

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL C
MONDAY, OCTOBER 15, 2007

Briefing: 10:30 A.M. 5ES
Public Hearing: 1:00 P.M. COUNCIL CHAMBERS

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

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

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

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10-15-2007

ZONING BOARD OF ADJUSTMENT, PANEL C
MONDAY, OCTOBER 15, 2007
AGENDA

BRIEFING	5ES	10:30 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS	1:00 P.M.

Donnie Moore, Chief Planner
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

Approval of the Monday, September 17, 2007 Board of Adjustment Public Meeting Minutes	M1
Consideration and adoption of Panel C's 2008 Public Hearing Schedule	M2

UNCONSTESTED CASES

BDA 067-146	7019 Claybrook Drive REQUEST: Application of D & E Architecture/Alan Kelly, represented by D & E Architecture/Jerry Tonn, for a variance to the off-street parking regulations	1
BDA 067-148	1934 Bayside Street REQUEST: Application of Paul Fabian for a variance to the front yard setback regulations	2

REGULAR CASE

BDA 067-144	4954 W. Northwest Highway REQUEST: Application of Robert Reeves for a variance to the floor area ratio regulations	3
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HOLDOVER CASE

BDA 067-101

4411 S. Lancaster Road

4

REQUEST: Application of Michael Davis and Dwaine Carraway to require compliance of a nonconforming use

EXECUTIVE SESSION NOTICE

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

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

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C September 17, 2007 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

To approve the Board of Adjustment Panel C's 2008 Public Hearing Schedule (see Attachment A for proposed schedule).

FILE NUMBER: BDA 067-146

BUILDING OFFICIAL'S REPORT:

Application of D & E Architecture/Alan Kelly, represented by D & E Architecture/Jerry Tonn, for a variance to the off-street parking regulations at 7019 Claybrook Drive. This property is more fully described as Lot 42C in City Block A/8130 and is zoned R-7.5(A) which requires 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 an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a structure and provide an enclosed parking space with a setback of 9 feet which will require a variance of 11 feet.

LOCATION: 7019 Claybrook Drive

APPLICANT: D & E Architecture/Alan Kelly
Represented by D & E Architecture/Jerry Tonn

REQUEST:

- A variance to the off-street parking regulations of up to 11' is requested in conjunction with constructing and maintaining enclosed parking spaces in a two vehicle garage extension/addition that would attach to an existing single family home. The enclosed parking spaces in the proposed garage would be located less than the required 20' distance they must be from an alley right-of-way line.

STAFF RECOMMENDATION:

- Approval, subject to the following conditions:
 1. Compliance with the submitted revised site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area in front of the garage be utilized for parking of vehicles.
 4. All applicable permits must be obtained.

Rationale:

- The Development Services Senior Engineer supports the request noting that the proposed garage addition will be located on a short and angled alley that should allow approaching vehicles sufficient time to see a vehicle parked in front of the eastern half of the proposed garage.
- The irregular shape of the subject site precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification – in this case with, according to information submitted by the applicant, a single family home/garage that would be

about 3,500 square feet in area - close to the 3,200 square foot average of the site and 12 other homes/garages in the 7100 block of Claybrook Avenue. It appears that if the site were more typical (or rectangular) in shape, no variance would be required for the proposed garage addition.

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

GENERAL FACTS:

- The Dallas Development Code requires 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 an enclosed structure and if the space faces upon or can be entered directly from the street or alley.
Submitted site plans (a floor plan and a site plan) and an elevation show proposed enclosed parking spaces in a new addition that would be located as close as 9' from the alley right of way line (or as much as 11' into the 20' setback/distance that an enclosed parking space is required to be from an alley right-of-way line).
- The submitted floor plan shows that the existing attached garage on the house is planned to be transitioned to a utility room whereby the new garage addition would be located closer to the site's rear property line and alley right-of-way line. The proposed enclosed parking spaces in the new addition would be located as close as 9' from the alley right of way line.
- The site is sloped, irregular in shape (according to the submitted plat, approximately 99' on the north, 70' on the south, 125' on the east, and 195' on the west), and approximately 9,400 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet.
- According to DCAD records, the property is developed with the following:
 - a single family home in "very good" condition built in 1979 with 2,637 square feet of living area;
 - a pool; and
 - a 440 square foot attached garage.

- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included a table detailing property/improvement information of the site and 12 other sites in the 7100 block of Claybrook Drive, and a revised site plan, floor plan, and elevation that merely expanded the width of the garage from what was originally proposed/submitted from 20' to 21'.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>North:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>South:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>East:</u>	R-7.5(A) (Single Family Residential 7,500 square feet)
<u>West:</u>	R-7.5(A) (Single Family Residential 7,500 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:

- August 24, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Sept. 20, 2007: The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the September 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of

Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and

- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 27, 2007 The applicant submitted additional information to the Board Administrator (see Attachment A).

Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

Oct. 3, 2007 The Development Services Senior Engineer forwarded a review comment sheet marked “Has no objections.” The engineer made the following comments:

- “Site visit on 10/2/07. Six residences have frontage along the alley. The alley is short and angled which should allow approaching vehicles sufficient time to see a vehicle parked in front of the eastern half of the proposed garage; however, site plan shows 9 feet distance to the edge of pavement of alley; therefore it is unlikely that homeowner(s) will park here.”

Oct. 5, 2007 The applicant submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- This request is made to allow the applicant the ability to enclose parking spaces in a proposed garage extension/addition that would face/access to an alley. The proposed extension/addition complies with all development standards with the exception of the 20’ spacing/distance requirement that is required to be provided between an enclosed parking space and an alley right of way line. As a result, the proposed extension/addition could be constructed and maintained on the site as shown on the submitted site plan *without* a garage door (on enclosed parking spaces) if this request were denied.
- The site plan shows that roughly half of the proposed garage/enclosed parking spaces would be in compliance with the parking regulations while the other half would not.
- The Development Services Senior Engineer has submitted a review comment sheet marked “Has no objections.” The engineer has commented that the alley is short and angled which should allow approaching vehicles sufficient time to see a vehicle parked in front of the eastern half of the proposed garage; however, since the site

plan shows a 9 foot distance to the edge of pavement of alley, it is unlikely that the homeowner(s) will park there.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of up to 11' to construct and maintain a garage structure addition with enclosed parking spaces as close as 9' away from an alley right of way line 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 up to 11' requested to construct and maintain a garage structure addition with enclosed parking spaces as close as 9' away from an alley right of way line 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-7.5(A) zoning classification.
- Typically, when the Board has found that this type of variance request is warranted, they have imposed the following conditions:
 1. Compliance with the submitted site plan is required.
 2. An automatic garage door must be installed and maintained in working order at all times.
 3. At no time may the area 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.
- If the Board were to grant the variance request of 11', imposing a condition whereby the applicant must comply with the submitted revised site plan, the garage structure extension/addition could be constructed and maintained as shown on the site plan with a garage door or enclosed parking spaces that is as close as 9' away from the alley right of way line (or as much as 11' into the 20' setback/distance requirement).

FILE NUMBER: BDA 067-148

BUILDING OFFICIAL'S REPORT:

Application of Paul Fabian for a variance to the front yard setback regulations at 1934 Bayside Street. This property is more fully described as Lot 1 in City Block R/7123 and is zoned R-5(A) which requires a front yard setback of 20 feet. The applicant proposes to construct a single family residential structure and provide a 5 foot front yard setback which will require a variance of 15 feet.

LOCATION: 1934 Bayside Street

APPLICANT: Paul Fabian

REQUEST:

- A variance to the front yard setback regulations of 15' is requested in conjunction with constructing and maintaining a single family home in the site's Darien Street 20' front yard setback on a site that is undeveloped.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in that it has two 20' front yard setbacks (one along Bayside Street, another along Darien Street). The two front yard setbacks leave only 25' of developable space left on the 50' wide site once a 20' front yard setback is accounted for on the west side of the site, and a 5' side yard setback is accounted for on the east side of the site. This feature of the site precludes it from being developed in a manner commensurate (in this case, a house with an approximately 1,800 square foot building footprint) with the development upon other parcels of land in districts with the same R-5(A) zoning classification.

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 ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of

land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

GENERAL FACTS:

- Structures on lots zoned R-5(A) are required to provide a minimum front yard setback of 20'. The site is located at the southeast corner of Bayside Street and Darien Street and has two front yard setbacks: one along Bayside Street (the shorter of the lot's two frontages), and the other along Darien Street (the longer of the two frontages but a front yard setback nonetheless in order to maintain continuity of the established setback of lots directly south that front westward on Darien Street). A scaled site/floor plan has been submitted that shows that the home is proposed to be located 5' from the site's Darien Street front property line (or 15' into the 20' front yard setback).
- According to calculations taken from the site plan by the Board Administrator, the proposed home has an approximately 1,800 square foot building footprint of which approximately 675 square foot (or 45' x 15') of the home is located in the site's Darien Street 20' front yard setback
- The site is flat, rectangular in shape (138' x 50') and 6,900 square feet in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area. The site has two 20' front yard setbacks. (No encroachment is shown or requested to be located in the site's Bayside Street 20' front yard setback).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-5 (A) (Single family district 5,000 square feet)
<u>North:</u>	R-5 (A) (Single family district 5,000 square feet)
<u>South:</u>	R-5 (A) (Single family district 5,000 square feet)
<u>East:</u>	R-5 (A) (Single family district 5,000 square feet)
<u>West:</u>	R-5 (A) (Single family district 5,000 square feet)

Land Use:

The subject site is undeveloped. The areas to the north and east are developed with single family uses; the area to the south is vacant; and the area to the west is developed with a school (Carr Elementary School).

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 29, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

Sept. 20, 2007: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the September 28th deadline to submit additional evidence for staff to factor into their analysis;
- the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection 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.

Oct. 3 2007 The Building Inspection Development Code Specialist forwarded a revised application to the Board Administrator (see Attachment A).

STAFF ANALYSIS:

- This variance is requested to construct/maintain a single family home (with an approximately 1,800 square foot building footprint) in one of the site's two 20' front

yard setbacks. (One front yard setback is along Bayside Street - the shorter of the lot's two frontages, and the other front yard setback is along Darien Street - the longer of the two frontages that would normally be deemed a side yard if it were not for two lots immediately south of the site that front westward on Darien Street and whose front yard setbacks must be maintained along the entire block face including the subject site).

- The submitted site plan indicates that over 1/3 of the proposed single family structure's 1,800 square foot building footprint is to be located in the site's Darien Street 20' front yard setback.
- The proposed single family structure is to be located 5' from the site's Darien Street front property line – a structure that would comply with the zoning district's required side yard setback regulations.
- The site is flat, rectangular in shape (138' x 50') and 6,900 square feet in area. The site is zoned R-5(A) where lots are typically 5,000 square feet in area. The site has two 20' front yard setbacks. (No encroachment is shown or requested to be located in the site's Bayside Street 20' front yard setback).
- Once a 20' front yard setback is accounted for on the west and a 5' side yard setback is accounted for on the east, the developable width remaining on the 50' wide site is 25'.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations of 15' requested in conjunction with constructing/maintaining a single family home in the site's Darien Street front yard setback 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 (a site that is undeveloped, and flat, rectangular in shape (138' x 50') and 6,900 square feet in area) 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-5(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 R-5(A) zoning classification.
- If the Board were to grant the front yard variance request of 15', imposing a condition whereby the applicant must comply with the submitted site/floor plan, the structure in the front yard setback would be limited to that shown on this plan – which in this case is a single family structure located 5' from the site's Darien Street front property line (or 15' into one of the site's two 20' front yard setbacks).

FILE NUMBER: BDA 067-144

BUILDING OFFICIAL'S REPORT:

Application of Robert Reeves for a variance to the floor area ratio regulations at 4954 W. Northwest Highway. This property is more fully described as a 6.18 acre tract of land in City Block 5/5578 and is zoned R-1ac(A) which requires that an accessory structure floor area may not exceed 25% of the floor area of the main structure. The applicant proposes to construct and maintain an accessory structure with 11,979 square feet of floor area (69% of the 17,350 square foot floor area of the single family residential main structure), which will require a variance of 7,641.5 square feet.

LOCATION: 4954 W. Northwest Highway

APPLICANT: Robert Reeves

REQUEST:

- A variance to the FAR (Floor Area Ratio) regulations of 7,641.5 square feet is requested in conjunction with constructing/maintaining an approximately 3,102 square foot expansion to an existing approximately 8,900 square foot tennis center accessory structure on a site being developed with an approximately 17,000 square foot single family home.

STAFF RECOMMENDATION:

Denial

Rationale:

- Although staff concluded that granting the variance does not appear to be contrary to the public interest since the request focuses on a relatively modest expansion to an existing nonconforming accessory structure that would be more architecturally compatible with the main structure on the site that is under construction, neither the topography, the shape, or size of the 6 acre site precludes it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification. Although the applicant contends that the variance is directly related to topography and lot area of the site, these features do not constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classifications while simultaneously complying with development code standards including FAR regulations.

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

GENERAL FACTS:

- The Dallas Development Code states that the floor area of any individual accessory structures on a lot, excluding floor area used for parking, may not exceed 25 percent of the floor area of the main building.
The Building Official's Report and a submitted revised site plan state that the accessory structure (after expansion) will have 11,979 square feet of floor area, and that the main structure has 17,350 square feet of floor area. The 11,979 square foot expanded accessory structure will be 69 percent of the floor area of the 17,350 square foot house being constructed on the site.
- The site is sloped, generally rectangular in shape and, according to the application, 6.18 acres in area. The site is zoned R-1ac(A) where lots are typically 1 acre in size.
- DCAD records indicate that the site is developed with a tennis court and a 9,036 square foot "outbuilding."
- The applicant submitted information beyond what was submitted with the original application (see Attachments A and B). This information included the following:
 - a document that provided additional details about the request;
 - a plot plan/contour map of the site;
 - an aerial of the site;
 - a property survey;
 - a site plan;
 - a lot coverage analysis table;
 - perspective drawings of the expanded/remodeled accessory structure and the single family home being constructed on the site;
 - elevations of the proposed expanded accessory structure; and
 - a revised site plan.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac (A) (Single family district 1 acre)

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

Land Use:

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

Zoning/BDA History:

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 17, 2007: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 20, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Sept. 20, 2007: The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the September 28th deadline to submit additional evidence for staff to factor into their analysis;
 - the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- Sept. 29 & Oct. 3, 2007 The applicant submitted additional information to the Board Administrator (see Attachments A and B).
- Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October

public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection 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.

STAFF ANALYSIS:

- This variance request focuses on expanding an existing nonconforming accessory structure – an accessory structure built in 1973 before amendments were made to the Dallas Development Code in 2005 requiring floor area of any individual accessory structures on a lot (excluding floor area used for parking) to not exceed 25 percent of the floor area of the main building on a site.
- The existing approximately 9,000 square foot accessory structure *without* the proposed addition does not comply with the current accessory structure regulations since it accounts for approximately 53 percent of the approximately 17,000 square foot main structure under construction on the site (or about 28 percent larger than the 25 percent allowed with the relatively new accessory structure code amendment of 2005). The existing structure without any expansion however would not require a variance given its nonconforming structure status.
- In this particular case, the applicant proposes to add about 3,000 square feet to the existing approximately 9,000 square foot tennis center accessory structure whereby the main structure under construction on the site would be about 17,000 square feet in area. As a result, if the tennis center accessory structure addition were allowed by the approval of this variance request, the expanded roughly 12,000 square foot accessory structure would account for approximately 70 percent of the main structure rather than 25 percent allowed by code. (The current provisions in the code would allow a new accessory structure no larger than 4,250 square feet in area with an approximately 17,000 square foot main structure on the site).
- The site is sloped, generally rectangular in shape and, according to the application, 6.18 acres in area. The site is zoned R-1ac(A) where lots are typically 1 acre in size.
- According to DCAD records is developed with a tennis court and a 9,036 square foot “outbuilding.”
- The applicant has the burden of proof in establishing the following related to the variance request:
 - That granting the variance to the FAR regulations of 7,641.5 square feet requested in conjunction with adding/maintaining about a 3,000 square foot addition to an approximately 9,000 square foot accessory 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 (a site that is according to DCAD developed with tennis court and approximately 9,000 square foot outbuilding, and is sloped, generally rectangular in shape and, according to the application, 6.18 acres in area) 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-1ac(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 R-1ac(A) zoning classification.
- If the Board were to grant the FAR variance request of 7,641.5 square feet, imposing a condition whereby the applicant must comply with the submitted revised site plan, the floor areas of the accessory and main structures would be restricted to the sizes and locations of what is shown on this plan (which in this case, is an expanded accessory structure that is approximately 45 percent larger in terms of floor area than the 25 percent floor area permitted by right).

FILE NUMBER: BDA 067-101

BUILDING OFFICIAL'S REPORT:

Application of Michael Davis and Dwaine Caraway to require compliance of a nonconforming use at 4411 S. Lancaster Road. This property is more fully described as Lot 8 in City Block 30/4328 and is zoned CR which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a nonconforming hotel or motel use.

LOCATION: 4411 S. Lancaster Road

APPLICANT: Michael Davis and Dwaine Carraway

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming motel use (The Southern Comfort Motel) on the subject site.

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

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
 - (iii) The manner in which the use is being conducted.
 - (iv) The hours of operation of the use.
 - (v) The extent to which continued operation of the use may threaten public health or safety.
 - (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
 - (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
 - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate that the motel use on the subject site became nonconforming on September 30, 1987 (Ordinance No. 19700).
- The Dallas Development Code states that “nonconforming use” means “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.”
- The subject site is zoned CR (Community Retail) that permits a “hotel or motel” use by SUP (Specific Use Permit) only.
- The Dallas Development Code establishes the following provisions for “hotel or motel” use in Section 51A-4.205 (1):
 - “Hotel or motel.”
 - (A) Definition: A facility containing six or more guest rooms that are rented to occupants on a daily basis.
 - (B) Districts permitted:
 - (i) Except as otherwise provided in Subparagraphs (B)(iii) or (B)(iv), by right in MO(A), GO(A), RR, CS, LI, IR, IM, central area, MU-1, MU-1(SAH), MU-2, Mu-2(SAH), MU-3, MU-3(SAH) and multiple commercial districts.
 - (ii) By SUP only in the CR district.
 - (iii) By SUP only for a hotel or motel use that has 60 or fewer guest rooms.
 - (iv) If an SUP is not required, RAR required in MO(A), GO(A), RR, CS, LI, IR, IM, MU-1, MU-1(SAH), MU-2, MU-2(SAH), MU-3, MU-3(SAH), and multiple commercial districts.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP (Specific Use Permit) from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site’s existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- On August 3, 2007, the owner of the motel submitted information to the Board Administrator on this application (see Attachment A). This information included the following:
 - photographs of the property and surrounding area;
 - a letter from the owner of the motel that explains additional details about the request;
 - two years of police calls; and
 - support letters from neighbors.
- On August 3, 2007, the applicants submitted additional information to the Board Administrator (see Attachment B). This information included an amended application.
- The Board of Adjustment conducted a public hearing on this matter on August 13, 2007. The purpose of this public hearing was to determine whether continued operation of the nonconforming motel use will have an adverse effect on nearby properties. The applicant submitted additional written information to the board at the

public hearing. This information was a document entitled “Part 1 Crime and Calls for Police for Southern Comfort Thru July 22, 2007” (see Attachment C).

- The Board of Adjustment determined at their August 13th hearing, that based on the evidence and testimony presented to them, that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date October 15, 2007 for the purpose of establishing a compliance date for this nonconforming use.
- All information submitted by the applicant and owner of the motel (including but not limited to previous attachments entitled “Attachment A,” “Attachment B,” and Attachment C”) related to whether continued operation of the nonconforming motel use would have an adverse effect on nearby properties has been retained in the case file and is available for review upon request.
- On August 14, 2007, a subpoena duces tecum and interrogatories were sent to the owner of the nonconforming motel use.
- On September 14, 2007, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories, as well as a document entitled “A Complete Self-Contained Appraisal Report Of The 25 Room Southern Comfort Inn Located at 4411 South Lancaster Road, Dallas, Dallas County, Texas 75216-7107” (see Attachment D). The owner has stated among other things in his answers that “In order to recoup the investment, there is still \$125,000 left to recoup. It will still need to be in operation for 5.5 years to recoup.”
- On October 5, 2007, information was submitted to the Board Administrator from a certified public accounting firm engaged to assist the City of Dallas in determining an amortization date for the nonconforming use on the subject site (see Attachment E). This information included materials including a table entitled “Estimated Date of Full Amortization of Building” on the subject site; and documentation stating among other things how the current owner of the property purchased the property after September 30, 1987, and how (based on methodology included in the documentation) it is in their opinion that the building on the site has been “fully amortized.”

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: CR (Community Retail)
South: CR (Community Retail)
East: R-7.5(A) (SUP 173) (Single family district, Specific Use Permit for Temporary Water Pump)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The site is currently developed with a motel use (The Southern Comfort Motel). The area to the north is developed with a motel (The Sunset Motel); the area to the east is developed with a hospital use (The Veterans Hospital); the area to the south is

developed with a commercial use; and the area to the west is developed with undeveloped land and single family uses.

Zoning/BDA History:

- | | |
|--|---|
| 1. BDA 92T-015, 4343 S. Lancaster Road (the lot immediately north of the subject site) | On April 28, 1992, the Board of Adjustment provided a termination date of October 31, 1992 for the nonconforming motel being operated on the site. Records show that this decision was appealed to District Court. |
| 2. BDA 067-066, 4343 S. Lancaster Road (the lot immediately north of the subject site) | On May 14, 2007, the Board of Adjustment Panel C found that continued operation of the nonconforming use on the site would have an adverse effect on nearby properties, and set a hearing date of August 13, 2007 for the purpose of establishing a compliance date for this nonconforming use. |

Timeline:

- March 15, 2007: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 17, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 17, 2007: The Board Administrator wrote/sent the owner of the site (Jalian Investments, Inc.) a letter (with a copy to the applicants) that informed them that a Board of Adjustment case had been filed against their property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
 - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
 - a copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102(90));
 - a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “hotel or motel” use (Section 51A-4.205(1));
 - a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704);

- a copy of the section of the Dallas Development Code that provides provisions regarding the Board of Adjustment hearing procedures (51A-4.703);
- a copy of the City of Dallas Board of Adjustment Working Rules of Procedure; and
- A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

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

- July 30, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Acting Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- August 3, 2007 The owner of the motel on the site submitted information on this application (see Attachment A).
- August 3, 2007 The applicants submitted additional information on this application (see Attachment B).
- August 13, 2007: The Board of Adjustment conducted a public hearing on this appeal. The applicant submitted additional written documentation at this hearing (see Attachment C). The board determined based on the evidence and testimony presented to them at the public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby properties, and set a hearing date October 15, 2007 for the purpose of establishing a compliance date for this nonconforming use.
- August 14, 2007: A subpoena duces tecum and interrogatories were sent to the owner of nonconforming use on the subject site.
- Sept. 14, 2007: The owner of the nonconforming use on the subject site submitted answers and responses to the subpoena duces tecum and interrogatories, as well as a document entitled "A Complete Self-Contained Appraisal Report Of The 25 Room Southern Comfort Inn Located at 4411 South Lancaster Road, Dallas, Dallas County, Texas 75216-7107" (see Attachment D).
- Oct. 1, 2007: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October

public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection 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.

Oct. 5, 2007: A document was submitted to the Board Administrator prepared by a public accounting firm engaged by the City of Dallas to assist in determining an amortization date for the nonconforming use on the subject site (see Attachment E).

STAFF ANALYSIS:

- The motel use on the subject site is a nonconforming use. According to city records, the motel use became a nonconforming use on September 30, 1987 when the City Council passed Ordinance No. 19700.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The owner of the site could eliminate the nonconforming use status of the existing motel use by obtaining an SUP from City Council.
- The owner of the site could transition the use of the site from motel use to any use that is permitted by right in the site's existing CR (Community Retail) zoning classification. Uses permitted by right in this zoning district include a number of commercial and business service uses; institutional and community service uses; office uses; recreation uses; retail and personal service uses; transportation uses; and utility and public service uses.
- On August 13, 2007, the Board of Adjustment determined at their public hearing that continued operation of the nonconforming motel use would have an adverse effect on nearby property, and set a hearing date of October 15, 2007 for the purpose of establishing a compliance date for this nonconforming use.
- The purpose of the Board of Adjustment's October 15th public hearing is to establish a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period. (The Dallas Development Code states that for purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use).
- The Dallas Development Code states that the following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

- Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
- Any return on investment since inception of the use, including net income and depreciation.
- The anticipated annual recovery of investment, including net income and depreciation.
- The Dallas Development Code additionally states that if the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- On September 14, 2007, the owner of the nonconforming motel use submitted a response to the subpoena duces tecum and interrogatories as well as a document entitled "A Complete Self-Contained Appraisal Report Of The 25 Room Southern Comfort Inn Located at 4411 South Lancaster Road, Dallas, Dallas County, Texas 75216-7107" (see Attachment D). The owner has stated among other things in his answers that "In order to recoup the investment, there is still \$125,000 left to recoup. It will still need to be in operation for 5.5 years to recoup."
- On October 5, 2007, information was submitted to the Board Administrator from a certified public accounting firm engaged to assist the City of Dallas in determining an amortization date for the nonconforming use on the subject site (see Attachment E). This information included materials including a table entitled "Estimated Date of Full Amortization of Building" on the subject site; and documentation stating among other things how the current owner of the property purchased the property after September 30, 1987, and how (based on methodology included in the documentation) it is in their opinion that the building on the site has been "fully amortized."

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2007

APPEARING IN FAVOR:

Dwayne Caraway, 1934 Argyle, Dallas, TX
 Michael Davis, 1934 Argyle, Dallas, TX
 Bishop Larry McGriff, Lancaster Rd, Dallas, TX
 Beverly Mitchell Brooks, 4315 S. Lancaster, Dallas, TX
 Anthony Green, 4343 Bonnie View, Dallas, TX
 Claudia Fowler, 4531 Solar Lane, Dallas, TX
 Bobby McGee, 2254 Stovall Dr., Dallas, TX

APPEARING IN OPPOSITION:

Frank Hernandez, 7161 Wayne St., Dallas, TX
 Piyush Patel 4403 S Lancaster, Dallas, TX
 Al Lipscomb, 830 Clearwood, Dallas, TX
 Mel Jackson, 3714 S Marsalis, Dallas, TX
 Aaron Shaw, 4338 Lashir, Dallas, TX
 Kishori Patel, 4403 S Lancaster, Dallas, TX
 Sean Craig, 4703 S Lancaster, Dallas, TX

MOTION: Moore

I move that the Board of Adjustment in Appeal No. **BDA 067-101**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, and set a hearing date of **October 15, 2007** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: **Boyd**

AYES: 5– Madrigal, Boyd, Moore, Maten, Jefferson

NAYS: 0–

MOTION PASSED: 5-0(unanimously)