

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, MAY 17, 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 and Trena Law, Board Secretary

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11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 17, 2010** docket.

1:00 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 April 19, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2010

MOTION: Moore

I move **approval** of the Monday, **April 19, 2010** public hearing minutes.

SECONDED: Coulter

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.**

FILE NUMBER: BDA 090-050

BUILDING OFFICIAL’S REPORT:

Application of Ik Ma, represented by William A Bratton, III, to appeal the decision of the administrative official at 1820 W. Mockingbird Lane, Suite 36. This property is more fully described as Lot 2 in City Block 7923 and is zoned MU-3 which requires that 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. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 1820 W. Mockingbird Lane, Suite 36

**APPLICANT: Ik Ma
Represented by William A Bratton, III**

May 17, 2010 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment C). This information was a May 4, 2010 letter (received

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's February 19, 2010 revocation of certificate of occupancy no. 0610031087 for a personal service use (June's Tan) at 1820 W. Mockingbird Lane, Suite 36. The application states that "the Certificate of Occupancy No. 0610031087 was not subject to revocation based on false incomplete or incorrect information when applied for and the premise is not being used as a massage establishment."

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that although the notification signs were posted on the site when the Board Administrator conducted his field visit on April 15th, the notification signs were picked up/purchased by Jade Leckey (a person affiliated with the application) at Dallas City Hall on March 30, 2010 – 15 days after the application was submitted on March 15th.

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."

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

- The Building Official's February 19th letter to GIC 1820 LP, Greenway Investment Company Registered Agent, and IK MA states the following:
 - The Dallas Police Department has informed me that you are operating a massage establishment at the Property and are engaged in an illegal business under state penal laws. A state issued massage establishment license is required to operate a massage establishment. Further, an application for a City of Dallas 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. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment.
 - 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.
 - Your certificate of occupancy is hereby revoked unless you furnish my office with a valid state issued massage establishment license for Property by March 8, 2010.
 - 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 applicant's representative submitted information beyond what was submitted with the original application (see Attachment B). This information included a revised application that appears to have amended the address and date from what was conveyed on the originally submitted application. (The original application dated 3/15/10 conveyed the property address to be 1801 W. Mockingbird Lane; the revised application dated 4/16/10 conveyed the property address to be 1820 W. Mockingbird Lane).

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: IR and MU-3 (Industrial Research and Mixed Use)
South: MU-3 (Mixed Use)
East: MU-3 (Mixed Use)
West: MU-3 (Mixed Use)

Land Use:

The subject site is a retail strip center where one of its suites (36) is the focus of this request – a use doing business as June’s Tan. The areas to the north, south, east, and west are developed with commercial/retail 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:

March 15, 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 18, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

March 19, 2010: The Board Administrator wrote the applicant’s representative a letter stating among other things how he had failed to remit payment for the required notification sign, and that failure to post the required notification sign would result in either the postponement or denial of the appeal.

March 30, 2010: The Board Administrator sold three notification signs to a person associated with the application (Jade Leckey).

April 22, 2010: The Board Administrator emailed the applicant’s representative the following information (see Attachment A):

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

April 23, 2010: The Board Administrator received additional information from the applicant’s representative (see Attachment B).

May 4, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner,

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

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. 0610031087 for a personal service use (June's Tan) at 1820 W. Mockingbird Lane, Suite 36 on February 19, 2010 be overturned/reversed.
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of the notification sign on the subject site with the finding that although the notification signs were posted on the site when the Board Administrator conducted his field visit on April 15th, the notification signs were picked up/purchased by Jade Leckey (a person affiliated with the application) at Dallas City Hall on March 30, 2010 – 15 days after the application was submitted on March 15th.
- 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 the 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 the notification signs on the site and upholds the Building Official's February 19th decision, the certificate of occupancy no. 0610031087 for a personal service use (June's Tan) at 1820 W. Mockingbird Lane, Suite 36 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 the notification signs on the site and reverses the Building Official's February 19th decision, the certificate of occupancy no. 0610031087 for a personal service use (June's Tan) at 1820 W. Mockingbird Lane, Suite 36 will be reinstated.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2010

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

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

MOTION: **Moore**

Having fully reviewed the evidence in Appeal No. **BDA 090-050**, on application of Ik Ma, represented by William Bratton, 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: Coulter

AYES: 4-0 Boyd, Moore, Coulter, Gaspard

NAYS: 0-

MOTION PASSED: 4- 0(unanimously)

FILE NUMBER: BDA 090-057

BUILDING OFFICIAL’S REPORT:

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

LOCATION: 3620 Edgewater Drive

APPLICANT: Lauren Bryant
Represented by Truett Roberts

May 17, 2010 Public Hearing Notes:

- The Board Administrator circulated additional written documentation to the Board at the briefing (see Attachment B). This information included a revised site plan and revised elevation prepared by the applicant’s representative.

REQUESTS:

- Variances to the side yard setback regulations of up to 5’ are requested in conjunction with obtaining a final building permit on a recently constructed three-story duplex, portions of which (according to documents submitted with the application - “flatwork, stairs and landings” structures and/or concrete stair structures) are located in the site’s eastern and western 5’ side yard setbacks.

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the site slopes northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120’, and is slightly irregular in shape (60’ on the north, approximately 48’ on the south, approximately 131’ on the east, and approximately 100’ on the west), the applicant has not substantiated how these

- The applicant has not substantiated how the physical features of the subject site precluded him from developing the site with reasonably-sized duplex that is commensurate with other duplexes in the zoning district while simultaneously being able to comply with the development standards in the Dallas Development Code including but not limited to the side yard setbacks.

STANDARD FOR A VARIANCE:

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

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

GENERAL FACTS:

- The minimum side yard setback on a PD No. 193 (Subdistrict D) zoned lot is 5 feet. The applicant has submitted a site plan indicating “structures” (described on information submitted with the application as “flatwork, stairs and landings” and/or concrete stair structures) located as close as on the site’s western side property line (or 5’ into the required 5’ side yard setback) and as close as 1’ from the site’s eastern side property line (or 4’ into the required 5’ side yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure that located in the site’s eastern 5’ side yard setback is approximately 130 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint; and the area of the structure located in the site’s western 5’ side yard setback is approximately 120 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint.
- The site plan shows that the site slopes northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120’. The site is slightly irregular in shape (60’ on the north, approximately 48’ on the south, approximately 131’ on the east, and approximately 100’ on the west), and according to the application is 0.18 acres in area. The site is zoned PD No. 193 (D Subdistrict).
- According to DCAD records, the property is developed with the following:

- a structure built in 2008 with 5,600 square feet of living area;
- a 440 square foot attached garage; and
- a 399 square foot attached garage.
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a document that provided additional details about the request, as well as photos of what the applicant's representative describes as "examples of single family and duplex structures in PD 193, subsection D, that extend to the side yard setback limit on both sides of the property...and are three stories in height."

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- March 26, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- April 22, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- April 22, 2010: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the May 3rd deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

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

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

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

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

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

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

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

STAFF ANALYSIS:

- This request focuses on obtaining a final building permit on a recently constructed three-story duplex, portions of which (according to documents submitted with the application - “flatwork, stairs and landings” structures and/or concrete stairs structures completed over a year ago) are located in the site’s eastern and western 5’ side yard setbacks.
- The applicant’s representative has stated among other things in a document (see Attachment A) that:
 - The owner received permit for construction from the City of Dallas in July of 2008 using plans by VirtualArchitect.com, and that the stairs for the entries in the side yard setbacks were noted by the architect as flatwork. The City inspector amended the document with the annotation “flatwork 6” above grade, max.” with the East and West elevations included in the permit documents showing stairs extending well above the grade.
 - The request for variance is limited to the issues surrounding the side yard setback, and “to the Owner’s best knowledge, the structure is currently in compliance with all other development codes for PD 193. A “previously non-conforming deck which extended into rear yard setback has been modified so that it does not extend into the setback.”
- The submitted site plan indicates “structures” (described on information submitted with the application as “flatwork, stairs and landings” and/or concrete stair structures) located as close as on the site’s western side property line (or 5’ into the required 5’ side yard setback) and as close as 1’ from the site’s eastern side property line (or 4’ into the required 5’ side yard setback).
- According to calculations taken by the Board Administrator from the submitted site plan, the area of the structure that located in the site’s eastern 5’ side yard setback is approximately 130 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint; and the area of the structure located in the site’s western 5’ side yard setback is approximately 120 square feet (or approximately 4 percent) of the approximately 3,000 square foot building footprint.
- The site plan shows that the site slopes northward from the rear of the site to Edgewater Drive from 500 to 494 over a distance of approximately 120’. The site is slightly irregular in shape (60’ on the north, approximately 48’ on the south, approximately 131’ on the east, and approximately 100’ on the west), and according to the application is 0.18 acres in area. The site is zoned PD No. 193 (D Subdistrict).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (D Subdistrict) zoning classification.
 - The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in

developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (D Subdistrict) zoning classification.

- If the Board were to grant the side yard variances of 5', imposing a condition whereby the applicant must comply with the submitted site plan, the structures encroaching into this setback would be limited to that shown on the site plan which in this case are stair "structures" attached to a duplex that are located as close as 5' from the side property lines or as much as 5' into the 5' side yard setbacks.

BOARD OF ADJUSTMENT ACTION: MAY 17, 2010

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

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

MOTION: **Gaspard**

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

SECONDED: **Maten**

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

NAYS: 0–

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Gaspard**

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

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

1:37 P. M. - Board Meeting adjourned for **May 17, 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.