

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, OCTOBER 18, 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 one

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

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

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 18, 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 September 13, 2010 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2010

MOTION: Maten

I move **approval** of the Monday, **September 13, 2010** public hearing minutes.

SECONDED: Moore

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

To consider Board of Adjustment Panel C’s 2011 public hearing schedule.

***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: 1909 Park Row

**APPLICANT: Operation Relief Community Development Corporation (ORCDC),
Represented by Rosalina Trevino-Ortega,**

October 18, 2010 Public Hearing Notes:

- The applicant submitted additional written documentation related to this request to the Board at the public hearing.

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.

Timeline:

- Sept. 27, 2010 The applicant submitted a letter requesting a waiver of the filing fee (which according to this letter is \$1,800.00) for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).
- Sept. 27, 2010: The request was randomly assigned to Board of Adjustment Panel C.
- Sept. 27, 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 October 8th 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."

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2010

APPEARIN IN FAVOR: Rosalinda Trevino-Ortega, 2010 Grand Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gaspard**

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

SECONDED: Maten

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-094

BUILDING OFFICIAL’S REPORT:

Application of Ramon Muniz for a special exception to the fence height regulations at 13905 Vida Lane. This property is more fully described as Tract 295 in City Block F/8820 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6-foot high fence which will require a special exception of 2 feet.

LOCATION: 13905 Vida Lane

APPLICANT: Ramon Muniz

October 18, 2010 Public Hearing Notes:

- The Board Administrator advised the Board at their public hearing of a revision that the applicant had made to his submitted site plan after the morning briefing that being the addition of the following notations: “Existing 5’ high solid metal fence to remain” noted on either side of the subject site perpendicular to Vida Lane but located in the 30’ front yard setback.

REQUEST:

- A special exception to the fence height regulations of 2’ is requested in conjunction with constructing and maintaining a 6’ high fence (4’ high arched open ornamental steel picket fence atop 2’ high stone veneer base) with 6’ high brick columns, and two 6’ high open ornamental steel picket gates in the site’s 30’ front yard setback on a site currently developed with a single family home.

STAFF RECOMMENDATION:

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

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

GENERAL FACTS:

- The Dallas Development Code states that a fence may not exceed 4’ above grade when located in the required front yard in all residential districts except multifamily districts.
The applicant has submitted a site plan and elevations indicating a fence/column/gate proposal in the site’s front yard setback that would reach a maximum height of 6’.
- The following additional information was gleaned from the submitted site plan:
 - The “new fence”/proposal is shown to be approximately 250’ in length parallel to the street.
 - The fence proposal is shown to be located approximately 3’ – 13’ from the property line and approximately 10’ – 23’ from the pavement line.
- The proposal would be located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4’ in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Vida Lane (generally 500 feet north and south of the site) and noted the following fences that appeared to be located in a front yard setback and higher than 4’ in height: (Note that these locations and dimensions are approximations)
 - A 5.5’ high chain link fence located northwest of the site with no recorded Board of Adjustment history.
 - A 6’ high chain link fence located two lots northwest of the subject site with no recorded Board of Adjustment history.
 - A 5’ high open metal fence located immediately north of the subject site that appears to be a result of a special exception granted by the Board of Adjustment in 2001: BDA001-270.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with either single family uses or fields/open space.

Zoning/BDA History:

1. BDA001-270, Property at 13700 Vida Lane (the lot immediately north of the subject site)

On October 23, 2001, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 1' subject to the following condition: compliance with the submitted site plan and fence elevation showing an open metal fence is required. The case report stated that the request was made in conjunction with maintaining a 5' high open metal fence in the front yard setback along Vida Lane.

Timeline:

- March 31, 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.
- September 16, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- September 16, 2010: The Board Administrator phoned the applicant with the following information:
- the public hearing date and panel that will consider the application; the October 4th deadline to submit additional evidence for staff to factor into their analysis; and the October 8th 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.
- September 27, 2010: The Building Inspection Senior Plans Examiner/Development Code Specialist submitted a review comment sheet marked "Has no objections."
- October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- October 7, 2010: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Has no objections if

certain conditions are met” with the following comments: “Needs to comply with all C.O.D visibility requirements.”

STAFF ANALYSIS:

- The request focuses on constructing maintaining a 6’ high fence (4’ high arched open ornamental steel picket fence atop 2’ high stone veneer base) with 6’ high brick columns, and two 6’ high open ornamental steel picket gates in the site’s 30’ front yard setback on a site currently developed with a single family home.
- A site plan and an elevation have been submitted indicating a fence/column/gate proposal that reaches a maximum height of 6’. The site plan indicates that the proposal is about 250’ in length parallel to the street, and is approximately 3’ – 13’ from the property line or about 10’ – 23’ from the pavement line.
- The proposal would be located on the site where two single family homes would have frontage, neither with fences that appear to be higher than 4’ in their front yard setbacks.
- The Board Administrator conducted a field visit of the site and surrounding area along Vida Lane (generally 500 feet north and south of the site) and noted three fences above four feet high which appeared to be located in the front yard setback that have been previously described in the “General Facts” section of the case report
- As of October 11, 2010, no letters had been submitted to staff in support or in opposition to the application.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 6’ in height) will not adversely affect neighboring property.
- Granting this special exception of 2’ with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal would be constructed and maintained in the location and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2010

APPEARING IN FAVOR: No one

APPEARIN IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 090-094** 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 site plan and elevation is required.

SECONDED: **Moore**

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

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 090-100

BUILDING OFFICIAL’S REPORT:

Application of Barbara Griffith, represented by Lakeside Architect, for a special exception to the single family use regulations at 6419 Royalton Drive. This property is more fully described as Lot 1 in City Block D/5500 and is zoned R-16(A) which limits the number of dwelling units to one. The applicant proposes to construct an additional dwelling unit which will require a special exception.

LOCATION: 6419 Royalton Drive

APPLICANT: Barbara Griffith
Represented by Lakeside Architect

REQUEST:

- A request for a special exception to the single family use development standard regulations is requested in conjunction with constructing and maintaining a one-story "dwelling unit"/"new guest house addition" structure with (according to the submitted site plan) approximately 1,000 square feet of living area on a site developed with a two-story dwelling unit/single family home structure that has (according to the submitted site plan) approximately 4,800 square feet of living area.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In

granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

GENERAL FACTS:

- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties. The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
A site plan has been submitted denoting the locations of the building footprints of the “new guest house addition” and the “existing residence” relative to the entire site.
An elevation has been submitted of the second/additional dwelling unit on the site (denoting a one-story structure).
A floor plan has been submitted denoting a structure with the following: “garage,” “bedroom,” “walk-in-clo.,” “bathrm.,” “kitchen,” “dining,” and “living” spaces. Building Inspection staff has reviewed the submitted floor plan and deemed it a “dwelling unit.”
- DCAD records indicate that the site is developed with the following:
 - a single family home built in 2005 with 4,943 square feet of living area;
 - 691 square feet of “unfinished space,”
 - an 844 square foot attached garage; and
 - pool.
- On October 8, 2010, the applicant’s representative forwarded additional information beyond what was submitted with the original application (see Attachment A).

Zoning:

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

Land Use:

The subject site is developed with a single family home. The area to the north is developed with a 100’-wide D.P. & L. right-of-way easement; and the areas to the 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:

August 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.

September 16, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

September 16, 2010: The Board Administrator emailed the owner of the site the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the October 4th deadline to submit additional evidence for staff to factor into their analysis; and the October 8th 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.

September 27, 2010: The Building Inspection Senior Plans Examiner/Development Code Specialist submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "subject to the usual standard conditions."

October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

October 8, 2010: The applicant's representative forwarded additional information on this application to staff (see Attachment A).

STAFF ANALYSIS:

- This request focuses on a one-story "dwelling unit"/"new guest house addition" structure with (according to the submitted site plan) approximately 1,000 square feet

of living area on a site developed with a two-story dwelling unit/single family home structure that has (according to the submitted site plan) approximately 4,800 square feet of living area.

- The site is zoned R-16(A) (Single family district 16,000 square feet) where the Dallas Development Code permits one dwelling unit per lot. The site is developed with a single family home/dwelling unit, and the applicant proposes to construct and maintain an additional dwelling unit/"new guest house addition" on the site hence the special exception request.
- Building Inspection staff has reviewed the submitted floor plan of the proposed additional dwelling unit/"new guest house addition" and deemed it a "dwelling unit" - that is per Code definition: "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms." The submitted floor plan denotes a structure with the following: "garage," "bedroom," "walk-in-clo.," "bathrm.," "kitchen," "dining," and "living" spaces.
- This request centers on the function of what is proposed to be located inside the proposed "new guest house addition" structure. If the board were to deny this request, it appears that this structure could be constructed and maintained with merely modifications to the function/use inside it (or to the floor plan) since the proposed structure appears to comply with the applicable zoning code development standards (i.e. no application has been made for variance to setbacks or any other zoning code provision). According to the applicant's representative, the "proposed small cottage is 1460 sq. ft. and meets all City of Dallas building code, firecode, site coverage and setback requirements. Therefore the structure can be permitted and constructed as designed with the exception of the kitchen. According to building inspection practice, it can be assumed that a "kitchen" is defined by the installation of a double sink and a standard sized stove/oven. Without a floor plan layout for these two components the guest house would comply with the subject R16 zoning and could be permitted for construction as designed."
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, the Board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan and/or floor plan are necessary in assuring that the special exception will not adversely affect neighboring properties. Note that granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements including but not limited to setback and coverage requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2010

APPEARING IN FAVOR: No one

APPEARIN IN OPPOSITION: No one

MOTION: **Maten**

I move that the Board of Adjustment grant application **BDA 090-100** 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.

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

SECONDED: **Moore**

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

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 090-089

BUILDING OFFICIAL’S REPORT:

Application of Vincent Ogbuehi for a special exception to the side yard setback regulations at 4729 Clear Creek Road. This property is more fully described as Lot 14 in City Block 5/6911 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a carport and provide a 6 inch setback which will require a special exception of 4 feet, 6 inches.

LOCATION: 4729 Clear Creek Road

APPLICANT: Vincent Ogbuehi

October 18, 2010 Public Hearing Notes:

- The Board Administrator advised the Board at their briefing of a revision that the applicant had made to his submitted site plan prior to the morning briefing that being the addition of the following notation: “extend to PL” underneath the notation of “New Conc. Floor to Meet City of Dallas Standards.”

UPDATED REQUEST (October 2010):

- A special exception to the side yard setback regulations of 4’ 6” is requested in conjunction with maintaining an existing carport that is attached to a single family

home, and is located in the required 5' side yard setback on the north side of the property.

ORIGINAL REQUEST (September 2010):

- A special exception to the side yard setback regulations of 4' 6" was requested in conjunction with maintaining an existing carport that is attached to a single family home, and extending/lengthening it by approximately 10 feet, part of which is and/or was proposed to be located in the required 5' side yard setback on the north 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).

UPDATED GENERAL FACTS (October 2010):

- The Board of Adjustment Panel C conducted a public hearing on this application on September 13, 2010, and delayed action until October 18th to allow the applicant an opportunity to consider a redesign of the addition to be made to the existing carport, and to consider paving the area between the existing carport and the 6" area between it and the side property line.
- On October 4, 2010, the applicant submitted a revised site plan and elevation (see Attachment A). The revised plans deleted the originally proposed addition to existing carport, and added notations of a concrete area between the carport and the side property line and a "new 1 hr wall with 1/2" GWB on both sides of 3 5/8" mtl studs @ 16" o.c." on the north side of the existing carport.

- The following information regarding the “existing carport” was gleaned from the submitted revised site plan and revised elevation/section:
 - Shown to be 15’ 10” in length and 21’ 1” in width (approximately 330 square feet in total area) of which about 68 square feet or 1/5 of the existing carport is located in the side yard setback.
 - Approximately 13’ in height as measured to the midpoint of the gabled roof (shown to be attached to an approximately 15’ high “existing building beyond”) with metal posts and sheet metal roofing.

ORIGINAL GENERAL FACTS (September 2010):

- A 5’ side yard setback is required in the R-7.5(A) zoning district. The applicant has submitted a site plan and elevation/section indicating the location of the existing carport and the “new carport” addition on the site that is located what appears to be approximately 6” from the site’s northern side property line or 4’ 6” into the 5’ side yard setback. (Note that the application references a 4’ 6” encroachment into the 5’ setback by a carport).
- The following information regarding the “existing carport” was gleaned from the submitted site plan and elevation/section:
 - Shown to be 15’ in length and 21’ 1” in width (approximately 315 square feet in total area) of which about 68 square feet or 1/5 of the existing carport is located in the side yard setback.
 - Approximately 13’ in height as measured to the midpoint of the gabled roof (shown to be attached to an approximately 15’ high “existing building beyond”) with metal posts and sheet metal roofing.
- The following information regarding the “new carport”/addition was gleaned from the submitted site plan and elevation/section:
 - Shown to be 10’ in length and 15’ 9 1/2” in width (approximately 150 square feet in total area) of which about 46 square feet or 1/3 is to be located in the side yard setback.
 - Approximately 9’ in height with metal posts and sheet metal roofing.
- The subject site is 130’ x 75’ (or 9,750 square feet) in area.
- According to DCAD, the site is developed with the following:
 - a structure in “good” condition built in 1954 with 1,544 square feet of living area,
 - a 400 square foot detached garage.
- 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:

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

- July 14, 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.
- August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 23, 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 August 30th deadline to submit additional evidence for staff to factor into their analysis; and the September 3rd 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.
- August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment 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.

September 13, 2010: The Board of Adjustment Panel C conducted a public hearing on this request and delayed action until their October 18th public hearing.

September 21, 2010: The Board Administrator sent a letter to the applicant informing him of the public hearing date and the October 8th deadline to submit additional evidence to be incorporated into the Board's docket materials.

October 4, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, 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:

- This request focuses on maintaining an existing carport that is located 6" from the site's northern side property line (or 4' 6" into the 5' side yard setback). (Revised plans eliminate the applicant's original intent to not only maintain the carport in the setback but to extend/lengthen it by approximately 10 feet in alignment with the existing carport).
- A revised site plan and revised elevation/section has been submitted showing the existing carport to be approximately 15' 10" long and approximately 21' wide whereby about 1/5 is located in the required 5' setback on the north side of the site. The submitted revised plans show the existing carport to be approximately 13' in height as measured to the midpoint of the gabled roof (shown to be attached to an approximately 15' high "existing building beyond") with metal posts and sheet metal roofing.
- The revised plans that deleted the originally proposed addition to existing carport added notations of a concrete area between the carport and the side property line

and a “new 1 hr wall with ½” GWB on both sides of 3 5/8” mtl studs @ 16” o.c.” on the north side of the existing carport.

- The applicant has the burden of proof in establishing the following:
 - That granting this special exception to the side yard setback regulations of 4’ 6” will not have a detrimental impact on surrounding properties.
- As of October 11, 2010, no letters had been submitted in support or 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 revised site plan and revised elevation/section 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: SEPTEMBER 13, 2010

APPEARING IN FAVOR: Vincent Ogbuehi, 1327 Empire Central Dr, #203F, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 090-089**, hold this matter under advisement until October 18, 2010.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2010

APPEARING IN FAVOR: Vincent Ogbuehi, 1327 Empire Central Dr, #203F, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 090-089** on application of Vincent Ogbuehi, **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 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 revised site plan and elevation/section 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: Gaspard

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 090-097

BUILDING OFFICIAL’S REPORT:

Application of Leroy Billingsley, represented by Israel Suster, to appeal the decision of the administrative official at 4931 Gaston Avenue. This property is more fully described as Lot 8 in City Block C/0681 and is zoned PD No. 99 which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 4931 Gaston Avenue

APPLICANT: Leroy Billingsley
Represented by Israel Suster

October 18, 2010 Public Hearing Notes:

- The applicant’s representative and the citizens opposed to the application submitted additional written documentation to the Board at the public hearing.

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's July 8, 2010 decision to revoke a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy # 9105281100 for a multifamily dwelling use on the property. The applicant alleges that this revocation was in error and should be overturned.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

GENERAL FACTS:

- The Building Official's July 8, 2010 letter to Leroy Billingsley states the following:
 - This letter is to inform you that Certificate of Occupancy #9105281100 is hereby revoked, and any use operating without a certificate of occupancy is an illegal use that must immediately cease operating.
 - On November 2, 2009, the court ruled that you were operating a residential hotel use. Your Certificate of Occupancy is for multifamily dwelling use. Chapter 52 Section 306.13 states that the Building Official shall revoke a certificate of occupancy if the certificate of occupancy is issued based on false, incomplete or incorrect information, a required city, county, state or federal license, permit, or registration to operate this use has not been issued, and if the use authorized by the certificate of occupancy has been discontinued for six months or more.
 - Any determination made by the Building Official shall be final unless appealed within 15 days of the date of this letter. Questions about the appeal process should be directed to the Building Official at 214-948-4320.
- On October 7, 2010, the applicant's representative forwarded additional information beyond what was submitted with the original application (see Attachment A).
- On October 8, 2010, the Assistant City Attorney assisting the Building Official on this application forwarded additional information to the Board Administrator regarding this appeal (see Attachment B).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 99 (Planned Development)
North: PD No. 63 (Planned Development)
South: PD No. 99 (Planned Development)
East: PD No. 99 (Planned Development)
West: PD No. 99 (Planned Development)

Land Use:

The subject site is developed as to what appears to be a residential structure. The areas to the north, south, east, and west are developed with residential uses.

Zoning/BDA History:

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

Timeline:

August 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.

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

September 17, 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 October 4th deadline to submit additional evidence for staff to factor into their analysis; and the October 8th 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."

September 27, 2010: The Building Inspection Senior Plans Examiner/Development Code Specialist submitted a review comment sheet marked "Recommends that this be denied."

October 5, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Assistant Building Official, the Building Inspection Chief Planner, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

October 7, 2010: The applicant's representative forwarded additional information on this application to staff (see Attachment A).

October 8, 2010: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to the Board Administrator regarding this appeal (see Attachment B).

STAFF ANALYSIS:

- The applicant is requesting the Board of Adjustment to overturn or reverse the Building Official's July 8th decision to revoke certificate of occupancy # 9105281100 for a multifamily dwelling use on the property located at 4931 Gaston Avenue.
- If the Board of Adjustment upholds the Building Official's July 8th decision, certificate of occupancy # 9105281100 for a multifamily dwelling use on the property located at 4931 Gaston Avenue will remain revoked.
- If the Board of Adjustment overturns/reverses the Building Official's July 8th decision, certificate of occupancy # 9105281100 for a multifamily dwelling use on the property located at 4931 Gaston Avenue will be reinstated.

BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2010

APPEARING IN FAVOR: Israel Suster, 1316 Village Creek, Ste 500, Dallas, TX
Susie Hughes, 1316 Village Creek, Ste 500, Dallas, TX

APPEARING FOR THE CITY: Melissa Miles, 1500 Marilla, 7DN, Dallas, TX

APPEARING IN OPPOSITION: Joanna Hampt, 4924 Tremont, Dallas, TX
Rene Schmidt, 715 Parkmont, Dallas, TX
Jason Cohen, 5713 Worth St., Dallas, TX
Jay Terpstra, 4937 Worth St., Dallas, TX
Virginia McAlester, 5703 Swiss Ave., Dallas, TX
Tarek Omar, 4907 Gaston, Dallas, TX
Darwin Smith, 4938 Swiss Ave., Dallas, TX
Walker Duke, 4303 Junius, Dallas, TX
Charles Branham, 4946 Swiss Ave., Dallas, TX

MOTION #1: Moore

I move that the Board of Adjustment in Appeal No. **BDA 090-097**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Gaspard

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Moore

I move that the Board of Adjustment in Appeal No. **BDA 090-097**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Gaspard

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Maten

I move that the Board of Adjustment in Appeal No. **BDA 090-097**, suspend the rules and accept the evidence that is being presented to us today.

SECONDED: Coulter

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

MOTION #4: Moore

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 090-097**, on application of Leroy Billingsley, represented by Israel Suster, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by the applicant **with** prejudice.

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)

3:40 P. M. - Board Meeting adjourned for **October 18, 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.