

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL A
TUESDAY, APRIL 22, 2008

Public Hearing: 1:00 P.M.

L1FN AUDITORIUM

Purpose: To take action on the attached agenda, which contains the following:

1. Zoning Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

***All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas 75201**

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04-22-2008

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, APRIL 22, 2008
AGENDA

PUBLIC HEARING

L1FN CONFERENCE AUDITORIUM

1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator
Kyra Blackston, Senior Planner

COMPLIANCE CASE

BDA 078-059

3103 Colonial Avenue

1

REQUEST: Application of St. Philip's School
PSA/St. Phillip's School, represented by Monifa Akinwole
Bandeke, to require compliance of a nonconforming use

EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

FILE NUMBER: BDA 078-059

BUILDING OFFICIAL'S REPORT:

Application of St. Philip's School PSA/St. Phillip's School, represented by Monifa Akinwole Bandele, to require compliance of a nonconforming use at 3103 Colonial Avenue. This property is more fully described as Lots 17-20 in City Block 11/1156 and is zoned PD-595 (CC) which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 3103 Colonial Avenue

APPLICANT: St. Philip's School PSA/St. Phillip's School
Represented by Monifa Akinwole Bandele

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (Colonial House Motel) 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:

- The subject site is zoned PD No. 595 (CC Community Commercial Subdistrict) that permits a “hotel or motel” use with an SUP (Specific Use Permit).
- The Dallas Development Code establishes the following provisions for “hotel or motel” use in Section 51A-4.205 (1):
 - “Hotel or motel.”
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
- City records indicate that the hotel or motel use on the subject site first became nonconforming on September 30, 1987 with the passage of Ordinance No. 19700. The hotel or motel use on the subject site remained nonconforming when it was rezoned from GR to CR on July 18, 1989 with the passage of Ordinance No. 20314. The nonconformity was reinforced again on September 26, 2001 when the property was rezoned from CR to PD No. 595 (Ordinance 24726).
- 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 owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use on the site from motel use to any use that is permitted by right in the site’s existing PD No. 595 (CC Community Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.
- On April 4, 2008, the applicant’s representative submitted additional information to the Board Administrator on this application beyond what was originally submitted with the application in late February of 2008 (see Attachment A). This information included 41 letters referenced by the applicant’s representative as “letters of complaints supporting our claim of non-compliance against the Colonial Inn Motel.”
- On April 4, 2008, the attorney representing the owner of the nonconforming motel submitted information to the Board Administrator on this application (see Attachment B). This information included a letter requesting: a dismissal of the application, a denial of the application, and/or for “continuance” of the application.
- The Board of Adjustment conducted a public hearing on the matter on April 15, 2008 where the following occurred:
 - the Board Administrator circulated an amended page to be substituted for a page in the originally mailed case report – a page that confirmed among other things, the dates in which CO’s were issued, and the dates in which the use on the site became nonconforming;
 - the attorney representing the applicant submitted written documentation to the members (see Attachment D);
 - verbal testimony was given by a number of citizens who supported the application, and attorneys representing the applicant and the owner of the motel;
 - the applicant showed a video regarding the nonconforming motel;

- the applicant amended the application to include the St. Philip's School in addition to the St. Philip's School PSA; and
- the Board delayed action on the application and called a special hearing to be held on April 22, 2008 for the purpose of continuing its consideration on whether continued operation of the nonconforming motel has an adverse affect on nearby properties. (The board suggested that the applicant consider reviewing submitted letters that were either unsigned or illegibly signed by the April 22nd hearing, and that any additional evidence that either party wanted the board to be mailed prior to the April 22nd special hearing to be submitted no later than April 17th.)
- On April 17, 2008, the attorney representing the owner of the nonconforming motel submitted information to the Board Administrator on this application (see Attachment E). This information included the following:
 - a map of the area representing properties owned by St. Philip's, property owned by other property owners, and the location of the subject site;
 - a copy of the City of Dallas's response to their open records request;
 - a copy of a contract offer to Jay Ma Corporation for the Colonial House Motel property.
- On April 17, 2008, the applicant's representative submitted additional information to the Board Administrator (see Attachment F). This information was described as "letters that have already been submitted to the board, with new serial number and names and addresses of the writers on them."

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>North:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>South:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>East:</u>	PD No. 595 (CC Subdistrict) (Planned Development District, Community Commercial)
<u>West:</u>	PD No. 595 (MF-2 Subdistrict) (Planned Development District, Multifamily)

Land Use:

The site is currently developed with a motel use (Colonial House Motel). The area to the immediate north is developed with a vacant office/retail structure; the area to the immediate east is undeveloped; the area to the immediate south is developed as a tree farm; and the area to the west is developed with commercial uses and plow fields.

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:

February 29, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 20, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 20, 2008: The Board Administrator wrote/sent the owner of the site (Jay Ma Corporation) a letter (with a copy to the applicant's representative) that informed them that a Board of Adjustment case had been filed against their property. The letter included the 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 definition and provisions set forth for "hotel or motel" use (Section 51P-595.113(5));
- 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 date, time, and location of the briefing/public hearing, and provided a deadline of April 4th to submit any information that would be incorporated into the board's docket.

April 1, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

April 4, 2008 The applicant's representative submitted additional information on this application beyond what was submitted with the original application in February of 2008 (see Attachment A).

- April 4, 2008 The attorney for the owner of the nonconforming motel use submitted information on this application (see Attachment B).
- April 15, 2008: The Board of Adjustment conducted a public hearing on this appeal where they delayed action on the application and called a special hearing to be held on April 22, 2008 for the purpose of continuing its consideration on whether continued operation of the nonconforming motel has an adverse affect on nearby properties.
- April 17, 2008 The attorney for the owner of the nonconforming motel use submitted information on this application (see Attachment E).
- April 4, 2008 The applicant's representative submitted additional information on this application (see Attachment F).

STAFF ANALYSIS:

- The hotel or motel use (Colonial House Motel) on the subject site is a nonconforming use. City records indicate the following:
 - On July 26, 1985, a certificate of occupancy was issued for a hotel or motel use at 3103 Colonial Avenue which was then zoned GR (see Attachment C).
 - On March 1, 1987, Ordinance No. 19455 was passed which created Chapter 51A and CR zoning. Hotel or motel uses are permitted by specific use permit (SUP) only in CR districts.
 - The hotel or motel use located at 3103 Colonial Avenue became nonconforming on September 30, 1987 with the passage of Ordinance No. 19700 (See Attachment C) which required an SUP for hotel or motel uses in GR zoning with fewer than 50 rooms or fewer than four stories. According to DCAD records the hotel or motel use located at 3103 Colonial Avenue has 29 rooms.
 - The hotel or motel use located at 3103 Colonial Avenue became nonconforming again on July 18, 1989, with the passage of Ordinance No. 20314 which rezoned all property within the City of Dallas, including the subject site which was rezoned from GR (General Retail) to CR (Community Retail).
 - The hotel or motel use located at 3103 Colonial Avenue became nonconforming for a third time on September 26, 2001 with the passage of Ordinance No. 24726 which created Planned Development District No. 595 and rezoned the property from CR to PD 595 (CC) (portions of which are included as part of Attachment C). Hotel or motel uses are permitted by SUP only in PD 595 (CC) districts.
- 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 motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use on the site from motel use to any use that is permitted by right in the site's existing PD No. 595 (CC Community

Commercial Subdistrict) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses, institutional and community service uses, office uses, recreation uses, retail and personal service uses, transportation uses, and utility and public service uses.

- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming motel use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment's April 22nd public hearing shall be to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.