

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

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: No

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

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 19, 2010** docket.

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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C March 15, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2010

MOTION: Maten

I move **approval** of the Monday, **March 15, 2010** public hearing minutes.

SECONDED: Gaspard

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

City attorney briefing on certain Dallas Development Code standards regarding applications to the Board of Adjustment.

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

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: Unassigned

REQUEST: To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

LOCATION: 445 N. Cavender Street

APPLICANT: Tom Wesson

April 19, 2010 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the Board at the briefing that had been submitted on April 15th by the applicant.

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.
- On March 5, 2010, the applicant submitted a letter related to the request of the board to waive the \$600.00 filing fee to be submitted with a potential board of adjustment application (see Attachment A). (Note, however, that on April 1st, the Board Administrator and the applicant determined that it appeared from a review of the conditions on the subject site on a "Google Street View" of the site, that the applicant would be seeking not only a special exception to the fence height regulations, but a special exception to the visual obstruction regulations that would result in a total filing fee of \$1,200.00).

Timeline:

- March 5, 2010 The applicants submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above along with additional related financial documents (see Attachment A).
- March 10, 2010: The request was randomly assigned to Board of Adjustment Panel C.
- March 10, 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 April 9th deadline to submit additional evidence to be incorporated into the Board's docket materials (information that may include financial documents as in but not limited to copies of 1040's, W-4's, bank statements);
 - 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 9, 2010: The applicant submitted additional information to the Board Administrator (see Attachment B).

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2010

APPEARING IN FAVOR: Tom Wesson, 445 N. Cavender, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Maten**

I move to **waive** the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal.

SECONDED: **Gaspard**

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

NAYS: 0–

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 090-045

BUILDING OFFICIAL’S REPORT:

Application of Robert Hopson for a variance to the off-street parking regulations at 6828 Avalon Avenue. This property is more fully described as Tract 15 in City Block D/2805 and is zoned R-10(A) which requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a structure and provide enclosed parking spaces with a setback of 15 feet 10 inches which will require a variance of 4 feet 2 inches.

LOCATION: 6828 Avalon Avenue

APPLICANT: Robert Hopson

REQUEST:

- A variance to the off-street parking regulations of 4’ 2” is requested in conjunction with enclosing parking spaces with a garage door in a proposed two-vehicle detached garage accessory structure (that would replace an existing accessory/garage structure in, according to the applicant, “the same relative position”) on a lot developed with a single family home. The parking spaces that are proposed to be enclosed with a garage door in the detached garage/accessory structure would be located less than the required 20’ distance from right-of-way line along the alley on the south side of the property.

STAFF RECOMMENDATION:

Denial without prejudice

Rationale:

- Based on the information submitted to staff at the point of their April 6th staff review team meeting, the applicant had not substantiated how the variance was necessary to permit development of a specific parcel of land that differed from other parcels of land by its restrictive area, shape, or slope, in a way that precluded the applicant from developing it in a manner commensurate with the development upon other parcels of land with the same R-10(A) zoning district.

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 Dallas Development Code requires that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley.

A site plan has been submitted that indicates the location of enclosed parking spaces in a proposed detached accessory structure that would be located as close as 15' 10" from the alley right of way line/rear property line on the southern side of the site. This site plan denotes an approximate 18.5' – 19' distance between the location of enclosed parking spaces in the accessory structure and the projected pavement line of the alley.

The site plan denotes an approximately 6' – 14' distance between the proposed accessory garage structure and the existing swimming pool. The lot width is 60' whereby there would be a 40' width left if the 20' wide garage were located on the western side property line - a location permitted if the detached accessory structure would be located in the rear 30 percent of the lot and 15' in height or less.

- A garage floor plan has been submitted indicating that the proposed garage accessory structure is 20' 2" long/deep by 26' 2" wide.
- The site is relatively flat, rectangular in shape (60' on the north and south; 213' on the east; and 206' on the west), and approximately 12,600 square feet in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area. The site is developed with a pre-existing pool and three mature Cedar trees that the applicant contends would have to be removed if the garage were to be located on the southwest corner of the site.
- According to DCAD records, the property is developed with the following:
 - a structure in "unsound" condition built in 1939 with 2,466 square feet of living area;
 - a 500 square foot detached garage; and
 - a pool.
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included email responses to a concern identified by the Building Inspection Senior Plans Examiner/Development Code Specialist as well as elevations and plans showing what the applicant contends are unsuccessful scenarios of an accessory structure/garage that complies with the off-street parking regulation that the applicant is seeking variance from.

BACKGROUND INFORMATION:

Zoning:

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

February 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.

- March 19, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 22, 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 April 5th deadline to submit additional evidence for staff to factor into their analysis; and the April 9th 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.
- March 29, 2010: The applicant submitted additional information to the Board Administrator (see Attachment A).
- April 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, 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.
- April 8, 2010: The applicant submitted additional information to the Board Administrator (see Attachment B). (Note that this information was not factored into the staff recommendation since it was submitted past the date in which the staff review team meeting occurred).
- April 9, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Substandard setback on substandard alley would be created. If anyone parks between the proposed garage and the alley, alley would be blocked."

STAFF ANALYSIS:

- This application focuses on enclosing parking spaces with a garage door in a proposed one-story two-vehicle detached accessory structure on a lot developed with a single family home. The parking spaces that are to be enclosed with garage doors in the proposed accessory structure would be located less than the required 20' distance from the alley right-of-way line on the south side of the subject site.

- The submitted site plan denotes an approximate 18.5' – 19' distance between the location of enclosed parking spaces in the proposed accessory structure and the projected pavement line of the alley.
The site plan denotes an approximately 6' – 14' distance between the proposed accessory garage structure and the existing swimming pool. The lot width is 60' whereby there would be a 40' width left if the 20' wide garage were located on the western side property line - a location permitted if the detached accessory structure would be located in the rear 30 percent of the lot and 15' in height or less.
- The site is relatively flat, rectangular in shape (60' on the north and south; 213' on the east; and 206' on the west), and approximately 12,600 square feet in area. The site is zoned R-10(A) where lots are typically 10,000 square feet in area. The site is developed with a pre-existing pool and three mature Cedar trees that the applicant contends would have to be removed if the garage were to be located on the southwest corner of the site.
- The Sustainable Development Department Project Engineer has submitted a Review Comment Sheet marked "Recommends that this be denied" commenting "Substandard setback on substandard alley would be created. If anyone parks between the proposed garage and the alley, alley would be blocked."
- The proposed accessory structure could be constructed and maintained on the site as shown on the submitted site plan and elevation *without* a garage door (or without enclosing the parking spaces) if this request were denied.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 4' 2" to install a garage door (or enclose parking spaces) in a proposed accessory structure whereby the enclosed parking spaces will be located 15' 10" away from the alley right of way line or approximately 18.5' - 19' from the pavement line 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 to the parking regulations of 4' 2" is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-10(A) zoning classification.
 - The variance to the parking regulations of 4' 2" requested would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-10(A) zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

(These conditions are imposed to help assure that the variance will not be contrary to public interest).

If the Board were to grant the variance request of 4' 2", imposing a condition whereby the applicant must comply with the submitted site plan, the parking spaces in the proposed accessory structure could be enclosed with a garage door that would be 15' 10" away from the alley right of way line (or 4' 2" into the 20' setback/distance requirement) and approximately 18.5'- 19' from the projected pavement line of the alley.

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2010

APPEARING IN FAVOR: Matt Sherstad, 6828 Avalon, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 090-045**, on application of Robert Hopson, **grant** the 4 foot, 2 inch variance for an enclosed parking space entered directly from a street or alley, 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.
- An automatic garage door must be installed and maintained in working order at all times.
- At no time may the area in front of the garage be utilized for parking of vehicles.
- All applicable permits must be obtained.

SECONDED: **Maten**

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

NAYS: 0–

MOTION PASSED: 5– 0(unanimously)

FILE NUMBER: BDA 090-044

BUILDING OFFICIAL’S REPORT:

Application of Bobby Broussard for a special exception to the side yard setback regulations at 5430 Richmond Avenue. This property is more fully described as Lot 8 in City Block 30/1949 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to maintain a carport that will provide a 2 foot setback which will require a special exception of 3 feet.

LOCATION: 5430 Richmond Avenue

APPLICANT: Bobby Broussard

April 19, 2010 Public Hearing Notes:

- The applicant revised his submitted elevation at the public hearing per the request of the Board/staff.

REQUEST:

- A special exception to the side yard setback regulations of 3' is requested in conjunction with maintaining an existing carport that is attached to a single family home, part of which is located in the required 5' side yard setback on the east side of the property.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, the carport will not have a detrimental impact on surrounding properties.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

GENERAL FACTS:

- A 5' side yard setback is required in the R-7.5(A) zoning district. The applicant has submitted a site plan indicating the location of the carport on the site that is located 2' from the site's eastern side property line (or 3' into the 5' side yard setback). Although the site plan also indicates a portion of the existing single family home structure located in the eastern 5' side yard setback, the applicant has

stated that he has an understanding that this structure is nonconforming – 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 following information regarding the carport was gleaned from the submitted site plan:
 - Approximately 34' in length and approximately 10' in width (approximately 340 square feet in total area) of which about 100 square feet or 1/3 is located in the side yard setback.
- The following information regarding the carport was gleaned from the submitted elevation:
 - Approximately 14' in height (attached to an approximately 14' high one-story single family structure) with wood posts and composition roof.
- The subject site is 144' x 50' (or 7,200 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a structure in "average" condition built in 1940 with 1,428 square feet of living area,
 - a 540 square foot detached carport; and
 - a 220 square foot attached carport.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>North:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>South:</u>	TH-3(A) (Townhouse)
<u>East:</u>	R-7.5 (A) (Single family residential 7,500 square feet)
<u>West:</u>	R-7.5 (A) (Single family residential 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:

February 25, 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.

March 19, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 22, 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 April 5th deadline to submit additional evidence for staff to factor into their analysis; and the April 9th 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 6, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, 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.

April 9, 2010 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- This request focuses on maintaining an existing carport that is located 2' from the site's eastern side property line (or 3' into the 5' side yard setback).
- A site plan/survey plat has been submitted showing the carport to be approximately 34' long and 10' wide whereby about 1/3 is located in the required 5' setback on the east side of the site.
- An elevation has been submitted that shows that the carport is approximately 14' high with wood posts and a composition roof that aligns with the roof line of the existing single family structure that it is attached to.

- The applicant has the burden of proof in establishing the following:
 - That granting this special exception to the side yard setback regulations of 3' will not have a detrimental impact on surrounding properties.
- As of April 12, 2010, 11 letters had been submitted in support (including the owner of the site and the owner of the lot immediately east of the site nearest the carport on the subject site) and no letters had been submitted in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be constructed and maintained in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water drainage-related issues that the modified carport may cause on the lot immediately east:
 1. Compliance with the submitted site plan/survey plat and elevation is required.
 2. The carport structure must remain open at all times.
 3. There is no lot-to-lot drainage in conjunction with this proposal.
 4. All applicable building permits are obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.

BOARD OF ADJUSTMENT ACTION: APRIL 19, 2010

APPEARING IN FAVOR: Bobby Broussard, 4449 Blystone, Plano, TX 75093

APPEARING IN OPPOSITION: No one

MOTION: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 090-044**, on application of Bobby Broussard, **grant** the request of this applicant to maintain a carport as a special exception to the minimum side yard requirements contained in the Dallas Development Code, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the carport will not have a detrimental impact on the surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan/survey plat and revised elevation is required.
- The carport structure must remain open at all times.
- Lot-to-lot drainage is not permitted in conjunction with this proposal.
- All applicable building permits must be obtained.
- No item (other than a motor vehicle) may be stored in the carport.

SECONDED: Moore

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

NAYS: 0–

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Moore**

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

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

1:25 P. M. - Board Meeting adjourned for **April 19, 2010**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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