

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, MARCH 17, 2008**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Joel Maten, regular member, Marc Bateman, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: Elizabeth Wahlquist, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Joel Maten, regular member, Marc Bateman, alternate member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: Elizabeth Wahlquist, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

10:30 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 17, 2008** docket.

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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C February 11, 2008 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2008

MOTION: Bateman

I move **approval** of the Monday, **February 11, 2008** public hearing minutes.

SECONDED: Maten

AYES: 5–Boyd, Maten, Moore, Bateman, Gaspard

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA078-031

REQUEST: To reimburse the \$900.00 filing fee submitted in conjunction with a request to appeal the decision of an administrative official.

LOCATION: 1004 N. Oak Cliff Boulevard

APPLICANT: Scott Chase

March 17, 2008 Public Hearing Notes:

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

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive/reimburse the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

GENERAL FACTS:

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
 - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
 - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board’s miscellaneous docket for predetermination.
 - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
 - In making this determination, the board may require the production of financial documents.

Timeline:

- Jan. 11, 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 7, 2008: The applicant submitted additional information to the Board Administrator which in this case included a letter requesting that the board reimburse the submitted filing fee (see Attachment A).
- March 7, 2008: The Board Administrator emailed the applicant the criteria/standard that the board will use in their decision to approve or deny the fee reimbursement request.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2008

APPEARING IN FAVOR: Scott Chase, 1008 N. Oak Cliff, Dallas, TX

APPEARING IN OPPOSITION: Neal Ford, 1004 N Oak Cliff, Dallas, TX

MOTION: **Gaspard**

I move to reimburse the filing fee submitted in conjunction with the appeal to overturn/reverse the decision of the administrative official.

SECONDED: **No one**

AYES:

NAYS:

MOTION FAILED: **Motion failed for lack of a second and is therefore deemed denied.**

FILE NUMBER: BDA 078-032(K)

BUILDING OFFICIAL’S REPORT:

Application of CKS Packaging, Inc. represented by Bill Marsh for a special exception to the parking regulations at 2818 Merrell Road. This property is more fully described as Lot 1 in City Block D/6460 and is zoned IR, which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential industrial (inside) use and provide 124 of the required 149 parking spaces, which will require a special exception of 25 spaces (17% reduction).

LOCATION: 2818 Merrell Road

APPLICANT: CKS Packaging, Inc.
Represented by Bill Marsh

REQUEST:

- A special exception to the off-street parking regulations of 25 parking spaces (or 17% of the required off-street parking) is requested in conjunction with constructing and maintaining nonresidential industrial (inside) use and provide 124 of the required 149 parking spaces.

STAFF RECOMMENDATION:

Approval

Rationale:

- The Development Services Senior Engineer has no objection.
- The applicant has substantiated how the parking demand generated by the use does not warrant the number of off-street parking spaces required, and that the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial

amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirements:
 - Office: One space per 600 square feet of floor area. If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to code.

The application and Building Official's Report state that 124 (or 83 percent) of the required 149 spaces will be provided in conjunction with the proposed industrial (inside) use.

BACKGROUND INFORMATION:

Zoning:

Site: IR
North: IR
South: IR
East: IR
West: CS

Land Use:

The subject site is developed with an industrial structure. The areas to the west are developed with commercial and industrial uses. The areas to the north, east, and south are developed with industrial uses.

Zoning/BDA History:

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

Timeline:

January 23, 2008: The applicant submitted an "Application to the Board of Adjustment" and related documents which have been included as part of this case report.

February 13, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 14, 2008: The Board of Adjustment Senior Planner contacted the applicant's representative and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria or standard that the board will use in their decision to approve or deny the request;
- the March 3rd deadline to submit additional evidence for staff to factor into their analysis;
- the March 7th 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

February 21, 2008: The applicant submitted a letter of explanation to the Board of Adjustment Senior Planner (see attachment).

February 28, 2008: The applicant submitted a “Parking Analysis” to the City Engineer for review (see attachment)

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

March 7, 2008: The City’s Engineer submitted a review comment sheet stating “Has no objections based on the parking analysis and site plan submitted 2/28/08.”

STAFF ANALYSIS:

- The applicant proposes to provide 124 of the 149 parking spaces required for industrial (inside) use.
- According to the applicant, the number of employees on the facility at any given time does not warrant the required number of parking spaces.
- Granting this request, subject to the conditions that the special exception of 25 spaces automatically and immediately terminates if and when the “industrial (inside)” use is changed or discontinued, would allow the development of the proposed structure with this specific use.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the “industrial (inside)” use does not warrant the number of off-street parking spaces required, and
 - The special exception of 25 spaces (or 17 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- The Development Services Senior Engineer has indicated that he has no objections to this request.

BOARD OF ADJUSTMENT ACTION: **MARCH 17, 2008**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Bateman**

I move that the Board of Adjustment grant application **BDA 078-032** 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.

- The special exception shall automatically and immediately terminate if and when the industrial (inside) use on the site is changed or discontinued.

SECONDED: Maten

AYES: 5–Boyd, Maten, Moore, Bateman, Gaspard

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-035(K)

BUILDING OFFICIAL’S REPORT:

Application of Doug Vanesko for a special exception to the fence height regulations at 12464 Breckenridge Drive. This property is more fully described as Lot 9 in City Block A/7463 and is zoned R-1/2ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 7 foot fence in a front yard setback, which will require a 3 foot special exception.

LOCATION: 12464 Breckenridge Drive

APPLICANT: Doug Vanesko

REQUEST:

A special exception to the fence height regulations of 3’ is requested in conjunction with constructing and maintaining a solid fence in the site’s 40’ front yard setback.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

February 14, 2008: The Board of Adjustment Senior Planner contacted the applicant's representative and shared the following information via telephone and letter:

- the public hearing date and panel that will consider the application;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
- the March 3rd deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the March 7, 2008 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 recently adopted 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 February public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- A scaled site has been submitted that documents the location of the proposed solid wall, fence, columns, and gates relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the limestone veneer wall to be 7' in height, the columns and stone caps to be 7' in height, and three operable gates 6'6" in height.
- The property faces a City of Dallas park, therefore no homes have frontage to the site.
- A site visit by the Senior Planner reveals there are no other fences along Breckenridge.

- The scaled site plan details the following information regarding the placement and dimensions of the fence.
 - The fence sits 20' back from the front property line and runs 80'4" along the front of the property.
 - The material indicated on the elevation include:
 - Limestone veneer wall
 - powder coated steel fence with welded wire panels
 - powder coated steel pedestrian gate
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, wall, columns, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 7' with conditions imposed that the applicant complies with the submitted site plan, and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2008

APPEARING IN FAVOR: Doug Vanesko, 6807 Meadow Rd., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Moore**

I move that the Board of Adjustment in Appeal No. **BDA 078-035**, hold this matter under advisement until **April 14, 2008**.

SECONDED: **Gaspard**

AYES: 5–Boyd, Maten, Moore, Bateman, Gaspard

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-031

BUILDING OFFICIAL’S REPORT:

Application of Scott Chase to appeal the decision of the administrative official at 1004 N. Oak Cliff Boulevard. This property is more fully described as Lot 10 in City Block 5/4610 and is zoned R-7.5(A) which requires a minimum 5 foot side yard setback for an accessory structure when located in the rear 30% of a lot and exceeding 15 feet in height. The applicant proposes to appeal the decision of the administrative official in the issuance of a building permit inspection approval (green tag).

LOCATION: 1004 N. Oak Cliff Boulevard

APPLICANT: Scott Chase

March 17, 2008 Public Hearing Notes:

- The applicant submitted additional printed documentation to the board at the public hearing. The owner of the site submitted an additional photograph to the board at the public hearing.

REQUEST:

- An application has been made requesting that the Building Official's January 9, 2008 "green tag" for Building Permit # 0701221084 (a green tag that was issued for a three-car garage with 2nd floor structure on property immediately adjacent to the applicant's property) be reversed/overtaken.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- The Building Official's Report states that the lot is zoned R-7.5(A) which requires a minimum 5' side yard setback for an accessory structure when located in the rear 30% of the lot and exceeds 15 feet in height.
- The applicant who owns property located at 1008 N. Oak Cliff Boulevard is appealing a "green tag" issued by the Building Official on January 9, 2008 for a three-car garage with 2nd floor structure constructed on a site immediately adjacent at 1004 N. Oak Cliff Boulevard.
- The applicant alleges that the January 9th "green tag" for the two-story accessory structure on the property immediately adjacent to him was issued by Building Inspection in error due to the adjacent neighbor's erroneous survey, and that the three car garage with 2nd floor structure is over 15' in height and is located inside the minimum 5' side yard setback.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - color copies of originally submitted documents;
 - supplemental information to be added to the appeal;
 - a letter requesting reimbursement of the \$900 filing fee submitted in conjunction with the appeal.
- The owner of the subject site submitted information (see Attachment B). This information included the following:
 - a statement/account of events that pertain to the complaint in question;
 - a copy of "First Copy of Survey;"
 - a copy of "Second Copy of Survey;"

- photos of the accessory structure on the site; and
- an “appendix” that includes direct responses to the applicant’s accusations.

BACKGROUND INFORMATION:

Zoning:

- Site: R-7.5 (A) (Single family district 7,500 square feet)
- North: R-7.5 (A) (Single family district 7,500 square feet)
- South: R-7.5 (A) (SUP 235) (Single family district 7,500 square feet, Specific Use Permit)
- East: R-7.5 (A) (Single family district 7,500 square feet)
- West: R-7.5 (A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed as a single family home. The areas to the north, east, and the west are developed with single family uses; and the area to the south is developed as a public golf course (Stevens Golf Course).

Zoning/BDA History:

- | | |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Miscellaneous Item #2, Property at 1004 N. Oak Cliff Boulevard (the subject site) | On March 17, 2008, the Board of Adjustment Panel A will consider reimbursing the filing fee submitted in conjunction with the application on the subject site. |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|

Timeline:

- Jan. 11, 2008 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Feb. 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Feb. 14, 2008: 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 outline of procedures from decisions of the Building Official that the board will use at the public hearing in their decision to approve or deny the request;
 - the March 3rd deadline to submit additional evidence for staff to factor into their analysis;
 - the March 7th 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Feb. 26, 2008: The Board Administrator contacted the *owner of the subject site* and shared the following information by phone and email:

- the public hearing date and panel that will consider the application;
- the outline of procedures from decisions of the Building Official that the board will use at the public hearing in their decision to approve or deny the request;
- the March 3rd deadline to submit additional evidence for staff to factor into their analysis;
- the March 7th 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

March 7, 2008: The applicant submitted additional information to the Board Administrator (see Attachment A).

March 7, 2008: The owner of the subject site submitted additional information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- The applicant is requesting that the Building Official’s decision be overturned/reversed regarding a “green tag” issued for a 2-story accessory structure on his adjacent neighbor’s property – an accessory structure that the applicant contends is located in the required 5’ side yard setback.

LOCATION: 5634 Morningside Avenue

APPLICANT: Stuart Mut

March 17, 2008 Public Hearing Notes:

- The applicant submitted additional printed documentation and photographs to the board at the public hearing.

REQUEST:

- An application has been made requesting that the Building Official's January 24, 2008 determination that a proposed 2-story garage/loft structure under construction on the subject site (where the building foundation is in place) does/would not conform to all applicable setback requirements decision be reversed/overturned. The Building Official has determined that the accessory structure is not in compliance with the required 5' rear yard setback (since the structure is proposed to be over 15' in height) and the required 3' setback where the rear yard is adjacent to an alley.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- The Building Official's Report states that the lot is zoned CD No. 9 which requires that garages (accessory structure) must have a 3' rear yard setback when adjacent to an alley, and if over 15' in height must have a minimum rear yard setback of 5', and that the applicant proposes to construct/maintain an accessory structure that provides a 6' setback from the rear property line which will require a reversal of the Building Official's decision that the setback be 3' away from a 5' easement along the rear of the property resulting in an 8' setback from the rear property line.
- The applicant differs with the Building Inspection Manager's assessment of January 24, 2008 that the rear yard setback requirements have not been met since the easement to the rear of the site is not an alley right of way and is not an appurtenant to an alley.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
 - an introductory letter;
 - amendments and revisions to the applicant's statement;
 - additional pages to the originally submitted "Exhibit B;" and
 - the exhibit mentioned in (but missing from) the original submittal: "Exhibit G."
- The Assistant City Attorney assisting the Building Official submitted information (see Attachment B). This information included the following:
 - a statement regarding inspections on the site;

- provisions from Conservation District No. 9 and the Dallas Development Code; and
- a photo looking westward towards the subject site from Greenville Avenue.

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 9 (Conservation District)
North: CD No. 9 (Conservation District)
South: CD No. 9 (Conservation District)
East: CD No. 9 (Conservation District)
West: CD No. 9 (Conservation District)

Land Use:

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

Zoning/BDA History:

1. BDA 978-236, Property at 5634 Morningside Avenue, the subject site

On September 21, 1998, the Board of Adjustment Panel C granted requests for variances to the rear yard setback regulations of 2' and to the parking regulations of 19'. The board imposed the following conditions with the rear yard variance: compliance with the submitted site plan is required; and the garage door facing the alley be used for ingress only and not as an exit. The board imposed the following conditions for the parking variance: compliance with the site plan is required; an automatic garage door must be installed and maintained in working order at all times; at no time may the area in front of the garage (on the alley) be utilized for parking of vehicles; and the garage door facing the alley be used for ingress and not as an exit. The case report stated that the requests were made to construct and maintain a 1.5 story, approximately 20' x 26' garage/carport/loft structure that would replace an existing smaller garage structure on the site located virtually the same distance from the rear property line.

Timeline:

- Jan. 25, 2008 The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report. (Although the applicant made reference to "Exhibit G" in his materials, the Board Administrator established with the applicant that this exhibit had not been submitted with the originally submitted materials since he was still waiting to receive it from the Dallas City Attorney's office. The applicant submitted this exhibit on March 7, 2008).
- Feb. 14, 2008: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Feb. 14, 2008: 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 outline of procedures from decisions of the Building Official that the board will use at the public hearing in their decision to approve or deny the request;
 - the March 3rd deadline to submit additional evidence for staff to factor into their analysis;
 - the March 7th 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 March public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- March 7, 2008: The applicant submitted additional information to the Board Administrator (see Attachment A).

March 7, 2008: The Assistant City Attorney assisting the Building Official submitted information to the Board Administrator (see Attachment B).

STAFF ANALYSIS:

- The applicant is requesting that the Building Official's decision be overturned/reversed regarding his determination that a proposed 2-story garage/loft structure under construction on the subject site does/would not conform to all applicable setback requirements since the structure is (according to a "site detail plan") located 6' from the rear property line and since this structure is not located adjacent to an alley.
- The site is zoned CD No. 9 which requires that garages (accessory structure) provide a 3' setback where the rear yard is adjacent to an alley and a minimum 5' rear yard setback if the accessory structure is over 15' in height.
- If the Board of Adjustment upholds the Building Official's decision, the accessory structure under construction on the subject site (where the building foundation is in place) will have to be modified to comply with the rear yard setback regulations, or the owner of the site could choose to make application to the board of adjustment to consider a variance to the rear yard setback regulations in conjunction with allowing the structure to be located in the rear yard setback.
- If the Board of Adjustment reverses the Building Official's decision, the accessory structure on the site can be completed as planned.

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2008

APPEARING IN FAVOR: Stuart Mut, 5634 Morningside Ave, Dallas, TX
Paul Smith, 4217 Live Oak, Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Dan Weir, 1500 Marilla, 7DN, Dallas, TX

MOTION: **Gaspard**

Having full reviewed the decision of the building official of the City of Dallas in Appeal No. **BDA 078-038**, on application of Stuart Mut, Jr., 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 **reverse** the decision of the building official and **grant** the relief requested by the applicant.

SECONDED: **Moore**

AYES: 5–Boyd, Maten, Moore, Bateman, Gaspard

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 078-003

BUILDING OFFICIAL'S REPORT:

Application of Barbara Martinez for an extension of the nonconforming use compliance date at 3025 Main Street. This property is more fully described as tract 14 in City Block 845 and is zoned PD-269 (Tract A) which states that the right to operate a nonconforming bar, lounge, or tavern (alcoholic beverage establishment) use and commercial amusement inside (dance hall) use shall automatically terminate on December 14, 2007 or one year after the use became nonconforming, whichever is later. The applicant proposes to maintain nonconforming bar, lounge, or tavern (alcoholic beverage establishment) and commercial amusement inside (dance hall) uses which will require an extension of the nonconforming use compliance date regulations.

LOCATION: 3025 Main Street.

APPLICANT: Barbara Martinez

March 17, 2008 Public Hearing Notes:

- The Board Administrator circulated a March 14th letter written by the applicant to the board members at the briefing (see Attachment B). The applicant's letter requested that the board deny her request.

REQUEST:

- A request is made for the Board of Adjustment to consider extending a City Council ordinance-imposed compliance date of December 14, 2007 for nonconforming bar/lounge/tavern (alcoholic beverage establishment) and inside commercial amusement (dance hall) uses (Club One) on the subject site.

Note: Although this application was originally scheduled for Board of Adjustment Panel C's February 11, 2008 hearing, it was not eligible for the board's consideration at that hearing given staff's discovery of a notification error. The Building Official's report and notification sent to property owners and advertised in the newspaper for the February hearing had only conveyed that the nonconforming use for consideration was a "dance hall" use while the application had been made for "additional time is needed to recoup the business owner's actual investment in the use as a dance hall/bar/tavern before the use became nonconforming."

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

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

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

(1) Amortization of nonconforming uses.

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

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

GENERAL FACTS:

- The 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 PD No. 269 where the ordinance includes a provision specifically related to nonconforming uses and structures (Section 51P-269.105(k)). This ordinance provides an automatic termination of nonconforming rights for certain uses including the nonconforming use located on the subject site. The ordinance states that the city council finds that certain nonconforming uses have an adverse effect on nearby properties; and that the purpose of this subsection is to eliminate these nonconforming uses and to make them 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 ordinance states that the right to operate a nonconforming bar, lounge or tavern use; a private club use; a tattoo studio use; a body piercing studio use, or dance hall use shall automatically and immediately terminate on December 14, 2007 or one year after the use became nonconforming, whichever is later. The ordinance continues to state that the owner of one of these types of uses may request an extension of the compliance deadline by filing an application with the Director of Development Services; and upon the filing of a complete application for extension, the board of adjustment shall determine whether it is necessary to extend the compliance deadline for the nonconforming use considering factors listed in Section 51A-4.704(a)(1)(D) in determining whether to grant the request for extension. Lastly, the ordinance states that if, based on evidence presented at the public hearing, the board finds that additional time is needed to recoup the owner's actual investment in the use before the use became nonconforming, the board shall grant the request for extension and establish a new compliance deadline consistent with its determination of a reasonable amortization period; otherwise, the board shall deny the request. If the board denies the request, the right to operate the

nonconforming use shall automatically terminate on December 14, 2007, or 30 days after the date of the board of adjustment's decision to deny, whichever is later.

- The owner of the nonconforming uses on the site attempted to eliminate the nonconforming use status of the existing alcoholic beverage establishment and dance hall uses by requesting an SUP (Specific Use Permit) from City Council. However, the City Council denied this application (Z067-345) on December 12, 2007.
- The owner of the site could transition the nonconforming uses on the site to any use that is permitted by right in the site's PD 269 zoning classification.
- On December 21, 2007, a subpoena duces tecum and interrogatories was sent to the owner of the site on which the nonconforming uses are located.
- On January 28, 2008, the applicant submitted a response to the subpoena duces tecum and interrogatories (see Attachment A).
- On February 11, 2008, a "first supplemental subpoena duces tecum and interrogatories" was sent to the owner of the site on which the nonconforming uses are located.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 269 (Planned Development)
North: PD No. 269 (Planned Development)
South: PD No. 269 (Planned Development)
East: PD No. 269 (Planned Development)
West: CA-(A) (Central Area)

Land Use:

The site is currently developed with nonconforming alcoholic beverage establishment and dance hall uses (Club One). The areas to the north, east, south, and west are developed with a mix of residential and nonresidential uses.

Zoning/BDA History:

1. Z067-345, 3205 Main Street (the subject site) On December 12, 2007, the City Council denied an application for an SUP for the dance hall and bar/lounge/tavern uses on the subject site.

Timeline:

- Nov. 14, 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.

- Dec. 12, 2007: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Dec. 21, 2007: A subpoena duces tecum and interrogatories was sent to the owner of the site on which the nonconforming use is located.
- January 28, 2008 The applicant submitted a response to the subpoena duces tecum and interrogatories (see Attachment A).
- January 29, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the 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.
- Feb. 11, 2008: A “first supplemental subpoena duces tecum and interrogatories” was sent to the owner of the site on which the nonconforming uses are located.
- March 4, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

STAFF ANALYSIS:

- 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 subject site is zoned PD No. 269 where the ordinance includes a provision specifically related to nonconforming uses and structures (Section 51P-269.105(k)). This ordinance provides an automatic termination of nonconforming rights for certain uses including the nonconforming use on the subject site: dance hall use.
- The PD No. 269 ordinance states that the city council finds that certain nonconforming uses including the use on the subject site (bar, lounge, or tavern and

dance hall) have an adverse effect on nearby properties; and that the purpose of the subsection in the ordinance is to eliminate these nonconforming uses and to make them comply with the regulations of the Dallas Development Code.

- The PD No. 269 ordinance states that the right to operate a nonconforming bar, lounge or tavern use; a private club use; a tattoo studio use; a body piercing studio use, or dance hall use shall automatically and immediately terminate on December 14, 2007 or one year after the use became nonconforming (which in this case was June 14, 2006), whichever is later.
- The application for an SUP made by the owner of nonconforming alcoholic beverage establishment and dance hall uses on the site was denied by the City Council on December 12, 2007. As a result, the owner of these uses made application to the board of adjustment to extend the ordinance-imposed December 14, 2007 compliance date.
- The PD No. 269 ordinance states that if, based on evidence presented at the public hearing, that the board finds that additional time is needed to recoup the owner's actual investment in the use before the use became nonconforming, the board shall grant the request for extension and establish a new compliance deadline consistent with its determination of a reasonable amortization period; otherwise, the board shall deny the request.
- The Dallas Development Code states that following factors must be considered by the board in determining a reasonable amortization period:
 - The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - Any return on investment since inception of the use, including net income and depreciation.
 - The anticipated annual recovery of investment, including net income and depreciation.
- The purpose of the public hearing is to determine if additional time is needed to recoup the owner's actual investment in the use before the use became nonconforming beyond the ordinance-imposed compliance date of December 14, 2007.
- If the board denies the compliance date extension request, the right to operate the nonconforming use shall automatically terminate 30 days after the date of the board of adjustment's decision to deny.
- 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.
- As is the case with any nonconforming use, the owner of the uses could transition the uses of the site from alcoholic beverage establishment and dance hall uses to any use that is permitted by right in the site's PD No. 269 zoning classification.

On January 28, 2008, the applicant submitted a response to the subpoena duces tecum and interrogatories (see Attachment A).

BOARD OF ADJUSTMENT ACTION: MARCH 17, 2008

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Lemuel Thomas, 1500 Marilla, 7DN, Dallas, TX

MOTION: **Bateman**

I move that the Board of Adjustment, in Appeal No. **BDA 078-003**, on application of Barbara Martinez, **deny** the extension to the compliance date requested by this applicant **with prejudice**, because our evaluation of the property and testimony shows that the owner's actual investment in the uses before the time the uses became nonconforming has been fully amortized.

SECONDED: **Moore**

AYES: 5–Boyd, Maten, Moore, Bateman, Gaspard

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Bateman**

AYES: 5 –Boyd, Maten, Moore, Bateman, Gaspard

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

3:14 P. M. - Board Meeting adjourned for **March 17, 2008**.

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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