

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL C
MONDAY, OCTOBER 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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10-19-2009

ZONING BOARD OF ADJUSTMENT, PANEL C
MONDAY, OCTOBER 19, 2009
AGENDA

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

Approval of the Monday, September 14, 2009 Board of Adjustment Public Hearing Minutes	M1
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UNCONTESTED CASES

BDA 089-114(K)	4526 Kelsey Road REQUEST: Application of Natalie Brandt represented by Lee Roth for a special exception to the fence height regulations	1
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HOLDOVER CASES

BDA 089-079(K)	1135 S. Lamar Street REQUEST: Application of Jeff Browning represented by Roger Albright for a special exception to the landscape regulations	2
BDA 089-104	6822 Lupton Drive REQUEST: Application of Brian Shroyer for a special exception to the fence height regulations	3
BDA 089-109(K)	3232 McKinney Avenue REQUEST: Application of Glenn Lickstein represented by Christopher Russell for a special exception to the landscape regulations	4

REGULAR CASE

BDA 089-110

2520 Electronic Lane, Suite 801

5

REQUEST: Application of Larry Keller to appeal the decision of the administrative official

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 September 14, 2009 public hearing minutes.

FILE NUMBER: BDA 089-114(K)

BUILDING OFFICIAL'S REPORT:

Application of Natalie Brandt represented by Lee Roth for a special exception to the fence height regulations at 4526 Kelsey Road. This property is more fully described as Lot 21 in City Block 2/5539 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 an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

LOCATION: 4526 Kelsey Road

APPLICANT: Natalie Brandt
Represented by Lee Roth

REQUESTS:

A special exception to the fence height regulations of 4 foot is requested to construct a fence that is 8 foot in height in a required front yard.

STAFF RECOMMENDATION (fence height special exception):

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

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 site is zoned R 1ac(A) and has a platted building line of 50 feet in the front yard.
- The applicant proposes to maintain an 8 foot high fence.
- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

BACKGROUND INFORMATION:

Zoning:

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

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.

Zoning/BDA History:

1. BDA 067-070 4627 Kelsey Road, on September 19 2007, the board of adjustment panel B, denied a request for the special exception to the fence height regulations.
2. BDA 067-159 10401 Lennox Lane, on November 14, 2007, the board of adjustment panel B, granted a special exception to the fence height regulation of 3 feet.

Timeline:

- August 24, 2009: 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.
- September 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- September 21, 2009: The Board Senior Planner contacted the applicant's representative by telephone and email and 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 October 5th deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the October 9th 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

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

October 5, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment 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 property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- This property has frontage along the Kelsey Road and Woodford Drive.
- The applicant proposes to construct and maintain a board on board fence with solid masonry columns that are 8 feet in height along Woodford Drive.
- The proposed fence runs approximately 110 feet parallel to the Woodford Drive front property line.
- During the site visit the senior planner did not observed multiple fences over four-feet high in the front yards of the neighboring properties.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

FILE NUMBER: BDA 089-079(K)

BUILDING OFFICIAL'S REPORT:

Application of Jeff Browning represented by Roger Albright for a special exception to the landscaping regulations at 1135 S. Lamar Street. This property is more fully described as Lot 10 in City Block 1082 and is zoned PD-317(Subdistrict 3A), which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 1135 S. Lamar Street.

APPLICANT: Jeff Browning
Represented by Roger Albright

REQUESTS:

The applicant seeks to develop the property with a non-residential use and seeks a special exception to the landscape regulations.

STAFF RECOMMENDATION:

Approval with the following conditions

- All required plantings for this property per this plan, and for the required remote parking area located at 700 Belleview Street, must be completed and in healthy, growing condition prior to final landscape inspection of 1135 S. Lamar Street.
- All trees per this plan will be credited as the required site trees for the property.

Rationale:

- Based on perceived conditions of implementing a street landscape plan, improvements on Lamar Street would require the removal of any required plantings and landscaping in the area. Once the Lamar St. designed plan is implemented, the proposed pedestrian-oriented landscape improvements on the property would, in the opinion of the Chief Arborist, complement the Lamar Street enhanced pedestrian amenities and landscape improvements while increasing the aesthetic appeal of the property.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

(1) strict compliance with the requirements of this article will unreasonably burden the use of the property;

- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

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

GENERAL FACTS:

- The property is developed with a non-residential use and is seeking relief from the landscape requirements of PD-317.

BACKGROUND INFORMATION:

Zoning:

Site: PD 317 (Sub district 3A) (Transit-oriented mixed use)
North: PD 317 (Sub district 3A) (Transit-oriented mixed use)
South: PD 317 (Sub district 3A) (Transit-oriented mixed use)
East: PD 317 (Sub district 3A) (Transit-oriented mixed use)
West: PD 317 (Sub district 3A) (Transit-oriented mixed use)

Land Use:

The site is developed with a non-residential use. The properties to the north and east are developed with parking lots. The properties to the west and south are undeveloped.

Zoning/BDA History:

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

Timeline:

April 24, 2009: The applicant's represent submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 21, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- May 22, 2009: 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 June 1st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
 - the June 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 April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment 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.
- June 8, 2009 The Chief Arborist submitted a memorandum referencing the material submitted in conjunction with the application.
- June 15, 2009 The Board of Adjustment held this case under advisement until September 14, 2009.
- September 1, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment 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.
- September 14, 2009 The Board of Adjustment held this case under advisement until October 19, 2009.

- October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment 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.
- October 9, 2009 The Chief Arborist submitted a memo in conjunction with this case (see attachment).
- October 9, 2009 The applicant submitted additional information for the Board's review (see attachment).

STAFF ANALYSIS:

- The site is currently developed with The Palladium Ballroom, Studio Bar and Grill, Gilley's, and The Loft.
- According to DCAD the site was developed in 1928 and has a total lease space of approximately 92,000 square feet.
- The applicant has submitted an alternate landscape plan and is requesting a special exception to the landscape regulations. The Chief Arborist has reviewed the revised alternate landscape plan submitted, the memo submitted is summarized below:
 1. This case is triggered by the proposed remodel of the site under the PD conditions.
 2. The site is not in compliance with PD 317, as amended.
 3. The site is deficient in enhanced pedestrian amenities, parking lot trees, street trees, parking lot screening, garbage storage screening, and off-street loading requirements.
 4. The site was permitted for remodel in February 2003. Since that time PD 317 has been amended and the property is currently under Subdistrict 3A for 'Transit-oriented High Density Mixed Use.'
 5. The building permit was issued for a property with 100% 'nonpermeable coverage', which allows for site trees to not be required.
 6. Required landscaping on remote parking lot across Austin Street was installed as designed in 2003.
 7. The Chief Arborist is recommending approval of the submitted alternated landscape plan for this site.
- The applicant has the burden of proof in establishing the following:
 1. that granting the special exception to the landscape regulations is necessary because strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

FILE NUMBER: BDA 089-104

BUILDING OFFICIAL'S REPORT:

Application of Brian Shroyer for a special exception to the fence height regulations at 6822 Lupton Drive. This property is more fully described as Lot 4 in City Block B/5476 and is zoned R-7.5(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot 3 inch fence which will require a special exception of 4 feet, 3 inches.

LOCATION: 6822 Lupton Drive

APPLICANT: Brian Shroyer

REVISED REQUEST:

- A special exception to the fence height regulations of 2' (reduced from the 4' 3" that had been originally requested in September) is requested in conjunction with reconfiguring/completing and maintaining a 6' high (reduced from an 8' high) open wrought iron entry gate flanked by two, 6' high (reduced from 8' 3" high) brick columns and two solid 4' high brick entry wing walls with 20" of wrought iron cresting atop (reduced from walls that had been ranging from 6' – 7' 7" in height) located in the site's 50' front yard setback on a site developed with a single family home. The total length of the proposal over 4' in height in the front yard setback is 26' 7" parallel to the street and 6' in length on both sides perpendicular to the street in the front yard setback. (The proposal is located 44' from the front property line where if it were located 6' further back, it would no longer be in the front yard setback and therefore no longer require a fence height special exception from the board of adjustment).

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 fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a revised site plan and revised elevation documents dated 10-6-09 indicating a fence/column/gate proposal that would be located in the site's 50' front yard setback (created by a platted building line) and would reach a maximum height of 6'.
- The following information was gleaned from the submitted revised site plan:
 - The proposal would be approximately 26.5' in length parallel to Lupton Drive and approximately 6' in length perpendicular to Lupton Drive on both "sides" of the motor court in the front yard setback.
 - The proposal is shown to be located 44' from front the front property line or about 55' from the pavement line.
- The proposal is located on a site where one single family home with no fence in its front yard setback would have direct frontage.
- The Board Administrator conducted a field visit of the site and surrounding area along Lupton Drive (approximately 500 feet east and west of the site) and noted no other fence/walls.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachments A and C). This information included the following:
 - a set of revised plans dated 8-23-09 – plans that according to the applicant are identical to the previously submitted plans with the exception of adding "coach lanterns" on the street side of each of the 8' 3" high entry columns;
 - a letter that provided additional details about the request;
 - copies of petitions signed by 14 owners/neighbors in support of the request (along with a map showing where these owners are located in relation to the subject stie); and
 - photographs of the subject site and neighboring properties.
- An attorney representing opposing property owners and residents of property located at 6806 Lupton Drive (the lot immediately west of the subject site) submitted a document for the board's consideration (see Attachment B). This information included a letter and photographs that explained/documented his clients' opposition to the application.
- The Board of Adjustment conducted a public hearing on this application on September 14, 2009, and moved to delay action on the matter until their October 19th hearing.
- The applicant submitted additional information beyond what was submitted with the original application and what was presented at the September 14th briefing/hearing (see Attachment D). This information a set of revised plans dated 10-6-09 – plans that according to the applicant's cover letter reduced the masonry wall height to 4'; reduced the column height to 6'; reduced the gate height to 6'; and placed 20" of ornate metal on top of the fence.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a 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:

- July 16, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 20, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the August 31st deadline to submit additional evidence for staff to factor into their analysis; and the September 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.”
- Sept. 1, 2009The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September 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, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.

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

- Sept. 1, 2009 The Building Inspection Development Code Specialist forwarded additional information to the Board Administrator that had been submitted to him by the applicant (see Attachment A).
- Sept. 2, 2009 An attorney representing opposing property owners and residents of property located at 6806 Lupton Drive (the lot immediately west of the subject site) submitted a document for the board's consideration (see Attachment B). This information included a letter and photographs that explained/documentated his clients' opposition to the application.
- Sept. 8, 2009 The applicant submitted additional information (dated September 14, 2009) to the Board Administrator (see Attachment C).
- Sept. 14, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their October 19th public hearing.
- Sept. 17, 2009: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the October 5th deadline to submit additional evidence for staff to factor into their analysis; and the October 9th 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."
- October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the October 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 Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- October 9, 2009 The applicant submitted additional information to the Board Administrator (see Attachment D).

STAFF ANALYSIS:

- The request focuses on reconfiguring/completing and maintaining a 6' high open wrought iron entry gate flanked by two, 6' high brick columns and two solid brick entry wing walls with wrought iron cresting atop at 5' 8" in height in the site's 50' front yard setback on a site developed with a single family home.
- The total length of the proposal over 4' in height in the front yard setback is 26' 7" parallel to the street and 6' in length on both sides perpendicular to the street in the front yard setback, and the proposal is located 44' from the front property line where if it were located 6' further back, it would no longer be in the front yard setback and therefore no longer require of a fence height special exception from the board of adjustment.
- A revised site plan and elevation documents dated 10-6-09 have been submitted indicating the location of the proposal in the front yard setback relative to its proximity to the front property line and pavement line, the length of the proposal relative to the entire lot, and the proposed building materials. The site plan indicates that the proposal is located 44' from the front property line and about 55' from the pavement line; that the proposal is 26' 7" in length parallel to the street and 6' in length perpendicular to the street on the "sides" of the motor court in the front yard setback.
- The proposal is located on a site where one single family home with no fence in its front yard setback would have direct frontage.
- No other fence/walls higher than 4' which appeared to be located in a front yard setback were noted by the Board Administrator in a field visit of the site and surrounding area (approximately 500 feet east and west of the site).
- Staff informed the Board of Adjustment at their September 14th briefing on this application that 4 petitions had been submitted signed by 14 neighbors/owners in support (on or prior to 9-8); and 2 letters (including one document/notebook from two property owners/neighbors) had been submitted in opposition and 3 petitions signed by 11 neighbors/owners had been submitted in opposition (on or after 9-10).
- As of October 12 2009, no additional or revised letters from neighbors/owners had been submitted to staff specifically to the applicant's revised proposal of 10-6-09 – Attachment D.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' (whereby the proposal that would reach 6' in height) will not adversely affect neighboring property.
- Granting this special exception of 2' with a condition imposed that the applicant complies with the submitted revised site plan and elevation documents dated 10-6-09 would assure that the proposal would be reconfigured/completed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: SEPTEMBER 14, 2009

APPEARING IN FAVOR: Brian Shroyer, 1543 Silver Springs Dr., Allen, TX
Mark Francis, 6822 Lupton, Dallas, TX

APPEARING IN OPPOSITION: Tom James, 9289 County Road 134, Celina, TX
Brenda Lockhart, 6806 Lupton, Dallas, TX

MOTION#1: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 089-104** on application of Brian Schroyer, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Salinas**

AYES: 2– Moore, Boyd

NAYS: 2– Maten, Salinas

MOTION FAILED: 2 – 2

MOTION#2: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 089-104** hold this matter under advisement until **October 19, 2009**.

SECONDED: **Salinas**

AYES: 4– Boyd, Moore, Maten, Salinas

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-109(K)

BUILDING OFFICIAL'S REPORT:

Application of Glenn Lickstein represented by Christopher Russell for a special exception to the landscaping regulations at 3232 McKinney Avenue. This property is more fully described as Lot 1C in City Block 1/638 and is zoned PD-193 (LC), which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 3232 McKinney Avenue

APPLICANT: Glenn Lickstein
Represented by Christopher Russell

REQUESTS:

The applicant seeks to develop the property with a non residential use in PD 193 and seeks a special exception to the landscape regulations.

STAFF RECOMMENDATION (landscape regulations):

Approval subject to the following condition:

- Compliance with the submitted alternate landscape plan.

Rationale:

- The Chief Arborist has reviewed the submitted site plan and recommends approval to the special exception to the landscape regulations for this site.
- The special exception will not adversely affect neighboring properties.

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

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

GENERAL FACTS:

- The applicant proposes to construct and maintain a nonresidential structure in Pd 193.
- The applicant is seeking relief from the general requirements for landscaping under PD 193 Part 1, primarily the tree planting zone and sidewalk width and locations.
- The subject site has street frontage along McKinney Ave, Hall Street, and Oak Grove Avenue.
- The Dallas Development Code provides a means of relief of the landscape requirements in PD 193 by way of a special exception to the landscape requirements.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (Planned Development District)
<u>North:</u>	PD 193 (Planned Development District)
<u>South:</u>	PD 193 (Planned Development District)
<u>East:</u>	PD 193 (Planned Development District)
<u>West:</u>	PD 193 (LC) (Planned Development District, Light Commercial)

Land Use:

The subject site is developed with a nonresidential structure (One McKinney Plaza). The properties to the north, south, east and are developed with nonresidential uses. The property to the west is developed with a multifamily use.

Zoning/BDA History:

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

Timeline:

- July 31, 2009: 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.
- August 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 24, 2009: The Board Senior Planner contacted the applicant by telephone and email and conveyed 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 August 31st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the September 8th 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 September public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

September 1, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment 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.

September 1, 2009 The Chief Arborist submitted a memorandum referencing the submitted alternate landscape plan (attachment A).

September 14, 2009 The Board of Adjustment, Panel C held this matter under advisement until October 19, 2009.

October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment 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 a nonresidential structure and provide an alternate landscape plan for the site.
- The site is currently developed with an office tower and vacant retail space. This application is triggered by changes to the existing site, including a new building

- The applicant is requesting a special exception to the landscape requirements of PD 193. Specifically, relief from the general requirements for the planting zone and sidewalk width and location.
- The Chief Arborist has reviewed the submitted landscape plan and submitted a memorandum with an analysis of the alternate landscape plan (summarized below):
 1. The site will be deficient in the location of trees that will be offset from the tree planting zone of 2.5'-5' from the back of the curb, and in the location of the required minimum sidewalks between 5'-12' from back of curb
 2. Most of the landscape plant materials are currently existing on the site.
 3. The planned removal of eleven trees from the site will be mitigated under Article X regulations.
 4. The parkway along Oak Grove contains 12 pear trees in the tree planning zone. Due to line-of-site concerns any future reductions and removals of the aging pear trees should account for site limitations for future compliance.
- The applicant has the burden of proof of showing strict compliance with the landscaping regulations will unreasonable burden the property, the special exception will not adversely affect neighboring property; and, the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.
- Staff recommends compliance with a submitted alternate landscape plan, should the Board grant a special exception to the landscape regulations.

FILE NUMBER: BDA 089-110

BUILDING OFFICIAL'S REPORT:

Application of Larry Keller to appeal the decision of the administrative official at 2520 Electronic Lane, Suite 801. This property is more fully described as an approximately 3.442 acre tract in City Block C/6509 and is zoned IR which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of the administrative official in the revocation of a certificate of occupancy.

LOCATION: 2520 Electronic Lane, Suite 801

APPLICANT: Larry Keller

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's July 29, 2009 revocation of certificate of occupancy no. 0902231016 for a personal service use (Seventh Heaven) at 2520 Electronic Lane, Suite 801.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

GENERAL FACTS:

- The Building Official's July 29th letter to Century Crescent PS and Larry Keller states the following:
 - This letter is to inform you that certificate of occupancy no. 0902231016 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not

state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.

- Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.
- Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.
- On October 2, 2009, the applicant forwarded additional documentation to the Board Administrator regarding this appeal (see Attachment A). This documentation included the following:
 - a “prepared statement” that provided additional points about the application;
 - a copy of the sign at the entrance to the business; and
 - a description of Reiki Therapy.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial Research)
North: IR (Industrial Research)
South: IR (Industrial Research)
East: PD No. 404 (Planned Development)
West: IR (Industrial Research)

Land Use:

The subject site is developed as a structure with several suites one of which (the subject site) is doing business as Seventh Heaven. The areas to the north, east, south, and west are developed with what appears to be a mix of commercial/retail and office uses.

Zoning/BDA History:

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

Timeline:

August 12, 2009: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

- Sept. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- Sept. 17, 2009: The Board Administrator spoke with the applicant and emailed him the following information:
- an attachment providing the public hearing date and panel that will consider the application; the October 5th deadline to submit additional evidence for staff to factor into their analysis; the October 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment;
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- October 2, 2009 The applicant submitted additional information to staff pertaining to this application (see Attachment A).
- October 6, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the October 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 Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's revocation of certificate of occupancy no. 0902231016 for a personal service use (Seventh Heaven) at 2520 Electronic Lane, Suite 801 on July 29, 2009 be overturned/reversed.
- If the Board of Adjustment upholds the Building Official's decision, the certificate of occupancy no. 0902231016 for a personal service use (Seventh Heaven) on the subject site will remain revoked.
- If the Board of Adjustment reverses the Building Official's decision, the certificate of occupancy no. 0902231016 for a personal service use (Seventh Heaven) on the subject site will be reinstated.