

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, JUNE 15, 2009**

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

MEMBERS ABSENT FROM BRIEFING: Elizabeth Wahlquist, regular member

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

MEMBERS ABSENT FROM HEARING: Elizabeth Wahlquist, regular member

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

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

10:33 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 15, 2009** 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 May 18, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 15, 2009

MOTION: Moore

I move **approval** of the Monday, **May 18, 2009** public hearing minutes.

SECONDED: Boyd

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-069(K)

BUILDING OFFICIAL’S REPORT:

Application of Ramsey Munir represented by Robert Baldwin for a special exception to the fence height regulation at 4834 S. Lindhurst Avenue. This property is more fully described as Lot 2 in City Block 3/5531 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot, 9 inch fence in a required front yard setback which will require a special exception of 4 feet, 9 inches.

LOCATION: 4834 S. Lindhurst Avenue

APPLICANT: Ramsey Munir
Represented by Robert Baldwin

REQUESTS:

Special exception to the fence height regulations of 4 foot and 9 inches to construct a fence that is 8 feet and 9 inches in a required front yard.

STAFF RECOMMENDATION (fence height special exception):

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The site is zoned R 1ac(A) and has a platted building line of 60 feet in the front yard.
- The applicant proposes construct and maintain a 8 foot 9 inch high fence.
- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures.

Zoning/BDA History:

B 178-013
B 095-006

Timeline:

- April 21, 2009: The applicant’s representative submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 21, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- May 22, 2009: The Board Senior Planner mailed the applicant’s representative a letter that containing the following information:
- the public hearing date and panel that will consider the application;
 - the criteria and standard that the board will use in their decision to approve or deny the request;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the June 1st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the June 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

STAFF ANALYSIS:

- The property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- The applicant proposes to construct and maintain:
 1. an open wrought iron fence that is six-feet and six-inches in height;
 2. with solid columns eight-feet in height;
 3. two gates that are a maximum height of 8 feet and 9 inches;
 4. and two solid cast stone wing walls that are 7-feet and 6-inches in height with 8-foot high capstones.
- The proposed fence runs approximately 223 feet parallel to the front property line and 60 feet perpendicular to the front property line.
- During the site visit the senior planner observed other properties in the immediate area with fences in the required front yards.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Murrah

I move that the Board of Adjustment grant application **BDA 089-069(K)** 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 site plan and partial elevation document is required.

SECONDED: Moore

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-077

BUILDING OFFICIAL’S REPORT:

Application of Tommy Mann for a special exception to the landscape regulations at 5622 Lemmon Avenue. This property is more fully described as Lot 3A in City Block A/2476 and is zoned PD-193(GR) which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 5622 Lemmon Avenue

APPLICANT: Tommy Mann

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 1,800 square foot addition to an existing approximately 36,000 square foot retail strip center on the subject site.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan (updated on 6/04/09) is required.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally “excepted” from the off-street parking screening and “landscape site area” requirements of PD No. 193 while exceeding requirements related to the number of street trees, landscape site area (lot area), and general and special planting areas (required front yard).
- The City’s Chief Arborist recommends approval of this request whereby if the alternate landscape plan were imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193, particularly given that the minimal landscape deficiencies on the site are compensated by areas shown on the plan that exceed the landscape requirements, and that the building expansion that would match the frontage of the building on the adjacent lot reduces the ability to provide additional landscaping along the street frontage.

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

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

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.

The applicant has submitted a revised alternate landscape plan (updated on 6/4/09) that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically the off-street parking screening and “landscape site area” requirements of this ordinance.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the special exception request (see Attachment B). The memo stated the following:
 - The special exception request is triggered by a new addition to an existing structure.
 - Deficiencies:

1. No screening is provided for three spaces south of the southern entrance drive ((51P-193.126(b)(3)).
2. The property had reduced Front Yard Landscape Site Area (51P-126 (h)(1)). The memo provides a table indicating among other things how the applicant is providing 7 of the required 6 street trees, and is exceeding the requirements relating to Landscape Site Area-Lot Area, and General and Special Planting Areas- Required Front Yard.
 - Factors:
 - The site is existing and has current landscaping provided. The site is currently deficient of PD No. 193 requirements.
 - Additional planting areas are being provided along the street frontage and in proximity to the building. New screening of off-street parking will be provided for most of lot 3A
 - Three proposed spaces south of the drive entry would have no screening in order to remain in continuity with the frontage of lot 3B, if approved. Also, the building expansion that would match the frontage of the building on lot 3B reduces the ability of providing additional landscaping along the street frontage. However, space is provided close to the structure for landscaping.
 - Additional planting area is provided in the rear of the property.
 - Recommendation:
 - Approval
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - an email that provided additional details about the request;
 - a conditional support letter from the Oak Lawn Committee; and
 - a revised alternate landscape plan updated 6/04/09 that addresses the Oak Lawn Committee's concern.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
North: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
South: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
East: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
West: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)

Land Use:

The subject site is developed with a retail strip center (El Fenix, Royal Cleaners, X-Press Cleaners). The area to the north is developed with commercial uses; the areas to the east and south are developed with retail uses; and the area to the west is under development.

Zoning/BDA History:

1. Z889-153, Lemmon Avenue and Inwood Road, east corner (the subject site and parcels of land north, east and west of the subject site)

On October 11, 1989, the City Council created an ordinance authorizing a GR Subdistrict on property previously zoned a LC Subdistrict within PD No. 193. The City Council also authorized acceptance of a deed restriction instrument submitted in conjunction with the change in zoning – deed restrictions that limited height to 30 feet and two stories; floor area ratio to 0.5:1; prohibition of drive-through restaurants within a certain area of the area of request; prohibited sexually oriented businesses; and required a continuous masonry screening wall at least 6 feet in height in certain areas of the area of request.

(Note that the applicant established in a letter to the Board Administrator on May 28, 2009 that the center renovations will comply with these deed restrictions).

2. BDA089-010, Property at 5636 Lemmon Avenue (immediately west of the subject site)

On January 21, 2009, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition to the request. The case report stated that the request was made in conjunction with constructing and maintaining a financial institution with drive-in window use (Bank of America) on a site that was developed as a retail strip center.

3. BDA078-078, Property at 5610 Lemmon Avenue (immediately east of the subject site)

On June 15, 2009, the Board of Adjustment Panel C will consider a request for a special exception to the landscape regulations made in conjunction with constructing and maintaining an approximately 1,400 square foot addition to an existing approximately 37,000 square foot retail strip center on the subject site.

Timeline:

- April 24, 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.

- May 21, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 21, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the June 1st deadline to submit additional evidence for staff to factor into their analysis; and the June 5th 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 requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- May 5, 2009: 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 Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- June 5, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- June 8, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a relatively small addition to an existing retail strip center and not fully complying with landscape regulations.
- Approval of this landscape special exception request would allow an approximately 1,800 square foot addition to an approximately 36,000 square foot center while allowing the site to not fully comply with the off-street parking screening and “landscape site area” requirements of PD No. 193.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 1. Not screening three spaces south of the southern entrance drive ((51P-193.126(b)(3)).
 2. Not providing the full 2,170 square feet of “Landscape Site Area”- Required Front Yard – the applicant proposes to provide 879 square feet.
 The alternate landscape plan meets or exceeds all other mandatory landscape provisions.

- The City of Dallas Chief Arborist supports the request largely given that the minimal landscape deficiencies on the site are compensated by areas shown on the plan that exceed the landscape requirements, and that the building expansion that would match the frontage of the building on the adjacent lot reduces the ability to provide additional landscaping along the street frontage.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient in the off-street parking screening and “landscape site area” requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised alternate landscape plan (updated on 6/04/09), the site would be minimally “excepted” from compliance from the off-street parking screening and “landscape site area” requirements of PD No. 193 while exceeding requirements related to the number of street trees, landscape site area (lot area), and general and special planting areas (required front yard).

BOARD OF ADJUSTMENT ACTION: **JUNE 15, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Murrah**

I move that the Board of Adjustment grant application **BDA 089-077** 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 alternate landscape plan is required.

SECONDED: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-078

BUILDING OFFICIAL’S REPORT:

Application of Tommy Mann for a special exception to the landscape regulations at 5610 Lemmon Avenue. This property is more fully described as Lot 3B in City Block

A/2476 and is zoned PD-193(GR) which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan which will require a special exception.

LOCATION: 5610 Lemmon Avenue

APPLICANT: Tommy Mann

REQUEST:

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining an approximately 1,400 square foot addition to an existing approximately 37,000 square foot retail strip center on the subject site.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan (updated on 6/04/09) is required.

Rationale:

- If the board were to grant this request with the staff suggested condition imposed, the site would only be minimally “excepted” from the off-street parking screening and “landscape site area” and “special planting area” requirements of PD No. 193 while exceeding requirements related to the general planting area- required front yard.
- The City’s Chief Arborist recommends approval of this request whereby if the alternate landscape plan were imposed as a condition, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193, particularly given the minimal landscape deficiencies on the site and the fact that additional plantings are proposed in an effort to minimize the level of non-compliance with existing code and to provide a consistent theme on this site and the adjacent center to the north – BDA089-077.

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

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

GENERAL FACTS:

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex

The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically the off-street parking screening and "landscape site area" and "special planting area" requirements of this ordinance.

- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the special exception request (see Attachment B). The memo stated the following:
 - The special exception request is triggered by a new addition to an existing structure.
 - Deficiencies:
 1. No screening of off-street parking ((51P-193.126(b)(3)).
 2. The property had reduced Landscape Site Area (Total and Front Yard) and Special Planting Area (51P-126 (h)(1) and (3)).The memo provides a table indicating among other things how the applicant is providing 7 of the required 7 street trees, and is exceeding the requirements relating to General Planting Area- Required Front Yard.
 - Factors:
 - The site is existing and has current landscaping provided. The site is currently deficient of PD No. 193 requirements.
 - Additional planting areas are being provided along the southern end of the structure that faces the adjacent property. Four new ginkgo trees and rows of holly shrubs are proposed along the façade.
 - No screening of off-street parking is proposed along the existing parking lot based on existing site restraints placed on parking due to the location of the structure and necessary sidewalk Placement of screening shrubs, or a wall, would require placing the screening in the parkway and force the replacement of the existing parkway sidewalk which could then compromise the existing trees in the parkway.
 - There are no conflicting overhead utilities. The existing trees should remain in their current location and be allowed to flourish.
 - Lots 3A and 3B are both planned for renovation with additions to both buildings. Existing plantings will be maintained where possible. Additional plantings are proposed on both sites in an effort to minimize the level of non-compliance with existing code and to provide a consistent theme.
 - Recommendation:
 - Approval
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - an email that provided additional details about the request;
 - a conditional support letter from the Oak Lawn Committee; and
 - a revised alternate landscape plan updated 6/04/09 that addresses the Oak Lawn Committee's concern.

BACKGROUND INFORMATION:

Zoning:

- Site: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
- North: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)
- South: PD No. 193 (LC Subdistrict) (Planned Development District, Light Commercial)
- East: PD No. 193 (LC Subdistrict)(SUP) (Planned Development District, Light Commercial, Specific Use Permit)
- West: PD No. 193 (GR Subdistrict)(Deed Restricted) (Planned Development District, General Retail)

Land Use:

The subject site is developed with a retail strip center (A Checks Cashed, H & R Block, Kelly Moore Paints, Mi Doctor). The areas to the north, south, east, and west are developed with commercial and retail uses.

Zoning/BDA History:

1. Z889-153, Lemmon Avenue and Inwood Road, east corner (the subject site and parcels of land north, east and west of the subject site)

On October 11, 1989, the City Council created an ordinance authorizing a GR Subdistrict on property previously zoned a LC Subdistrict within PD No. 193. The City Council also authorized acceptance of a deed restriction instrument submitted in conjunction with the change in zoning – deed restrictions that limited height to 30 feet and two stories; floor area ratio to 0.5:1; prohibition of drive-through restaurants within a certain area of the area of request; prohibited sexually oriented businesses; and required a continuous masonry screening wall at least 6 feet in height in certain areas of the area of request.
(Note that the applicant established in a letter to the Board Administrator on May 28, 2009 that the center renovations will comply with these deed restrictions).

2. BDA089-010, Property at 5636 Lemmon Avenue (two lots immediately west of the subject site)

On January 21, 2009, the Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition to the request. The case report stated that the request was made in conjunction with constructing and maintaining a financial

institution with drive-in window use (Bank of America) on a site that was developed as a retail strip center.

3. BDA078-077, Property at 5622 Lemmon Avenue (immediately west of the subject site)

On June 15, 2009, the Board of Adjustment Panel C will consider a request for a special exception to the landscape regulations made in conjunction with constructing and maintaining an approximately 1,800 square foot addition to an existing approximately 36,000 square foot retail strip center on the subject site.

Timeline:

April 24, 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.

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

May 21, 2009: The Board Administrator contacted the applicant and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the June 1st deadline to submit additional evidence for staff to factor into their analysis; and the June 5th 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

May 5, 2009: 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 Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

June 5, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).

June 8, 2009

The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a relatively small addition to an existing retail strip center and not fully complying with landscape regulations.
- Approval of this landscape special exception request would allow an approximately 1,400 square foot addition to an approximately 37,000 square foot center while allowing the site to not fully comply with the off-street parking screening and “landscape site area” and “special planting area” requirements of PD No. 193.
- An alternate landscape plan has been submitted whereby the applicant seeks an exception from the landscape requirements in the following ways:
 1. No screening of off-street parking ((51P-193.126(b)(3)).
 2. The property had reduced Landscape Site Area (Total and Front Yard) and Special Planting Area (51P-126 (h)(1) and (3)).The alternate landscape plan meets or exceeds all other mandatory landscape provisions.
- The City of Dallas Chief Arborist supports the request largely given that the minimal landscape deficiencies on the site, and the fact that additional plantings are proposed in an effort to minimize the level of non-compliance with existing code and to provide a consistent theme on this site and the adjacent center to the north – BDA089-077.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where an alternate landscape plan has been submitted that is deficient the off-street parking screening, “landscape site area” and “special planting area” requirements) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised alternate landscape plan (updated on 6/04/09), the site would be minimally “excepted” from compliance from the off-street parking screening, “landscape site area”, and “general planting area” requirements of PD No. 193 while exceeding requirements related to the general planting area (required front yard), and providing additional plantings in an effort to minimize the level of non-compliance with existing code.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted revised alternate landscape plan (updated on 6/04/09), the site would be minimally “excepted” from compliance from the off-street parking screening, “landscape site area”, and “special planting area” requirements of PD No. 193 while exceeding requirements related to the general planting area (required front yard).

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2009

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Murrah**

I move that the Board of Adjustment grant application **BDA 089-078** 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 alternate landscape plan is required.

SECONDED: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-079(K)

BUILDING OFFICIAL’S REPORT:

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

LOCATION: 1135 S. Lamar Street.

APPLICANT: Jeff Browning
Represented by Roger Albright

REQUESTS:

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

STAFF RECOMMENDATION:

Hold Under Advisement

Rationale:

- After reviewing the submitted materials and conferring with the applicant of the case, the Chief Arborist has determined that there are still questions concerning the basis of the request and the extent of time a special exception should allow for the completion of any conditioned landscaping. Staff believes

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

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

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

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

GENERAL FACTS:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

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

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

May 22, 2009: The Board Senior Planner mailed the applicant's representative a letter that contained the following information:

- the public hearing date and panel that will consider the application;
- the criteria and standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the June 1st deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the June 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the April public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

June 8, 2009 The Chief Arborist submitted a memorandum referencing the material submitted in conjunction with the application.

STAFF ANALYSIS:

- The site is currently developed with The Palladium Ballroom, Studio Bar and Grill, and The Loft.
- According to DCAD the site was developed in 1928 and has a total lease space of approximately 92,000 square feet.
- The applicant has submitted an alternate landscape plan and is requesting a special exception to the landscape regulations. The Chief Arborist has reviewed the revised alternate landscape plan submitted on Jun 8, 2009, and stated "I believe this case is not ready to present for consideration and I cannot, at the time, provide a recommendation to the Board."
- The applicant has the burden of proof in establishing the following:
 1. that granting the special exception the landscape regulations is necessary because strict compliance with the requirements of this article will unreasonably burden the use of the property; the special exception will not adversely affect neighboring property; and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council;

After reviewing the submitted materials and conferring with the applicant of the case, the Chief Arborist has determined that there are still questions concerning the basis of the request and the extent of time a special exception should allow for the completion of any conditioned landscaping. Staff believes this case is not ready to present for consideration at this time. The applicant has suggested the case be held under advisement until September 14, 2009.

BOARD OF ADJUSTMENT ACTION: **JUNE 15, 2009**

APPEARING IN FAVOR: Roger Albright, 3301 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 089-079**, hold this matter under advisement until **September 14, 2009**.

SECONDED: **Gaspard**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-070

BUILDING OFFICIAL’S REPORT:

Application of Jeffry Hinkson for a variance to the front yard setback regulation at 6416 Lake Circle Drive. This property is more fully described as part of Lots 3 & 4 in City Block 3/4907 (AKA: block 3-B/4907) and is zoned R-7.5(A) which requires a 25 foot

front yard setback. The applicant proposes to construct and maintain a structure and provide a 20 foot front yard setback which will require a variance of 5 feet.

LOCATION: 6416 Lake Circle Drive

APPLICANT: Jeffry Hinkson

REQUESTS:

- A variance to the front yard setback regulations of 5' is requested in conjunction with remedying/maintaining a circa 1950's nonconforming single family home structure in the 25' front yard setback and constructing/maintaining a second floor addition that would partially align atop.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The approximately 7,400 square foot subject site (zoned R-7.5(A) where lots are typically 7,500 square feet in area) is restricted in its developable area and is different from other parcels of land given that almost half of it is comprised of a lake.
- The applicant has substantiated that the existing/proposed development on the site is/would be commensurate with development found on other parcels of land in the same R-7.5(A) zoning district – in this case, what would result in a two-story single family structure with about 2,300 square feet (compared to seven other homes in the area that average about 2,600 square feet).
- Granting the variance does not appear to be contrary to the public interest in that the existing nonconforming structure appears to align with existing homes to the east and west and that the second floor addition would not exceed beyond the front façade of the existing one-story structure.

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 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; 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 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 front yard setback on an R-7.5(A) zoned lot is 25 feet.
The applicant has submitted a site plan document indicating a structure that is located as close as 20' from the front property line (or as much as 5' into the 25' front yard setback). The site plan document includes several drawings one of which denotes an approximately 1,400 square foot building footprint; another drawing which denotes "level one square feet" with 1,293 square feet in area; and another drawing which denotes "level two square feet" with 1,055 square feet in area.
- 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 site plan, the area of the existing structure that is located in the site's 25' front yard setback is approximately 200 square feet (approximately 40' x 5' in area or approximately 14 percent) of the 1,400 square foot building footprint. The actual amount of the second floor addition to be located in the front yard setback cannot be gleaned from the site plan but it can be reasoned to be of a lesser amount than that of the first floor/existing home since the second floor only partially aligns with the front façade of the existing structure.
- The site is somewhat irregular in shape (approximately 155' x 50'), and is (according to DCAD) 7,445 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The plat map indicates that about half of the lot is comprised of a lake.
The applicant has prepared a table that shows that the average square footage of seven other lots in the area is 9,659 square feet while the square footage of the subject site is 7,455 square feet.
- According to DCAD records, the property is developed with the following:
 - a single family home in "very good" condition built in 1954 with 1,341 square feet of living area; and
 - a 200 square foot attached garage.The applicant has prepared a table that shows that the average square footage of seven other homes in the area is 2,579 square feet while the square footage of the home with the proposed addition is 2,348 square feet.
- The applicant 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 requests.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

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

Timeline:

- April 23, 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.
- May 21, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 21, 2009: The Board Administrator contacted the applicant and shared the following information via email:
- an attachment that provided the public hearing date and panel that will consider the application; the June 1st deadline to submit additional evidence for staff to factor into their analysis; and the June 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- June 1, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Development Services Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Development Code Specialist, the Chief Arborist, 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 a variance to the front yard setback regulations of 5' focus on maintaining a portion of a nonconforming (circa 1950's) single family structure in the 25' front yard setback and aligning/adding a second floor that would partially align atop its front façade.
- The application was originally made in conjunction with adding a second floor to an existing one-story home. But upon being fully informed of the Dallas Development Code nonconforming structure provisions, the applicant amended his request by adding a variance to remedy the existing nonconforming structure aspect of the home on the site that was built in 1954 – in this case a structure that does not conform to the current setback regulations but was lawfully constructed under the regulations in force at the time of construction.
- The applicant has requested a front yard variance to address the nonconforming aspect of the structure on the site so that if it were ever intentionally destroyed, a house could be replaced in the building footprint shown on the submitted site plan document 20' from the front property line rather than the required 25'.
- The submitted site plan indicates that about 200 square feet of the existing 1950's home (that is about 1,400 square feet in area) is located in the front yard setback (40' in length, 5' in depth). The amount of second floor in the front yard setback would be a lesser amount considering that the second floor does not span across the entire front façade of the existing one-story structure.
- The applicant has prepared a table that shows that the average square footage of seven other lots in the area is 9,659 square feet while the square footage of the subject site is 7,455 square feet, and that the average square footage of these seven other lots is 9,659 square feet while the square footage of the subject site is 7,455 square feet.
- The site is somewhat irregular in shape (approximately 155' x 50'), and is (according to DCAD) 7,445 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area. The plat map indicates that about half of the lot is comprised of a lake.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front 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 variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) (Single family) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) (Single family) zoning classification.

- If the Board were to grant the front yard variance of 5', imposing a condition whereby the applicant must comply with the submitted site plan document, the structure encroaching into this setback would be limited to that shown on the submitted plan which in this case is a structure that is located 20' from the front property line or 5' into the 25' front yard setback.

BOARD OF ADJUSTMENT ACTION: **JUNE 15, 2009**

APPEARING IN FAVOR: Jeffrey Hinkson, 6416 Lake Cr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 089-070**, on application of Jeffrey Hinkson, **grant** the five-foot variances to the front yard setback regulations 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: **Moore**

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

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 089-072

BUILDING OFFICIAL’S REPORT:

Application of Santos T. Martinez of Masterplan for a variance to the front yard setback regulation at 2326 N. Henderson Avenue. This property is more fully described as Lot 11 in City Block 1/1975 and is zoned PD-462 which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback which will require a variance of 15 feet.

LOCATION: 2326 N. Henderson Avenue

APPLICANT: Santos T. Martinez of Masterplan

June 15, 2009 Public Hearing Notes:

- The applicant submitted additional written documentation to the board at the public hearing –documents that included letters of support to the application, and a copy of a document entitled “Involuntary Dissolution of Lowest Greenville West Neighborhood Association” printed on State of Texas Office of Secretary of State letterhead.

REQUEST:

- A variance to the front yard setback regulations of 15’ is requested in conjunction with completing and maintaining an approximately 750 square foot portion of an approximately 1,000 square foot “covered patio”/trellis structure that is located in the site’s 15’ front yard setback. The “covered patio”/trellis structure would attach to an existing main structure on the site that has an approximately 2,600 square foot building footprint which according to the applicant, is a 1940’s duplex structure-turned retail structure-turned restaurant structure being renovated as a new restaurant/bar use (Hacienda Restaurant and Bar).

STAFF RECOMMENDATION:

Denial

- There is no property hardship to the site that warrants a front yard variance which in this case is requested to complete/maintain a “covered patio”/trellis structure in the minimum 15’ front yard setback.
- The site is rectangular in shape, flat, and of a size no thinner or shorter than the parcels of land to its east and west zoned PD No. 462 (Subdistrict 3). There is no physical characteristic/feature of the subject site that warrants a “covered patio”/trellis structure in the site’s 15’ minimum front yard setback.
- The applicant had not substantiated how the physical features of this flat, rectangular-shaped, 7,250 square foot site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 462 (Subdistrict 3) zoning classification while simultaneously complying with code development standards including but not limited to front yard setback regulations.
- Although the applicant contends that there is “no other viable location for an open air trellis patio except in the front yard” in order to maintain required parking spaces, staff concludes that this issue can be remedied without variance on this flat, rectangular shaped, standard-sized PD No. 462 subject site. The existing converted duplex-turned-retail-turned restaurant structure can be retained of a size that is relative to others in the same zoning district without the “covered patio”/trellis structure where the site could comply with both the front yard setback and off-street parking regulations.

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 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; 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 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:

- Structures on lots zoned PD No. 462 (Subdistrict 3) are required to provide a minimum front yard setback of 15' and a maximum front yard setback of 30 feet. The applicant has submitted a revised site plan indicating a "covered patio" structure that is located on the site's N. Henderson Avenue front property line (or as much as 15' into the 15' front yard setback).
- According to calculations taken by the Board Administrator from the revised site plan, the area of the "covered patio" structure located in the site's 15' minimum front yard setback is approximately 750 square feet (approximately 50' wide and 15' deep) or approximately 75 percent of the approximately 1,000 square foot total "covered patio" building footprint.
- The site is flat, rectangular in shape (145' x 50'), and is (according to DCAD) 7,250 square feet in area. The site is zoned PD No. 462 (Subdistrict 3).
- According to DCAD records, the property is developed with a 4,440 square foot restaurant built in 1940.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a revised site plan; and
 - a letter that provided additional information related to the request.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

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.

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

May 26, 2009: The Board Administrator contacted the applicant and shared the following information via email:

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

May 29, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).

June 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Development Services Assistant Director, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The request focuses on completing and maintaining an approximately 750 square foot portion of an approximately 1,000 square foot “covered patio”/trellis structure

- The submitted revised site plan indicates that the area of the “covered patio” structure that in the site’s minimum 15’ front yard setback is approximately 750 square feet (approximately 50’ x 15’ in area or approximately 75 percent) of the approximately 1,000 square foot “covered patio” building footprint.
- The site is flat, rectangular in shape (145’ x 50’), and is (according to DCAD) 7,250 square feet in area. The site is zoned PD No. 462 (Subdistrict 3). According to DCAD records, the property is developed with a 4,440 square foot restaurant built in 1940.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 462 (Subdistrict 3) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 462 (Subdistrict 3) zoning classification.
- If the Board were to grant the variance to the minimum front yard setback regulations of 15’, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure encroaching into this setback would be limited to that what is shown on the submitted revised site plan which in this case is a structure that is located on the front property line or 15’ into the minimum 15’ front yard setback.
- If the Board were to grant the variance based partially on what has been represented on the submitted elevation, the board can choose to impose this elevation plan as a condition in addition to the submitted revised site plan.

BOARD OF ADJUSTMENT ACTION: JUNE 15, 2009

APPEARING IN FAVOR:

Santos Martinez, 900 Jackson, #640, Dallas, TX
 Pat Tetrick, 3900 McKinney, Dallas, TX
 Chris Clary, 4931 Homer St., Dallas, TX
 Brian Payson, 4906 Alcott St., Dallas, TX
 Vicente Bushamante, 5811 E Mockingbird, Dallas, TX

APPEARING IN OPPOSITION:

Bruce Richardson, 5607 Richmond Ave., Dallas, TX
***Member Matt Murrah recused himself and did not hear nor vote on this matter.**

2:31 P.M.: Executive Session Begins
2:42 P.M.: Public Hearing Resumes

MOTION: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 089-072**, on application of Santos T. Martinez, **grant** the 15-foot variance to the minimum front yard setback regulations for an open patio, totally unenclosed, no sides with trellises on the top 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 revised site plan is required.

SECONDED: **Gaspard**

AYES: 4–Boyd, Moore, Maten, Gaspard

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Moore**

AYES:4 –Boyd, Moore, Maten, Gaspard

NAYS: 0 - None

MOTION PASSED: 4 – 0 (Unanimously)

3:07: P. M. - Board Meeting adjourned for June 15, 2009.

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.