

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, SEPTEMBER 13, 2010**

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

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Sharon Boyd, Vice-Chair, Robert Moore, Panel Vice-Chair Joel Maten, regular member, Ross Coulter, regular member and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, Chris Caso, Asst. City Atty., and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Donnie Moore, Chief Planner, Todd Duerksen, Development Code Specialist, and Trena Law, Board Secretary

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**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 13, 2010** docket.  
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**1:00 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C August 16, 2010 public hearing minutes.

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

**MOTION: Agnich**

I move **approval** of the Monday, **August 16, 2010** public hearing minutes.

**SECONDED: Maten**

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

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Executive session for attorney briefing pursuant to Texas Open Meetings Act Section 551.071, regarding *HOH LLC v. City of Dallas and Board of Adjustment*, Cause No. DC-10-10635, BDA 090-053, Property at 2326 N. Henderson Avenue.

**\*This is not an action item.**

**12:00 P.M.: Executive Session Begins**

**12:09 P.M.: Executive Session Ends**

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**FILE NUMBER: BDA 090-076**

**BUILDING OFFICIAL’S REPORT:**

Application of Cyrus Barcus Jr., represented by Richard Bragg, for a special exception to the single family use regulations at 9009 Briarwood Lane. This property is more fully described as Lots 8 and 9 in City Block 5/5578 and is zoned R-1ac(A) which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit which will require a special exception

**LOCATION: 9009 Briarwood Lane**

**APPLICANT: Cyrus Barcus, Jr.  
Represented by Richard Bragg**

**REQUEST:**

- A request for a special exception to the single family use development standard regulations is requested for constructing and maintaining a two-story "dwelling

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is *when in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting a special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE FAMILY USE DEVELOPMENT STANDARDS REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:**

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties. In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

**UPDATED GENERAL FACTS (September 2010):**

- The Board of Adjustment Panel C conducted a public hearing on this application and delayed action until September 13<sup>th</sup> per the request of a representative of a neighboring property owner and the applicant's representative.
- As of September 7, 2010, no additional information has been submitted to staff.

**ORIGINAL GENERAL FACTS (August 2010):**

- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.  
The Dallas Development Code defines "single family" use as "one dwelling unit located on a lot;" and a "dwelling unit" as "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms."  
A site plan has been submitted denoting the locations of the building footprints of the "new structure" and the "existing house footprint" relative to the entire site. An

elevation has been submitted of the second/additional dwelling unit on the site (denoting a two-story structure) and floor plans (denoting a structure with a "veranda," "vanity," "shower," "cabin w.c.," and "storage" room on the first floor, and a "bar," "craft room," "craft closet," and "powder room" on the second floor). The Building Official has reviewed the submitted floor plans and deemed it a "dwelling unit."

- DCAD records indicate that the site is developed with the following:
  - a single family home built in 2007 with 15,039 square feet of living area;
  - a 1605 square foot attached garage; and
  - pool.

### **Zoning:**

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

### **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:**

- May 21, 2010: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 15, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- July 15, 2010: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and

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

August 3, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

August 16, 2010: The Board of Adjustment Panel C conducted a public hearing on this request and delayed action until their September 13<sup>th</sup> public hearing.

August 23, 2010: The Board Administrator sent a letter to the applicant's representative that the public hearing date and the September 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials.

August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a two-story "dwelling unit"/"cabin" structure with an approximately 600 square foot (approximately 30' x 20') building footprint on a site being developed with a dwelling unit/single family home structure that has (according to DCAD) approximately 15,000 square feet of living area.
- The site is zoned R-1ac(A) Single family district 1 acre where the Dallas Development Code permits one dwelling unit per lot. The site is being developed with a single family home/dwelling unit, and the applicant proposes to construct and maintain an additional dwelling unit/"cabin" structure on the site hence the special exception request.
- Building Inspection has reviewed the submitted floor plans of the proposed additional dwelling unit/"cabin" structure and deemed it a "dwelling unit" - that is (per Code definition) "one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms." The submitted floor plans denote a structure with a "veranda," "vanity," "shower," "cabin w.c.," and "storage" room on the

- This request centers on the function of what is proposed to be located inside the proposed "cabin" structure. If the board were to deny this request, it appears that this structure could be constructed and maintained with merely modifications to the function/use inside it (or to the floor plans) since the proposed structure appears to comply with the applicable zoning code development standards.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve the request for a special exception to the single family regulations, the Board may want to determine if they feel that imposing a condition that the applicant comply with the submitted site plan and/or floor plans are necessary in assuring that the special exception will not adversely affect neighboring properties. Note that granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. the site and the development on the site must meet all required setback and coverage requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**BOARD OF ADJUSTMENT ACTION: AUGUST 16, 2010**

APPEARING IN FAVOR: Richard Bragg, 9009 Briarwood, Dallas, TX

APPEARIN IN OPPOSITION: Susan Mead, 901 Main St., Dallas, TX

MOTION: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 090-076**, hold this matter under advisement until **September 13, 2010**.

SECONDED: **Maten**

AYES: 5—Boyd, Moore, Maten, Gaspard, Agnich

NAYS: 0 –

MOTION PASSED: 5 – 0 (unanimously)

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

**APPEARING IN FAVOR:** Richard Bragg, 9009 Briarwood, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 090-076** on application of Cyrus Barcus Jr., represented by Richard Bragg, **grant** the request of this applicant to maintain an additional dwelling unit on the Property, because our evaluation of the property and testimony shows that the additional dwelling unit will not be used as rental accommodations nor adversely affect neighboring properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The property must be deed restricted to prohibit the additional dwelling unit on the site from being used as rental accommodations.

**SECONDED:** **Coulter**

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

**NAYS:** 0 –

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 090-086

**BUILDING OFFICIAL’S REPORT:**

Application of Robert Baldwin to restore a nonconforming use at 5544 Military Parkway. This property is more fully described as a 0.287 acre tract in City Block 5802 and is zoned PD No. 323 which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming outside salvage and reclamation use which will require a special exception.

**LOCATION:** 5544 Military Parkway

**APPLICANT:** Robert Baldwin

**REQUEST:**

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a nonconforming “outside salvage and reclamation” use (Texas T Metals) on the subject site even though this nonconforming use was discontinued for a period of six months or more. (The site is currently developed with two nonconforming uses: an “outside salvage and reclamation” use - the use requested to be reinstated in this application, and a

### **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

**STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:** The Dallas Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

### **GENERAL FACTS:**

- The subject site is zoned PD No. 323 (Planned Development) – a zoning district created in 1989 that does not permit an “outside salvage or reclamation” use. The “outside salvage or reclamation” use on the site is a nonconforming use given that Building Inspection has determined that this use was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time. The Dallas Development Code defines “nonconforming use” as “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 nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code 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 nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- According to information from Dallas Central Appraisal District (DCAD), the property at 5544 Military Parkway is developed with a “converted service station” with 1,296 square feet that was constructed in 1956.



- The current “outside salvage and reclamation” use to be reinstated/restored on the site is a legal nonconforming use. Building Inspection indicates that a Certificate of Occupancy (CO) was issued in 1979. Zoning maps dated July 11, 1986 indicated that the site had been zoned I-2 (Industrial). The I-2 zoning district allowed “outside salvage or reclamation” use as a permitted use with a Specific Use Permit (SUP). Although the site did not have an SUP, Building Inspection states that this requirement was most likely added after the CO was issued on this site for this use in 1979.

The I-2 zoning district was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the “outside salvage and reclamation” use on the subject site became a legal *nonconforming* use upon the passing of PD No. 323 in 1989.

- Given provisions set forth in the Dallas Development Code, an “outside salvage and reclamation” use can obtain “conforming use” status upon attaining an amendment to the current Planned Development District zoning district from the City Council.
- The nonconforming “outside salvage or reclamation” use on the site would be subject to the possibility of an application that may be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- On August 30, 2010, the applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a document that provides additional details about the request; and
  - information gathered from public records that (according to the applicant) shows that this outside salvage and reclamation use has been a continuous use on the site since 1978.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD No. 323 (Planned Development)
- North: PD No. 323 (Planned Development)
- South: PD No. 323 (Planned Development)
- East: PD No. 323 (Planned Development)
- West: PD No. 323 (Planned Development)

**Land Use:**

The site is currently developed with two nonconforming uses: an “outside salvage and reclamation” use - the use requested in this application to be reinstated, and a “vehicle display, sales, and service” use – a use which is not part of this application since it retains its nonconforming use status since it has had valid Certificates of Occupancy since 1979 and has not discontinued for six months or more from 1979 to present. The

areas to the north, south, and west are developed with commercial uses; and the area to the east appears to be undeveloped.

**Zoning/BDA History:**

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

**Timeline:**

June 19, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

August 23, 2010: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

August 30, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original application (see Attachment A).

August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**STAFF ANALYSIS:**

- This special exception request is made to restore/reinstate nonconforming use rights (and obtain a Certificate of Occupancy) for an “outside salvage and reclamation” use that has been discontinued for six months or more.
- The site is currently developed with two nonconforming uses: an “outside salvage and reclamation” use - the use requested to be reinstated in this application, and a “vehicle display, sales, and service” use which is not part of this application since this use retains its nonconforming use status since it has had valid Certificates of Occupancy since 1979, and has not discontinued for six months or more from 1979 to present.
- Although the applicant has stated that the “outside salvage and reclamation” use has continually operated since 1978, the City interprets this use to have been discontinued when the applicant applied for a Certificate of Occupancy in 1979 for another use on the property (vehicle display, sales, and service) not realizing when he obtained the CO for this new/added use, it voided the CO for the existing outside salvage and reclamation use.
- The current “outside salvage and reclamation” use to be reinstated/restored on the site is a legal nonconforming use. Building Inspection indicates that a Certificate of Occupancy (CO) was issued in 1979. Zoning maps dated July 11, 1986 indicated that the site had been zoned I-2 (Industrial). The I-2 zoning district allowed “outside salvage or reclamation” use as a permitted use with a Specific Use Permit (SUP). Although the site did not have an SUP, Building Inspection states that this requirement was most likely added after the CO was issued on this site for this use in 1979.  
The I-2 zoning district was one of several cumulative zoning districts that were eliminated during the city-wide zoning transition program in the late 80’s. Most likely, the “outside salvage and reclamation” use on the subject site became a legal *nonconforming* use upon the passing of PD No. 323 in 1989.
- The applicant has the burden of proof in establishing the following related to the special exception request:
  - There was a clear intent not to abandon the nonconforming “outside salvage and reclamation” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “outside salvage and reclamation” use was vacant for a period of six (6) months or more. Granting this request would restore the “outside salvage and reclamation” use as legal nonconforming use but not as a legal *conforming* use. The applicant would have to make application for a change in zoning and obtain approval from City Council in order to make the use on the site a legal conforming use.
- If restored/reinstated, the nonconforming use would be subject to compliance to use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

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

**APPEARING IN FAVOR:** Rob Baldwin, 401 Exposition Ave., Dallas, TX  
Wyndell Burly, 8850 Ferguson Rd., Dallas, TX

**APPEARING IN OPPOSITION:** Rod Dinkins, 5520 Military Pkwy, Dallas, TX

**MOTION: Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 090-086**, on application of Robert Baldwin, **grant** the request of this applicant for a special exception to the provision found in Section 51A-4.704(a)(2) of the Dallas Development Code providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the property has shown that there was a clear intent not to abandon the use even though it was discontinued for six months or more.

**SECONDED: Moore**

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

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 090-089**

**BUILDING OFFICIAL’S REPORT:**

Application of Vincent Ogbuehi for a special exception to the side yard setback regulations at 4729 Clear Creek Road. This property is more fully described as Lot 14 in City Block 5/6911 and is zoned R-7.5(A) which requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a carport and provide a 6 inch setback which will require a special exception of 4 feet, 6 inches.

**LOCATION: 4729 Clear Creek Road**

**APPLICANT: Vincent Ogbuehi**

**REQUEST:**

- A special exception to the side yard setback regulations of 4’ 6” is requested in conjunction with maintaining an existing carport that is attached to a single family home, and extending/lengthening it by approximately 10 feet, part of which is and/or is proposed to be located in the required 5’ side yard setback on the north side of the property.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is *when in the opinion of the board*, the carport will not have a detrimental impact on surrounding properties.

**STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

**GENERAL FACTS:**

- A 5' side yard setback is required in the R-7.5(A) zoning district.  
The applicant has submitted a site plan and elevation/section indicating the location of the existing carport and the "new carport" addition on the site that is located what appears to be approximately 6" from the site's northern side property line or 4' 6" into the 5' side yard setback. (Note that the application references a 4' 6" encroachment into the 5' setback by a carport).
- The following information regarding the "existing carport" was gleaned from the submitted site plan and elevation/section:
  - Shown to be 15' in length and 21' 1" in width (approximately 315 square feet in total area) of which about 68 square feet or 1/5 of the existing carport is located in the side yard setback.
  - Approximately 13' in height as measured to the midpoint of the gabled roof (shown to be attached to an approximately 15' high "existing building beyond") with metal posts and sheet metal roofing.
- The following information regarding the "new carport"/addition was gleaned from the submitted site plan and elevation/section:
  - Shown to be 10' in length and 15' 9 1/2" in width (approximately 150 square feet in total area) of which about 46 square feet or 1/3 is to be located in the side yard setback.
  - Approximately 9' in height with metal posts and sheet metal roofing.
- The subject site is 130' x 75' (or 9,750 square feet) in area.
- According to DCAD, the site is developed with the following:
  - a structure in "good" condition built in 1954 with 1,544 square feet of living area,

- a 400 square foot detached garage.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of “carport” however Building Inspection interprets a “carport” to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a “carport”).
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5 (A) (Single family residential 7,500 square feet)  
North: R-7.5 (A) (Single family residential 7,500 square feet)  
South: R-7.5 (A) (Single family residential 7,500 square feet)  
East: R-7.5 (A) (Single family residential 7,500 square feet)  
West: 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:**

- July 14, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 23, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

### **STAFF ANALYSIS:**

- This request is twofold in that part of it focuses on maintaining an existing carport that is located 6" from the site's northern side property line (or 4' 6" into the 5' side yard setback); the other part focuses on extending/lengthening it by approximately 10 feet in alignment with the existing carport.
- A site plan and elevation/section has been submitted showing the existing carport to be approximately 15' long and approximately 21' wide whereby about 1/5 is located in the required 5' setback on the north side of the site. The submitted plans show the existing carport to be approximately 13' in height as measured to the midpoint of the gabled roof (shown to be attached to an approximately 15' high "existing building beyond") with metal posts and sheet metal roofing.
- The submitted site plan and elevation/section shows the "new carport"/addition to be approximately 10' long and approximately 21' wide whereby about 1/3 is to be located in the required 5' setback on the north side of the site. The submitted plans show the "new carport"/addition to be approximately 9' in height with metal posts and sheet metal roofing.
- The applicant has the burden of proof in establishing the following:
  - That granting this special exception to the side yard setback regulations of 4' 6" will not have a detrimental impact on surrounding properties.
- As of September 7, 2010, no letters had been submitted in support or in opposition to the request.
- Typically, staff has suggested that the Board impose conditions with this type of appeal. The following conditions would restrict the location and size of the carport in the side yard setback; would require the carport in the side yard setback to be constructed and maintained in a specific design with specific materials and in a specific configuration; and would require the applicant to mitigate any water

1. Compliance with the submitted site plan and elevation/section is required.
  2. The carport structure must remain open at all times.
  3. There is no lot-to-lot drainage in conjunction with this proposal.
  4. All applicable building permits are obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.
- If the Board chooses to grant this request, they may want to specify what structure they are granting in the side yard setback: only the existing carport, or both the existing carport and the proposed carport addition.

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

**APPEARING IN FAVOR:** Vincent Ogbuehi, 1327 Empire Central Dr, #203F, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Moore**

I move that the Board of Adjustment in Appeal No. **BDA 090-089**, hold this matter under advisement until October 18, 2010.

**SECONDED: Maten**

**AYES: 5—Boyd, Moore, Maten, Coulter, Agnich**

**NAYS: 0 –**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 090-092**

**BUILDING OFFICIAL’S REPORT:**

Application of Cary L. Albert, represented by Jonathan Hake, for a special exception to the parking regulations at 11838 Josey Lane. This property is more fully described as Lot 1 in City Block A/6590 and is zoned MU-2 which requires parking to be provided. The applicant proposes to construct a drive-thru restaurant use and provide 25 of the required 30 parking spaces which will require a special exception of 5 spaces.

**LOCATION: 11838 Josey Lane**

**APPLICANT: Cary L. Albert  
Represented by Jonathan Hake**

**REQUEST:**



- A special exception to the off-street parking regulations of 5 parking spaces (or a 17 percent reduction of the required off-street parking) is requested in conjunction with constructing and maintaining an approximately 3,000 square foot “restaurant with drive-in or drive through service” use (Schlotzky’s) on a site that is currently undeveloped. The applicant proposes to provide 25 of the required 30 off-street parking spaces.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 5 spaces automatically and immediately terminates if and when the “restaurant with drive-in or drive through service” use on the site is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet indicating that he has no objections to the request.
- The applicant has substantiated how the parking demand generated by the “restaurant with drive-in or drive through service” 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.

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

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.

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

**GENERAL FACTS:**

- The Dallas Development Code requires the following off-street parking requirement:
  - Restaurant with drive-in or drive through service: 1 space per 100 square feet of floor area with a minimum of 4 spaces.
 The application materials and Building Official's Report state that 25 (or 83 percent) of the required 30 spaces are proposed to be provided.
- On September 3, 2010, the applicant submitted additional information beyond what was submitted with the original application. This information included a copy of what the applicant has described as the reciprocal access and parking agreement for the Schlotzsky's at Josey and I-635 - an agreement that was originally put together for the IHOP that existed on this tract prior to the TxDOT ROW taking. (A copy of this parking agreement has been placed in the case file and is available for review upon request).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MU-2 (Mixed Use)  
North: MU-2 (Mixed Use)  
South: MU-2 (Mixed Use)  
East: MU-2 (Mixed Use)  
West: MU-2 (Mixed Use)

**Land Use:**

The subject site is undeveloped. The area to the north is the LBJ Freeway; and the areas to the east, south, and west are developed with retail uses.

**Zoning/BDA History:**

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

**Timeline:**

- July 30, 2010: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 23, 2010: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 23, 2010: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 31, 2010: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- September 3, 2010: The applicant submitted additional information to the Board Administrator beyond what was submitted with the original

application. This information included a copy of what the applicant has described as the reciprocal access and parking agreement for the Schlotzsky's at Josey and I-635 - an agreement that was originally put together for the IHOP that existed on this tract prior to the TxDOT ROW taking. (A copy of this parking agreement has been placed in the case file and is available for review upon request).

September 3, 2010: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

**STAFF ANALYSIS:**

- This request focuses on the applicant's proposal to construct and maintain an approximately 3,000 square foot "restaurant with drive-in or drive through service" use (Schlotzky's) on a site that is currently undeveloped, and provide 25 of the required 30 off-street parking spaces.
- The Sustainable Development and Construction Department Project Engineer has submitted a review comment sheet indicating that he has no objections to the request.
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the "restaurant with drive-in or drive through service" use does not warrant the number of off-street parking spaces required, and
  - The special exception of 5 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.
- If the Board were to grant this request, subject to the condition that the special exception of 5 spaces automatically and immediately terminates if and when the "restaurant with drive-in or drive through service" use is changed or discontinued, the applicant would be allowed to develop/maintain the site with this specific use and provide only 25 of the 30 off-street parking spaces required by the code.

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

APPEARING IN FAVOR: Jonathan Hake, 106 W. Louisiana, McKinney, TX  
Bryan Moore, 11 S. Kentucky, Ste 210, McKinney, TX

APPEARING IN OPPOSITION: Gary Stephens, 3102 Maple Ave #500, Dallas, TX  
Alan Altick, 3102 Maple Ave #500, Dallas, TX

**MOTION #1: Moore**

I move to I move that the Board of Adjustment in Appeal No. **BDA**, 090-092 suspend the rules and accept the evidence that is being presented to us today.

**SECONDED: Moore**

**AYES:** 5—Boyd, Moore, Maten, Coulter, Agnich

NAYS: 0 –  
MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Coulter**

I move that the Board of Adjustment, in Appeal No. **BDA 090-092**, on application of Cary L. Albert, represented by Jonathan Hake, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 5 parking spaces, because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard nor increase traffic congestion on adjacent and nearby streets. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 5 spaces automatically and immediately terminates if and when the restaurant with drive-in or drive through service use on the site is changed or discontinued.

SECONDED: **Maten**  
AYES: 5–Boyd, Moore, Maten, Coulter, Agnich  
NAYS: 0 –  
MOTION PASSED: 5– 0 (unanimously)

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MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Moore**  
AYES: 5–Boyd, Moore, Maten, Coulter, Agnich  
NAYS: 0 - None  
MOTION PASSED: 5 – 0 (Unanimously)

**P. M.** - Board Meeting adjourned for **September 13, 2010**.

\_\_\_\_\_  
CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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

