

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, NOVEMBER 16, 2009**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten and Jim Gaspard

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten and Jim Gaspard

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, Phil Erwin, Chief Arborist, 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, Phil Erwin, Chief Arborist, and Trena Law, Board Secretary

11:01 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 16, 2009** 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 October 19, 2009 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2009

MOTION: Maten

I move **approval** of the Monday, **October 19, 2009** public hearing minutes.

SECONDED: Moore

AYES: 4–Boyd, Moore, Maten, Gaspard

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

To consider and adopt Board of Adjustment Panel C’s 2010 public hearing schedule as amended to change the February hearing date to Friday, February 19, 2010.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2009

MOTION: Maten

I move **approval** of the Board of Adjustment Panel C’s 2010 public hearing schedule.

SECONDED: Gaspard

AYES: 4–Boyd, Moore, Maten, Gaspard

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

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: 12511 Fish Road

APPLICANT: Maria L. Villarreal

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.
- The applicant submitted a letter along with other financial information related to her request of the board to waive the filing fee to be submitted with a potential board of adjustment application (see Attachment A).

Timeline:

- Oct. 27, 2009 The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be submitted/requested at the address referenced above (see Attachment A).
- Nov. 3, 2009: The Board of Adjustment Secretary randomly assigned this request to Board of Adjustment Panel C.
- Nov. 3, 2009: The Board Administrator spoke with the applicant's daughter about the request and the scheduling of it to Board of Adjustment Panel C. The administrator followed with writing the applicant a letter that conveyed information about her request (see Attachment B).

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2009

APPEARING IN FAVOR: Luisanna Balderas, 12511 Fish Road, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

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

SECONDED: Maten

AYES: 4–Boyd, Moore, Maten, Gaspard

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-125

BUILDING OFFICIAL’S REPORT:

Application of Barry Knight and Tommy Mann of Winstead PC, for a special exception to the tree preservation regulations at 8070 Park Lane. This property is more fully described as Lot 1C in City Block A/5456 and is zoned MU-3(SAH) which requires mandatory landscaping and tree mitigation. The applicant proposes to complete and maintain structures and provide an alternate plan for tree mitigation which will require a special exception.

LOCATION: 8070 Park Lane

APPLICANT: Barry Knight and Tommy Mann of Winstead PC

November 16, 2009 Public Hearing Notes:

- The Board Administrator circulated an additional table prepared by the Chief Arborist entitled “Equivalent Values for Tree Preservation” to the board members at the morning briefing (see Attachment C).

REQUEST:

- A special exception to the tree preservation regulations is requested in conjunction with not fully mitigating protected trees removed on a site that is currently being developed with a mixed use office/residential/dining/shopping project (Park Lane).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- All protected trees, as defined by Article X, that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, may be subject to replacement.

Rationale:

- The applicant has substantiated:
 - how strict compliance with the requirements of this article (The Landscape and Tree Preservation Regulations) will unreasonably burden the use of the property;and

- that the special exception will not adversely affect neighboring property, particularly considering: 1) the extent to which “landscaping” exists on the site for which no credit is given including but not limited to the cost incurred by the applicant to retain protected trees on the property- nearly 45 percent of all protected trees at a cost of more than 10 times the cost to have removed the trees and mitigated in another accepted method, and 2) the extent to which other existing or proposed amenities including but not limited to various “tree preservation,” “landscaping and streetscape,” and “urban design and energy conservation” components of the project compensate for the reduction of “landscaping” on the site; and
- that the requirements are not imposed by a site specific landscape plan approved by the city plan commission or city council.
- The City’s Chief Arborist approval of the request, subject to the condition mentioned above.

STANDARD FOR A SPECIAL EXCEPTION TO THE TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the tree preservation 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 Dallas Development Code states that the Tree Preservation, Removal, and Replacement Regulations apply to all property in the city except for: a) lots smaller than two acres in size that contain single family or duplex uses; and b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from those in the provisions set forth in Chapter 51A.
- The Dallas Development Code states that if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with the following requirements:

1. Quantity. The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured.
2. Species. A replacement tree must be one of the specific “approved replacement trees” listed, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract.
3. Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by the code as an “alternate method of compliance with tree replacement requirements.” Replacement trees may not be planted within a visibility triangle, a water course, or an existing or proposed street or alley.
4. Minimum size. A replacement tree must have a caliper of at least two inches.
5. Timing. Except as otherwise provided in the code, all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees. If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official shall permit the property owner to plant the replacement trees during the six-month period.

If the property owner provides the building official with a performance bond or letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees with the following restrictions:

- For single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and
- In all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.

A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the tree preservation regulations.

- The Dallas Development Code provides the following “alternate methods of compliance with tree replacement requirements” if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the “tree removal property”):
 1. Donate the replacement tree to the city’s park and recreation department.
 2. Plant the replacement tree on other property in the city that is within one mile of the tree removal property.
 3. Make a payment into the Reforestation Fund.
 4. Grant a conservation easement to the city.
- The applicant has stated on his application that a request has been made for a special exception “to the tree replacement requirements of Section 51A-10.134(1) of 2722.75 caliper inches.” The applicant has stated in his submitted narrative about the application that “before development, there were 397 trees (2,963 caliper

- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - a narrative that provided additional details and information about the request; and
 - photographs of the subject site.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Chief Board of Adjustment Planner (see Attachment B). The memo stated the following:
 - The applicant is seeking a special exception to Sections 51A-10.134 (Replacement of Removed Trees) and 51A-10.135 (Alternate Methods of Compliance) of the ordinance.
 - Trigger:
 - New construction of a 33.5-acre development with mixed uses
 - Deficiencies:
 - Required mitigation: The City's analysis identifies 215 protected trees removed for a total of 2,966 caliper inches. The applicant states this to be 217 trees at 2,963 inches. There were originally 395 "protected trees" on the Property of which 215 were subject to mitigation (due to removal) that were based on tree health, species, size or other limiting factors.
 - Reduction (Article X); The City recognizes that 56 new trees were planted that provides 241 caliper inches into the landscaping. These trees are counted toward tree replacement under Article X. After planting these trees, the actual mitigation requirement is leveled at 2,725 caliper inches.
 - Neutral: The City recognizes that 103 mature trees (1,129.5 caliper inches) were maintained in their original locations while allowing for the development. These protected trees are not counted as mitigation credit by ordinance.
 - The Property is still subject to final landscape and tree mitigation final inspections. Currently the deficiencies from Article X include: 2,725 caliper inches of trees (after what has already been planted for landscaping) are due for replacement prior to final inspection, to be either planted on the site, or to be provided through one of more of the alternative methods of compliance found in Article X including: planting trees within one mile of the property; donating trees to the Park Department; making a payment into the Reforestation Fund, and granting a conservation easement to the City.
 - The applicant seeks to resolve mitigation by practices currently implemented, namely harvesting and retention of trees on the Property.
 - Factors for consideration:
 - The applicant has presented a request to the board to "grant a special exception to the tree mitigation requirements and not require the mitigation of 2,739 caliper inches..." The arborist believes this to mean that they seek an

- The arborist and the applicant disagree as to the number of caliper inches required for mitigation. The applicants stated the mitigation requirement is for 2,739 inches while we submit the amount is 2,725 inches. I recommend that staff accounting was determined for final inspection, and for the time of this hearing, be considered to be factual for this case to avoid confusion. The amounts are related in the attached exhibit.
- Protected trees were “harvested” and replanted (77 trees) on Property, and the protected trees that were maintained (103 trees) in their original locations do not have any additional credits provide under Article X. In that they were NOT removed, the trees do not required replacement and therefore no charge is placed against them; but no additional credit is provided for their maintenance, except in conditions for site tree credits for required landscaping per code. The applicant is not seeking a special exception to the landscaping standards.
- The Property is a pedestrian-oriented infill redevelopment near a public transit center and not an application that impacts on wooded undeveloped properties.
- The applicant has supplied various “tree preservation,” “landscaping and streetscape,” and “urban design and energy conservation” criteria to be considered by the board in their request. Although the arborist recognizes many of these attributes to the Property, there is currently no mechanism in the ordinance to provide the arborist with a quantitative value to these considerations. However, the arborist office supports the significant efforts to provided for “green development” as presented in the request and will endeavor to be ready to discuss any element of the request during the board’s briefing.
- A separate tabulation for exhibit has been presented to give some comparison of the mitigation accounting.
 - The “Equivalent Values for Tree Preservation” section identifies the required mitigation and their equivalent replacement values, based upon the Reforestation Fund formulation. The “Trees Harvested” and “Trees Retained” are listed to show the Replacement Value for information purposes only. The total would be the potential mitigation cost if all trees had been removed.
 - The “Cost of Operation” section takes into account the applicant’s estimation of cost for harvesting and maintaining trees (approximately \$950,000.00) as compared to the final cost for mitigating (replacing) the trees under Article X. The “rate difference” indicates the ration of the two processes based on “cost per tree.”
 - The “Comparison of Trees Retained Versus Removed” attempts to provide numbers that give a percentage equivalent of trees harvested and preserved as compared to those removed. The original tree count (519 trees) provides for all trees that were on the original 100 percent tally

- Recommendation
 - Approval, subject to a condition. The Chief Arborist believes the request for exemption of mitigation is not satisfactory, but that approval should be based upon an “alternative method of compliance” that includes: 1) the preservation of mature trees; 2) the transplantation of mature trees; 3) additional landscaping and streetscape; and 4) sustainable urban design and energy conservation credit. This would act as a replacement of all alternative methods of mitigation stated in 51A-10.135.
 - If the Board reasons that strict compliance with the conditions of Article X will unreasonably burden the use of the Property, the Chief Arborist believes the request meets the criteria to indicate “the extent to which landscaping exists for which no credit was given and the extent to which other existing or proposed amenities will compensate for the reduction of “landscaping” as presented by the applicant.
 - In addition, the Chief Arborist has not confirmed the total cost issues, as stated by the applicant, for the harvesting and maintenance of trees on site. However, if the Board is satisfied with the accounting by the applicant, the Chief Arborist believes the extensive effort and cost to retain protected mature trees on the Property (nearly 45 percent of all protected trees) is substantial and should be awarded.
 - The Chief Arborist believes that the spirit and intent of this request consorts with the purposes of the Article X ordinance. The primary purposed of the Tree Replacement ordinance, that was added to the others in 1994, states “to encourage the preservation of large trees which, once removed, can be replaces only after generations.” – Section 51A-10.102(7).
 - If the Board chooses to approve the request, with the exception of mitigation of trees currently planted on site (per Article X), the Chief Arborist recommends that the following conditions be applied:
 - All protected trees, as defined by Article X, that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, may be subject to replacement.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3(SAH) (Deed restricted)* (Mixed Use, Standard Affordable Housing)
North: RR (Regional Retail)
South: GO(A) (General Office)
East: MU-3 (Mixed Use)
West: RR (Regional Retail)

- * Note that the applicant acknowledged in an email to the Board Administrator on October 27, 2009 of the deed restrictions on the property. The applicant stated that these deed restrictions regulate density and do not create a conflict with the tree preservation special exception requested to the board of adjustment.

Land Use:

The subject site is currently under development as a mixed use development. The areas to the north, south, east and west are development with mostly retail and office uses.

Zoning/BDA History:

1. BDA067-052, Property at 8070 Park Lane (the subject site) On May 14, 2007, the Board of Adjustment Panel C granted a request for a special exception to the off-street parking regulations of 374 spaces (or 5.67% of the required off-street parking) and imposed the following conditions: The special exception shall automatically and immediately terminate if and when the office uses on the site are changed or discontinued to have less than 125,000 square feet of office use; and the applicant or property owner must submit a parking analysis of the site to the Department of Development Services engineer no later than December 31, 2011. Should the parking analysis show any parking deficiency, the applicant or property owner must immediately mitigate that deficiency as may be agreed between the applicant or property owner and the Department of Development Services. The case report stated that the request was made in conjunction with developing a 33-acre site with mixed-uses.

Timeline:

- Sept. 25, 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.
- October 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

- October 22, 2009: The Board Administrator spoke with the applicant and emailed him the following information:
- an attachment providing the public hearing date and panel that will consider the application; the November 2nd deadline to submit additional evidence for staff to factor into their analysis; the November 6th 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.”
- Nov. 2, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).
- Nov. 3, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Nov. 9, 2009 The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

STAFF ANALYSIS:

- The request focuses on 2,725 caliper inches of trees that are due for replacement prior to the final inspection on the site being developed as a mixed use office/residential/dining/shopping project (Park Lane). The 2,725 caliper inches of trees are required to either be planted on site, or provided through one or more of the alternate methods of compliance provided in Article X: The Landscape and Tree Preservation Regulations of the Dallas Development Code – options including planting trees within one mile of the property; donating trees to the Park Department; making a payment into the Reforestation Fund, and granting a conservation easement to the City.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the Tree Preservation Regulations of the Dallas Development Code will unreasonably burden the use of the property (in this case, a site that is currently under development as a mixed use development).
 - The special exception will not adversely affect neighboring property.

- The City of Dallas Chief Arborist recommends approval of the request, subject to the following condition being imposed:
 - All protected trees, as defined by Article X, that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, may be subject to replacement.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2009

APPEARING IN FAVOR: Barry Knight, 5400 Renaissance Tower, Dallas, TX
Blaine Lee, 8070 Park Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Gaspard

I move that the Board of Adjustment, in Appeal No. **BDA 089-125**, on application of Barry Knight and Tommy Mann, **grant** the request of this applicant to provide an alternate tree mitigation plan as a special exception to the tree preservation requirements in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements 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. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- All protected trees, as defined by Article X that remain on the Property following the date of the hearing, are considered to be protected and subject to the Article X tree preservation ordinance. Any protected tree that is determined to be removed, based on conditions as defined in Article X, must be subject to replacement.

SECONDED: Moore

AYES: 3–Boyd, Moore, Gaspard

NAYS: 1– Maten,

MOTION FAILED: 3 – 1

MOTION #3: Maten

I move that the Board of Adjustment, in Appeal No. **BDA 089-125**, on application of Barry Knight and Tommy Mann, **deny** the special exception to the tree preservation requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not

unreasonably burden the use of the property; and the special exception will adversely affect neighboring property.

SECONDED: No One
MOTION FAILED: FOR LACK OF SECOND

MOTION #3: Moore

I move that the Board of Adjustment in Appeal No. **BDA 089-125**, hold this matter under advisement until **December 14, 2009**.

SECONDED: Moore
AYES: 3–Boyd, Moore, Gaspard
NAYS: 1– Maten
MOTION PASSED: 3 – 1

FILE NUMBER: BDA 089-119

BUILDING OFFICIAL’S REPORT:

Application of Soon D. Yoon, represented by William A. Bratton, to appeal the decision of the administrative official at 2006 Market Center Boulevard, Suite A. This property is more fully described as Lot 5 in City Block 7894 and is zoned MU-3 which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of the administrative official in the revocation of a certificate of occupancy.

LOCATION: 2006 Market Center Boulevard, Suite A

APPLICANT: Soon D. Yoon, represented by William A. Bratton

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s August 25, 2009 revocation of certificate of occupancy no. 0808121025 for a personal service use (Hawaii Spa) at 2006 Market Center Boulevard, Suite A. The applicant alleges that this revocation was based “on an incorrect premise that the location is being used as a massage establishment without proper license from the state. “

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on October 9th -35 days after the application was submitted on September 4th, and 2) that as of October 26th, city records showed that no notification sign had been purchased - 52 days after the application was submitted on September 4th.

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

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

GENERAL FACTS:

- Section 51A-4.703(2) of the Dallas Development Code provides that any aggrieved person, or an officer, department, or board of the city may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. The code provides that an appeal to the board must be made within 15 days after notice of the decision of the official; that the appellant shall file with the official a written notice of appeal on a form approved by the board; and that the official shall forward the notice of appeal and the record upon which the appeal is based to the director of development services.
- The Building Official’s August 25th letter to Shendelman Chung and Soon D. Yoon states the following:
 - This Dallas Police Department has informed me that you are operating a massage establishment at the Property and are engaged in an illegal business under other state penal laws. A state issued massage establishment license is required to legally operate a massage establishment. Further, an application for a City of Dallas certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state,

or federal license, permit, or registration is required to operate the use. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment.

- The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.
- Your certificate of occupancy is hereby revoked unless you furnish my office with a valid state massage establishment license for the property by September 9, 2009.
- Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed use)
North: MU-3 (Mixed use)
South: MU-3 (Mixed use)
East: PD No. 621 (Planned Development District)
West: IR (Industrial Research)

Land Use:

The subject site is developed as a commercial structure with a use doing business as Hawaii Spa. The areas to the north, south, and west are developed with a mix of commercial/retail, office, and warehouse uses; and the area to the east is undeveloped/vacant.

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:

Sept. 4, 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.

Oct. 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

Oct. 22 & 26, 2009: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the November 2nd deadline to submit additional evidence for staff to factor into their analysis; and the November 6th 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;
- the code provision related to the posting of notification signs on the subject site; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

Nov. 3, 2009

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

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

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's revocation of certificate of occupancy no. 0808121025 for a personal service use (Hawaii Spa) at 2006 Market Center Boulevard, Suite A on August 25, 2009 be overturned/reversed.
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on October 9th -35 days after the application was submitted on September 4th, and 2) that as of October 26th, city records showed that no notification sign had been purchased - 52 days after the application was submitted on September 4th.
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of notification signs, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant's request, with or without prejudice.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and upholds the Building Official's decision, the certificate of occupancy no. 0808121025 for a personal service use (Hawaii Spa) at 2006 Market Center Boulevard, Suite A will remain revoked.

- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and reverses the Building Official's decision, the certificate of occupancy no. 0808121025 for a personal service use (Hawaii Spa) at 2006 Market Center Boulevard, Suite A will be reinstated.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2009

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Maten**

I move that the Board of Adjustment in Appeal No. **BDA 089-119**, **deny** the relief requested by the applicant **with prejudice** for failure to appear.

SECONDED: **Moore**

AYES: 4–Boyd, Moore, Maten, Gaspard

NAYS: 0–

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 089-121

BUILDING OFFICIAL’S REPORT:

Application of Un Sun Toner-Chang, represented by William A. Bratton, to appeal the decision of the administrative official at 2018 W. Northwest Highway, Suite B-2. This property is more fully described as Lot 3 in City Block 6501 and is zoned IR which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of the administrative official in the revocation of a certificate of occupancy.

LOCATION: 2018 W. Northwest Highway, Suite B-2

APPLICANT: Un Sun Toner-Chang
Represented by William A. Bratton

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s August 25, 2009 revocation of certificate of occupancy no. 0808121025 for a personal service use (Bellagio) at 2018 W. Northwest Highway, Suite B-2. The applicant alleges that this revocation was based “on an incorrect premise that the location is being used as a massage establishment without proper license from the state. “

The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on October 9th -23 days after the application was submitted on September 16th, and 2) that as of October 26th, city records showed that no notification sign had been purchased - 40 days after the application was submitted on September 16th.

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

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

GENERAL FACTS:

- Section 51A-4.703(2) of the Dallas Development Code provides that any aggrieved person, or an officer, department, or board of the city may appeal a decision of an administrative official to the board when that decision concerns issues within the jurisdiction of the board. The code provides that an appeal to the board must be made within 15 days after notice of the decision of the official; that the appellant shall file with the official a written notice of appeal on a form approved by the board; and that the official shall forward the notice of appeal and the record upon which the appeal is based to the director of development services.
- The Building Official’s August 25th letter to Na Pong & Na Ki Pong and Dallas Bellagio Partners, LLC states the following:
 - This Dallas Police Department has informed me that you are operating a massage establishment at the Property and are engaged in an illegal business under other state penal laws. A state issued massage establishment license is required to legally operate a massage establishment. Further, an application for a City of Dallas certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state,

or federal license, permit, or registration is required to operate the use. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment.

- The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.
- Your certificate of occupancy is hereby revoked unless you furnish my office with a valid state massage establishment license for the property by September 9, 2009.
- Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed as a commercial structure with a use doing business as Bellagio. The areas to the north, east, and west are developed with a mix of commercial/retail, office, and warehouse uses; and the area to the south appears to be developed with commercial uses.

Zoning/BDA History:

1. BDA 089-118, Property at 2018 W. Northwest Highway, Suite B-3 (A suite located on the subject site).

On October 22, 2009, the applicant withdrew an appeal that had been assigned to Board of Adjustment Panel C – an appeal to reverse/overturn the Building Official’s revocation of certificate of occupancy for a personal service use (Pink) at 2018 W. Northwest Highway, Suite B-3.

Timeline:

- Sept. 16, 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.
- Oct. 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Oct. 22 & 26, 2009: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the November 2nd deadline to submit additional evidence for staff to factor into their analysis; and the November 6th 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;
 - the code provision related to the posting of notification signs on the subject site; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- Nov. 3, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the November public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Chief Arborist, the Sustainable Development Department Project Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's revocation of certificate of occupancy no. 0808121025 for a personal service use (Bellagio) at 2018 W. Northwest Highway, Suite B-2 on August 25, 2009 be overturned/reversed.
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs On the subject site with the findings that: 1) no notification sign was posted on the site when the Board Administrator conducted his field visit on October 9th -23 days after the application was submitted on September 16th, and 2) that as of October 26th, city records showed that no notification sign had been purchased - 40 days after the application was submitted on September 16th.
- If the Board of Adjustment were to determine that the applicant did not comply with the Dallas Development Code provision related to the posting of notification signs, it

- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and upholds the Building Official's decision, the certificate of occupancy no. 0808121025 for a personal service use (Bellagio) at 2018 W. Northwest Highway, Suite B-2 will remain revoked.

If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs on the site and reverses the Building Official's decision, the certificate of occupancy no. 0808121025 for a personal service use (Bellagio) at 2018 W. Northwest Highway, Suite B-2 will be reinstated.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2009

APPEARING IN FAVOR: No One

APPEARING IN OPPOSITION: No One

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 089-121**, **deny** the relief requested by the applicant **with prejudice** for failure to appear.

SECONDED: **Maten**

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: 5 – 0 (Unanimously)

1:38 P. M. - Board Meeting adjourned for **November 16, 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.