

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL C
THURSDAY, FEBRUARY 19, 2009

Briefing: 11:00 A.M. 5/E/S
Public Hearing: 1:00 P.M. COUNCIL CHAMBERS

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

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

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

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02-19-2009

ZONING BOARD OF ADJUSTMENT, PANEL C
THURSDAY, FEBRUARY 19, 2009
AGENDA

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| BRIEFING | 5ES | 11:00 A.M. |
| LUNCH | | |
| PUBLIC HEARING | COUNCIL CHAMBERS | 1:00 P.M. |

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

MISCELLANEOUS ITEMS

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| | Approval of the Monday, December 15, 2008 Board of Adjustment Public Hearing Minutes | M1 |
| BDA 078-028 | 9807 Walnut Hill Lane REQUEST: Application of James P. Christon, represented by Tommy Mann of Winstead, to waive the two year time limitation on a request for a special exception to the landscape regulations that was granted by Board of Adjustment Panel C (with conditions) on February 11, 2008 | M2 |

UNCONTESTED CASES

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| BDA 089-021(K) | 4731 S. Lindhurst Avenue REQUEST: Application of Michael Dees for a special exception to the fence height regulations | 1 |
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HOLDOVER CASE

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| BDA 078-159(K) | 6133 Llano Avenue REQUEST: Application of Dolores Parker for a special exception to the visibility obstruction regulations | 2 |
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UNCONTESTED-REGULAR CASES

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| BDA 089-012 | 2811 Hood Street REQUEST: Application of W. Scott Singler, represented by Robert Baldwin, for variances to the front and side yard setback regulations | 3 |
|-------------|--|---|

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C –December 15, 2008 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA 078-028

REQUEST: To waive the two year limitation on a request for a special exception to the landscape regulations that was granted with conditions by Board of Adjustment Panel C on February 11, 2008

LOCATION: 9807 Walnut Hill Lane

APPLICANT: James P. Christon, represented by Tommy Mann of Winstead

STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to board action:
 - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
 - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
 - The applicant may apply for a waiver of the two year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On January 30, 2009, the applicant's representative for BDA078-028 submitted a letter to the Board Administrator requesting him to schedule for the board's consideration, a request to waive the two year time limit in place in conjunction with a request for a special exception to the landscape regulations that was granted by Board of Adjustment Panel C (with a condition imposed that compliance with the submitted site plans is required) on February 11, 2008. (See Attachment A). This letter also provided details as to why the applicant felt the request should be granted.

- On February 2, 2009, the Board Administrator responded to the applicant's representative's request, and shared the following additional information:
 - the public hearing date and panel that will consider the miscellaneous request;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the February 2nd deadline to submit additional evidence for staff to factor into their analysis, and the February 6th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- The February 2008 case report regarding BDA078-028 stated that a special exception to the landscape regulations was made in conjunction with constructing a nonresidential structure and providing an alternate landscape plan.

FILE NUMBER: BDA 089-021(K)

BUILDING OFFICIAL'S REPORT:

Application of Michael Dees for a special exception to the fence height regulations at 4731 S. Lindhurst Avenue. This property is more fully described as Lot 4 in City Block B/5531 and is zoned R-1ac(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot, 6 inch fence in a required front yard setback which will require a special exception of 2 feet, 6 inches.

LOCATION: 4731 S. Lindhurst Avenue

APPLICANT: Michael Dees

REQUEST:

A special exception to the fence height regulations of 2 feet and 6 inches is requested in conjunction with constructing and maintaining a fence and gate in the site's 40 foot front yard setback.

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 property is developed with a single family structure.
- This property is zoned R-1ac(A) and has a 40 front yard setback.
- The applicant is proposing to construct and maintain an open iron fence, solid stone columns, solid stone wing walls, and iron gates.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts. And a person shall not erect or maintain a fence in a required yard more than nine feet above grade.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 067-015, 4818 N. Lindhurst Avenue (subject site) On January 16, 2007, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 4'. On May 15, 2007, the Board of Adjustment Panel A waived the two-year time limitation on this request granted in January of 2007.
2. BDA 95-071, 4805 S. Lindhurst Avenue (the lot immediately south of the subject site) On May 23, 1995, the Board of Adjustment denied a request for a fence height special exception of 2' 5" without prejudice.
3. BDA 978-186, 4834 N. Lindhurst Avenue (the lot immediately east of the subject site) On June 15, 1998, the Board of Adjustment Panel C granted a request for a fence height special exception of 4'.

Timeline:

- December 12 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 22, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- January 23, 2009 The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via phone and letter:
 - the public hearing date and panel that will consider the application;

- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the February 2nd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the February 6th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the January public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

January 6, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- A scaled site plan has been submitted that documents the location of the proposed solid fence, open fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that illustrates the following:
 - 5 foot iron fence
 - 5' 6" stone columns
 - 6 foot solid iron gate
 - 7 foot wing wall
- The proposed fence runs approximately 210 linear feet along South Lindhurst Avenue.
- During the site visit the senior planner observed other fences (of varying heights) in immediate area.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (the solid stucco fence that is proposed to exceed 4' in height) will not adversely affect neighboring property.

- Should the Board vote to grant the special exception to the fence height regulation, staff recommends imposing the submitted landscape plan, elevation and site plan as conditions of approval.

FILE NUMBER: BDA 078-159(K)

BUILDING OFFICIAL'S REPORT:

Application of Dolores Parker for a special exception to the visibility obstruction regulations at 6133 Llano Avenue. This property is more fully described as Lot 13 in City Block 1/2156 and is zoned R-7.5(A), which requires a 20 foot visibility triangle at driveway and alley approaches. The applicant proposes to construct and maintain a single family residential fence structure in a required visibility obstruction triangle which will require a special exception.

LOCATION: 6133 Llano Avenue

APPLICANT: Dolores Parker

REQUESTS:

Special exceptions to the visibility obstruction regulations are requested in conjunction with constructing and maintaining a fence and a residential structure in required 20 foot visibility obstruction triangles.

STAFF RECOMMENDATION (visibility obstruction):

Denial

Rationale:

- The Development Services Senior Engineer submitted a comment sheet marked "Recommends that this be denied" for the following reasons:
 1. The fence will be inside the 20' x20' all visibility triangle.
 2. The fence will in the 20' x20' driveway visibility triangles.
 3. The gate will only provide a distance of approximate 9 feet form the gate to the front of the curb on Clements Street.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:

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

GENERAL FACTS:

- The property is located on the corner of Llano Ave and Clement St.

- The proposed fence will be constructed adjacent to the alley on the northern property line.
- The site is zoned R-7.5(A) which requires a visibility triangle of 20' at driveway and alley approaches.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family residential 7,500 square feet).
North: R-7.5(A) (Single family residential 7,500 square feet).
South: R-7.5(A) (Single family residential 7,500 square feet).
East: R-7.5(A) (Single family residential 7,500 square feet).
West: R-7.5(A) (Single family residential 7,500 square feet).

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures. The property to the west is developed with a City of Dallas Park.

Zoning/BDA History:

There is no zoning history or board of adjustment history for this site or properties in the immediate area.

Timeline:

- October 24, 2008: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- November 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- November 21, 2008: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 1st deadline to submit additional evidence for staff to factor into their analysis and recommendation;

- the December 5th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the December public hearing after considering the information or evidence and testimony presented to them by the applicant and all other interested parties.

December 2, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

February 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The applicant proposes to construct and maintain a fence in the 20’ visibility triangles at the driveway and alley approaches on the property.
- There are three visibility triangles at the drive approach on Clements St.:
 1. one at the alley on the northern side of the drive approach; and
 2. two at the drive approach for the property
- According to DCAD this 3,565 square foot single family structure was constructed in 2005 and is listed in “excellent” condition.
- The City’s Senior engineer reviewed the site plans and has recommended denial of the special exception.
- The applicant has the burden of proof in establishing that granting the special exception to the visibility obstruction regulations does not constitute a traffic hazard
- If the Board were to grant the special exception to the visibility obstruction regulations, it may impose compliance with the submitted site plan and elevation.

FILE NUMBER: BDA 089-012

BUILDING OFFICIAL'S REPORT:

Application of W. Scott Singler, represented by Robert Baldwin, for variances to the front and side yard setback regulations at 2811 Hood Street. This property is more fully described as Lot 7 in City Block 1/1024 and is zoned PD-193 (MF-3) which requires a 10 foot front yard setback for the first 36 feet in height of a structure and a 25 foot front yard setback for all portions of a structure above 36 feet in height, and a 38 foot side yard setback. The applicant proposes to construct a multifamily residential structure and provide a 2 foot, 6 inch front yard setback for a portion of the structure under 36 feet in height which will require a 7 foot, 6 inch variance to the front yard setback regulations, and provide an 18 foot front yard setback for a portion of the structure over 36 feet in height which will require a 7 foot variance to the front yard setback regulations, and to provide 10 foot side yard setbacks which will require 28 foot variances to the side yard setback regulations.

LOCATION: 2811 Hood Street

APPLICANT: W. Scott Singler
Represented by Robert Baldwin

REQUESTS:

- The following appeals have been made in this application on a site that is currently being developed as a 4-story, 56' high multifamily development:
 1. A variance to the front yard setback regulations of 7' 6" is requested in conjunction with constructing and maintaining two stairwell "structures" to be located in the 10' front yard setback required for the portion of the multifamily structure under 36' in height;
 2. According to the revised Building Official's report and applicant's representative's letter of January 30th, a variance to the front yard setback regulations of 7' is requested in conjunction with constructing and maintaining a portion of the multifamily structure to be located in the 25' front yard setback required for the portion of the multifamily structure over 36' in height;
 3. Variances to the side yard setback regulations of 28' are requested in conjunction with constructing and maintaining a portion of the multifamily structure to be located in the site's two 38' side yard setbacks for the portion of the multifamily structure over 36' in height.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that there is no property hardship to the site that warrants any of the four variances requested in this case. The site is flat, is not irregular in shape, and is of a size that would allow it to be developed in a manner commensurate with other parcels of land in the same MF-3 Subdistrict of PD No. 193.
- The applicant had not substantiated how the physical features of the flat, regularly-shaped, 20,000+ square foot subject site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (MF-3) zoning classification while simultaneously complying with code standards including front yard setback regulations.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- The subject site is located at the northwest corner of Congress Avenue and Hood Street. The subject site is zoned PD No. 193 (MF-3 Subdistrict).
As a result, the site has two 10' front yard setbacks for the portion of the structure 36' in height and under, and two 25' front yard setback for the portion of the structure *over* 36' in height: one front yard setback along the south side/Hood Street side of the site (the shorter of the lot's two frontages), and the other front yard setback along the west side/Congress Avenue side of the site (the longer of the two frontages but a front yard setback nonetheless in order to maintain continuity of the established setback of one home directly west that fronts southward onto Congress Avenue).
In addition, the site has two side yard setbacks along the north and east sides of the site: 10' side yard setbacks for the portion of the structure 36' in height or less and 38' side yard setbacks (a 10' side yard setback combined with a setback of one-half the height of the proposed structure height which in this case is 56') for the portion of the structure *over* 36' in height.
- The Building Inspection Development Code Specialist forwarded a revised Building Official's Report on this application (see Attachment A).
- In the MF-3 Subdistrict of PD No. 193, the following minimum front yard setbacks must be provided for all buildings and structures:

1. 10 feet for the first 36 feet in height.
2. 25 feet for all portions of a building above 36' in height.

The applicant has submitted a site plan and an "exterior elevation" document indicating a four-story, approximately 56' high structure with an approximately 6,700 square foot building footprint whereby two stairwell structures are located (according to the revised Building Official's Report) 2' 6" from the site's Congress Avenue front property line (or 7' 6" into the required 10' setback for the portion of the structure 36' in height or less). In addition, the submitted site plan denotes an "additional 6'-0" setback for areas above 36'-0" "and a "10'-0" side yard setback" provided along Congress which would indicate a total setback of 16' for the portion of the multifamily structure over 36' in height even though the revised Building Official's Report and applicant's representative's letter references an 18' front yard setback provision into the required 25' front yard setback. The site plan shows a 16' setback for the portion of the structure over 36' in height (which would necessitate a variance of 9') and the revised Building Official's Report and applicant's representative's letter references a 18' setback which would necessitate a variance of 7').

- In the MF-3 Subdistrict of PD No. 193, a 10' side yard setback is required for multiple-family structures 36' or less in height, and if a building is erected to exceed 36' in height, an additional setback must be provided that is equal to one-half the height of the building, up to a maximum setback of 50 feet.

The applicant has submitted a site plan and an "exterior elevation" document indicating a four-story, approximately 56' high structure with an approximately 6,700 square foot building footprint whereby the structure 36' or less in height complies with the side yard setback regulations. The proposed structure over 36' in height is shown to be located 10' from the site's northern and eastern side property lines whereby the structure over 36' in height is located 28' into the required 38' side yard setbacks on the north and east sides of the site.

- According to calculations taken by the Board Administrator from the site plan, the area of the proposed structure 36' in height or less (two stairwell structures) to be located in the site's 10' Congress Avenue front yard setback is approximately 64 square feet (less than 1 percent) of the 8,700 square foot building footprint.
- According to calculations taken by the Board Administrator from the site plan, the area of the proposed structure over 36' in height to be located in the site's 25' Congress Avenue front yard setback is approximately 840 square feet (or 9 percent) of the 8700 square foot building footprint.
- According to calculations taken by the Board Administrator from the site plan, the area of the proposed structure over 36' in height to be located in the site's 38' 6" eastern side yard setback is approximately 2,400 square feet (or 28 percent) of the 8700 square foot building footprint.
- According to calculations taken by the Board Administrator from the site plan, the area of the proposed structure over 36' in height to be located in the site's 38' 6" northern side yard setback is approximately 2,300 square feet (or 26 percent) of the 8700 square foot building footprint.
- The site is flat, generally rectangular in shape (approximately 195' on the north, approximately 195' on the south, approximately 109' on the east, and approximately 102' on the west) and approximately 20,500 square feet (or 0.47 acres) in area. The

site is zoned PD No. 193 (MF-3). The site has two front yard setbacks and two side yard setbacks.

- DCAD records indicate that the site is developed with a 6,552 square foot apartment structure built in 2008.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). Although this information was dated January 30, 2009, it was not received by staff until February 5th after the staff review team meeting held on February 3rd. This information included the following:
 - a letter that further explains the requests;
 - photographs labeled "Other properties zoned PD 193 (MF-3) in Immediate Vicinity with No Additional Setbacks";
 - a "Plan View of Stairs" document;
 - a "Detail of Stairs" document;
 - a "Side View of Stairs" document; and
 - an annotated "Building Elevations" document.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (MF-3) (Planned Development Multifamily)
North: PD No. 193 (MF-3) (Planned Development Multifamily)
South: PD No. 193 (MF-3) (Planned Development Multifamily)
East: PD No. 193 (MF-3) (Planned Development Multifamily)
West: PD No. 193 (MF-3) (Planned Development Multifamily)

Land Use:

The subject site is under development. The areas to the north, east, south, and west are developed with residential uses.

Zoning/BDA History:

1. BDA 056-212, Property at 2811 Hood Street (the eastern "half" of the subject site)

On September 18, 2006, the Board of Adjustment Panel C granted a request for a variance to the side yard setback regulations of 10' and imposed the submitted site plan as a condition to this request. The case report stated that the request was made in conjunction with constructing and maintaining two, 3 story, 3 unit multifamily structures on a site that was currently developed with a vacant, one story apartment structure.

Timeline:

- Nov. 20, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Dec. 16, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”
- Jan. 23, 2009: 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 February 2nd deadline to submit additional evidence for staff to factor into their analysis; the February 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- Feb. 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Assistant Director of Development Services – Current Planning; the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Feb. 3, 2009 The Building Inspection Development Code Specialist forwarded a revised Building Official’s Report to the Board Administrator (see Attachment A).
- Feb. 5, 2009: The applicant’s representative forwarded additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- Four variances have been requested to complete and maintain a 4-story, 56’ high multifamily development with a building footprint of approximately 6,700 square feet. Two front yard setback variances have been requested to the site’s Congress Avenue front yard setback: one being for the portion of the structure over 36’ in

height or less – two stairway structures, and the other being for the portion of the structure over 36' in height – an approximately 84' long portion of the structure that is either 7' or 9' into the setback depending on what is shown on the submitted site plan or referenced in the applicant's representative's letter and revised Building Official's Report. (No front yard variance is requested for the site's Hood Street front yard setback). Two side yard setback variances have been requested to the site's two 38' foot side yard setbacks for the portion of the structure over 36' in height along the north and east sides of the site.

- The site is flat, generally rectangular in shape (approximately 195' on the north, approximately 195' on the south, approximately 109' on the east, and approximately 102' on the west) and approximately 20,500 square feet (or 0.47 acres) in area. The site is zoned PD No. 193 (MF-3). The site has two front yard setbacks and two side yard setbacks. DCAD records indicate that the site is developed with a 6,552 square foot apartment structure built in 2008.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front and 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 variances are necessary to permit development of the subject site (a site that is under development, and is flat, generally rectangular in shape, and over 20,000 square foot in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (MF-3) 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 No. 193 (MF-3) zoning classification.
- If the Board were to grant any or all of the variances requested, imposing a condition whereby the applicant must comply with the submitted site plan and elevation document, the structure in any or all of the front and side yard setbacks that are granted would be limited to what is shown on these plans.