

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, OCTOBER 16, 2012**

MEMBERS PRESENT AT BRIEFING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Lloyd Denman, Traffic Engineer, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Robert Moore, Vice Chair, Jordan Schweitzer, regular member, Scott Hounsel, regular member, Clint Nolen, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Bert Vandenberg, Asst. City Attorney, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Lloyd Denman, Traffic Engineer, and Trena Law, Board Secretary

**11:03 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 16, 2012** docket.

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**1:00 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 A **September 18, 2012** public hearing minutes as amended.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

**MOTION: Schweitzer**

I move **approval** of the Tuesday, **September 18, 2012** public hearing minutes.

**SECONDED: Hounsel**

**AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Approval of the Board of Adjustment Panel A's 2013 Public Hearing Schedule.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

**MOTION: Hounsel**

I move **approval** of **Panel A's 2013** Public Hearing Schedule.

**SECONDED: Nolen**

**AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER: BDA 112-040**

**REQUEST:** To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment's favorable action on a request for variance to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

**LOCATION:** 2612 Boll Street

**APPLICANT:** Herbert B, Story, Jr.  
Represented by Michael R. Coker

**STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:**

- The Dallas Development Code states:
  - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
  - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

**Timeline:**

May 15, 2012: The Board of Adjustment Panel A granted a request for variance to the front yard setback regulations and a special exception to the landscape regulations and imposed the submitted revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 as conditions to the requests. The case report stated that requests were made in conjunction with constructing and maintaining a “raised planting bed” structure, a staircase structure, and the westernmost wall of a “proposed two story brick addition” structure (with an approximately 600 square foot building footprint that is proposed to be located on the lot immediately to the east/adjacent to the subject site).

May 22, 2012: The Board Administrator wrote the applicant’s representative a letter documenting the May 15<sup>th</sup> action of the board, and noting to “Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board.”

October 2, 2012: The applicant's newly designated representative submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days they had to do so from the May 15, 2012 favorable action (see Attachment A).

October 4, 2012: The Board Administrator emailed the applicant's newly designated representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 6<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;
- an attachment of materials related to BDA 112-040 (see Attachment B); and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

APPEARING IN FAVOR: Mike Coker, 2700 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment's favorable action on a request for variance to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**MISCELLANEOUS ITEM NO. 4**

FILE NUMBER: BDA 112-058

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment's

favorable action on a request for certain variances to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

**LOCATION:** 2701 McKinney Avenue

**APPLICANT:** Herbert B, Story, Jr.  
Represented by Michael R. Coker

**STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:**

- The Dallas Development Code states the following with regard to board action:
  - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
  - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

**Timeline:**

May 15, 2012: The Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations made in conjunction with constructing and maintaining a “proposed two story brick addition” structure with an approximately 600 square foot building footprint, denied a request for a variance to the front yard setback regulations made in conjunction with remedying the nonconforming aspect of the existing nonconforming structure that is located in the site’s two front yard setbacks along McKinney Avenue and Boll Street, and granted a special exception to the landscape regulations. The Board imposed the submitted revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 as conditions to these granted requests.

- May 22, 2012: The Board Administrator wrote the applicant's representative a letter documenting the May 15<sup>th</sup> action of the board, and noting to "Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board."
- October 2, 2012: The applicant's newly designated representative submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days they had to do so from the May 15, 2012 favorable action (see Attachment A).
- October 4, 2012: The Board Administrator emailed the applicant's newly designated representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the April 6<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;
  - an attachment of materials related to BDA 112-058 (see Attachment B); and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

APPEARING IN FAVOR: Mike Coker, 2700 Swiss Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Hounsel**

I move that the Board of Adjustment extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment's favorable action on a request for certain variances to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

**SECONDED: Nolen**

**AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER:** BDA 112-095

**BUILDING OFFICIAL'S REPORT:**

Application of Ed Simons for a variance to the front yard setback regulations at 10011 N. Central Expressway. This property is more fully described as Lot 31A in City Block 7294 and is zoned MU-3(SAH), which requires an urban form front yard setback of 35 feet for that portion of the structure over 45 feet in height. The applicant proposes to construct and maintain a structure and provide an 18 foot urban form front yard setback, which will require a variance of 17 feet.

**LOCATION:** 10011 N. Central Expressway

**APPLICANT:** Ed Simons

**REQUEST:**

A request for a variance to the urban form front yard setback regulations of 17' is requested in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped.

The applicant is returning with the exact same application granted in 2009 (BDA 078-071). Dallas Development Code states that if the applicant fails to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board, the request is automatically denied without prejudice. The applicant did not file for a building permit with the 180 days, thus the applicant must begin the variance process again.

**STANDARD 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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not 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;
- (B) necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) not 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 with the same zoning.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the site plan and elevation is required.

Rationale:

- The site is restricted in its developable area and different from other parcels of land given a 16' wide D.P. & L. easement along its western boundary. This feature creates hardship on the lot and prohibits the applicant's ability to construct/maintain development on the site that is commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
- Granting the variance to the urban form front yard setback regulations (with the suggested conditions imposed) would not be contrary to the public interest since the portion of the proposed structure to be "varied" is:
  - Only approximately 54' in height or 9' above/beyond the 45' height in which the additional 20' urban form front yard setback begins; and
  - Located immediately adjacent to over 300' of right-of-way for Central Expressway and its related service roads.
- Granting this variance request would merely restore or reinstate a variance granted by Board of Adjustment on this site in June of 2009 where the only reason for a new application is because the applicant had not filed for a building permit within 180 days from June of 2009.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: MU-3(SAH) (Mixed Use, Standard Affordable Housing)  
North: GO (A) (General Office)  
South: GO (A) (General Office)  
East: GO (A) (General Office)  
West: MU-3(SAH) (Mixed Use, Standard Affordable Housing)

### **Land Use:**

The subject site is undeveloped. The area to the north is developed with a communications use (Channel 11); the area immediately east is the North Central Expressway; the area to the south is developed with a hotel; and the area to the west is developed with multifamily use.

### **Zoning/BDA History:**

1. BDA 001-193, Property located at 10011 N. Central Expressway (the subject site)

On April 26, 2001, the Board of Adjustment Panel A took the following actions: 1) denied without prejudice a request for a parking special exception of 2 spaces; 2) granted a request for a variance to the front yard (urban form) setback regulations of 9' (subject to compliance with the submitted site plan and elevations); and 3) granted a request for a

variance to the side yard (tower spacing) setback regulations (subject to compliance with the submitted site plan and elevation). The case report stated that these requests were made in conjunction with constructing/maintaining a four-story, 60' high apartment building (Park Fountain Apartments).

2. BDA 078-071, Property located at 10011 N. Central Expressway (the subject site)

On May 20, 2008, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that these requests were made in conjunction with constructing and maintaining a 60' high multifamily residential structure (Parc Fountains Apartments) on a site that is undeveloped.

3. BDA 089-075, Property located at 10011 N. Central Expressway (the subject site)

On June 16, 2009, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that these requests were made in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped

### **Timeline:**

August 23, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

September 19, 2012: 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;

and the October 5<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.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

#### **GENERAL FACTS/STAFF ANALYSIS:**

- This variance request focuses on restoring or reinstating an urban form front yard variance granted by the Board of Adjustment Panel A in June of 2009 – a request that returns to the board given that the applicant did not apply for a building permit or certificate of occupancy within 180 days from the board's favorable action.
- Lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height.
- The applicant has submitted the same site plan and elevation as in June of 2009 indicating a structure that is 53' 8" in height located as close as 18' from the site's front property line. Although the proposed structure complies with the 15' front yard setback for the portion 45' in height or less, the structure above 45' in height (its 4<sup>th</sup> level of residential use) is located 17' into the 35' urban form front yard setback.
- The additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.
- The subject site is flat, rectangular in shape (202.5' x 142'), and, according to the application, 0.6599 acres in area. The applicant contends that the site's 16' D.P. &L. easement along its west side creates limitations to the development of the site. The site is zoned MU-3 (SAH) (Mixed Use)(Standard Affordable Housing). There are public deed restrictions on this site that imposes a maximum structure height to 60 feet. (The applicant has informed the Board Administrator that the proposed development does not conflict with these publicly-recorded deed restrictions).
- According to calculations taken by the Board Administrator from the previously submitted site plan (one that is according to the applicant identical to the one submitted with the current application), about 1,800 square feet (105' x 17') of the proposed approximately 17,000 square foot building footprint (105' x 165') of its 4<sup>th</sup> level is proposed to be located in the additional 20' urban form front yard setback.

- This re-filed application focuses on allowing approximately half of the height of the proposed structure's 4<sup>th</sup> level to be located in the site's urban form front yard setback required along the site's street frontage which in this case is Central Expressway. The proposed structure complies with all setbacks with one exception: the structure between 45' – 54' in height is proposed to be located 18' from the site's front property line (or as much as 17' into the total 35' urban form front yard setback).
- The proposed structure that is between 45' – 54' in height to be located in the additional required 20' front yard setback is only 9' beyond the height in which the urban form setback becomes a factor, and is adjacent to an unusually wide right-of-way - in this case, Central Expressway/service road right-of-way over 300' wide.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the urban form front yard setback requested to construct and maintain an approximately 54' high, 4-level multifamily residential structure 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
  - The variance would 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 this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant the urban form front yard variance request of 17', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure would be limited to what is shown on these submitted plans – a structure that complies with setbacks 45' in height and below, but where 9' of the structure above 45' in height would be allowed to be located 18' from the site's front property line (or 17' into the 35' urban form front yard setback).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Agnich**

I move that the Board of Adjustment grant application **BDA 112-095** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevation is required.

**SECONDED:** Nolen  
**AYES:** 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich  
**NAYS:** 0 -  
**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 112-104

**BUILDING OFFICIAL’S REPORT:**

Application of John Chong, represented by Tailim Song Law Firm, for variances to the front yard setback regulations at 1030 N. Zang Boulevard. This property is more fully described as Lot 1 in City Block A/3373 and is zoned CR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback, which will require a variance of 15 feet.

**LOCATION:** 1030 N. Zang Boulevard

**APPLICANT:** John Chong  
Represented by Tailim Song Law Firm

**October 16, 2012 Public Hearing Notes:**

- The Board Administrator circulated a revised site plan to the board at the briefing – a plan revised from what had been originally submitted by the applicant in removing items that had been located in required visibility triangles.

**REQUESTS:**

Variances to the front yard setback regulations of up to 15’ are requested in conjunction with constructing and maintaining an approximately 2,800 square foot convenience store, part of which would be located in the site’s two 15’ front yard setbacks on N. Zang Boulevard and N. Beckley Avenue. The site is currently developed with a vacant nonresidential structure that the applicant plans to demolish.

**STANDARD 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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not 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;
- (B) necessary to permit development of a specific parcel of land that 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 with the same zoning; and  
(C) not 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 with the same zoning.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned CR in that it is a triangular-shaped lot with a restrictive build area. The developable space on this property ranges from 0' at the narrowest to 38' in width at its widest when the two 15' front yard setbacks are accounted for on this site.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: PD 468 (Planned Development District)  
South: CR (Community retail)  
East: CH (Cluster Housing)  
West: LO-1 (Limited Office)

**Land Use:**

The subject site is developed with a vacant non-residential structure. The area to the north is developed mostly as retail uses; the area to the east is developed with residential uses; and the area to the south and west are developed with what appears to be office uses.

**Zoning/BDA History:**

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

**Timeline:**

August 22, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

September 19, 2012: 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<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.

September 26, 2012: The Sustainable Development and Construction Department Senior Historic District Planner commented that the structure on the site is not a City of Dallas landmark or in a District but is adjacent to the Lake Cliff Historic District. The planner comments that he knows the community was upset about the demolition and original plan for the site but it seems from the application that the building will be closer to the street, preserving more of the streetscape, so perhaps this is the compromise worked out.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

#### **GENERAL FACTS/STAFF ANALYSIS:**

- These requests focus on constructing and maintaining an approximately 2,800 square foot convenience store, part of which would be located in the site's two required front yard setbacks on N. Zang Boulevard and N. Beckley Avenue on a site currently developed with a vacant nonresidential structure.
- The subject site is located at intersection of Zang Boulevard and N. Beckley Avenue. The property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- Development in CR zoning is required to provide a minimum 15' front yard setback. A site plan has been submitted that denotes an approximately 2,800 square foot structure that is located as close as on the site's two front property lines or as much as 15' into the 15' front yard setbacks.

- According to DCAD records, the “improvements” at 103 N. Zang Boulevard is a 1,345 square foot “converted service station” built in 1929.
- The subject site is triangular in shape and, according to the application, is 0.263 acres (or approximately 11,500 square feet) in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the front yard setback regulations 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
  - The variances would 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 this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structure in the front yard setbacks would be limited to what is shown on this document.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

APPEARING IN FAVOR: Talim Song, 13140 Coit, #340, Dallas, TX

APPEARING IN OPPOSITION: Patricia Hall, 1026 N Beckley, Dallas, TX

**MOTION: Agnich**

I move that the Board of Adjustment, in Appeal No. **BDA 112-104** on application of John Chong, represented by the Tailim Song Law Firm, **grant** the requested 15 foot variances to the front yard setback 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. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted revised site plan is required.

**SECONDED: Schweitzer**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 112-094

## **BUILDING OFFICIAL'S REPORT:**

Application of John Pozadzides, represented by Keith Redmon, for variances to the side yard setback and off-street parking regulations at 6506 Crestmere Drive. This property is more fully described as Lot 9 in City Block 4/8181 and is zoned R-16(A), which requires (1) a 10 foot side yard setback and (2) that a parking space be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a structure and provide a 4 foot side yard setback, which will require a variance to the side yard setback regulations of 6 feet. The applicant also proposes to provide enclosed parking spaces with a setback of 13 feet 11 inches, which will require a variance to the off-street parking regulations of 6 feet 1 inch.

**LOCATION:** 6506 Crestmere Drive

**APPLICANT:** John Pozadzides  
Represented by Keith Redmon

## **REQUESTS:**

The following appeals have been made on a site that is currently developed with a single family home:

1. a variance to the side yard setback regulations of 6' is requested in conjunction with constructing and maintaining a garage addition, part of which is located in the site's southern 10' side yard setback;
2. a variance to the off-street parking regulations of 6' 1" is requested in conjunction with modifying the existing enclosed garage and enclosing the parking spaces in the modified enclosed garage. Its expansion would be located less than the required 20' distance from the alley right-of-way line.

## **STANDARD 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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (D) not 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;
- (E) necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (F) not 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 with the same zoning.

**STAFF RECOMMENDATION (front yard variance):**

Denial

Rationale:

- Although the subject site is unique and different from most lots zoned R-16(A) in that it is slightly irregular in shape and is a corner lot with two front yard setbacks, the applicant has not substantiated how these features of the approximately 20,000 square foot site preclude the applicant from developing it in a manner commensurate with development on other similarly zoned R-16(A) properties. The site is currently developed with a single-family home approximately 3,700 square feet with an attached two-vehicle garage that complies with setbacks.
- The applicant has not provided information to show that the proposed addition/expansion of the existing home is necessary to develop the approximately 20,000 square foot lot with development that is commensurate with development on other lots zoned R-16(A) – that being what appears to be a home with 3,700 feet of area with a four-vehicle garage that would not comply with side yard setbacks.

**STAFF RECOMMENDATION (parking variance):**

Denial

Rationale:

- Although the subject site is unique and different from most lots zoned R-16(A) in that it is slightly irregular in shape and is a corner lot with two front yard setbacks, the applicant has not substantiated how these features of the approximately 20,000 square foot site preclude the applicant from developing it in a manner commensurate with development on other similarly zoned R-16(A) properties. The site is currently developed with what appears to be a home with 3,700 square feet with an attached two-vehicle garage that complies with setbacks. The applicant has not provided information to show that the proposed addition/expansion of the existing home is necessary to develop the approximately 20,000 square foot lot with development that is commensurate with development on other lots zoned R-16(A) – that being what appears to be a home with 3,700 feet of area with a four-vehicle garage that would not comply with off-street parking regulations.
- In addition the applicant has not substantiated how granting this variance would not be contrary to the public interest. The Sustainable Development and Construction Department Engineering Division Assistant Director recommends denial of this request commenting that the “alley would be vulnerable to obstruction.” The site is located at the entrance of an alley that appears to be an access way of several homes with frontages on Crestmere Drive and Meadowcreek Drive that use the alley way to access their garages off this alley where the enclosed parking spaces on the subject site (if variance were to be granted) would be as close as approximately 15’ from the alley pavement line.

**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:**

July 27, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

September 19, 2012: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<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.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "Alley would be vulnerable to obstruction."

**GENERAL FACTS/STAFF ANALYSIS (side yard variance):**

- This request focuses on constructing and maintaining a garage addition (approximately 500 square feet in area), part of which is proposed to be located in the site's southern 10' side yard setback.
- The subject site is a corner lot with two street frontages of unequal distance. The subject site has two required front yards. The Crestmere Drive frontage is a required front yard because it is the shorter of the two frontages, which is always deemed the front yard on a corner lot of unequal frontage distance in a single family zoning district. The Meadowcreek Drive frontage is a required front yard because the continuity of the established front yard setbacks along this street created by lots to the south fronting this street must be maintained – a front yard that carries across the Meadowcreek Drive side of the site to where it meets Crestmere Drive. Thus, the site has two required front yards two side yards, and no rear yard.
- A site plan has been submitted denoting a portion of the proposed garage addition to be located as close as 4' from the site's southern side property line (or as much as 6' into the 10' side yard setback).
- It appears from the submitted site plan that approximately 1/10 (approximately 50 square feet) of the proposed approximately 500 square foot addition is to be located in the site's southern 10' side yard setback.
- DCAD records indicate that the property at 6506 Crestmere Drive has the following improvements:
  - "main improvement:" a structure built in 1968 with 3,726 square feet of living area, and 3,726 square feet of total area; and
  - "additional improvement:" a 550 square foot attached garage, and pool.
- The subject site is slightly irregular in shape (approximately 120' on the north; approximately 140' on the south; approximately 95' on the east; and approximately 164' on the west) and according to the application, is 0.46 acres (or approximately 20,000 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area. The site is unique from most lots zoned R-16(A) in that it has two required front yards.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations 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 is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.

- The variance would 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 this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure to be located as close as 4’ from the site’s southern side property line (or as much as 6” into this 10’ side yard setback).

**GENERAL FACTS/STAFF ANALYSIS (parking variance):**

- This request focuses on enclosing parking spaces with garage doors in the proposed garage addition to an existing garage with doors that currently face south to a motor court to what is proposed to face east towards the alley where the parking spaces in the expanded existing garage would be located less than the required 20’ distance from the alley right-of-way line.
- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan denotes what appears to be the location of enclosed parking spaces in the proposed addition and modified garage structure ranging from approximately 14’ – 17’ from the side property/alley right-of-way line or approximately 15’ – 18’ from the projected pavement line.
- DCAD records indicate that the property at 6506 Crestmere Drive has the following improvements:
  - “main improvement:” a structure built in 1968 with 3,726 square feet of living area, and 3,726 square feet of total area; and
  - “additional improvement:” a 550square foot attached garage, and pool.
- The subject site is slightly irregular in shape (approximately 120’ on the north; approximately 140’ on the south; approximately 95’ on the east; and approximately 164’ on the west) and according to the application, is 0.46 acres (or approximately 20,000 square feet) in area. The site is zoned R-16(A) where lots are typically 16,000 square feet in area. The site is unique from most lots zoned R-16(A) in that it has two required front yards.
- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Recommends that this be denied” commenting “Alley would be vulnerable to obstruction.”
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 6’ 1” 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 to the parking regulations of 6’ 1” is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed

in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.

- The variance to the parking regulations of 6' 1" requested would 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 this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance request of 6' 1", staff recommends imposing the following conditions:
  1. Compliance with the submitted site plan is required.
  2. Automatic garage doors must be installed and maintained in working order at all times.
  3. At no time may the areas in front of the garage be utilized for parking of vehicles.
  4. All applicable permits must be obtained.

(These conditions are imposed to help assure that the variance will not be contrary to public interest).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

APPEARING IN FAVOR: Keith Redmon, 1614 LongVista, Dallas, TX  
John Pozadzides, 6506 Crestmere Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Nolen**

I move that the Board of Adjustment, in Appeal No. **BDA 112-094** on application of John Pozadzides, represented by Keith Redmon, **deny** the variance to the off-street parking regulations **without prejudice**, 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 not result in unnecessary hardship to this applicant.

**SECONDED: Hounsel**

**AYES:** 3 –, Moore, Hounsel, Nolen,

**NAYS:** 2 –Agnich Schweitzer

**MOTION PASSED:** 3– 2

**MOTION #2: Nolen**

I move that the Board of Adjustment, in Appeal No. **BDA 112-094** on application of John Pozadzides, represented by Keith Redmon, **deny** the variance to the side yard setback regulations **without prejudice**, 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 not result in unnecessary hardship to this applicant.

**SECONDED: Hounsel**

**AYES:** 3 –, Moore, Hounsel, Nolen,

NAYS: 2 –Agnich Schweitzer  
MOTION PASSED: 3– 2

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**FILE NUMBER:** BDA 112-100

**BUILDING OFFICIAL’S REPORT:**

Application of Jonathan Vinson of Jackson Walker for variances to the front yard setback regulations at 330 Bedford Street. This property is more fully described as a building site on Lots 5, 6, 7, & 8 in City Block 7087 and is zoned IR, which requires a front yard setback of 15 feet. The applicant proposes to construct and/or maintain a structure and provide a 0 foot front yard setback, which will require a variance of 15 feet.

**LOCATION:** 330 Bedford Street

**APPLICANT:** Jonathan Vinson of Jackson Walker

**October 16, 2012 Public Hearing Notes:**

- The applicant submitted additional written documentation to the board at the public hearing.

**REQUESTS:**

The following appeals have been made on a site that is currently developed with a nonconforming “existing 1-story metal building 5,058 square foot” structure being redeveloped into a restaurant structure/use (Babb Bros. Bar B Q):

1. a variance to the front yard setback regulations of 15’ in conjunction with completing and maintaining what is represented on the submitted revised site plan as an approximately 600 square foot “covered sidewalk” structure that is located on the site’s Bedford Street front property line or 15’ into this 15’ required front yard setback.
2. a variance to the front yard setback regulations of 5’ in conjunction with completing and maintaining the “covered sidewalk” structure that is located 10’ from the site’s Pastor Street front property line or 5’ into this 15’ front yard setback.
3. a variance to the front yard setback regulations of 9.5’ in conjunction with completing and maintaining what is represented on the submitted revised site plan as a 588 square foot 1-story building (smoker) expansion that is located 5.5’ from the site’s Bedord Street front property line or 9.5’ into this 15’ front yard setback.

**STANDARD 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 for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not 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;
- (B) necessary to permit development of a specific parcel of land that 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 with the same zoning; and
- (C) not 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 with the same zoning.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Although the subject site is slightly irregular in shape with four front yards (typical of any lot in this zoning district with four street frontages), the applicant has not shown that the variance is necessary to permit development of this parcel that differs from other parcels 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 with the same IR (Industrial Research) zoning.
- The applicant has not shown that, owing to special conditions, the literal enforcement of the IR zoning would result in an unnecessary hardship. The site is currently developed with a nonconforming approximately 5,000 square foot structure.
- The applicant has not substantiated that the approximately 600 square foot smoker and the approximately 600 square foot “covered sidewalk” to be located in the site’s front yard setbacks is not a self-created hardship or a request for financial reasons only.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is developed with a non-residential structure. The area to the north is developed as a surface parking lot; the areas to the east and south are developed with residential uses; and the area to the west is developed with warehouse 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:**

August 24, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

September 19, 2012: 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 September 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 5<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.

September 27, 2012: The applicant amended his application and submitted a revised site plan (see Attachment A). The applicant also submitted information for staff review to be considered at the October 2<sup>nd</sup> staff review team meeting.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

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

October 5, 2012: The applicant forwarded additional information beyond what was submitted with the original application, and at the October 2<sup>nd</sup> staff review team meeting (see Attachment B).

**GENERAL FACTS/STAFF ANALYSIS:**

- These requests focus on completing and maintaining additions to an existing nonconforming structure being transitioned to a restaurant use. The additions requiring variances include a “smoker” addition on the west side of the structure that aligns with this structure in the Bedford Street front yard setback, and a “covered sidewalk” addition that aligns with this structure in the Pastor Street front yard setback, and further encroaches beyond that of the nonconforming structure into the Bedford Street front yard setback.
- The subject site is bounded on the north by Bedford Street, on the south by Akron Street, on the west by McPherson Street, and on the east by Pastor Street. The property with four street frontages has four front yard setbacks as any property with four street frontages would that is not zoned agricultural, single family, or duplex.
- Structures on lots with IR zoning must have a minimum 15’ front yard setback. A revised site plan has been submitted (see Attachment A) denoting: 1) an “existing 1-story metal building 5,058 sq. ft” near the center of the site; #2) a “1-story building expansion 588 sq. ft.” on the west side of the existing nonconforming structure, and, #3) what appears to be a 600 square foot “covered sidewalk” structure on the north side of the existing nonconforming structure.
- It appears from the submitted revised site plan that approximately 1/10 (approximately 50 square feet) of the approximately 590 square foot building expansion on the west side of the existing nonconforming structure is located in the Bedford Street front yard setback; that all of the approximately 600 square foot “covered sidewalk” structure is located in the Bedford Street front yard setback; and the approximately 5 percent of the approximately 600 square foot “covered sidewalk” structure is located in the Pastor Street front yard setback
- DCAD shows that the “improvements” at 330 Bedford Street include a 5,000 square foot “storage warehouse” built in 1978. Archive maps in the Department of Sustainable Development show that the property was zoned I-2 before the Zoning Transition of 1989, which required a 0 foot front yard setback.
- The subject site is slightly irregular in shape (300’ on the north, approximately 150’ on the south; 115’ on the east, and approximately 130’ on the west) and according to the application, is 0.483 acres (or approximately 21,000 square feet) in area.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachments A and B).
- The applicant has the burden of proof in establishing the following:
  - That granting the variances to the front yard setback regulations 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same IR zoning classification.
  - The variances would 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 this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same IR zoning classification.

- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structures in the front yard setbacks would be limited to what is shown on this document– which in this case are structures to be located as close as on the Bedford Street front property line (or as much as 15’ into this 15’ front yard setback), and a structure located 10’ from the Pastor Street front property line (or 5’ into this 15’ front yard setback).

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX  
Randall White, 1939 Mayflower Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 112-100** on application of Jonathan Vinson, **grant** the requested **15 foot variance and 5 foot variance** to the front yard setback 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. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

SECONDED: **Nolen**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**MOTION #2: Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 112-100** on application of Jonathan Vinson, **deny the 9.5** foot variance to the front yard setback regulations without prejudice 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 not result in unnecessary hardship to this applicant.

SECONDED: **Agnich**

AYES: 1 –Hounsel

NAYS: 4 - Moore, Schweitzer, Nolen, Agnich

MOTION FAILED: 4-1

**MOTION #3: Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 112-100** on application of Jonathan Vinson, **grant** the requested **9.5** foot variance to the front yard setback 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. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED: Nolen**

**AYES:** 4 – Moore, Schweitzer, Nolen, Agnich

**NAYS:** 1 – Hounsel

**MOTION PASSED:** 4-1

**Break: 2:21P.M.**

**Resumed: 2:28 P.m.**

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**FILE NUMBER:** BDA 101-068

**BUILDING OFFICIAL’S REPORT:**

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1809 Rock Island Street. This property is more fully described as Lot 15 and part of Lot 16 in City Block 73/7342 and is zoned PD-784, which requires that the building official revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

**LOCATION:** 1809 Rock Island Street.

**APPLICANT:** Tommy Mann of Winstead, PC

**October 16, 2012 Public Hearing Notes:**

- The Board Administrator circulated additional documentation submitted by the Assistant City Attorney assisting the Building Official to the board at the briefing (labeled Attachment G).

**REQUEST:**

An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to revoke the existing certificate of occupancy for the property.

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) states that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 784 (Planned Development)  
North: PD 784 (Planned Development)  
South: PD 784 (Planned Development)  
East: PD 784 (Planned Development)  
West: PD 784 (Planned Development)

**Land Use:**

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

**Zoning/BDA History:**

1. BDA 101-069, Property at 1809 Rock Island Street ( the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy. The Board held this application under advisement until October 16, 2012.
2. BDA 101-070, Property at 1803 Rock Island Street ( the property immediately north of the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the

Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy. The Board held this application under advisement until October 16, 2012.

**Timeline:**

- June 3, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 28, 2011: The applicant requested postponement of the application from Panel A's August 16<sup>th</sup> hearing to Panel A's September 20<sup>th</sup> hearing.
- August 11, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 25, 2011: The applicant requested postponement of the application from Panel A's September 20<sup>th</sup> hearing to Panel A's October 18<sup>th</sup> hearing.

- September 26, 2011: The applicant requested postponement of the application from Panel A's October 18<sup>th</sup> hearing to Panel A's November 15<sup>th</sup> hearing.
- October 28, 2011: The applicant requested postponement of the application from Panel A's November 15<sup>th</sup> hearing to Panel A's January 17, 2012 hearing.
- December 17, 2011: The applicant requested postponement of the application from Panel A's January 17, 2012 hearing to Panel A's February 14, 2012 hearing.
- December 20, 2011: Application was postponed indefinitely.
- June 22, 2012: The applicant indicated that he was ready to proceed with this request.
- June 22, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.
- August 3, 2012: The applicant forwarded additional information on this application to staff.
- August 14, 2012: The Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to revoke the existing certificate of occupancy for the property.
- The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:

1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a “summary of issues under consideration” (see Attachment A).
2. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001” (see Attachment C).
3. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of Chapter 52 of the Dallas City Code (see Attachment B).
4. The applicant submitted a document entitled “Linda Henry Testimony’ (see Attachment D).
5. The applicant submitted a document entitled “Olen Ray Long Testimony’ (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14<sup>th</sup> hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

The Board held this application under advisement until October 16, 2012.

August 21, 2012: The Board Administrator wrote the applicant a letter that conveyed the board’s action on this appeal and the October 5<sup>th</sup> deadline to submit any additional information that he would want to be incorporated into the board’s October docket.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The applicant forwarded additional information on this application and BDA 101-069 and BDA 101-070 to staff (see Attachment F).

**GENERAL FACTS/STAFF ANALYSIS:**

- The Building Official’s May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding “Revocation of certificate of occupancy no. 0110101005 (“the CO”) for a petroleum product storage and wholesale use at 1809 Rock Island Street (“the Property”) owned by Buckley Oil Company (“Buckley Oil”) is included in this case report. The letter states among other things that:

- 1) The CO for a petroleum product storage and wholesale use on the Property is hereby revoked and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
  - 2) The building official shall revoke a certificate of occupancy if the building official determines that a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes.
  - 3) The Fire Department has determined that because of the many Dallas Fire and Construction Code violations on the Property (described in this letter), the use or occupancy is being operated in a manner that is of substantial danger of injury or adverse health impact to persons and property.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled "Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas' Exhibits 1 through 43." (A cover memo attached stated that "by copy of this letter, a copy of same is being delivered to counsel of record." In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
  - On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
  - If the Board of Adjustment upholds the Building Official's May 18, 2011 decision, certificate of occupancy # 0110101005 on the property located at 1809 Rock Island Street will remain revoked.
  - If the Board of Adjustment overturns/reverses the Building Official's May 18, 2011 decision, certificate of occupancy # 0110101005 on the property located at 1809 Rock Island Street will be reinstated.

**BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012**

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

MOTION #1: **Hounsel**

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the applicant.

SECONDED: **Schweitzer**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**MOTION #2: Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the city.

**SECONDED: Hounsel**

**AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

**MOTION #3: Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the city.

**SECONDED: Agnich**

**AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

**Break: 2:07 P.M.**

**Resumed: 2:17 P.M.**

**MOTION#4: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-068**, hold this matter under advisement until **October 16, 2012**.

**SECONDED: Agnich**

**AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

**APPEARING IN FAVOR:** Art Anderson, 1201 Elm St., Dallas, TX  
Ohen Long, 410 E Cherrywood, Celina, TX  
Linda Henry, 1809 Rock Island St., Dallas, TX

**APPEARING IN OPPOSITION:** Jacklyn Gilmore, 1551 Baylor St., Dallas, TX  
Little David Session, 320 E. Jefferson, Dallas, TX  
Philip Sikes, 320 E. Jefferson, Dallas, TX

**APPEARING FOR THE CITY:** Andrew Gilbert, 1500 Marilla St., Dallas, TX

**5:11 P.M.: Executive Session Begins**

**5:19 P.M.: Public Hearing Resumes**

**MOTION: Schweitzer**

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 101-068** on application of Tommy Mann and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by this applicant **with prejudice**.

**SECONDED: Hounsel**

**AYES:** 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 101-069

**BUILDING OFFICIAL’S REPORT:**

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1809 Rock Island Street. This property is more fully described as Lot 15 and part of Lot 16 in City Block 73/ 7342 and is zoned PD-784, which requires that the building official deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy would be issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official to deny an application for a certificate of occupancy.

**LOCATION:** 1809 Rock Island Street.

**APPLICANT:** Tommy Mann of Winstead, PC

**October 16, 2012 Public Hearing Notes:**

- The Board Administrator circulated additional documentation submitted by the Assistant City Attorney assisting the Building Official to the board at the briefing (labeled Attachment G).

**REQUEST:**

An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s May 18<sup>th</sup> decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy.

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD 784 (Planned Development)  
North: PD 784 (Planned Development)  
South: PD 784 (Planned Development)  
East: PD 784 (Planned Development)  
West: PD 784 (Planned Development)

### **Land Use:**

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

### **Zoning/BDA History:**

1. BDA 101-068, Property at 1809 Rock Island Street ( the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to ) to revoke the existing certificate of occupancy for the property. The Board held this application under advisement until October 16, 2012.
2. BDA 101-070, Property at 1803 Rock Island Street ( the property immediately north of the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision

(received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy. The Board held this application under advisement until October 16, 2012.

**Timeline:**

- June 3, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- July 28, 2011: The applicant requested postponement of the application from Panel A’s August 16<sup>th</sup> hearing to Panel A’s September 20<sup>th</sup> hearing.
- August 11, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- August 25, 2011: The applicant requested postponement of the application from Panel A’s September 20<sup>th</sup> hearing to Panel A’s October 18<sup>th</sup> hearing.

September 26, 2011: The applicant requested postponement of the application from Panel A's October 18<sup>th</sup> hearing to Panel A's November 15<sup>th</sup> hearing.

October 28, 2011: The applicant requested postponement of the application from Panel A's November 15<sup>th</sup> hearing to Panel A's January 17, 2012 hearing.

December 17, 2011: The applicant requested postponement of the application from Panel A's January 17, 2012 hearing to Panel A's February 14, 2012 hearing.

December 20, 2011: Application was postponed indefinitely.

June 22, 2012: The applicant indicated that he was ready to proceed with this request.

June 22, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.

August 3, 2012: The applicant forwarded additional information on this application to staff.

August 14, 2012: The Board of Adjustment Panel A conducted a hearing to consider an appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18<sup>th</sup> decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy.

The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:

1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a “summary of issues under consideration” (see Attachment A).
2. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001” (see Attachment C).
3. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of the Chapter 52 of the Dallas City Code (see Attachment B).
4. The applicant submitted a document entitled “Linda Henry Testimony’ (see Attachment D).
5. The applicant submitted a document entitled “Olen Ray Long Testimony’ (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14<sup>th</sup> hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

The Board held this application under advisement until October 16, 2012.

August 21, 2012: The Board Administrator wrote the applicant a letter that conveyed the board’s action on this appeal and the October 5<sup>th</sup> deadline to submit any additional information that he would want to be incorporated into the board’s October docket.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The applicant forwarded additional information on this application and BDA 101-068 and BDA 101-069 to staff (see Attachment F).

**GENERAL FACTS/STAFF ANALYSIS:**

- The Building Official’s May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding “Denial of certificate of occupancy application nos. 100802063 and 1008021064 (“the applications”) for a petroleum product storage and wholesale use at 1803 and 1809 Rock Island Street (“the Properties”) owned by Buckley Oil

Company (“Buckley Oil”)” is included in this case report. The letter states among other things that:

1. The applications for the Properties are denied and any use operating on the Properties without a certificate of occupancy is an illegal land use that must immediately cease operating.
  2. The building official is required to deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with code, and that past inspections of the Properties by the Fire Department have revealed many different Fire and Construction Code violations which have not been corrected.
  3. The building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information and that the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented.
  4. The building official shall deny an application for a certificate of occupancy if the building official determines that the applicant does not possess a required city license, permit, or registration to operate the use or occupancy. Past inspections of the Properties by the Fire Department have revealed that Buckley Oil does not possess required city permits.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled “Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas’ Exhibits 1 through 43.” (A cover memo attached stated that “by copy of this letter, a copy of same is being delivered to counsel of record.” In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
  - On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
  - If the Board of Adjustment upholds the Building Official’s May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1809 Rock Island Street will remain denied.
  - If the Board of Adjustment overturns/reverses the Building Official’s May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1809 Rock Island Street will be approved.

**BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012**

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

**MOTION #1: Hounsel**

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the applicant.

**SECONDED: Schweitzer**

**AYES:** 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**MOTION #2: Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the city.

**SECONDED: Hounsel**

**AYES:** 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**MOTION #3: Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the city.

**SECONDED: Agnich**

**AYES:** 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**Break: 2:07 P.M.**

**Resumed: 2:17 P.M.**

**MOTION#4: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-069**, hold this matter under advisement until **October 16, 2012**.

**SECONDED: Agnich**

**AYES:** 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

**APPEARING IN FAVOR:** Art Anderson, 1201 Elm St., Dallas, TX  
Ohen Long, 410 E Cherrywood, Celina, TX

Linda Henry, 1809 Rock Island St., Dallas, TX

APPEARING IN OPPOSITION: Jacklyn Gilmore, 1551 Baylor St., Dallas, TX  
Little David Session, 320 E. Jefferson, Dallas, TX  
Philip Sikes, 320 E. Jefferson, Dallas, TX

APPEARING FOR THE CITY: Andrew Gilbert, 1500 Marilla St., Dallas, TX

**5:11 P.M.: Executive Session Begins**

**5:19 P.M.: Public Hearing Resumes**

MOTION: **Schweitzer**

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 101-069** on application of Tommy Mann and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by this applicant **with prejudice**.

SECONDED: **Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 101-070

**BUILDING OFFICIAL'S REPORT:**

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1803 Rock Island Street. This property is more fully described as part of Lot 16 in City Block 73/7342 and is zoned PD-784, which requires that the building official deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy would be issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official to deny an application for a certificate of occupancy.

LOCATION: 1803 Rock Island Street.

APPLICANT: Tommy Mann of Winstead, PC

**October 16, 2012 Public Hearing Notes:**

- The Board Administrator circulated additional documentation submitted by the Assistant City Attorney assisting the Building Official to the board at the briefing (labeled Attachment G).

**REQUEST:**

An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18<sup>th</sup> decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy.

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) states that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 784 (Planned Development)  
North: PD 784 (Planned Development)  
South: PD 784 (Planned Development)  
East: PD 784 (Planned Development)  
West: PD 784 (Planned Development)

**Land Use:**

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

**Zoning/BDA History:**

1. BDA 101-068, Property at 1809 Rock Island Street ( the property immediately south of the subject site)

On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to revoke the existing certificate of occupancy for the property. The Board held this application under advisement until

October 16, 2012.

2. BDA 101-069, Property at 1809 Rock Island Street ( the property immediately south of the subject site)

On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy. The Board held this application under advisement until October 16, 2012.

**Timeline:**

- June 3, 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.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 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 August 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 28, 2011: The applicant requested postponement of the application from Panel A's August 16<sup>th</sup> hearing to Panel A's September 20<sup>th</sup> hearing.
- August 11, 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

August 25, 2011: The applicant requested postponement of the application from Panel A’s September 20<sup>th</sup> hearing to Panel A’s October 18<sup>th</sup> hearing.

September 26, 2011: The applicant requested postponement of the application from Panel A’s October 18<sup>th</sup> hearing to Panel A’s November 15<sup>th</sup> hearing.

October 28, 2011: The applicant requested postponement of the application from Panel A’s November 15<sup>th</sup> hearing to Panel A’s January 17, 2012 hearing.

December 17, 2011: The applicant requested postponement of the application from Panel A’s January 17, 2012 hearing to Panel A’s February 14, 2012 hearing.

December 20, 2011: Application was postponed indefinitely.

June 22, 2012: The applicant indicated that he was ready to proceed with this request.

June 22, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.

August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.

August 3, 2012: The applicant forwarded additional information on this application to staff.

August 14, 2012: The Board of Adjustment Panel A conducted a hearing to consider an appeal has been made requesting that the Board of Adjustment

reverse/overturn the Building Official's May 18<sup>th</sup> decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy.

The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:

1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a "summary of issues under consideration" (see Attachment A).
2. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001" (see Attachment C).
3. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of the Chapter 52 of the Dallas City Code (see Attachment B).
4. The applicant submitted a document entitled "Linda Henry Testimony" (see Attachment D).
5. The applicant submitted a document entitled "Olen Ray Long Testimony" (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14<sup>th</sup> hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

The Board held this application under advisement until October 16, 2012.

August 21, 2012: The Board Administrator wrote the applicant a letter that conveyed the board's action on this appeal and the October 5<sup>th</sup> deadline to submit any additional information that he would want to be incorporated into the board's October docket.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The applicant forwarded additional information on this application and BDA 101-068 and BDA 101-069 to staff (see Attachment F).

### **GENERAL FACTS/STAFF ANALYSIS:**

- The Building Official's May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding "Denial of certificate of occupancy application nos. 100802063 and 1008021064 ("the applications") for a petroleum product storage and wholesale use at 1803 and 1809 Rock Island Street ("the Properties") owned by Buckley Oil Company ("Buckley Oil")" is included in this case report. The letter states among other things that:
  1. The applications for the Properties are denied and any use operating on the Properties without a certificate of occupancy is an illegal land use that must immediately cease operating.
  2. The building official is required to deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with code, and that past inspections of the Properties by the Fire Department have revealed many different Fire and Construction Code violations which have not been corrected.
  3. The building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information and that the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented.
  4. The building official shall deny an application for a certificate of occupancy if the building official determines that the applicant does not possess a required city license, permit, or registration to operate the use or occupancy. Past inspections of the Properties by the Fire Department have revealed that Buckley Oil does not possess required city permits.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled "Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas' Exhibits 1 through 43." (A cover memo attached stated that "by copy of this letter, a copy of same is being delivered to counsel of record." In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
- On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
- If the Board of Adjustment upholds the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1803 Rock Island Street will remain denied.

- If the Board of Adjustment overturns/reverses the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1803 Rock Island Street will be approved.

**BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012**

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

**MOTION #1: Hounsel**

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the applicant.

**SECONDED: Schweitzer**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**MOTION #2: Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the city.

**SECONDED: Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**MOTION #3: Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the city.

**SECONDED: Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**Break: 2:07 P.M.**

**Resumed: 2:17 P.M.**

**MOTION #4: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 101-070**, hold this matter under advisement until **October 16, 2012**.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: OCTOBER 16, 2012**

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX  
Ohen Long, 410 E Cherrywood, Celina, TX  
Linda Henry, 1809 Rock Island St., Dallas, TX

APPEARING IN OPPOSITION: Jacklyn Gilmore, 1551 Baylor St., Dallas, TX  
Little David Session, 320 E. Jefferson, Dallas, TX  
Philip Sikes, 320 E. Jefferson, Dallas, TX

APPEARING FOR THE CITY: Andrew Gilbert, 1500 Marilla St., Dallas, TX

**5:11 P.M.: Executive Session Begins**

**5:19 P.M.: Public Hearing Resumes**

MOTION: **Schweitzer**

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 101-070** on application of Tommy Mann and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by this applicant **with prejudice**.

SECONDED: **Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Agnich**

I move to adjourn this meeting.

SECONDED: **Hounsel**

AYES: 5– Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

**5:26 P. M.** - Board Meeting adjourned for **October 16, 2012**.

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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.