

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
FRIDAY, FEBRUARY 19, 2010**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Jim Gaspard, alternate member and Marc Bateman, alternate member

MEMBERS ABSENT FROM BRIEFING: Robert Moore, Panel Vice-Chair

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Jim Gaspard, alternate member and Marc Bateman, alternate member

MEMBERS ABSENT FROM HEARING: Robert Moore, Panel Vice-Chair

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

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**11:04 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 19, 2010** docket.

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**1:01 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C December 14, 2009 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2010**

**MOTION: Gaspard**

I move **approval** of the Monday, **December 14, 2009** public hearing minutes.

**SECONDED: Maten**

**AYES: 4–Boyd, Maten, Gaspard, Bateman**

**NAYS: 0–**

**MOTION PASSED: 5 – 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Briefing by the City Attorney’s Office on lobbyist registration, campaign contribution restrictions, multiple seconds, and gift policy (see Attachment A for related material).

**\*This was not an action item.**

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**FILE NUMBER: BDA 090-024**

**BUILDING OFFICIAL’S REPORT:**

Application of Steve Platt of Wind Rush Custom Homes, Inc. for a special exception to the single family use zoning regulations at 2207 Cambria Boulevard. This property is more fully described as Lot 8 (part of Lot 9) in City Block B/2788 and is zoned CD-2 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: 2207 Cambria Boulevard**

**APPLICANT: Steve Platt of Wind Rush Custom Homes, Inc**

**REQUEST:**

- A request for a special exception to the use development standard regulations of Conservation District No. 2 is requested with constructing and maintaining a one-story, approximately 1,200 square foot (approximately 49’ x 24’) accessory structure/garage/”dwelling unit” structure on a site developed with a dwelling unit/single family home structure that has (according to DCAD) approximately 2,702

square feet of living area. (According to the applicant, the proposed additional dwelling unit accessory structure that is the issue of this request would replace an existing accessory/garage structure in “disrepair” and in virtually the same location).

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit in Conservation District No. 2 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 USE DEVELOPMENT STANDARDS REGULATIONS OF CONSERVATION DISTRICT NO. 2 TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:**

The board may grant a special exception within the use development standards regulations of Conservation District No. 2 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:**

- Section 6 “Development Standards” of Conservation District No. 2 state that only single family residential uses are permitted in this district, that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to the provisions in Paragraph (3) 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 revised plot plan has been submitted denoting the location of the building footprint in relation to the entire site. A revised “garage floor plan” has been submitted that denotes a 49’ x 23’ 8” structure of which 23’ of its 49’ length is garage and the remaining 26’ is space which appears to be or is denoted as living space, kitchen space, bath, and closet space. The Building Official has reviewed the submitted floor plan and deemed it not only an “accessory structure” but a “dwelling unit” as well.

The Board Administrator was copied on an email sent by the City of Dallas Conservation District Program Manager to the applicant stating that review of the

applicant's revised plans has been completed with the work review including three conditions associated with this approval:

1. BDA approval of 2<sup>nd</sup> dwelling unit is required.
  2. If 2<sup>nd</sup> dwelling unit is granted, a "no rental" deed restriction is required to be filed.
  3. If 2<sup>nd</sup> dwelling is granted, separate utility service is required.
- DCAD records indicate that the site is developed with the following:
    - a single family home built in 1939 in excellent condition with 2,702 square feet of living area;
    - a 380 square foot detached garage.
  - The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
    - copies of a revised plot plan, floor plan, and elevations;
    - a copy of an email sent from the City of Dallas Conservation District Program Manager (and related "work review form");
    - a letter that further explains the nature of the request and why it should be granted; and
    - two letters in support of the application from the owners of the properties immediately north and south of the subject site.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CD No. 2 (Conservation District)  
North: CD No. 2 (Conservation District)  
South: CD No. 2 (Conservation District)  
East: CD No. 2 (Conservation District)  
West: CD No. 2 (Conservation District)

### **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:**

1. BDA 012-160, Property at 6535 Gaston Avenue (the lot immediately south of subject site)

On March 18, 2002, the Board of Adjustment Panel C granted a request for a variance to the front yard setback regulations of 10.5' and a special exception to allow an additional dwelling unit on the site imposing the submitted site plan and that the property must be deed restricted to prohibit the additional dwelling unit on the site as rental accommodations as conditions. The case report stated that the requests were made in

conjunction with maintaining a single family structure in its current location (to address its nonconformity) and to construct and maintain an approximately 920 square foot garage/guest quarters structure.

**Timeline:**

Dec. 11, 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.

January 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 21, 2010: The Board Administrator contacted the applicant and emailed him the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 5<sup>th</sup> 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.

Jan. 28 & Feb. 4, 2010: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, the Sustainable Development 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 an additional “dwelling unit” structure that (according to the applicant) would replace an existing accessory garage structure in “disrepair” and in virtually the same location on the subject site.
- Building Inspection has reviewed the submitted floor plan of the proposed replacement accessory 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 plan shows this proposed structure to be made up of garage space and what appears to be or is denoted as living space, kitchen space, bath, and closet space.

- The site is zoned CD No. 2 where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to construct and maintain a second/additional dwelling unit on the site hence the special exception request.
- This request centers on the function of what is proposed to be located inside the proposed accessory structure. If the board were to deny this request, it appears that the structure could be constructed and maintained with merely modifications to the function/use inside the structure (or to the floor plan) since the proposed structure appears to comply with the applicable zoning code development standards – the City of Dallas Conservation District Program Manager has emailed the applicant stating that review of his revised plans has been completed with the work review with three conditions associated with this approval:
  1. BDA approval of 2<sup>nd</sup> dwelling unit is required.
  2. If 2<sup>nd</sup> dwelling unit is granted, a “no rental” deed restriction is required to be filed.
  3. If 2<sup>nd</sup> dwelling is granted, separate utility service is required.
- 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, subject to imposing a condition that the applicant comply with the submitted revised plot plan, the “dwelling unit” structure would be restricted to the specific location and footprint shown on this plan.
- 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.

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2010**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 090-024** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised plot plan is required.
- Separate utility service is required for additional dwelling unit.

- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

**SECONDED: Gaspard**

**AYES: 4–Boyd, Maten, Gaspard, Bateman**

**NAYS: 0–**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA 090-025**

**BUILDING OFFICIAL’S REPORT:**

Application of Maria Villarreal for a variance to the side yard setback regulations at 12511 Fish Road. This property is more fully described as Tract 36 in City Block 4/8837 and is zoned A(A) which requires a side yard setback of 20 feet. The applicant proposes to construct and maintain a single family residential structure and provide a 5 foot side yard setback which will require a variance of 15 feet.

**LOCATION: 12511 Fish Road**

**APPLICANT: Maria Villarreal**

**REQUESTS:**

- Variances to the side yard setback regulations of 15’ are requested in conjunction with replacing an existing nonconforming single family home structure on the site (nonconforming as it relates to compliance with current side yard setbacks) with a single family home of a similar size, portions of which would be located in the site’s northwestern and southeastern 20’ side yard setbacks.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Development of the subject site is restricted in that the subject site is only 60’ wide and has only 20’ of developable width area left once two, 20’ side yard setbacks are accounted for. This 20’-wide strip of developable area is not conducive to a single family home other than a “shot gun” type home more typical of development decades ago.
- Granting the variances does not appear to be contrary to the public interest in that the variances would only allow replacement of the existing nonconforming structure on the site (nonconforming as it relates to current side yard setbacks) with a house of similar size and scale (i.e. demolishing an approximately 1,300 square foot house

with a house (according to the City of Dallas Housing Coordinator) that would not exceed 1,300 square feet “under air.”

### **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.

### **GENERAL FACTS:**

- The minimum side yard setback on an R-10(A) zoned lot is 20 feet. The applicant has submitted a site plan indicating a 50' x 50' “house site” that is located as close as 5' from the site’s northwestern and southeastern side property lines (or 15' into the required 20' side yard setbacks). According to a City of Dallas Housing Coordinator who is assisting the applicant with Housing Department related issues, the proposed house on the site would be similar in scale to the house currently on the site in disrepair – a “replacement home” that would not exceed 1,300 square feet “under air,” and that the “house site” on the submitted site plan at 50' x 50' in area is the area in which the maximum 1,300 square foot proposed home would be located. (The Housing Department Coordinator has informed the Board Administrator that the exact actual building footprint of the proposed house has not been determined).
- The site is flat, is rectangular in shape (150' x 60'), and is 9,000 square feet in area. The site is zoned A(A).
- According to DCAD records, the property is developed with a single family home with 1,272 square feet of living area built in 1950.
- The City of Dallas Housing Coordinator who is assisting the applicant with Housing Department related issues speculates that the existing circa 1950’s home on the subject site is a nonconforming structure – that is a structure that does not conform to the regulations of the code but was lawfully constructed under the regulations in force at the time of construction.
- The Dallas Development Code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent. However, except in the scenario where the structure is destroyed

by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.

- According to calculations taken by the Board Administrator from the submitted site plan and plat, only a 20' wide area would be left for development on the 60' wide site once a 20' side yard setback is accounted for on both sides of the subject site – developable area that is not conducive to a single family home other than a “shot gun” type home more typical of development decades ago.

## **BACKGROUND INFORMATION:**

### **Zoning:**

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

### **Land Use:**

The subject site is developed with a single family home that is most likely a nonconforming structure as it relates to current A(A) 20' side yard setback. The area to the north is undeveloped, and the areas to the east, south, and west are developed with single family uses.

### **Zoning/BDA History:**

1. Miscellaneous Item # 3, 12511 Fish Road (the subject site) On November 16, 2009, the Board of Adjustment Panel C waived the filing fee to be submitted in conjunction with a pending board of adjustment application at this address and for this applicant.

### **Timeline:**

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

January 22, 2010: The Board Administrator mailed the applicant a letter that conveyed the following information:

- A letter that provided information about the public hearing date and panel that will consider the application; the February 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials, and
- the criteria/standard that the board will use in their decision to approve or deny the request.

Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, the Sustainable Development 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 requests for variances in this case focus on replacing an existing approximately 1,300 square foot nonconforming single family home structure on the site (nonconforming as it relates to compliance with current side yard setbacks) with a single family home of a similar size, portions of which would be located in the site’s northwestern and southeastern 20’ side yard setbacks. (The Code states that the right to rebuild a nonconforming structure ceases if/when the nonconforming structure is intentionally destroyed by the owner or the owner’s agent, hence the variance requests).
- The applicant has submitted a site plan indicating a 50’ x 50’ “house site” that is located as close as 5’ from the site’s northwestern and southeastern side property lines (or 15’ into the required 20’ side yard setbacks). According to a City of Dallas Housing Coordinator who is assisting the applicant with Housing Department related issues, the proposed house on the site would be similar in scale to the house currently on the site in disrepair – a “replacement home” that would not exceed 1,300 square feet “under air,” and that the “house site” on the submitted site plan at 50’ x 50’ in area is the area in which the maximum 1,300 square foot proposed home would be located. (The Housing Department Coordinator has informed the Board Administrator that the exact actual building footprint of the proposed house has not been determined).
- According to calculations taken by the Board Administrator from the submitted site plan and plat, only a 20’ wide area would be left for development on the 60’ wide site once a 20’ side yard setback is accounted for on both sides of the subject site –

developable area that is not conducive to a single family home other than a “shot gun” type home more typical of development decades ago.

- The site is flat, is rectangular in shape (150’ x 60’), and is 9,000 square feet in area. The site is zoned A(A).
- 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 A(A) (Agricultural) 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 A(A) (Agricultural) zoning classification.
- If the Board were to grant the side yard variances of 15’, imposing a condition whereby the applicant must comply with the submitted site plan, the structure encroaching into these setbacks would be limited to that shown on the submitted plan which in this case is structure that would be required to be located within the 50’ x 50’ “house site” located as close as 5’ from northwestern and southeastern side property lines (or as much as 15’ into the required 20’ side yard setbacks).

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2010**

APPEARING IN FAVOR: Luis Villarreal, 12511 Fish Road, Dallas, TX

APPEARING IN OPPOSITION: Noel Sheffield, 13316 Ravenview, Dallas, TX

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 090-025**, on application of Maria Villarreal, **grant** the fifteen-foot variances to the minimum side yard setback regulations for both the northwest and southeast property lines requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Gaspard**

**AYES: 4–Boyd, Maten, Gaspard, Bateman**

**NAYS: 0–**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA 090-002**

**BUILDING OFFICIAL’S REPORT:**

Application of William J. Killpack, represented by Peter Schulte and William Kortemeir, to appeal the decision of the administrative official at 2051 W. Northwest Highway, Suite 65. This property is more fully described as Lot 2 in City Block B/ 6489 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 an administrative official in the revocation of a certificate of occupancy.

**LOCATION: 2051 W. Northwest Highway, Suite 65**

**APPLICANT: William J. Killpack  
Represented by Peter Schulte and William Kortemeir**

**February 19, 2010 Public Hearing Notes:**

- The applicant’s representative submitted photos of the site to the board at the public hearing.

**REQUEST:**

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s September 11, 2009 revocation of certificate of occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65. The applicant states that “the property is being used only as described on the Certificate of Occupancy and was not being uses as a massage establishment as alleged by the Dallas Police Department.”

The Board of Adjustment should once again determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the subject site with the finding that the two required notification signs that were posted on the storefront of Suite 65 on the site when the Board Administrator conducted his field visit on November 6th (32 days after the application was submitted on October 5, 2009) and the storefront of the use doing business as

Ocean Side Studio were in what appeared to be the exact same location when the Board Administrator revisited the subject site on January 13, 2010. The signs were still posted virtually side by side on the approximately 25' wide storefront of Suite 65 doing business as Ocean Side Studio on January 13, 2010 as they were on November 6, 2009 – a location (according to a scale aerial photograph prepared by the City) approximately 220' from the pavement line of Northwest Highway and approximately 400 feet from the pavement line of Newkirk Street.

The Dallas Development Code states that “The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.” The code additionally states “If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

City records show that no additional signs were purchased after the original December 14<sup>th</sup> hearing on this matter hence no possibility of additional signs being placed on the site beyond the ones posted on the storefront in November of 2009 and January of 2010 that may have been stolen or taken away by natural elements.

**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:**

- Section 51A-4.703(2) of the Dallas Development Code provides that any aggrieved person, or an officer, department, or board of the city may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. The code provides that an appeal to the board must be made within 15 days after notice of the decision of the official; that the appellant shall file with the official a written notice of appeal on a form approved by the board; and that the official shall forward the notice of appeal and the record upon which the appeal is based to the director of development services.
- The Building Official’s September 11<sup>th</sup> letter to CHA Associates LTD, Yong H. Cha, Registered Agent, and William J. Killpack states the following:

- This letter is to inform you that certificate of occupancy no. 0708081096 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.
- The Board of Adjustment conducted a public hearing on this application on December 14, 2009 where the board moved to delay action on the matter until their next hearing scheduled for February 19, 2010 given that the Board determined from all testimony and facts relating to the posting of the notification signs that the required signs were not posted properly.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: IR (Industrial Research)  
North: IR (Industrial Research)  
South: IM (Industrial Manufacturing)  
East: IR (Industrial Research)  
West: IR (Industrial Research)

**Land Use:**

The subject site is a suite within a strip center doing business as Ocean Side Studio. The areas to the north, south, and west appear to be developed with a mix of retail and commercial 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:**

October 5, 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.

Nov. 17, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

Nov. 18, 2009: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the December 4<sup>th</sup> 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; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

Dec. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the December public hearing. Review team members in attendance included: the Assistant Director of Sustainable Development Department's Current Planning Division, the Board of Adjustment Chief Planner, the Board Administrator, 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.

Dec. 14, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their February public hearing given that the Board determined from all testimony and facts relating to the posting of the notification signs that the required signs were not posted properly. The applicant was advised of the specific code provision related to the posting of notification signs at this hearing, and of his obligation to comply with the code requirement – that being to post the notification signs at prominent locations adjacent to the public streets within 24 hours from the hearing and to leave them posted in these locations until a final decision is made on the application.

January 21, 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 January 4<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 8<sup>th</sup> 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.

Feb. 2, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Chief Arborist, the Sustainable Development Department Project Engineer, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- The applicant is requesting that the Building Official's September 11<sup>th</sup> revocation of certificate of occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65 be overturned/reversed.
- The Board of Adjustment should once again determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the subject site with the finding that the two required notification signs that were posted on the storefront of Suite 65 on the site when the Board Administrator conducted his field visit on November 6<sup>th</sup> (32 days after the application was submitted on October 5, 2009) and the storefront of the use doing business as Ocean Side Studio were in what appeared to be the exact same location when the Board Administrator revisited the subject site on January 13, 2010. The signs were still posted virtually side by side on the approximately 25' wide storefront of Suite 65 doing business as Ocean Side Studio on January 13, 2010 as they were on November 6, 2009 – a location (according to a scale aerial photograph prepared by the City) approximately 220' from the pavement line of Northwest Highway and approximately 400 feet from the pavement line of Newkirk Street.
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of notification signs, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and upholds the Building Official's September 11<sup>th</sup> decision, the certificate of occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65 will remain revoked.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and reverses the Building Official's September 11<sup>th</sup> decision, the certificate of

occupancy no. 0708081096 for a personal service use (Ocean Side Studio) at 2051 W. Northwest Highway, Suite 65 will be reinstated.

**BOARD OF ADJUSTMENT ACTION: DECEMBER 14, 2009**

APPEARING IN FAVOR: Peter Schulte, 4131 N Central Expwy #650, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melisa Miles, Asst. City Atty., 1500 Marilla 7DN, Dallas, TX

MOTION: **Salinas**

Having fully reviewed the evidence in Appeal No. **BDA 090-002**, on application of William J. Killpack, represented by Peter Schulte, and heard all testimony and facts relating to the posting of the notification signs, I find that the required signs were not posted properly and I move that the Board of Adjustment, hold this matter under advisement until **February 19, 2010**.

SECONDED: **Maten**

AYES: 3 –Maten, Gaspard, Salinas

NAYS: 2–Boyd, Moore

MOTION PASSED: 3 – 2

**BOARD OF ADJUSTMENT ACTION: FEBRUARY 19, 2010**

APPEARING IN FAVOR: Peter Schulte, 4131 N Central Expwy #650, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melisa Miles, Asst. City Atty., 1500 Marilla 7DN, Dallas, TX

MOTION: **Bateman**

Having fully reviewed the evidence in Appeal No. **BDA 090-002**, on application of William J. Killpack, represented by Peter Schulte, and heard all testimony and facts relating to the posting of the notification signs, I find that the required signs were not posted properly and I move to **deny** the relief requested by the applicant **without prejudice**.

SECONDED: **Gaspard**

AYES: 4–Boyd, Maten, Gaspard, Bateman

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Gaspard**

AYES: 4–Boyd, Maten, Gaspard, Bateman

NAYS: 0 - None

MOTION PASSED: 4 – 0 (Unanimously)

**1:46 P. M.** - Board Meeting adjourned for **February 19, 2010.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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