

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, PARK & RECREATION CONFERENCE ROOM
TUESDAY, JANUARY 18, 2005**

MEMBERS PRESENT AT BRIEFING: Randall White, Chair, Peggy Hill, Vice-Chair, Rev. H.J. Johnson, regular member, Ben Gabriel, regular member and Linda Wise, alternate member

MEMBERS ABSENT FROM BRIEFING: None

STAFF PRESENT AT BRIEFING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Casey Burgess, Asst. City Attorney, Danny Sipes, Development Code Specialist, and Chau Nguyen, Traffic Engineer

MEMBERS PRESENT AT HEARING: Randall White, Chair, Peggy Hill, Vice-Chair, Rev. H.J. Johnson, regular member, Ben Gabriel, regular member and Linda Wise, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Donnie Moore, Chief Planner, Steve Long, Board Administrator, Trena Law, Board Secretary, Casey Burgess, Asst. City Attorney, Robert Miklos, Asst. City Attorney, Danny Sipes, Development Code Specialist , and Chau Nguyen, Traffic Engineer

10:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's January 18, 2005 docket.

1:05 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 A December 15, 2004 public hearing minutes.

MOTION: Johnson

I move to approve the Board of Adjustment December 15, 2004 public hearing minutes.

SECONDED: Gabriel

AYES: 5 – White, Hill, Johnson, Gabriel, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-128

BUILDING OFFICIAL'S REPORT:

Application of Michael B. Lanahan for a special exception to allow an additional dwelling unit at 5222 Farquhar Drive. This property is more fully described as Lot 2 in City Block B/5668 which is zoned R-16(A) which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5222 Farquhar Drive

APPLICANT: Michael B. Lanahan

SUMMARY:

- A special exception to the single family use regulations is requested in conjunction with constructing an additional “dwelling unit” on a site developed with a single family home. The proposed additional “dwelling unit” in this application is a 1.5-story pool house structure.

STAFF RECOMMENDATION: Approval, subject to the following conditions:

1. Compliance with the submitted elevation and site plan is required.
2. The property must be deed restricted to prohibit the additional dwelling unit on the site to be used as rental accommodations.

This recommendation was based on the following:

- The additional dwelling unit would not adversely affect neighboring property given that the “additional dwelling unit” structure on the site complies with setback, lot coverage, and height regulations.
- The additional dwelling unit structure would be deed restricted to preclude it from being used as rental accommodations.

ADDITIONAL FACTS:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties.
- The subject site is approximately 18,750 square feet in area (125’ x 150’), and developed with, according to DCAD records, a single family home built in 1985 that has 5,557 square feet of living area, a pool, and a 642 square foot attached garage.
- The proposed 1.5-story additional “dwelling unit”/pool house structure has a building footprint of approximately 22’ x 21’ or is about 462 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located in the rear 30% of the lot, 2’ 1” from the nearest side property line on the northeast, and approximately 6’ from the site’s rear yard property line on the southeast.
- The submitted elevation indicates that the additional “dwelling unit” structure will be approximately 15’ in height.
- The proposed “dwelling unit” structure meets side yard setback requirements since the Dallas Development Code states that no side yard setback is required for an accessory structure in a residential district located in the rear 30% of a lot and does not exceed 15’ in height.
- Floor plans indicate the following spaces within the proposed detached 1.5-story additional “dwelling unit” structure on the site:
 - a room with an ice machine, a sink and a refrigerator, and a bathroom on the 1st floor; and
 - a loft area with an HVAC closet area on the top floor.
- The Dallas Development Code defines “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”

- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted an email to staff that provided additional information related to the request (see Attachment A).

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BACKGROUND INFORMATION:

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 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:

- Nov. 18, 2004: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 20, 2004: The Board Administrator wrote the applicant’s representative a letter that conveyed the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
- that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 23, 2004

The applicant's representative submitted an email to staff that provided additional information regarding the request (see Attachment A).

Dec. 27, 2004:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

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

BASIS FOR REQUESTS FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT:

The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district 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.

STAFF EVALUATION:

- Staff concluded from their analysis of the site and from information submitted by the applicant that, if the staff suggested conditions are imposed, the additional dwelling unit

(in this case, the proposed 1.5-story pool house structure) would not adversely affect neighboring property due to the following reasons:

- The structure meets all setback, lot coverage, and height regulations.
- The structure would be deed restricted so that it would never be used as rental accommodations.

BOARD OF ADJUSTMENT ACTION: January 18, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment, in Appeal No. **BDA 045-128** on application of Michael B. Lanahan, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevation is required; and
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations

SECONDED: Johnson

AYES: 5 – White, Hill, Johnson, Gabriel, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-129

BUILDING OFFICIAL'S REPORT:

Application of Kimley-Horn and Associates, Inc., represented by Jeff Linder, for a variance to the height regulations at 1808 Ariel Drive. This property is more fully described as a tract of land in City Block 6050 and is zoned R-7.5 (A) which limits the height of a structure to 30 feet. The applicant proposes to construct recreational structures with heights of up to 41 feet which would require a variance of 11 feet to the height regulations. Referred to the Board of Adjustment in accordance with Section 51A-3.102 (d) (10) of the Dallas Development Code, as amended, which states the power of the Board to variances.

LOCATION: 1808 Ariel Drive

APPLICANT: Kimley-Horn and Associates, Inc.
Represented by Jeff Linder

SUMMARY:

- Variances to the maximum height regulations have been made in conjunction with constructing recreational water park structures to be located in a new “aquatics center” within an existing public park (Thurgood Marshall Park). More specifically, the following appeals have been made in this application:
 1. A variance to the height regulations of 10’ is requested in conjunction with constructing a 40’-high play structure dubbed the “Rain Forest;” and
 2. A variance to the height regulations of 11’ is requested in conjunction with constructing an approximately 41’-high tube slide tower.

STAFF RECOMMENDATION:

Approval of the variances, subject to the submitted site plan and section drawings

This recommendation was based on the following:

- Property hardship due to the site’s irregular shape and slope.

ADDITIONAL FACTS:

- The maximum permitted height for structures in the R-7.5(A) zoning district is 30 feet.
- The approximately 24-acre site occupies an entire city block and has 4 front yards (Ariel Drive, Campfire Circle, Mark Trail Way, and the Marvin D. Love Freeway). The site is irregularly shape and sloped. (Topographic lines on the submitted site plan indicate the highest point on the site to be 647’ and the lowest point to be 625’, or a 22’ grade change over an approximately 500’ distance).
- There is a provision set forth in the Dallas Development Code pertaining to maximum heights for public park and playground uses that allow lighting standards for these types of facilities to be built to any height below the residential proximity slope (or to exceed the residential proximity slope to a height not to exceed 40 feet). However, at this time, there is no such provision allowing heights for recreational water slides or similar features as proposed in this application to exceed the height regulations by right, hence the requests in this case for variances.
- The submitted site plan indicates that the 40’-high play structure dubbed the “Rain Forest” is about 220’ at its closest point to any property line (in this case, the property line adjacent to Marvin D. Love Freeway); and that the approximately 41’-high tube slide tower is about 80’ at its closest point to any property line (in this case as well, the property line adjacent to Marvin D. Love Freeway).
- The applicant’s representative has submitted a letter to staff that provides further details on the application (see Attachment A). The letter details that the structures needing the height variances in this application are part of a park expansion that will include an

aquatics center that will have a lazy river, two zero-entry pool areas, two water slide structures and a large aquatic play structure.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5 (A) (Single family district 7,500 square feet)
North: R-7.5 (A) (Single family district 7,500 square feet)
South: MF-1 (A) (Multifamily district 1)
East: R-7.5 (A) (Single family district 7,500 square feet)
West: MF-2 (A) (Multifamily district 2)

Land Use:

The subject site is developed as a public park (Thurgood Marshall Park). The area to the north is developed with single family uses; the area to the east is a freeway (Marvin D. Love Freeway); and the areas to the south and west are developed with multifamily 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:

- Nov. 24, 2004: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 16, 2004: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the requests;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matters at the January public hearing after considering the staff recommendation that will be

made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 21, 2004 The applicant's representative submitted a letter to staff that further explained the scope and merits of the requests (see Attachment A).

Dec. 27, 2004: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

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

BASIS FOR A REQUEST FOR A VARIANCE: The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

STAFF EVALUATION:

- Staff concluded from their analysis of the site and from the information submitted by the applicant that the variances are necessary to permit development of this site/parcel of land in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5 (A) zoning classification. The site is encumbered by its irregular shape and slope.

- Granting the variance requests, subject to the submitted site plan and elevation, does not appear to be contrary to the public interest for the following reasons:
 1. The only “encroachments” on the site above/beyond the 30’ maximum height limit would be 2 recreational water park structures: a 40’-high play structure dubbed the “Rain Forest;” and an approximately 41’-high tube slide tower.
 2. The two structures requiring the height variances are located interior to the site – at locations at their closest point to any of the site’s property lines, 80’ away from the site’s southeastern property line along the Marvin D. Love Freeway.

BOARD OF ADJUSTMENT ACTION: January 18, 2005

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gabriel

I move that the Board of Adjustment in Appeal No. **BDA 045-129**, on application of Kimley-Horn & Associates, **grant** the variances to the height regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

- Compliance with the submitted site plan and section drawings is required.

SECONDED: Johnson

AYES: 5 – White, Hill, Johnson, Gabriel, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-135

BUILDING OFFICIAL'S REPORT:

Application of Allegro Management Inc., represented by Robert Baldwin, for a special exception to allow an additional dwelling unit at 5131 Deloache Avenue. This property is more fully described as Lot 4 in City Block 9/5582 which is zoned R 1-AC which limits the property to one dwelling unit per lot. The applicant proposes to construct an additional dwelling unit which would require a special exception. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 5131 Deloache Avenue

APPLICANT: Allegro Management Inc.
Represented by Robert Baldwin

SUMMARY:

- A special exception to the single family use regulations is requested to construct an additional “dwelling unit” on a site being developed with a single family home. The proposed “additional dwelling unit” in this application is a 2-story garage/hobby room structure.

STAFF RECOMMENDATION: Approval, subject to the following conditions:

1. Compliance with the submitted elevation and site plan is required.
2. The property must be deed restricted to prohibit the additional dwelling unit on the site to be used as rental accommodations.

This recommendation was based on the following:

- The additional dwelling unit would not adversely affect neighboring property given that the additional “dwelling unit” structure on the site complies with setback, lot coverage, and height regulations.
- The additional dwelling unit structure would be deed restricted to preclude it from being used as rental accommodations.

ADDITIONAL FACTS:

- “Single family” use is defined in the Dallas Development Code as “one dwelling unit located on a lot,” however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or
 - 2) adversely affect neighboring properties. The subject site is approximately 2.25 acres in area (approximately 450’ x 220’), and developed with, according to DCAD records, “no improvements.”
- The proposed 2-story additional “dwelling unit”/garage/hobby room structure has a building footprint of approximately 35’ x 22’ or is about 770 square feet in area.
- The site plan indicates that the additional “dwelling unit” structure will be located 15’ from a property line which in this case is the side property line on the west.
- The proposed additional “dwelling unit” structure is located about 15’ from the single family home that is under development.
- The submitted elevation indicates that the additional “dwelling unit” structure will be approximately 24’ in height.
- Floor plans indicate the following spaces within the proposed detached 2-story additional “dwelling unit” structure on the site:
 - a 2-car garage on 1st floor; and
 - a “hobby room,” “bath,” and “storage closet” on the 2nd floor.

- The submitted site plan indicates the following information regarding the structures on the site:
 - Existing house – Lot coverage: 10,093 square feet
 - Hobby room, garage, garage porch, and cabana – Lot coverage: 2,110 square feet
 - Total lot coverage on the 98,706 square foot site: 12,203 (or 12.36% total lot coverage)
- The Dallas Development Code defines “dwelling unit” as “one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions.”
- The Dallas Development Code defines “family” as “individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption.”
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot.”
- Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy.
- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney’s Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted a letter to staff that provided additional information related to the request (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA 045-106, 5210 DeLoache Avenue (the lot immediately southeast of the subject site)

On November 17, 2004, the Board of Adjustment Panel B followed the staff recommendation and granted an application for a special exception to allow a 2nd dwelling unit on a site that was being developed as a single family home. The board imposed conditions whereby the applicant had to comply with the submitted site plan and elevation, and deed restrict the site whereby the additional dwelling unit cannot be used for rental accommodations. The case report stated that the function of the “additional dwelling unit” structure on the site was twofold: a “cabana/workshop” that will have 1,168 square feet of living area, and a garage & storage area that will be 3,183 square feet in area.

Timeline:

- Nov. 30, 2004: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 20, 2004: The Board Administrator contacted the applicant’s representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 23, 2004 The applicant's representative submitted additional information regarding the request to staff (see Attachment A).

Dec. 27, 2004: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

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

BASIS FOR REQUESTS FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT: The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district 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.

STAFF EVALUATION:

- Staff concluded from their analysis of the site and from information submitted by the applicant that, if the staff suggested conditions are imposed, the additional dwelling unit (in this case, the proposed 2-story garage/hobby room) would not adversely affect neighboring property due to the following reasons:
 - The structure meets all setback, lot coverage, and height regulations;
 - The applicant has researched properties in the area on DCAD and found that 23 of 56 lots surveyed have second dwelling units; and
 - The structure would be deed restricted so that it would never be used as rental accommodations.

BOARD OF ADJUSTMENT ACTION: January 18, 2005

APPEARING IN FAVOR: Robert Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Gabriel**

I move that the Board of Adjustment, in Appeal No. **BDA 045-135** on application of Allegro Management, Inc., **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevation is required; and
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations

SECONDED: Hill

AYES: 5 – White, Hill, Johnson, Gabriel, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-134

BUILDING OFFICIAL'S REPORT:

Application of Geoffrey Wilkinson, represented Karl Crawley of Masterplan, for an appeal of the Building Official's decision and to allow a second dwelling unit at 4506 Lively Lane. This property is more fully described as Lot 5 in City Block A/5552 and is R-10 (A) which allows only one dwelling unit per lot. The applicant proposes to construct a structure that the Building Official has deemed is an additional dwelling unit which would require a special exception. The applicant proposes that the Building Official has erred in the determination that the structure is a second dwelling unit. However, if the Board determines that the structure *is* a second dwelling unit, then the applicant requests a special exception to allow the structure/additional dwelling unit. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (1) & (3) of the Dallas Development Code, as amended, which states the power of the Board to hear and decide appeals of administrative officials and to grant special exceptions.

LOCATION: 4506 Lively Lane

**APPLICANT: Geoffrey Wilkinson
Represented Karl Crawley of Masterplan**

SUMMARY:

- The following appeals have been made in this application with regard to constructing a 1-story, approximately 572 square foot structure on a site developed with a single family home :
 1. An appeal has been made requesting that the Building Official's decision be overturned in order for a building permit to be obtained for the structure that the applicant contends is a cabana and that the Building Official contends is a "dwelling unit."
 2. That, in the event that the Board determines that the Building Official's decision should be upheld (i.e. that the structure is a "dwelling unit"), an appeal has been made for a special exception to the single family use regulations in order to construct the cabana (or additional "dwelling unit") on the site.

STAFF RECOMMENDATION:

1. No recommendation on the appeal of the Building Official's decision per the request of the City Attorney's Office, however, the applicant does have the burden of proof in establishing the necessary facts to warrant favorable action from the board which in this case is how the Building Official's decision as to the structure being a dwelling unit was in error.
2. However, if the Building Official's decision is affirmed / upheld (whereby the board deems the structure a "dwelling unit"), then staff recommends approval of the special exception to the single family use regulations to allow an additional dwelling unit, subject to the following conditions:
 - Compliance with the submitted elevation and site plan is required.
 - The property must be deed restricted to prohibit the additional dwelling unit on the site to be used as rental accommodations.

This recommendation was based on the following:

- The additional dwelling unit would not adversely affect neighboring property given that the additional "dwelling unit" structure on the site complies with setback, lot coverage, and height regulations.
- The additional dwelling unit structure would be deed restricted to preclude it from being used as rental accommodations.

ADDITIONAL FACTS:

- The Dallas Development Code states that the Board of Adjustment is empowered to hear and decide appeals from decisions of administrative officials made in the enforcement of the zoning ordinance of the city.
- "Single family" use is defined in the Dallas Development Code as "one dwelling unit located on a lot," however, the code allows the Board of Adjustment to grant a special exception to this provision to allow an additional dwelling unit when, in their opinion, the additional dwelling unit will not:
 - 1) be used as rental accommodations; or

- 2) adversely affect neighboring properties.
- The applicant's representative alleges that the Administrative Official, in this case, the Building Official, erred in denying a permit application on November 23, 2004 for property located at 4506 Lively Lane. (A copy of this permit has been included in this case report and is entitled "Attachment A"). The "Application Denial Form" relevant to this appeal states the following:
 - Date: 11-23-04
 - Project Address: 4506 Lively
 - Reason(s) Denied: Second Dwelling not allowed in R-10A zoning
 - Comments: Visit zoning consultant in Room 105 to obtain application for Board of Adjustment for variance approval
 - The applicant submitted a letter to staff that provided additional information related to the requests (see Attachment B).
 - Per the request of the City Attorney's Office, staff does not suggest a recommendation on an appeal of an Administrative Official's decision. The Board is to follow an outline of procedures for handling these appeals that was created by the City Attorney's Office (see Attachment C).
 - The subject site is approximately 26,000 square feet in area (approximately 230' x 115'), and developed with, according to DCAD records, the following:
 - a single family residence built in 1992 with 4,992 square feet of living area;
 - a 576 square foot attached garage; and
 - a 252 square foot attached carport. The proposed 1-story additional "dwelling unit"/cabana structure has a building footprint of approximately 26' x 22' or is about 572 square feet in area.
 - The site plan indicates that the additional "dwelling unit" structure will be located 22' from the nearest property line which in this case is the side property line on the west.
 - The submitted elevation indicates that the additional "dwelling unit" structure will be approximately 16.5' in height.
 - The floor plan indicates the following spaces within the proposed detached 1-story additional "dwelling unit" structure on the site:
 - a "lounge," "wet bar," and "bath."
 - The site and floor plans indicate that attached to the dwelling unit/cabana structure is a garage with a building footprint of 352 square feet (or 22' x 16').
 - The Dallas Development Code defines "dwelling unit" as "one or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary, and sleeping conditions."
 - The Dallas Development Code defines "family" as "individuals living together as a single housekeeping unit in which not more than four individuals are unrelated to the head of the household by blood, marriage, or adoption."
 - The Dallas Development Code defines "single family" use as "one dwelling unit located on a lot."
 - Currently the City of Dallas is in the process of considering an amendment to the Development Code with regard to provisions related to single family accessory structures which are at times being interpreted as additional dwelling unit structures by Building Inspection due to a recent change in policy.

- If this request is granted, a completed deed restriction stating that the additional dwelling unit on the site will not be used for rental accommodations must be submitted to the Board Administrator, approved by the City Attorney's Office as to form, and filed in the deed records of the applicable county (in this case, Dallas County) before the applicable permits for this additional dwelling unit can be issued by the City.
- The applicant submitted a letter to staff that provided additional information related to the request (see Attachment D).

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

Timeline:

- Nov. 30, 2004: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 16, 2004: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request for the dwelling unit special exception, and the outline the board will use during the public hearing in considering the appeal of the Building Official's decision;

- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the December 27th deadline to submit additional evidence for staff to factor into their recommendation on the dwelling unit special exception; and
- that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.

Dec. 23, 2004 The applicant's representative submitted additional information regarding the requests to staff (see Attachments B and D).

Dec. 27, 2004: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.

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

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.

BASIS FOR REQUESTS FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT IN A SINGLE FAMILY ZONING DISTRICT: The board may grant a special exception within the single family use regulations to authorize an additional dwelling unit in any single family zoning district 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.

STAFF EVALUATION (regarding the special exception request):

- Staff concluded from their analysis of the site and from information submitted by the applicant that, if the staff suggested conditions are imposed, the additional dwelling unit (in this case, a 1-story, approximately 572 square foot cabana structure) would not adversely affect neighboring property due to the following reasons:
 - The structure meets all setback, lot coverage, and height regulations; and
 - The structure would be deed restricted so that it would never be used as rental accommodations.

BOARD OF ADJUSTMENT ACTION: January 18, 2005

APPEARING IN FAVOR: Willie Cothrum, 500 So. Ervay, Dallas, TX
Santos Martinez, 500 So. Ervay, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Robert Miklos, 1500 Marilla, 7DN, Dallas, TX
Danny Sipes, 320 E. Jefferson, Dallas, TX

MOTION #1: Hill

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 045-134 on** application of Geoffrey Wilkinson, 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 this applicant.

SECONDED: Wise

AYES: 4 – White, Hill, Gabriel, Wise

NAYS: 1 - Johnson

MOTION PASSED: 4– 1

MOTION #2: Hill

I move that the Board of Adjustment, in Appeal No. **BDA 045-134 on** application of Geoffrey Wilkinson, **grant** the request of this applicant to maintain an additional dwelling unit on the property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevation is required; and
- The property must be deed-restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations

SECONDED: Wise

AYES: 5 – White, Hill, Johnson, Gabriel, Wise

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 045-133

BUILDING OFFICIAL'S REPORT:

Application of J. T. & M. L. Matassa, represented by Roger Albright, for a special exception to the nonconforming use regulations at 3606 Greenville Avenue, Suite A. This property is more fully described as part of Lots 1-A and 2-A in City Block 1/2888 which is zoned CR-MD-1 which requires an alcoholic beverage establishment and a dance hall to have an SUP (Specific Use Permit). The applicant requests that the Board reinstate the nonconforming rights for an alcoholic beverage establishment use and a dance hall use because there was not a clear intent to abandon the uses although they were discontinued for a period of more than 6 months. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 3606 Greenville Avenue, Suite A

APPLICANT: J. T. & M. L. Matassa
Represented by Roger Albright

SUMMARY:

- A special exception is requested in conjunction with reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses even though these uses were discontinued for a period of six months or more. The site is currently developed with a vacant commercial/retail structure.

STAFF RECOMMENDATION:

Denial without prejudice

This recommendation was based on the following:

- The applicant had not fully addressed the standard in which the board can grant this type of special exception: that the owner has demonstrated that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

ADDITIONAL FACTS:

- The nonconforming use regulations of the Dallas Development Code state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. However, there is a provision in the code allowing the board to grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- According to information from Dallas Central Appraisal District (DCAD), the property at 3606 Greenville Avenue (which would encompass this site designated as “Suite A,” and the site of BDA 045-136 designated as “Suite B,”) is developed with a “free standing retail store” that was built in 1940 and has 17,520 square feet of lease area. According to the applicant’s representative, the site has been developed as clubs over the past 20 years including Nick’s Uptown, Fast & Cool Club, Fish Dance, and most recently, the Red Jacket.
- According to the applicant’s representative, the vacant structure located at 3606 Greenville Avenue has been recently divided into two spaces: Suite A and Suite B. Granting this application (along with the application of BDA 045-136) would allow the applicant to operate the vacant structure on this site and the site of BDA 045-136 as two separate dance halls/alcoholic beverage establishment uses on what had been one dance hall/alcoholic beverage establishment use (or night club) in one structure.
- In this case, that applicant has requested a special exception to reinstate nonconforming use rights since the property is zoned CR, and in accordance with a city ordinances enacted in 1993 and 1994, alcoholic beverage establishment uses and dance halls can only be located in CR zoning if an SUP (Specific Use Permit) has been obtained.
- The application states that the request is needed “to obtain a Building Permit and change of tenant CO for non-conforming dance hall/alcoholic beverage establishment.” The application states that the application is made to grant the request for the following reasons:
 - “The Building Official denied the request because the non-conforming use was allegedly discontinued for six months or more. Applicant would show the Board that this location has been a non-conforming dance hall/alcoholic beverage establishment for over twenty (20) years. There was no intent to abandon the use. The prior tenant filed bankruptcy and thus prevented the owner from taking any action to remove the tenant and relet the premises even though the prior tenant was no longer operating the use. The owner used all diligence to regain possession of the property and have now relet it to Applicant.”
- The alcoholic beverage establishment use and dance hall use that existed on the site were legal nonconforming uses. Prior to ordinances the City adopted in the early 90’s, these two uses located in the structure at 3606 Greenville were permitted by right in CR

zoning *without* an SUP. Prior to the ordinances adopted by the City in the early 90's, the uses were legal conforming uses. The uses on the site became legal *nonconforming* uses upon the passing of the ordinance in the early 90's.

- Granting this request would reinstate/restore the nonconforming use rights that were lost when the structure was vacant for a period of six (6) months or more. Granting this request would restore the alcoholic beverage establishment use and dance hall use as legal nonconforming uses but not as legal *conforming* uses. The applicant would have to make application for an SUP and obtain approval from City Council in order to make the uses on the site legal conforming uses.
- Granting this request would only restore nonconforming use rights for an alcoholic beverage establishment use and dance hall use. If restored/reinstated, the nonconforming uses would be subject to termination by the Board of Adjustment as any other nonconforming use in the city.
- The applicant's representative submitted additional documentation to staff beyond that what was submitted with the original application (see Attachment A). This information includes copies of CO's (Certificates of Occupancies); leases, and building permit applications, and a letter that further explains the scope and merits of the request.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CR-MD-1 (Community retail- Modified delta-1)
<u>North:</u>	CR-MD-1 (Community retail- Modified delta-1)
<u>South:</u>	CR-MD-1 (Community retail- Modified delta-1)
<u>East:</u>	MF-2(A)-MD-1 (Multifamily 1- Modified delta-1)
<u>West:</u>	CR-MD-1 (Community retail- Modified delta-1)

Land Use:

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

Zoning/BDA History:

1. BDA 045-136, 3606 Greenville Avenue, Suite B (the lot immediately north of the subject site) On January 18, 2005, the Board of Adjustment Panel A will consider a special exception requested in conjunction with reinstating nonconforming use rights for "alcoholic beverage establishment" and "dance hall" uses.

Timeline:

- Nov. 30, 2004: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 16, 2004: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 21, 2004 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A). This information includes copies of CO's (Certificates of Occupancies); leases, and building permit applications, and a letter that further explains the scope and merits of the request.
- Dec. 27, 2004: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.
- No review comments sheets (with comments) were submitted in conjunction with this application.

BASIS FOR REQUESTS FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BOARD OF ADJUSTMENT ACTION: January 18, 2005

APPEARING IN FAVOR: Roger Albright, 3301 Elm St., Dallas, TX
Michael Turner, Dallas, TX
Chuck Cole, 5120 Pinrose, Dallas, TX
Sam Matassa, 116 Starlite Drive, Dallas, TX

APPEARING IN OPPOSITION: Gaye Hopkins, 6030 Monticello Ave., Dallas, TX
Bob Helterbran, 5732 Penrose Ave., Dallas, TX
Steve Howard, 6000 Monticello Ave., Dallas, TX
Lisa Marie Gala, 5835 Morningside Ave., Dallas, TX
Sally Garcia, 5623 Anita, Dallas, TX 75206

MOTION#1: Wise

I move that the Board of Adjustment, in Appeal No. **BDA 045-133** on application of J.T. and M.L. Matassa, **deny** the special exception requested by this applicant **without prejudice** because the board has found that the nonconforming use was discontinued for six months or more.

SECONDED: Hill

AYES: 2 – Hill, Wise

NAYS: 3 - White, Johnson, Gabriel

MOTION FAILED: 2– 3

MOTION #2:

I move that the Board of Adjustment, in Appeal No. **BDA 045-133** on application of J.T. and M.L. Matassa, **grant** the request of this applicant for a special exception to the provisions of Section 51A-4.704(a)(2) of the Dallas Development Code which require that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the board finds that the owner of the property has shown that there was no clear intent on his part to abandon the use even though it was discontinued for six months or more.

SECONDED: Johnson

AYES: 4 – White, Hill, Johnson, Gabriel

NAYS: 1 - Wise

MOTION PASSED: 4– 1

FILE NUMBER: BDA 045-136

BUILDING OFFICIAL'S REPORT:

Application of J. T. & M. L. Matassa represented by Roger Albright, for a special exception to the nonconforming use regulations at 3606 Greenville Avenue, Suite B. This property is more fully described as part of Lots 1-A and 2-A in City Block 1/2888 which is zoned CR-MD-1 which requires an alcoholic beverage establishment and a dance hall to have an SUP (Specific Use Permit). The applicant requests that the Board re-instate the nonconforming rights for an alcoholic beverage establishment use and a dance hall use because there was not a clear intent to abandon the uses although they were discontinued for a period of more than 6 months. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(3) of the Dallas Development Code, as amended, which states the power of the Board to grant special exceptions.

LOCATION: 3606 Greenville Avenue, Suite B

APPLICANT: J. T. & M. L. Matassa
Represented by Roger Albright

SUMMARY:

- A special exception is requested in conjunction with reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses even though these uses were discontinued for a period of six months or more. The site is currently developed with a vacant commercial/retail structure.

STAFF RECOMMENDATION:

Denial without prejudice

This recommendation was based on the following:

- The applicant had not fully addressed the standard in which the board can grant this type of special exception: that the owner has demonstrated that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

ADDITIONAL FACTS:

- The nonconforming use regulations of the Dallas Development Code state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. However, there is a provision in the code allowing the board to grant a

special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.
- According to information from Dallas Central Appraisal District (DCAD), the property at 3606 Greenville Avenue (which would encompass this site designated as “Suite B,” and the site of BDA 045-133 designated as “Suite A,”) is developed with a “free standing retail store” that was built in 1940 and has 17,520 square feet of lease area. According to the applicant’s representative, the site has been developed as clubs over the past 20 years including Nick’s Uptown, Fast & Cool Club, Fish Dance, and most recently, the Red Jacket.
- According to the applicant’s representative, the vacant structure located at 3606 Greenville Avenue has been recently divided into two spaces: Suite A and Suite B. Granting this application (along with the application of BDA 045-133) would allow the applicant to operate the vacant structure on this site and the site of BDA 045-133 as two separate dance halls/alcoholic beverage establishment uses on what had been one dance hall/alcoholic beverage establishment use (or night club) in one structure.
- In this case, that applicant has requested a special exception to reinstate nonconforming use rights since the property is zoned CR, and in accordance with a city ordinances enacted in 1993 and 1994, alcoholic beverage establishment uses and dance halls can only be located in CR zoning if an SUP (Specific Use Permit) has been obtained.
- The application states that the request is needed “to obtain a Building Permit and change of tenant CO for non-conforming dance hall/alcoholic beverage establishment.” The application states that the application is made to grant the request for the following reasons:
 - “The Building Official denied the request because the non-conforming use was allegedly discontinued for six months or more. Applicant would show the Board that this location has been a non-conforming dance hall/alcoholic beverage establishment for over twenty (20) years. There was no intent to abandon the use. The prior tenant filed bankruptcy and thus prevented the owner from taking any action to remove the tenant and relet the premises even though the prior tenant was no longer operating the use. The owner used all diligence to regain possession of the property and have now relet it to Applicant.”
- The alcoholic beverage establishment use and dance hall use that existed on the site were legal nonconforming uses. Prior to ordinances the City adopted in the early 90’s, these two uses located in the structure at 3606 Greenville were permitted by right in CR zoning *without* an SUP. Prior to the ordinances adopted by the City in the early 90’s, the uses were legal conforming uses. The uses on the site became legal *nonconforming* uses upon the passing of the ordinance in the early 90’s.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the structure was vacant for a period of six (6) months or more. Granting this

request would restore the alcoholic beverage establishment use and dance hall use as legal nonconforming uses but not as legal *conforming* uses. The applicant would have to make application for an SUP and obtain approval from City Council in order to make the uses on the site legal conforming uses.

- Granting this request would only restore nonconforming use rights for an alcoholic beverage establishment use and dance hall use. If restored/reinstated, the nonconforming uses would be subject to termination by the Board of Adjustment as any other nonconforming use in the city.
- The applicant's representative submitted additional documentation to staff beyond that what was submitted with the original application (see Attachment A). This information includes copies of CO's (Certificates of Occupancies); leases, and building permit applications, and a letter that further explains the scope and merits of the request.

BACKGROUND INFORMATION:

Zoning:

Site: CR-MD-1 (Community retail- Modified delta-1)
North: CR-MD-1 (Community retail- Modified delta-1)
South: CR-MD-1 (Community retail- Modified delta-1)
East: MF-2(A)-MD-1 (Multifamily 1- Modified delta-1)
West: CR-MD-1 (Community retail- Modified delta-1)

Land Use:

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

Zoning/BDA History:

1. BDA 045-133, 3606 Greenville Avenue, Suite A (the lot immediately south of the subject site) On January 18, 2005, the Board of Adjustment Panel A will consider a special exception requested in conjunction with reinstating nonconforming use rights for "alcoholic beverage establishment" and "dance hall" uses.

Timeline:

- Nov. 30, 2004: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- Dec. 15, 2004: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- Dec. 16, 2004: The Board Administrator contacted the applicant's representative and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
 - the December 27th deadline to submit additional evidence for staff to factor into their recommendation; and
 - that the board will take action on the matter at the January public hearing after considering the staff recommendation that will be made at the staff review team meeting, and all other information/evidence and testimony presented to them by the applicant and all other interested parties.
- Dec. 21, 2004 The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A). This information includes copies of CO's (Certificates of Occupancies); leases, and building permit applications, and a letter that further explains the scope and merits of the request.
- Dec. 27, 2004: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Development Services Department Assistant Director of Predevelopment, the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Subdivision and Plats Chief Planner, the Development Services Transportation Planner; the Assistant City Attorney to the Board, and an Assistant City Attorney that will be substituting for him in the month of January.
- No review comments sheets (with comments) were submitted in conjunction with this application.

BASIS FOR REQUESTS FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BOARD OF ADJUSTMENT ACTION: January 18, 2005

APPEARING IN FAVOR: Roger Albright, 3301 Elm St., Dallas, TX
Michael Turner, Dallas, TX
Chuck Cole, 5120 Pinrose, Dallas, TX
Sam Matassa, 116 Starlite Drive, Dallas, TX

APPEARING IN OPPOSITION: Gaye Hopkins, 6030 Monticello Ave., Dallas, TX
Bob Helterbran, 5732 Penrose Ave., Dallas, TX
Steve Howard, 6000 Monticello Ave., Dallas, TX
Lisa Marie Gala, 5835 Morningside Ave., Dallas, TX
Sally Garcia, 5623 Anita, Dallas, TX 75206

MOTION#1: Wise

I move that the Board of Adjustment, in Appeal No. **BDA 045-136** on application of J.T. and M.L. Matassa, **deny** the special exception requested by this applicant **without prejudice** because the board has found that the nonconforming use was discontinued for six months or more.

SECONDED: Hill
AYES: 2 – Hill, Wise
NAYS: 3 - White, Johnson, Gabriel,
MOTION FAILED: 2– 3

MOTION #2:

I move that the Board of Adjustment, in Appeal No. **BDA 045-136** on application of J.T. and M.L. Matassa, **grant** the request of this applicant for a special exception to the provisions of Section 51A-4.704(a)(2) of the Dallas Development Code which require that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the board finds that the owner of the property has shown that there was no clear intent on his part to abandon the use even though it was discontinued for six months or more.

SECONDED: Johnson
AYES: 4 – White, Hill, Johnson, Gabriel
NAYS: 1 - Wise
MOTION PASSED: 4– 1

3:35 P.M. - Board Meeting adjourned for January 18, 2005.

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.