

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL C
MONDAY, AUGUST 16, 2010

Briefing: 10:00 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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08-16-2010

ZONING BOARD OF ADJUSTMENT, PANEL C
MONDAY, AUGUST 16, 2010
AGENDA

BRIEFING	5/E/S	10:00 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEM

Approval of the Monday, June 14, 2010 Board of Adjustment Public Hearing Minutes	M1
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UNCONSTESTED CASES

BDA 090-076	9009 Briarwood Lane REQUEST: Application of Cyrus Barcus, Jr., represented by Richard Bragg, for a special exception to the single family use regulations	1
BDA 090-083	330 W. Pembroke Avenue REQUEST: Application of Butch Phillips to enlarge a nonconforming use	2

HOLDOVER CASES

BDA 090-053	2326 N. Henderson Avenue REQUEST: Application of Santos T. Martinez for a variance to the front yard setback regulations	3
BDA 090-057	3620 Edgewater Drive REQUEST: Application of Lauren Bryant, represented by Truett Roberts, for variances to the side yard setback regulations	4

REGULAR CASES

BDA 090-060	3516 Ross Avenue REQUEST: Application of Deban Hinga Mbogo for an extension of the nonconforming use compliance date	5
BDA 090-079	6941 Gaston Avenue REQUEST: Application of Robert Baldwin for special exceptions to the fence height regulations	6

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C June 14, 2010 public hearing minutes.

FILE NUMBER: BDA 090-076

BUILDING OFFICIAL'S REPORT:

Application of Cyrus Barcus Jr., represented by Richard Bragg, for a special exception to the single family use regulations at 9009 Briarwood Lane. This property is more fully described as Lots 8 and 9 in City Block 5/5578 and is zoned R-1ac(A) which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit which will require a special exception

LOCATION: 9009 Briarwood Lane

APPLICANT: Cyrus Barcus, Jr.
Represented by Richard Bragg

REQUEST:

- A request for a special exception to the single family use development standard regulations is requested for constructing and maintaining a two-story "dwelling unit"/"cabin" structure with an approximately 600 square foot (approximately 30' x 20') building footprint on a site being developed with a dwelling unit/single family home structure that has (according to DCAD) approximately 15,000 square feet of living area.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

GENERAL FACTS:

- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties. The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
A site plan has been submitted denoting the locations of the building footprints of the “new structure” and the “existing house footprint” relative to the entire site. An elevation has been submitted of the second/additional dwelling unit on the site (denoting a two-story structure) and floor plans (denoting a structure with a “veranda,” “vanity,” “shower,” “cabin w.c.,” and “storage” room on the first floor, and a “bar,” “craft room,” “craft closet,” and “powder room” on the second floor). The Building Official has reviewed the submitted floor plans and deemed it a “dwelling unit.”
- DCAD records indicate that the site is developed with the following:
 - a single family home built in 2007 with 15,039 square feet of living area;
 - a 1605 square foot attached garage; and
 - pool.

Zoning:

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

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:

May 21, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 15, 2010: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a two-story "dwelling unit"/"cabin" structure with an approximately 600 square foot (approximately 30' x 20') building footprint on a site being developed with a dwelling unit/single family home structure that has (according to DCAD) approximately 15,000 square feet of living area.
- The site is zoned R-1ac(A) Single family district 1 acre where the Dallas Development Code permits one dwelling unit per lot. The site is being developed with a single family home/dwelling unit, and the applicant proposes to construct and maintain an additional dwelling unit/"cabin" structure on the site hence the special exception request.
- Building Inspection has reviewed the submitted floor plans of the proposed additional dwelling unit/"cabin" structure and deemed it a "dwelling unit" - that is (per Code definition) "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms." The submitted floor plans denote a structure with a "veranda," "vanity," "shower," "cabin w.c.," and "storage" room on the first floor, and a "bar," "craft room," "craft closet," and "powder room" on the second floor.
- This request centers on the function of what is proposed to be located inside the proposed "cabin" structure. If the board were to deny this request, it appears that this structure could be constructed and maintained with merely modifications to the

function/use inside it (or to the floor plans) since the proposed structure appears to comply with the applicable zoning code development standards.

- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, the Board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan and/or floor plans are necessary in assuring that the special exception will not adversely affect neighboring properties. Note that granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. the site and the development on the site must meet all required setback and coverage requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

FILE NUMBER: BDA 090-083

BUILDING OFFICIAL'S REPORT:

Application of Butch Phillips to enlarge a nonconforming use at 330 W. Pembroke Avenue. This property is more fully described as a 16.604 acre tract in City Block A/3317 and is zoned MF-1(A) and R-7.5(A) which prohibits the enlargement of a nonconforming use. The applicant proposes to enlarge a nonconforming convalescent and nursing home, hospice care, and related institutions use which will require a request to enlarge a nonconforming use.

LOCATION: 330 W. Pembroke Avenue

APPLICANT: Butch Phillips

REQUEST:

- A request is made to enlarge a nonconforming “convalescent and nursing homes” use (St. Joseph’s Residence) on the subject site – a site developed with a multifamily development and counseling/laypersons training center in addition to the existing nursing home structure/use. According to calculations taken from the submitted site plan by the Board Administrator, the building footprint area of the proposed enlargement of the existing nursing home structure is approximately 8,800 square feet (or approximately 36 percent of the area) of the 24,500 square feet of existing building footprint of the existing nursing home structure.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request to enlarge a nonconforming use since the basis for this type of appeal is based on when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STANDARD FOR ENLARGING A NONCONFORMING USE:

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

GENERAL FACTS:

- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The subject site encompasses 16.604 acres in area and includes not only the nursing home structure/use that is the nature of this request but also a multifamily development on the northeast corner of the site and a counseling/laypersons training center on roughly the southern half of the site. The approximately 16.604 acre site is zoned both R-7.5(A) (the areas in which the nursing home and counseling/laypersons training center are located) and MF-1(A) (the area where the multifamily development is located).
- A “convalescent and nursing homes” use is not permitted in R-7.5(A) zoning.
- DCAD states that the site is developed with “senior citizen housing” built in 1965.
- Given provisions set forth the Dallas Development Code, the existing “convalescent and nursing homes” use on the site can obtain “conforming use” status upon obtaining a change in zoning to a district that permits this specific use from the City Council.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance date that is provided 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 applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information includes documents entitled: “First Floor Plan,” “Second Floor Plan,” “Roof Plan,” and “Exterior Elevations.” (Note that the “footage schedule” denoted on the submitted “First Floor Plan” references “total covered area” of the proposed two-story addition to be “15,752 square feet.”)

BACKGROUND INFORMATION:

Zoning:

Site: R 7.5(A), MF- 1(A), SUP 499 (Single family residential 7,500 square feet and multifamily, and specific use permit)
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: MU-1 (Mixed use)

West: R 7.5(A)(Single family residential 7,500 square feet)

Land Use:

The 16.604 acre subject site is developed with nursing home structure/use, counseling/laypersons training center use, and multifamily use. The areas to the north, east, south, and west appear to be developed with residential uses.

Zoning/BDA History:

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| 1. Z078-129, southwest corner of Pembroke Avenue and Madison Street (the northeast corner of the subject site) | On February 27, 2008, the City Council approved a request for MF-1(A) Multifamily District on property zoned R-7.5(A) Single Family District and SUP 499 for an Institution of Charitable, Religious, or Philanthropic Nature. (According to the case report, SUP No. 499 was established on February 9, 1970 for a permanent time period). |
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Timeline:

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| June 21, 2010: | The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. |
| July 15, 2010: | The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C. |
| July 16, 2010: | The Board Administrator emailed the applicant the following information: <ul style="list-style-type: none">• an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 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. |
| July 23, 2010: | The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A). |
| August 3, 2010: | The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building |

Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

August 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

STAFF ANALYSIS:

- This request focuses on enlarging nonconforming “convalescent and nursing homes” use (St. Joseph’s Residence) on the subject site – a site developed with a multifamily development and counseling/laypersons training center in addition to the existing nursing home structure/use.
- According to calculations taken from the submitted site plan by the Board Administrator, the building footprint area of the proposed enlargement of the existing nursing home structure is approximately 8,800 square feet (or approximately 36 percent of the area) of the 24,500 square feet of existing building footprint of the existing nursing home structure. The “footage schedule” denoted on the submitted “First Floor Plan” references “total covered area” of the proposed two-story addition to be “15,752 square feet.”
- A “convalescent and nursing homes” use is not permitted in R-7.5(A) zoning.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- Granting this request, with a condition imposed that the applicant comply with the submitted site plan and “Exterior Elevations” document, would assure that the enlargement of the nonconforming use on this site would be limited to that what is shown on these documents.

FILE NUMBER: BDA 090-053

BUILDING OFFICIAL'S REPORT:

Application of Santos T. Martinez for a variance to the front yard setback regulations at 2326 N. Henderson Avenue. This property is more fully described as Lot 11 in City block 1/1975 and is zoned PD No. 462 which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback which will require a variance of 15 feet.

LOCATION: 2326 N. Henderson Avenue

APPLICANT: Santos T. Martinez

AMENDED REQUEST:

- A variance to the front yard setback regulations of 15' is requested (according to a July 23rd letter submitted by the applicant) for the following:
 - "a retractable awning that would be placed above the existing trellis;" and
 - "installation of clear vinyl wind flaps to be used during winter months around the lower patio."

The site is currently developed with a restaurant use (Hacienda Restaurant and Bar).

The applicant's July 23rd letter (see Attachment A) states that this variance request is seeking removal of a condition imposed by the Board of Adjustment (Panel C) in June of 2009 on the subject site (BDA089-072): that condition (according to the applicant's letter) being "that the patio remain open at all times."

The "retractable canopy" that is mentioned on the application or "retractable awning" mentioned in the applicant's July 23rd letter that is an issue of the applicant's variance request appears from the submitted site plan (denoted as "covered patio") to be approximately 650 square feet in area and located in the site's 15' front yard setback – a patio/trellis structure that was "varied" by the Board of Adjustment in June of 2009 - BDA089-072. Although the applicant made an application in June of 2009 for a variance to the front yard setback regulations of 15' to construct and maintain a "covered patio"/trellis structure, the Board granted the variance of 15 feet as stated in the motion to grant the request "for an open patio, totally unenclosed, no sides with trellises on the top," and imposed the submitted revised site plan as a condition to the request. The BDA089-072 case report from June of 2009 stated that the proposed covered patio/trellis structure would attach to an existing main structure on the site that has an approximately 2,600 square foot building footprint which (according to the applicant) was a 1940's duplex structure-turned retail

structure-turned restaurant structure planned to transition to a new restaurant/bar use (Hacienda Restaurant and Bar).

In March of 2010, the applicant made an application for a variance to the front yard setback regulations of 15' (BDA090-027) – an application made where (according to the application) the “owner seeks to install a retractable canopy over the patio within the required front yard setback “ – a structure that would have “covered” or enclosed the open patio “structure” that was “varied” by the Board of Adjustment Panel C in June of 2009.

STAFF RECOMMENDATION:

Denial

- There is no property hardship to the site that warrants a front yard variance of 15' requested to install and maintain the requested retractable canopy/retractable awning over the patio structure previously “varied” by the Board of Adjustment Panel C in June of 2009, or the requested “clear vinyl wind flaps to be used during winter months around the lower patio” both of which are shown on the applicant’s submitted “Awning Exhibit” document in the site’s required 15’ front yard setback.
- The site is rectangular in shape, relatively flat, and of a size no thinner or shorter than the parcels of land to its east and west zoned PD No. 462 (Subdistrict 3). There is no physical characteristic/feature of the subject site that warrants either: 1) the requested “retractable canopy over the patio/retractable awning” or 2) any other type of enclosure (wind flaps, clear vinyl, glass, etc.) of the patio on its sides located in the 15’ front yard setback.
- The applicant had not substantiated how the physical features of this relatively flat, rectangular-shaped, 7,250 square foot 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. 462 (Subdistrict 3) zoning classification (developments in the specific zoning district that are legal conforming structures that have not been previously “varied” by the Board of Adjustment) while simultaneously complying with: 1) the Board’s June 2009 order allowing “for an open patio, totally unenclosed, no sides with trellises on the top,” and/or 2) with code development standards including but not limited to front yard setback regulations.
- The site is currently developed with a restaurant use with (according to the submitted site plan) a building footprint of over 1,400 square feet excluding the area denoted on this plan as “covered patio” at approximately 850 square feet. The total building footprint located outside the 15’ front yard setback is over 2,000 square feet – an area that the applicant has not substantiated is less than commensurate than other legal conforming developments in the same PD No. 462 (Subdistrict 3) zoning district.
- Regardless of whether the proposed development meets the spirit/intent of PD No. 462, the board can only grant a variance to the front yard setback regulations of this 15’ front yard setback ordinance provision upon the applicant’s demonstration of property hardship that precludes this parcel of land from being developed in a manner commensurate with legal conforming development found on other

Subdistrict 3 zoned lots (not development on lots on the same street located outside of PD No. 462, Subdistrict nor illegal or non-permitted development on lots in PD No. 462).

STANDARD FOR A VARIANCE:

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

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

UPDATED GENERAL FACTS (August 2010):

- The Board of Adjustment Panel C conducted a briefing and public hearing on this application on June 14, 2010 where the board delayed action on the matter until their August 16th hearing.
- The applicant submitted additional information beyond what was submitted with the original application on August 3, 2010 (see Attachment A). This information included a letter that amended/added to what was originally requested, and provided additional information about the request.

ORIGINAL GENERAL FACTS (June 2010):

- Structures on lots zoned PD No. 462 (Subdistrict 3) are required to provide a minimum front yard setback of 15' and a maximum front yard setback of 30 feet. The applicant has submitted a site plan indicating a "covered patio" structure that is located on the site's N. Henderson Avenue front property line (or as much as 15' into the 15' front yard setback).
- The submitted site plan denotes information related to "Parking Analysis." Notes on this plan list uses and floor area as follows: uses - restaurant, floor area: 4495, office, 345; required parking: 46, provided parking: 56. According to calculations taken by the Board Administrator from the submitted site plan, the area of the "covered patio" structure to be located in the site's 15' minimum front yard setback is approximately 650 square feet (approximately 43' long and 15' deep). Approximately 75 percent of the proposed covered patio would be located in the front yard setback (about 650 square feet of the total 850 square foot "covered patio.")

- The site is virtually flat, rectangular in shape (145' x 50'), and is (according to DCAD) 7,250 square feet in area. The site is zoned PD No. 462 (Subdistrict 3).
- According to DCAD records, the property is developed with a 4,440 square foot restaurant built in 1940.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 462 (Subdistrict 3) (Planned Development)
North: R-7.5(A) (Single family residential 7,500 square feet)
South: PD No. 462 (Subdistrict 3) (Planned Development)
East: PD No. 462 (Subdistrict 3) (Planned Development)
West: PD No. 462 (Subdistrict 5) (Planned Development)

Land Use:

The subject site is developed with a bar/restaurant use (Hacienda Restaurant and Bar). The area immediately north is developed as single family uses; and the areas immediately east, south, and west are developed with retail uses.

Zoning/BDA History:

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|---|---|
| <p>1. BDA089-072, 2326 N. Henderson Avenue (the subject site)</p> | <p>On June 15, 2009, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 15 feet “for an open patio, totally unenclosed, no sides with trellises on the top,” and imposed the submitted revised site plan as a condition to the request. The case report stated that the request was made in conjunction with completing and maintaining an approximately 750 square foot portion of an approximately 1,000 square foot “covered patio”/trellis structure that is located in the site’s 15’ front yard setback. The “covered patio”/trellis structure would attach to an existing main structure on the site that has an approximately 2,600 square foot building footprint which according to the applicant, is a 1940’s duplex structure-turned retail structure-turned restaurant structure being renovated as a new restaurant/bar use (Hacienda Restaurant and Bar).</p> |
| <p>2. Miscellaneous Item # 2,</p> | <p>On March 15, 2010, the Board of Adjustment</p> |

BDA089-072, 2326 N. Henderson Avenue (the subject site)

Panel C waived the two year limitation on a request for a variance to the front yard setback regulations of 15' that was granted "for an open patio, totally unenclosed, no sides with trellises on the top" by Board of Adjustment Panel C on June 15, 2009 in order for the applicant to resubmit the same type of application on the subject site – in this case, on the same day as the actual variance request.

3. BDA090-027, 2326 N. Henderson Avenue (the subject site)

On March 15, 2010, the Board of Adjustment Panel C denied a request for a variance to the front yard setback regulations of 15' without prejudice. The case report stated that the request was made to install a retractable canopy over the patio within the required front yard setback – a structure that would "cover" or enclose an open patio "structure" that was "varied" by the Board of Adjustment Panel C in June of 2009. The site is currently developed with a restaurant use (Hacienda Restaurant and Bar).

Timeline:

March 22, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 22, 2010: 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."

April 22, 2010: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th 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.

April 30, 2010: The applicant emailed the Board Administrator requesting to postpone the application until June. The email stated that “the operator at 2326 N. Henderson is continuing to work with adjacent property owners regarding the open patio requirement for this property. There are more meetings scheduled to take place during the month of May, but not in time for the scheduled Board case. At this time, we respectfully request that this case be scheduled for the June hearing so that we can continue these conversations with our neighbors.” (The Board Administrator emailed a response back that informed that the application would be scheduled for June 14th per his request).

May 11, 2010: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 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 request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 2, 2010: The applicant emailed the Board Administrator requesting to postpone the application until August. The email stated that “We continue to work with a new neighborhood association regarding this request.” (The Board Administrator emailed a response back that informed that the application would remain scheduled for June 14th).

June 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” with the following comments: “Setback is measured from property line not curb. Still need to comply with C.O.D. visibility requirements on all driveways, both sides of patio. Also need to comply with Mill Creek Drainage Guidelines.” (Note that the applicant responded in an email to these comments with the following: “We comply with all city requirements. No visibility obstructions, we understand setback is from property

line (but we note the clearance to the curb). Mill Creek concerns were addressed on building permit.”)

- June 14, 2010: The Board of Adjustment conducted a public hearing on this request and delayed action until their August 16th public hearing.
- June 21, 2010: The Board Administrator wrote the applicant a letter that conveyed the following information:
- the board delayed action on the application until August 16th
 - the July 30th deadline to submit additional evidence for staff to factor into their analysis; and
 - the August 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials.
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- August 3, 2010: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- The applicant submitted a letter on July 23rd stating that his variance request is made for: 1) “a retractable awning that would be placed above the existing trellis;” and 2) “installation of clear vinyl wind flaps to be used during winter months around the lower patio” on the subject site that is currently developed with a restaurant use (Hacienda Restaurant and Bar).
- The retractable canopy/awning and “clear vinyl wind flaps” that are requested to be “varied” in this application would “cover” and enclose an open patio “structure” that was “varied” by the Board of Adjustment Panel C in June of 2009.
- The applicant has submitted a site plan indicating a “covered patio” structure that is located on the site’s N. Henderson Avenue front property line (or as much as 15’ into the 15’ front yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the “covered patio” structure located in the site’s 15’ minimum front yard setback is approximately 650 square feet (approximately 43’ long and 15’ deep). Approximately 75 percent of the covered patio would be located in the front yard setback (about 650 square feet of the total 850 square foot “covered patio.”)
- The applicant has also submitted a document entitled “Awning Exhibit.” This document includes four drawings: “01: Side Elevation/Section,” “02: Front Elevation,” “03: Detail,” and “04: Key Plan.” The requested clear vinyl wind panels “for winter months” are denoted on drawing numbers “01” and “02”, and the requested “retractable awnings” are denoted on drawing number “04.”
- The site is virtually flat, rectangular in shape (145’ x 50’), and is (according to DCAD) 7,250 square feet in area. The site is zoned PD No. 462 (Subdistrict 3). According to DCAD records, the property is developed with a 4,440 square foot restaurant built in 1940.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance 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 PD No. 462 (Subdistrict 3) 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 PD No. 462 (Subdistrict 3) zoning classification.
- If the Board were to grant the variance to the minimum front yard setback regulations of 15', imposing a condition whereby the applicant must comply with the submitted site plan and "Awning Exhibit" document, the "open patio, totally unenclosed, no sides with trellises on the top" that was varied by the board in 2009 would be allowed to become covered with a retractable canopy/awning and enclosed on the sides with clear vinyl wind flaps as shown on these documents.

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

2:24 P.M: Executive Session Begins

2:28 P.M: Public Hearing Resumes

***Member Joel Maten recused himself and did not hear or vote on this matter.**

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., 940, Dallas, TX

APPEARING IN OPPOSITION: Bruce Richardson, 5607 Richmond Ave., Dallas, TX

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 090-053**, hold this matter under advisement until **August 16, 2010**.

SECONDED: **Salinas**

AYES: 3– Boyd, Coulter, Salinas

NAYS: 0–

MOTION PASSED: 3– 0 (unanimously)

FILE NUMBER: BDA 090-057

BUILDING OFFICIAL'S REPORT:

Application of Lauren Bryant, represented by Truett Roberts, for a variance to the side yard setback regulations at 3620 Edgewater Drive. This property is more fully described as Lot 4 in City Block 5/2022 and is zoned PD-193 (Subdistrict D) which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a duplex structure and provide a 0 foot side yard setback which will require a variance of 5 feet.

LOCATION: 3620 Edgewater Drive

APPLICANT: Lauren Bryant
Represented by Truett Roberts

REQUESTS:

- Variances to the side yard setback regulations of 5' are requested in conjunction with obtaining a final building permit on a recently constructed three-story duplex, portions of which (existing staircases) are located and to be redesigned in the site's eastern and western 5' side yard setbacks. According to documents submitted with the application, the "structures" located in the setbacks were "flatwork, stairs and landings" structures and/or concrete stair structures in the site's eastern and western 5' side yard setbacks, however, according to a document submitted by the applicant's representative on June 4th, the existing concrete stair structures that completely fill the 5' setbacks are to be redesigned to be 3' 8" wide, and to be made of steel and wood (see Attachment C).

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the originally submitted site plan shows the site sloping northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120', and being slightly irregular in shape (60' on the north, approximately 48' on the south, approximately 131' on the east, and approximately 100' on the west), the applicant has not substantiated how these features result in being unable to develop the subject site/parcel of land in a manner commensurate with development found on other PD No. 193 (D Subdistrict) zoned lots.
- The applicant has not substantiated how the physical features of the subject site precluded him from developing the site with reasonably-sized duplex that is commensurate with other duplexes in the zoning district while simultaneously being

able to comply with the development standards in the Dallas Development Code including but not limited to the side yard setbacks.

STANDARD FOR A VARIANCE:

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

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

UPDATED GENERAL FACTS (August 2010):

- The Board of Adjustment Panel C conducted a briefing and public hearing on this application on June 14, 2010 where the board delayed action on the matter until their August 16th hearing in part to allow time for the applicant to possibly garner additional support of the application and/or to possibly submit a redesign of the stair structures in the setbacks.
- As of August 9, 2010, the applicant's representative had not submitted any additional information beyond what was submitted with the original application, and at the May 17th and June 14th public hearings.

UPDATED GENERAL FACTS (June 2010):

- The Board of Adjustment Panel C conducted a briefing and public hearing on this application on May 17, 2010. The Board Administrator circulated additional written documentation to the Board at the May 17th briefing (see Attachment B). This information included a revised site plan and revised elevation prepared by the applicant's representative.
- According to calculations taken by the Board Administrator from the submitted revised site plan, the area of the structure that located in the site's eastern 5' side yard setback is approximately 200 square feet (or approximately 7 percent) of the approximately 2,600 square foot building footprint; and the area of the structure located in the site's western 5' side yard setback is approximately 120 square feet (or approximately 5 percent) of the approximately 2,600 square foot building footprint.
- The Board of Adjustment Panel C delayed action on the matter until their June 14th hearing in part to allow time for the applicant to possibly garner additional support of

the application and/or to possibly submit a redesign of the stair structures in the setbacks.

- The applicant's representative submitted information beyond what was submitted with the original application and at the May 17th public hearing (see Attachment C). This information included the following:
 - a narrative providing additional details about the request,
 - a revised site plan and elevation of the revised request; and
 - three letters of support from “individuals with residences in the neighborhood.”
- According to calculations taken by the Board Administrator from the submitted June 4th revised site plan, the area of the each structure located in the site's eastern and western 5' side yard setback is approximately 90 square feet (or approximately 3 percent) of the approximately 2,600 square foot building footprint.

ORIGINAL GENERAL FACTS (May 2010):

- The minimum side yard setback on a PD No. 193 (Subdistrict D) zoned lot is 5 feet. The applicant had submitted a site plan indicating “structures” (described on information submitted with the application as “flatwork, stairs and landings” and/or concrete stair structures) located as close as on the site's western side property line (or 5' into the required 5' side yard setback) and as close as 1' from the site's eastern side property line (or 4' into the required 5' side yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure that located in the site's eastern 5' side yard setback was approximately 130 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint; and the area of the structure located in the site's western 5' side yard setback is approximately 120 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint.
- The site plan shows that the site slopes northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120'. The site is slightly irregular in shape (60' on the north, approximately 48' on the south, approximately 131' on the east, and approximately 100' on the west), and according to the application is 0.18 acres in area. The site is zoned PD No. 193 (D Subdistrict).
- According to DCAD records, the property is developed with the following:
 - a structure built in 2008 with 5,600 square feet of living area;
 - a 440 square foot attached garage; and
 - a 399 square foot attached garage.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request, as well as photos of what the applicant's representative describes as “examples of single family and duplex structures in PD 193, subsection D, that extend to the side yard setback limit on both sides of the property...and are three stories in height.”

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 193 (D) (Planned Development District, Duplex)
<u>North:</u>	CD No. 17 (Conservation District)
<u>South:</u>	PD No. 193 (D) (Planned Development District, Duplex)
<u>East:</u>	PD No. 193 (D) (Planned Development District, Duplex)
<u>West:</u>	PD No. 193 (D) (Planned Development District, Duplex)

Land Use:

The subject site is developed with a duplex. The areas to the north, south, and west are developed with residential uses; and the area to the east is undeveloped.

Zoning/BDA History:

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

Timeline:

March 26, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

April 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

April 22, 2010: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th 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.

The Board Administrator also posed the following questions from having seen the structure on the site that he thought the applicant's representative may want to establish in conjunction with his appeal:

1) How did the structure reach its point of completion? (Regardless of whether there is any point to the answer in terms of the variance standard, the board may want to know).

2) Does the structure as it stands and/or as it is proposed to be finished as shown on the submitted plans only violate side yard

setbacks? (In other words, does the structure as it stands and/or as it is shown on the submitted plans comply with every development standard other than side yard setbacks? Even though one may assume "yes" since it is the only variance being requested, to a layperson, the house looks large in terms of its bulk and height. It may be beneficial to the application if the applicant can establish for the board (and for any concerned citizen) that the structure as shown on the submitted plans only violates PD 193 (D Subdistrict) side yard setbacks.

May 4, 2010: Staff received additional information from the applicant's representative dated March 26, 2010 (see Attachment A).

May 4, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

The Building Inspection Senior Plans Examiner/Development Code Specialist commented that the side yard setback requirements were noted on the construction drawings at the time the permit was issued, and that in his opinion, the reason for the appeal appeared to be a design change after permits were issued whereby no variance is warranted.

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

May 13, 2010: The applicant's representative submitted additional information to the Board Administrator (see Attachment B).

May 17, 2010: The Board of Adjustment conducted a public hearing on this request and delayed action until their June 14th public hearing.

May 18, 2010: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the May 27th deadline to submit additional evidence for staff to factor into their analysis; and the June 4th 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."

June 1, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner,

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

- June 4, 2010: The applicant's representative submitted additional information to the Board Administrator (see Attachment C).
- June 14, 2010: The Board of Adjustment conducted a public hearing on this request and delayed action until their August 16th public hearing.
- June 21, 2010: The Board Administrator wrote the applicant a letter that conveyed the following information:
- the board delayed action on the application until August 16th
 - the July 30th deadline to submit additional evidence for staff to factor into their analysis; and
 - the August 6th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- This request focuses on obtaining a final building permit on a recently constructed three-story duplex, portions of which (existing staircases) are located and to be redesigned in the site's eastern and western 5' side yard setbacks. According to documents submitted with the application, the "structures" located in the setbacks were "flatwork, stairs and landings" structures and/or concrete stair structures in the site's eastern and western 5' side yard setbacks, however, according to a document submitted by the applicant's representative on June 4th, the existing concrete stair structures that completely fill the 5' setbacks are to be redesigned to be 3' 8" wide, and to be made of steel and wood.
- The applicant's representative had stated among other things in a document (see Attachment A) that:
 - The owner received permit for construction from the City of Dallas in July of 2008 using plans by VirtualArchitect.com, and that the stairs for the entries in the side yard setbacks were noted by the architect as flatwork. The City inspector amended the document with the annotation "flatwork 6" above grade, max." with the East and West elevations included in the permit documents showing stairs extending well above the grade.
 - The request for variance is limited to the issues surrounding the side yard setback, and "to the Owner's best knowledge, the structure is currently in compliance with all other development codes for PD 193. A "previously non-

conforming deck which extended into rear yard setback has been modified so that it does not extend into the setback.”

- The revised site plan submitted on June 4th indicates “proposed steel and wood stairs and landing” located as close as 1’ away from the site’s western side property line (or 4’ into the required 5’ side yard setback) and as close as about 1.5’ away from the site’s eastern side property line (or 3.5’ into the required 5’ side yard setback).
- According to calculations taken by the Board Administrator from the submitted June 4th revised site plan, the area of the each structure located in the site’s eastern and western 5’ side yard setback is approximately 90 square feet (or approximately 3 percent) of the approximately 2,600 square foot building footprint. (According to calculations taken by the Board Administrator from the originally submitted site plan, the area of the structure located in the site’s eastern 5’ side yard setback was approximately 130 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint; and the area of the structure located in the site’s western 5’ side yard setback was approximately 120 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint).
- The originally submitted site plan shows that the site slopes northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120’. The site is slightly irregular in shape (60’ on the north, approximately 48’ on the south, approximately 131’ on the east, and approximately 100’ on the west), and according to the application is 0.18 acres in area. The site is zoned PD No. 193 (D Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 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 No. 193 (D Subdistrict) 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 same PD No. 193 (D Subdistrict) zoning classification.
- If the Board were to grant the side yard variances of 5’, imposing a condition whereby the applicant must comply with the revised site plan and elevation submitted on June 4th, the structures encroaching into this setback would be limited to that what is shown on these plans which in this case are “proposed steel and wood stairs and landing “structures” attached to a duplex that appear to located as close as 1’ from the side property lines or as much as 4’ into the 5’ side yard setbacks.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2010

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #640, Dallas, TX
Lauren Bryant, 3608 Asbury Ave, Dallas, TX

APPEARING IN OPPOSITION: Judy Desanders, 3619-21 Springbrook, Dallas, TX
Sherryl Thomas, 4228 Glenwood Ave., #4, Dallas, TX

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 090-057**, hold this matter under advisement until **June 14, 2010**.

SECONDED: **Maten**

AYES: 5– Boyd, Moore, Maten, Coulter, Gaspard

NAYS: 0–

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 14, 2010

APPEARING IN FAVOR: Truett Roberts, 6438 Vickery, Dallas, TX
Lauren Bryant, 3608 Asbury Ave, Dallas, TX
Ed Simons, 900 Jackson St., #640, Dallas, TX
Bryan Luter, 3518 Springbrook Dr., Dallas, TX

APPEARING IN OPPOSITION: Sherryl Thomas, 4228 Glenwood Ave., #4, Dallas, TX
Judy Desanders, 3619-21 Springbrook, Dallas, TX

MOTION: **Salinas**

I move that the Board of Adjustment, in Appeal No. **BDA 090-057**, hold this matter under advisement until **August 16, 2010**.

SECONDED: **Maten**

AYES: 4– Boyd, Maten, Coulter, Gaspard

NAYS: 0–

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA 090-060

BUILDING OFFICIAL'S REPORT:

Application of Deban Hinga Mbogo to appeal the nonconforming use compliance date at 3516 Ross Avenue. This property is more fully described as Tracts 3, 4 and 5 of City Block 513 and is zoned PD-298 (Subarea 1) which requires that those uses that became nonconforming as a result of City Council action on April 27, 2005, must be brought to conformance no later than April 26, 2010. The applicant requests a later conformance date for the nonconforming vehicle or engine repair or maintenance use.

LOCATION: 3516 Ross Avenue

APPLICANT: Deban Hinga Mbogo

REQUEST:

- An application is made for the Board of Adjustment to appeal a City Council ordinance-imposed compliance date of April 26, 2010 for a nonconforming vehicle or engine repair or maintenance use (DBA Hinga's Automotive) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES:

Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate that a Certificate of Occupancy (CO # 8610091100) was issued on October 9, 1986, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that "nonconforming use" means "a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The owner of use on the site could transition the use to any use that is permitted by right in the site's PD 298 (Subarea 1) zoning classification.
- On June 7, 2010, a subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- On July 14 2010, the applicant/owner of the nonconforming use on the site submitted responses to the subpoena duces tecum and interrogatories part of which has been included as part of this case report, another part of which has been retained in the box submitted on July 14th by the applicant/owner available for review upon request. (The applicant/owner's submitted responses to the subpoena duces tecum and interrogatories and the list of documents placed in the box of materials have been included in this case labeled as "Attachment A.")

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 298 (Subarea 1) (Planned Development)
North: PD No. 298 (Subarea 1) (Planned Development)
South: PD No. 298 (Subarea 1) (Planned Development)
East: PD No. 298 (Subarea 7) (Planned Development)
West: PD No. 298 (Subarea 1) (Planned Development)

Land Use:

The site is currently developed with nonconforming vehicle or engine repair or maintenance use (Hinga's Automotive). The area to the north appears to be developed with commercial uses; and the areas to the east, south, and west appear to be developed with surface parking lots.

Zoning/BDA History:

1. BDA 067-080, Property at 3516 Ross Avenue (the subject site) On May 14, 2008 the applicant withdrew his application to extend the compliance date for the nonconforming auto service center use on the site- an application that had been randomly assigned to the Board of Adjustment Panel C.

Timeline:

- April 7, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 11, 2010: The Board of Adjustment Secretary 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."
- June 7, 2010: A subpoena duces tecum and interrogatories was personally delivered to the applicant/owner of the nonconforming use on the site.
- July 14, 2010: The applicant/owner of the nonconforming use on the site submitted responses to the subpoena duces tecum and interrogatories part of which has been included as part of this case report, another part of which has been retained in the box submitted on July 14th by the applicant/owner available for review upon request. (The applicant/owner's submitted responses to the subpoena duces tecum and interrogatories and the list of documents placed in the box of materials have been included in this case report labeled as "Attachment A.")
- August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board

of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The vehicle or engine repair or maintenance use on the subject site is a nonconforming use. City records indicate that a Certificate of Occupancy (CO # 8610091100) was issued on October 9, 1986, and that the vehicle or engine repair or maintenance use on the subject site became nonconforming on April 27, 2005.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The subject site is zoned PD No. 298 (Subarea 1) where the ordinance includes a provision specifically related to nonconforming uses (Section 51P-298.108). This ordinance (Ordinance No. 25960 which was established on April 27, 2005) states that all nonconforming uses must be brought to conformance no later than April 26, 2008, except those uses that became nonconforming as a result of city council action on April 27, 2005 must be brought into conformance no later than April 26, 2010. The ordinance states that the owner of a nonconforming use in Subarea 1 may appeal to the board of adjustment for a later compliance date at any time up to the conformance date set forth in this subsection if the owner will not be able to recover his investment in the use (up to the date of nonconformance) by the conformance date set forth in this subsection.
- The Dallas Development Code states the following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recover his investment in the use (up to the date of nonconformance) by the conformance date set by this subsection of the ordinance which in this case is April 26, 2010.

- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- As is the case with any nonconforming use, the owner of the use could transition the nonconforming vehicle or engine repair or maintenance use on the site to any use that is permitted by right in the site's PD No. 298 (Subarea 1) zoning classification.
- On July 14, 2010, the applicant/owner of the nonconforming use on the site submitted responses to the subpoena duces tecum and interrogatories, part of which has been included as part of this case report, another part of which has been retained in the box submitted on July 14th by the applicant/owner available for review upon request. (The applicant/owner's submitted responses to the subpoena duces tecum and interrogatories and the list of documents placed in the box of materials have been included in this case report labeled as "Attachment A.")

FILE NUMBER: BDA 090-079

BUILDING OFFICIAL'S REPORT:

Application of Robert Baldwin for special exceptions to the fence height regulations at 6941 Gaston Avenue. This property is more fully described as Lots 9, 10, 11 and part of 12 in City Block E/2811 and is zoned R-10(A) which limits the height of a fence in the required side and rear yard setbacks to 9 feet. The applicant proposes to construct and maintain a 14 foot fence in the required side and rear yard setback which will require special exceptions of 5 feet.

LOCATION: 6941 Gaston Avenue

APPLICANT: Robert Baldwin

REQUESTS:

- The following appeals have been made in this application on a site that is currently developed with a single family home:
 1. A special exception to the fence height regulations of 1' 3" is requested in conjunction with maintaining a 10' 3" high "cinder block wall with stove veneer on the inside" fence located in the site's 6' required side yard setback on the west side of the subject site; and .
 2. A special exception to the fence height regulations of 5' is requested in conjunction with maintaining "cinder block privacy wall" ranging from 9' 7" – 14' high located in the site's 6' required rear yard setback on the north side of the subject site.

The applicant has stated that the fence/wall that is the issue in these requests is a result of a City-approved permit obtained in November of 2007.

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 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 Dallas Development Code states that "fence heights shall be measured from in single family districts, the top of the fence to the level of the ground on the inside of the fence in the required side or rear yard."

The applicant has submitted a revised site plan/elevation document indicating that the proposal located in the required 6' side yard setback on the west side of the site reaches a maximum height of 10' 3" and that the proposal located in the required 6' rear yard setback on the north side of the site reaches a maximum height of 14'. (Attachment A includes among other things a copy of the applicant's revised site plan/elevation document that he requested replace the originally submitted site plan/elevation document).

- The length of the fence/wall located in the western required 6' side yard setback over 9' in height cannot be gleaned from the submitted revised site plan/elevation document, however, a fence line is denoted on this plan this is virtually on the property line, and ranges in height from 8' 6" to 10' 3" and has a total length of approximately 110'. (The length of the fence that is denoted at 8' 6" in height would be permitted by right, and is not part of the request for a fence height special exception since a 9' high fence is permitted in a required side yard).
- The following additional information was gleaned from the submitted revised site plan with regard to the fence/wall in the required 6' rear yard setback over 9' in height:
 - Approximately 200' in length. (The plan shows that approximately 50' of the fence/wall length is 9' 7" high, approximately 10' of the fence/wall length is 14' high; approximately 15' of the fence/wall length is 11' 7" high; and approximately 125' of the fence/wall length is 10' high – all of which are measurements denoted as measured on the inside of the fence).
 - Located approximately on the site's rear property line.
- The submitted revised site plan/elevation document does not include a full elevation of the proposal in the required side and rear yard setbacks; this document includes two "wall cross sections" one of which is entitled "Wall Cross Section" denoting a wall that separates "backyard" from "alleyway" showing "interior wall of varying heights" in the backyard while showing "exterior wall of varying heights," "retaining wall of varying heights," and "existing 6" curb," the other entitled "West Wall Cross Section" denoting a "west wall cross section" denoting a "cinder block privacy wall (varying heights)" at 8' 6" and 10' 3". A third representation is made on the revised site plan/elevation document, that being a "North Wall Elevation" denoting a "cinder block privacy wall (varying heights)" at 9' 7", 14', 11' 7", and 10'.
- One single family home abuts the proposal in the required side yard setback, and three single family homes abut the proposal in the required rear yard setback. None of these homes/lots appear to have a fence/wall in a required side/rear yard setback over 9' in height.
- On July 23, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:

- a letter that provides additional details about the requests;
 - attachments that show photographs of the wall on the site from inside and the alley side of the site, and “other fences in neighborhood built on retaining walls”;
 - a copy of a permit for the fence;
 - a revised site plan/elevation document.
- On August 5, 2010, the owner of the subject site submitted additional information beyond what was submitted with the original application (see Attachment C). This information included the following:
 - a letter that provides additional details about the requests (along with copies, according to the owner, of his green tag and final measurement approval from the City of Dallas when he built the wall);
 - 12 letters of support from neighboring property owners;
 - his letter in response to a letter in written in opposition from a neighboring property owner (see Attachment B); and
 - letters from a certified residential real estate broker/neighbor and a certified residential appraiser who support the request.

BACKGROUND INFORMATION:

Zoning:

Site: R-10 (A) (Single family district 10,000 square feet)
North: R-10 (A) (Single family district 10,000 square feet)
South: R-10 (A) (Single family district 10,000 square feet)
East: R-10 (A) (Single family district 10,000 square feet)
West: R-10 (A) (Single family district 10,000 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:

June 7, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

July 15, 2010: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 2nd deadline to submit additional evidence for staff to factor into their analysis; and the August 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.

July 23, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

July 24, 2010: A neighboring property owner directly north of the subject site forwarded a letter in opposition to the request (see Attachment B).

August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

August 4, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Alley wall appears to be in a paved substandard ROW, and as such, needs to be removed. Registered surveyor needs to provide survey of wall, including alley ROW, alley pavement locations. In order to approve wall engineering plans, sealed by a registered structural engineer will need to be provided and approved. Foundation design needs to be included."

August 5, 2010: The owner of the subject site submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment C).

STAFF ANALYSIS:

- This request focuses on maintaining a stone-veneered cinder block wall that is located in the site's required side yard setback on the western boundary and in the site's rear yard setback on the northern boundary. Plans/partial elevations have been submitted indicating that the existing fence/wall in the required side yard setback reaches a maximum height of 10' 3", and that the existing fence/wall in the required rear yard setback reaches a maximum height of 14' as measured in both setbacks from the top of the fence to the level of the ground on the inside of the

fence. The applicant has stated that the existing fence/wall that is the issue in these requests is a result of a City-approved permit obtained by the in November of 2007.

- Details of fence/wall over 9' in height in the required side yard setback as gleaned from the submitted revised site plan/elevation document:
 - The length of the fence/wall located in the western required 6' side yard setback over 9' in height cannot be gleaned from the submitted revised site plan/elevation document, however, a fence line is denoted on this plan this is virtually on the property line, and ranges in height from 8' 6" to 10' 3" and has a total length of approximately 110'. (Note that the length of the fence at 8' 6" in height would be permitted by right, and is not part of the request for a fence height special exception since a 9' high fence is permitted in a required side yard).
- Details of fence/wall over 9' in height in the required rear yard as gleaned from the submitted revised site plan/elevation document:
 - Approximately 200' in length. (The plan shows that approximately 50' of the fence/wall length is 9' 7" high, approximately 10' of the fence/wall length is 14' high; approximately 15' of the fence/wall length is 11' 7" high; and approximately 125' of the fence/wall length is 10' high – all of which are measurements denoted as measured on the inside of the fence).
 - Located approximately on the site's rear property line.
- The submitted revised site plan/elevation document does not include a full elevation of the proposal in the required side and rear yard setbacks; this document includes two "wall cross sections" one of which is entitled "Wall Cross Section" denoting a wall that separates "backyard" from "alleyway" showing "interior wall of varying heights" in the backyard while showing "exterior wall of varying heights," "retaining wall of varying heights," and "existing 6" curb," the other entitled "West Wall Cross Section" denoting a "west wall cross section" denoting a "cinder block privacy wall (varying heights)" at 8' 6" and 10' 3". A third representation is made on the revised site plan/elevation document, that being a "North Wall Elevation" denoting a "cinder block privacy wall (varying heights)" at 9' 7", 14', 11' 7", and 10'.
- One single family home abuts the proposal in the required side yard setback, and three single family homes abut the proposal in the required rear yard setback. None of these homes/lots appear to have a fence/wall in a required side/rear yard setback over 9' in height.
- As of August 9, 2010, 12 letters had been submitted to staff in support of the request, and two letters and two petitions signed by 12 neighbors/owners had been submitted in opposition to the proposal.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 1' 3" and 5' for the fence/wall in the required side and rear yard setbacks, respectively, does not adversely affect neighboring property.
- Granting either one or both of these special exceptions with a condition imposed that the applicant complies with the submitted revised site plan/elevation document would assure that the existing fence exceeding 9' in height (as measure from the top of the fence to the level of the ground on the inside of the fence in the required side or rear yard) would be maintained in the locations and of the heights and material as shown on this document.
- Granting either one or both of these special exceptions does not allow the applicant/owner to erect or maintain any fence/wall/structure in the public right of

way, nor provide the applicant/owner any exception from fully complying with City of Dallas building codes.