

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, 6ES  
MONDAY, MARCH 14, 2011**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, and Bob Richard, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM HEARING: Robert Moore, Panel Vice-Chair

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, Jerry Svec, Project Engineer 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, Jerry Svec, Project Engineer and Trena Law, Board Secretary

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**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 14, 2011** docket.  
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**1:03 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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C February 17, 2011 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 14, 2011**

**MOTION: Richard**

I move **approval** of the Monday, **February 17, 2011** public hearing minutes.

**SECONDED: Maten**

**AYES: 5–Boyd, Moore, Maten, Coulter, Richard**

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 101-025**

**BUILDING OFFICIAL’S REPORT:**

Application of Masterplan Consultants for a special exception to the parking regulations at 5907-5909 Belt Line Road. This property is more fully described as Lot 1 in City Block C/8221 and is zoned CR which requires parking to be provided. The applicant proposes to maintain structures for general merchandise, personal service, and restaurant without drive through service uses and provide 148 of the required 175 parking spaces which will require a special exception of 27 spaces.

**LOCATION: 5907-5909 Belt Line Road**

**APPLICANT: Masterplan Consultants**

**REQUEST:**

- A special exception to the off-street parking regulations of 27 parking spaces (or a 15 percent reduction to the required 175 off-street parking spaces) is requested in conjunction with leasing square footage/space within an existing approximately 29,000 square foot retail strip center with a certain mix of uses, and providing 148 of the required 175 off-street parking spaces.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet, personal service, and restaurant without drive-in service uses are changed or discontinued.

Rationale:

- The Sustainable Development Department Project Engineer supports the amended reduction request of 15 percent based on the applicant's submitted parking study report.
- The applicant has substantiated how the parking demand generated by the existing/proposed general merchandise, personal service, and restaurant uses does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.

- 4) In granting a special exception, the board may:
  - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirement:
  - General merchandise or food store greater than 3,500 square feet: 1 space for 200 square feet of floor area.
  - Personal service use: 1 space per 200 square feet of floor area.
  - Restaurant without drive-in service use: 1 space per 200 square feet of floor area
 The applicant proposes in his revised request to provide 148 (or 85 percent) of the required 175 off-street parking spaces in conjunction with the site being leased/maintained with a combination of the uses mentioned above.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A) which triggered an amendment to his application and a revised Building Official's report (see Attachment B).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: MF-1(A) (Multifamily)  
South: PD No. 272 (Planned Development)  
East: CR (Community Retail)  
West: MF-1(A) (Multifamily)

**Land Use:**

The subject site is developed as a retail strip center. The areas to the north and west are developed with multifamily uses; and the areas to the east and south are developed with retail uses.

**Zoning/BDA History:**

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

**Timeline:**

January 27, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 14, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.

February 14, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<sup>th</sup> 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.

February 28, 2011: The applicant submitted additional information to staff that reduced his parking special exception request from 34 spaces (19 percent of the required parking) to 27 spaces (or 15 percent of the required parking) (see Attachment A). The amended application triggered a revised Building Official’s Report (see Attachment B).

March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 3, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has

no objections if certain conditions are met” with the following comments: “Uses conform to the parking study report submitted Feb. 28, 2011 supporting a 14.8% reduction.”

**STAFF ANALYSIS:**

- This request focuses on leasing approximately 9,500 square feet vacant square footage/space within an existing approximately 29,000 square foot retail strip center with certain uses (some of which require more off-street parking than what had existed previously on the site), and providing 148 (or 85 percent) of the required 175 off-street parking spaces.
- The applicant has prepared a study indicating among other things how “in the event the unoccupied space were fully leased and parking to code with this observed peak count there would still be a surplus of 37 spaces.”
- The Sustainable Development Department Project Engineer has indicated that he supports the request for a 15 percent parking reduction based on the applicant’s submitted parking study report.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the existing/proposed uses on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 27 spaces (or a 15 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 27 spaces shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet, personal service, and/or restaurant without drive-in service uses are changed or discontinued, the applicant would be allowed to develop/lease/maintain the site with these specific uses and provide 148 of the 175 code required off-street parking spaces.

**BOARD OF ADJUSTMENT ACTION: MARCH 14, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Coulter**

I move that the Board of Adjustment grant application **BDA 101-025** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and the intent of the Dallas Development Code:

- The special exception shall automatically and immediately terminate if and when the general merchandise or food store greater than 3,500 square feet, personal service, and/or restaurant without drive-in service uses are changed or discontinued.

**SECONDED:** Maten

**AYES:** 5–Boyd, Moore, Maten, Coulter, Richard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-001

**BUILDING OFFICIAL’S REPORT:**

Application of Scott Ramsey for a special exception to the landscape regulations at 2345 Reagan Street. This property is more fully described as Lot 23-30 in City Block 30/2282 and is zoned PD-193 (LC Subdistrict) which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan which will require a special exception.

**LOCATION:** 2345 Reagan Street

**APPLICANT:** Scott Ramsey

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with constructing and maintaining a “proposed building expansion” and not fully providing required landscaping. The site is currently developed with an institutional use/ structure (Phoenix House).

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Compliance with the submitted alternate landscape plan is required.
2. If a sidewalk is required by the City, a sidewalk exemption must be approved for Sylvester Street. If an exemption is not required, a sidewalk of a minimum width of four feet (or as required by the Director of Sustainable Development and Construction) must be provided along Sylvester Street.
3. Any tree on the landscape plan that dies must be replaced with at least one tree at a minimum of 3.5” and in close proximity to the original established tree.
4. No new landscaping may be located in required visibility triangles.

Rationale:

- The City’s Chief Arborist recommends approval of this request whereby, if the conditions mentioned above are imposed, the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.
- In addition, in this particular case, the landscape materials that are existing and/or proposed on the site appear to be justified (the site complies with all other landscape requirement of the PD for “planting areas”) particularly given: 1) the relatively small

proposed development on the site that triggers this request, and 2) existing site constraints (mainly utility lines) that preclude the applicant from fully complying with some of the landscape requirements.

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

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

**GENERAL FACTS:**

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

The applicant has submitted a document entitled “special exception landscape plan” in this case, an alternate landscape plan that, according to the City of Dallas Chief Arborist, is seeking relief from the landscaping requirements of PD No. 193, specifically sidewalk, tree, and off-street parking screening requirements of this ordinance.

- On March 4, 2011, the City of Dallas Chief Arborist submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the landscape special exception request (see Attachment A). The memo stated the following:
  - Trigger: Construction of a new addition on the property.
  - Deficiencies:
    - Sidewalks – Required: 6’ wide between 5’ – 12’ from back of curb.
    - Trees within the tree planting zone – between 2.5’ – 5’ from back of curb.
    - Screening of off-street parking at 3.5 feet in height along Reagan Street.
  - Factors:
    - The proposed building addition on this established site is located near Sylvester Street. The primary landscape and sidewalk infrastructure improvements are along Reagan Street.
    - The site complies with all other PD 193 (LC) landscape requirements for “planting area.” Existing large trees along Reagan Street that are outside of the tree planting zone are being incorporated into the overall street frontage design for the site.
    - Overhead utilities along Reagan Street may restrict the long-term clear growth of any large canopy trees planted with the required tree planting zone.



There is a large available landscape area within the property for a healthy tree growing environment.

- The applicant proposes to provide for a 6' wide sidewalk at the curb along Reagan Street but not along Sylvester Street.
- Recommendation: Approval of the alternate landscape plan, subject to the following conditions
  1. If a sidewalk is required by the City, a sidewalk exemption must be approved for Sylvester Street. If an exemption is not required, a sidewalk of a minimum width of four feet (or as required by the Director of Sustainable Development and Construction) must be provided along Sylvester Street.
  2. Any tree on the landscape plan that dies must be replaced with at least one tree at a minimum of 3.5" and in close proximity to the original established tree.
  3. No new landscaping may be located in the visibility triangles in violation of city ordinance.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	PD No. 193 (LC) (SUP 213) (Planned Development District, Light commercial and Specific Use Permit)
<u>North:</u>	PD No. 193 (TH-3) (Planned Development District, Townhouse)
<u>South:</u>	PD No. 193 (I-2) (Planned Development District, Industrial)
<u>East:</u>	PD No. 193 (LC) (Planned Development District, Light commercial)
<u>West:</u>	PD No. 193 (LC) (Planned Development District, Light commercial)

#### **Land Use:**

The subject site is developed with an institutional use/ structure (Phoenix House). The area to the north is developed with residential uses; the area to the east is undeveloped; the area to the south is developed with what appears to be office use; and the area to the west is developed with what appears to be a utility use.

#### **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:**

December 23, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

February 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 14, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<sup>th</sup> 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.

March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 2, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" with the following comments: "Comply with all C.O.D. visibility requirements."

March 4, 2011: The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment A).

March 4, 2011: The Board Administrator left a message with the applicant informing him that regardless of what was observed in field slides of the site and/or represented on the applicant's submitted alternate landscape plan his request for a special exception to the landscape regulations would not provide relief for: 1) any existing or proposed item deemed to be in noncompliance with the applicable visibility obstruction regulations; and/or 2) any item located in public right of way.

### **STAFF ANALYSIS :**

- This landscape special exception request is triggered with the construction and maintenance of a building expansion/addition on a site developed with an existing institutional use/structure (Phoenix House).

- The applicant seeks exception from the landscaping requirements of PD No. 193, specifically sidewalk, tree, and off-street parking screening requirements of this ordinance.
- The City of Dallas Chief Arborist supports the request with the imposition of 3 specific conditions that are detailed in his March 4<sup>th</sup> memo to staff (see Attachment A).
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the sidewalk, tree, and off-street parking screening requirements of the PD No. 193 landscape regulations) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the conditions suggested by staff/the Chief Arborist, the site would be “excepted” from compliance to the sidewalk, tree, and off-street parking/screening requirements of the Oak Lawn PD landscape ordinance.
- Note that staff has made the applicant aware of the fact if the Board were to grant his application for a special exception to the landscape regulations, and impose his submitted alternate landscape plan as a condition to the request that this approval would not provide relief for: 1) any existing or proposed item deemed to be in noncompliance with the applicable visibility obstruction regulations; and/or 2) any item located in public right of way regardless of what was observed in field slides of the site and/or represented on the applicant’s submitted alternate landscape plan.

**BOARD OF ADJUSTMENT ACTION: MARCH 14, 2011**

APPEARING IN FAVOR: Scott Ramsey, 601 Thompson Dr., Richardson, TX

APPEARING IN OPPOSITION: Dennis Corbett, 2401 Knight St., Dallas, TX

**MOTION #1: Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 101-001**, on application of Scott Ramsey, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code.

**SECONDED: Boyd**

**AYES:** 2–Boyd, Maten,

**NAYS:** 3 – Moore, Coulter, Richard

**MOTION FAILED:** 2– 3

**MOTION #2: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 101-001**, on application of Scott Ramsey, **grant** the request of this applicant for a special exception to the

landscaping requirements contained in PD 193, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception will not compromise the spirit and intent of Section 51P-193.126 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.
- If a sidewalk is required by the City, a sidewalk waiver must be approved for Sylvester Street. If a waiver is not required, a sidewalk with a minimum width of four feet (or as required by the Director of Sustainable Development and Construction) must be provided along Sylvester Street.
- Any tree on the landscape plan that dies must be replaced with at least one tree at a minimum of 3.5” and in close proximity to the original established tree.
- No new landscaping may be located in required visibility triangles.

**SECONDED: Coulter**

**AYES: 4–Boyd, Moore, Coulter, Richard**

**NAYS: 1– Maten**

**MOTION PASSED: 4– 1**

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**FILE NUMBER: BDA 090-105**

**BUILDING OFFICIAL’S REPORT:**

Application of Evelyn J. L. Braswell to require compliance of a nonconforming use at 14831 Seagoville Road. This property is more fully described as Tracts 68 A and B in City Block 8823 and is zoned R-10(A) which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming manufactured home park use.

**LOCATION: 14831 Seagoville Road**

**APPLICANT: Evelyn J. L. Braswell**

**REQUEST:**

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming “manufactured home park” use on the subject site.

**COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:**

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property

rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

- (A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.
- (B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:
- (i) The character of the surrounding neighborhood.
  - (ii) The degree of incompatibility of the use with the zoning district in which it is located.
  - (iii) The manner in which the use is being conducted.
  - (iv) The hours of operation of the use.
  - (v) The extent to which continued operation of the use may threaten public health or safety.
  - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
  - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
  - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
  - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
  - (ii) The following factors must be considered by the board in determining a reasonable amortization period:

- (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
- (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
- (cc) Any return on investment since inception of the use, including net income and depreciation.
- (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

**GENERAL FACTS:**

- City records indicate the “manufactured home park” use became nonconforming on April 1, 1978.
- The Dallas Development Code states that “nonconforming use” means “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.”
- The subject site is zoned R-10(A) (Single family district 10,000 square feet) that does not permit a “manufactured home park, manufactured home subdivision, or campground” use.
- The Dallas Development Code establishes the following provisions for “manufactured home park, manufacture home subdivision, or campground” use in Section 51A-4.209 (b) (4):
  - “Manufactured home park, manufactured home subdivision, or campground”
    - (A) Definition:
      - (i) A manufactured home park is a unified development of transient stands arranged on a lot under single ownership.
      - (ii) A manufactured home subdivision is a plat designed specifically for manufactured home development
      - (iii) a campground is a lot used to accommodate recreation vehicles, tents, or manufactured homes on a rental basis for temporary camping purposes.
    - (B) Districts permitted: By right in the MH(A) district.
- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining MH(A) (Manufactured Home district) zoning from City Council.

- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site's existing R-10(A) (Single family district 10,000 square feet) zoning classification.
- The board determined at their December 13, 2010 hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming "manufactured home park" use would have an adverse effect on nearby properties, and set a hearing date March 14, 2011 for the purpose of establishing a compliance date for this nonconforming use.
- All information submitted by the applicant ("Attachment A") related to whether continued operation of the nonconforming "manufactured home park" use would have an adverse effect on nearby properties has been retained in the case file and is available for review upon request.
- Photographs submitted by the owner of the nonconforming use (Rickey Gregory) at the December 13<sup>th</sup> public hearing have been retained in the case file and are available for review upon request.
- On February 10, 2011, a subpoena duces tecum and interrogatories was delivered to the owner of the nonconforming "manufactured home park" use of the site/property (Rickey Gregory).
- On February 28, 2011, the owner of the nonconforming use's newly designated representative forwarded a letter to the Board Administrator that stated among other things how the applicant was requesting an extension of 30 days to allow him to provide "complete answers to the Interrogatories and Requests for Admission and to obtain a proper amortization before March 14<sup>th</sup>." (See Attachment B).
- On March 1, 2011, the Assistant City Attorney assisting with this application forwarded a letter to the Board Administrator that stated among other things how the City does not oppose and joins the applicant's February 28<sup>th</sup> 30 day extension request, and how "the Board and all parties will be better served if a continuance is granted." (See Attachment C).

**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-7.5(A) (Single family district 7,500 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 site is currently developed with a "manufactured home park" use. The areas to the north, east, and west are developed with single family uses; and the area to the south appears to be undeveloped.

**Zoning/BDA History:**

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

**Timeline:**

Sept. 17, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 21, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 21, 2010: The Board Administrator wrote/sent the owner of the site/property (Rickey Gregory) a letter (with a copy to the applicant) that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:

- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
- a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
- a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));
- a copy of the section of the Dallas Development Code that provides the purpose and main use permitted set forth for "R-10(A)" districts (Section 51A-4.122 (e));
- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for "manufactured home park" use (Section 51A-4.209 (b)(4));
- a copy of the section of the Dallas Development Code that provides provisions for "nonconforming uses and structures" (Section 51A-4.704);
- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed the owner of the property the date, time, and location of the briefing/public hearing, and provided a deadline of December 3<sup>rd</sup> to submit any information that would be incorporated into the board's docket.

November 30, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for December public hearing. Review team members in attendance included: the Board Administrator, the Building Inspection Senior Plans



Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

December 2, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

December 13, 2010: The Board of Adjustment conducted a public hearing on this application and determined that based on the evidence and testimony presented to them, that continued operation of the nonconforming “manufactured home park” use would have an adverse effect on nearby properties, and set a hearing date March 14, 2011 for the purpose of establishing a compliance date for this nonconforming use.

February 10, 2011: A subpoena duces tecum and interrogatories was delivered to the owner of the nonconforming “manufactured home park” use of the site/property (Rickey Gregory).

February 28, 2011: The owner of the nonconforming use’s newly designated representative submitted additional information to the Board Administrator (see Attachment B).

March 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

March 1, 2011: The Assistant City Attorney assisting with this application submitted additional information to the Board Administrator (see Attachment C).

**STAFF ANALYSIS:**

- The “manufactured home park” use on the subject site is a nonconforming use. According to city records, the use became nonconforming on April 1, 1978.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of

the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining MH(A) (Manufactured Home district) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site's existing R-10(A) (Single family district 10,000 square feet) zoning classification. Uses permitted by right in this zoning district.
- The board determined at their December 13, 2010 hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming "manufactured home park" use would have an adverse effect on nearby properties, and set a hearing date March 14, 2011 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's March 14, 2011 public hearing is to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use).
- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
  - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
  - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
  - Any return on investment since inception of the use, including net income and depreciation.
  - The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- On February 28, 2011, the owner of the nonconforming use's newly designated representative forwarded a letter to the Board Administrator that stated among other things how the applicant was requesting an extension of 30 days to allow him to provide "complete answers to the Interrogatories and Requests for Admission and to obtain a proper amortization before March 14<sup>th</sup>." (See Attachment B).
- On March 1, 2011, the Assistant City Attorney assisting with this application forwarded a letter to the Board Administrator that stated among other things how the City does not oppose and joins the applicant's February 28<sup>th</sup> 30 day extension request, and how "the Board and all parties will be better served if a continuance is granted." (See Attachment C).

**BOARD OF ADJUSTMENT ACTION: DECEMBER 13, 2010**

APPEARING IN FAVOR: Evelyn Braswell, 14825 Seagoville Rd., Dallas, TX

APPEARING IN OPPOSITION: Rick Gregory, 14831 Seagoville Rd., Dallas, TX  
Donald Downey, 14831 Seagoville Rd., Dallas, TX

**MOTION #1: Moore**

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, suspend the rules and accept the evidence that is being presented to us today.

**SECONDED: Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

**MOTION #2: Richard**

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, based on the evidence presented at the public hearing find that continued operation of this nonconforming use will have an adverse effect on nearby properties, based on the following factors:

- The character of the surrounding neighborhood with the traffic in and out and non maintenance of high grass and appliances on the property.
- The degree of incompatibility of the use with the zoning district in which it is located is not properly zoned even though it's grandfathered.
- The manner in which the use is being conducted as a business.
- The hours of operation of the use being all hours and not normal business hours.
- The extent to which continued operation of the use may threaten public health or safety.
- The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use in that access to the property is a serious contention to the two parties.
- And set a hearing date of **March 14, 2011** for the purpose of establishing a compliance date for this nonconforming use.

**SECONDED: Moore**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: MARCH 14, 2011**

APPEARING IN FAVOR: Evelyn Braswell, 14825 Seagoville Rd., Dallas, TX

APPEARING IN OPPOSITION: Carol Warren, P.O. Box 360306, Dallas, TX

APPEARING FOR THE CITY: Charles Estee, 1500 Marilla St., 7DN, Dallas, TX

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 090-105**, hold this matter under advisement until **April 18, 2011**.

SECONDED: **Maten**

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

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Coulter**

AYES: 5—Boyd, Moore, Maten, Coulter, Richard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

**1:55 P. M.** - Board Meeting adjourned for **March 14, 2011**.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.