special exceptions, they almost always impose the applicant's submitted site plan *and* elevation as a condition to the request. With this in mind, the applicant may want to consider the importance of how a clearly noted site plan *and* elevation that conveys the issue at hand in terms of what structure/structures are requested to be excepted in the visibility triangle may be in the process.

April 27, 2012: The applicant submitted additional information to the staff beyond what was submitted with the original application (see Attachment A).

May 1, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and Assistant City Attorney to the Board.

May 4, 2012: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "This proposal makes an existing visibility problem worse. The acute angle of the intersection contributes to the traffic hazard problem."

STAFF ANALYSIS (variances):

- These requests focus on:
 1. demolishing the existing concrete "patio" and steps at the entrance of a vacant business and replacing it with a "new wooden patio and stairs," almost all of which would be located in the site's two 10' front yard setbacks along Routh Street and Cedar Springs Road,

2. constructing and maintaining (according to the applicant's April 27th letter) a "small balcony near the entrance along Routh Street";
 3. addressing and remedying the nonconforming aspect of the existing nonconforming structure on this site that is located in the site's two front yard setbacks along McKinney Avenue and Boll Street.
- According to calculations taken by the Board Administrator from the submitted revised site plan, virtually all of the approximately 330 square feet of the "proposed new wooden patio and stair" structure is in Routh Street and Cedar Springs Road front yard setbacks, and all of what appears to be a 26 square foot "balcony" structure is located in the Routh Street front yard setback.
 - The site is flat, irregular in shape (five-sided), and according to the amended application, 0.1656 acres in area. The site is zoned PD No. 193 (GR). The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
 - DCAD records indicate that the improvements at 2911 Routh Street is a "retail strip" with 7,672 square feet built in 1950.
 - The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD 193 (GR) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD 193 (GR) zoning classification.
 - If the Board were to grant the front yard variance requests, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structures in the front yard setbacks would be limited to what is shown on this plan – which in this case are portions of existing structure in the site's two front yard setbacks, virtually all of a proposed "wooden patio and stairs" structure in the site's two front yard setbacks (and in the 45' visibility triangle), and what *appears* to be an approximately 26 square foot "balcony" structure in the site's front yard setback along Routh Street.

STAFF ANALYSIS (visual obstruction special exception):

- This request focuses on constructing/locating/maintaining portions of the aforementioned "new wooden patio and stairs" in the required 45' visibility triangle at the intersection of Routh Street and Cedar Springs Road.
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to construct/locate/maintain

the aforementioned items in Routh Street/Cedar Springs Road intersection visibility triangle does not constitute a traffic hazard.

- Granting this request with a condition imposed that the applicant complies with the submitted revised site plan and submitted elevation would require that the proposed items in the 45' Routh Street/Cedar Springs Road intersection triangle to be limited to the location, height, and materials of those items as shown on these documents.
- If the Board grants this request, they may consider requiring the applicant to clearly denote the building materials beyond the general label on the elevation stating nothing more than "Proposed New Wooden Deck and Stairs" to assure that the items in the visibility triangle do not constitute a traffic hazard.

BOARD OF ADJUSTMENT ACTION: MAY 16, 2012

APPEARING IN FAVOR: Santos Martinez, 900 Jackson, Ste 640, Dallas, TX

APPEARING IN OPPOSITON: No one

MOTION #1: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-050**, on application of Santos T. Martinez, **deny** the front yard setback variances **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Chernock

AYES: 4– Reynolds, Chernock, Wilson, Leone

NAYS: 1 – Gillespie

MOTION PASSED 4 – 1

MOTION #2: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 112-050** on application of Santos T. Martinez, **deny** the special exception **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

SECONDED: Gillespie

AYES: 4 – Reynolds, Gillespie, Wilson, Leone

NAYS: 1 – Chernock

MOTION PASSED 4 – 1

2:34 P.M.: Break

2:39 P.M.: Resumed

MOTION: **Wilson**

I move to adjourn this meeting.

SECONDED: **Gillespie**

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

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

3:35 P.M. - Board Meeting adjourned for **May 16, 2012.**

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.