

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, SEPTEMBER 15, 2009**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

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

MEMBERS PRESENT AT HEARING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Ben Gabriel, regular member, Steve Harris, regular member and Jim Gaspard, alternate member

MEMBERS ABSENT FROM HEARING: No one

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

**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 15, 2009** docket.

**11:57 A.M.: Executive Session Begins**

**12:01 P.M.: Executive Session Ends**

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**1:00 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A August 18, 2009 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 15, 2009**

**MOTION: Schweitzer**

I move **approval** of the Tuesday, **August 18, 2009** public hearing minutes as amended.

**SECONDED: Harris**

**AYES:** 5 – Richmond, Schweitzer, Gabriel, Harris, Gaspard

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 089-102(K)

**BUILDING OFFICIAL'S REPORT:**

Application of John Reynolds for a special exception to the height regulations at 303 S. Glasgow Drive. This property is more fully described as an approximately 15.29 acre tract in City Block 1672 and 1673 and is zoned R-7.5(A), which limits the maximum height of lighting standards to 66 feet, 10 inches due to a residential proximity slope. The applicant proposes to construct lighting standards with a height of 80 feet which will require a special exception of 13 feet, 2 inches.

**LOCATION:** 303 S. Glasgow Drive

**APPLICANT:** John Reynolds

**REQUESTS:**

The applicant seeks to develop the property with a recreational use and install and maintain 80' lighting standards which will require a special exception to height restrictions.

**STAFF RECOMMENDATION (landscape regulations):**

Approval with the following conditions;

- Compliance with the submitted site plan.

Rationale:

- The proposed lighting will replace lighting that currently exists on the site.
- The special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE HEIGHT RESTRICTIONS:**

The board may grant a special exception to the height restrictions applicable to lighting standards for this use upon making a special finding from the evidence presented that:

- (1) strict compliance with those restrictions will unreasonably burden the use of the property; and
- (2) the special exception will not adversely affect neighboring property. The board shall not grant a special exception to the spillover light restriction.

**GENERAL FACTS:**

- The property is developed with Randall park, a public park, that is developed with a softball field, baseball field, soccer field, and tennis courts.
- The applicant proposes to construct two lighting standards that are 80 feet in height.
- The proposed lighting standards will replace existing lighting standards on the site.
- The applicant is seeking a special exception to the lighting standards height regulations in order to build the two 80 foot light structures.
- The Dallas Development Code provides a means of relief of the lighting standards requirements by way of a special exception to the lighting standards.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family residential 7,500 square feet)  
North: PD 543 (Planned Development District)  
South: PD 134 (Planned Development District)  
East: D-(A) (Duplex)  
West: SUP 351 MF-2 (LC) (Specific Use Permit, Multi-family)

**Land Use:**

The subject site is developed with a public recreation facility. The property to the north is developed with a school. The properties to the east and south are developed with single family structures. The property to the west is developed with a multifamily use.

**Zoning/BDA History:**

There is no zoning history or Board of Adjustment history for this site or sites in the immediate area.

**Timeline:**

July 14, 2009: 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 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 24, 2009: The Board Senior Planner contacted the applicant by telephone and email and conveyed the following information:

- the public hearing date and panel that will consider the application;
- the criteria and 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 August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
- the September 8<sup>th</sup> 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 September public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.

September 1, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services

Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

**STAFF ANALYSIS:**

- The applicant proposes to construct and maintain two light standards that exceed the maximum height for residential adjacency.
- The proposed lighting standards are 80 feet tall and are 201 feet and 214 feet from the adjacent single family properties, respectively.
- The Dallas development Code requires a 3:1 slope for lighting that is adjacent to residential property, which would require the lighting standards to provide a minimum of 240 foot setback for the 80' lights.
- The applicant seeks relief from the lighting standards by way of a 13 foot 2 inch special exception to the maximum height allowed by right.
- The properties that create the residential adjacency slope are located to the northwest of the property on Columbia Avenue.
- The proposed lighting standards will replace existing lighting on the property. The proposed lighting standards are being installed in conjunction with the relocation of a baseball field on the property.
- The applicant has the burden of proof of showing strict compliance with the lighting standards regulations will unreasonable burden the property, and the special exception will not adversely affect neighboring property.
- Staff recommends compliance with a submitted site plan and elevation, should the Board grant a special exception to the lighting standards regulations.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 15, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Gaspard**

I move that the Board of Adjustment grant application **BDA 089-102** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

**SECONDED: Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 089-103(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Efrain Pena for a variance to the front yard setback regulations at 2010 W. Jefferson Blvd. This property is more fully described as part of Lot 8 in City Block 1/3320 and is zoned CR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a nonresidential structure and provide a 0 foot front yard setback which will require a variance of 15 feet.

LOCATION: 2010 W. Jefferson Blvd.

APPLICANT: Efrain Pena

**REQUEST:**

- A variance to the front yard setback regulation of 15 feet is requested to construct and maintain a nonresidential structure and provide a 0 foot front yard setback, which will require a 15 foot variance to the front yard setback regulation..

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

Approval, subject to the following condition:

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

Rationale:

- The site is different from other parcels of land in the CR zoning, in that it has an irregular shape.
- The applicant is not requesting an increase in the square footage of the building. The applicant proposes to alter the façade of the current structure.
- Granting this variance does not appear to be contrary to the public interest because the building footprint is not changing, the applicant is only requesting the variance to alter the façade of the building, and the structure is in compliance with the side and rear yard setback requirements.

**STANDARD FOR A VARIANCE:**

To grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street loading, or landscape regulations provided that: the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done; the variance is necessary to permit

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

**GENERAL FACTS:**

- Structures on lots zoned CR are required to provide a minimum front yard setback of 15 feet.
- The site is flat, irregular in shape and approximately 30,000 square feet in area.
- According to DCAD, the site was developed in 1948 with a non-residential structure that is 8,864 square feet.
- The applicant submitted a site plan and elevations showing the proposed construction will require a 15 foot variance to the front yard setback regulations.
- On January 20, 2009 The Board of Adjustment, Panel A, granted a variance to the front yard setback regulations of 8 feet, for the subject site (BDA 089-001).
- The initial period to file for a building permit for the previously approved request has passed, therefore BDA 089-001 is considered denied without prejudice and the board now has jurisdiction to hear this new request.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail district)  
North: CR (Community Retail district)  
South: R-7.5 (A) (Single family district 7,500 square feet)  
East: CR (Community Retail district)  
West: PD 409 (Dallas Independent School District)

**Land Use:**

The subject site is developed with a church. The property to the north is developed with an automotive repair use, the property to the east is developed with a non-residential use, the property to the south is developed with a single family use, and the property to the west is developed with a public school.

**Zoning/BDA History:**

BDA 089-001. On January 20, 2009 The Board of Adjustment, Panel A, granted a variance to the front yard setback regulations of 8 feet, for the subject site.

**Timeline:**

- July 27, 2009           The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 20, 2009:       The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- August 24, 2009:       The Board of Adjustment Senior Planner contacted the applicant and shared the following information by 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 September 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the September 8<sup>th</sup> 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 September public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- September 1, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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 Building Chief Arborist, and the Assistant City Attorney to the Board.

**STAFF ANALYSIS:**

- The applicant is seeking relief from the front yard setback requirement of 15 feet and proposes to provide 0 foot front yard setback.
- The applicant received approval for a variance of 8 feet to the front yard setback on January 20, 2009. The applicant is returning to the Board of Adjustment because the time period to apply for initial building permits has expired.
- Upon further review of the BDA 089-001 request, the applicant discovered the existing building is constructed on the front property line and requires a variance of 15 feet to the front yard setback. The submitted plans and elevation for this application are the same as the plans submitted in conjunction with BDA 089-001.

- The site is developed with church structure. According to DCAD the site was developed in 1948 and is approximately 8,800 square feet and is in good condition.
  - This site is different from other properties in the CR zoning in that it has an irregular shape. This irregular shape causes a portion of the building to exist at the front property line, providing a front yard setback that varies between 0-8 feet.
  - The site is currently developed and the applicant is requesting the variance to the front yard setback requirements so that the Iglesia del Dios Vivo Columna y Apoyo de la Verdad, la Luz del Mundo may modify the façade of the structure.
  - The variance request is for an existing structure that is not in compliance with the current Dallas City Code 15 foot front yard setback requirement.
  - The submitted elevation illustrates the structure will be 42 feet in height. The maximum allowed height in the CR zoning is 54 feet.
  - The applicant has the burden of proof in establishing the following:
    - that granting the variance to the front yard setback regulations of 15 feet to construct and maintain a church is necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification;
1. Should the Board choose to grant the request for the variance to the front yard setback, staff recommends a condition of compliance with the submitted site plan.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 15, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Gaspard**

I move that the Board of Adjustment grant application **BDA 089-103** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan is required.

**SECONDED: Gabriel**

**AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Gaspard**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 089-073**

**BUILDING OFFICIAL’S REPORT:**

Application of Ed Simons of Masterplan for a special exception for the handicapped at 3303 Hall Court. This property is more fully described as Lot 2A in City Block H/1320 and is zoned PD-193 (MF-2) which requires a front yard setback of 20 feet. The applicant proposes to construct a structure and provide a 4 foot setback which will require a special exception of 16 feet.

**LOCATION:** 3303 Hall Court

**APPLICANT:** Ed Simons of Masterplan

**REQUEST:**

- A special exception for the handicapped is requested in conjunction with constructing and maintaining an approximately 340 square foot (approximately 34’ x 10’) swimming pool structure located 4’ from the site’s Hall Street front property line or 16’ into the 20’ front yard setback on a site developed with a single family home.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Compliance with the submitted revised survey plat/site plan is required.
2. The special exception expires when a handicapped person no longer resides on the property.
3. All applicable building permits must be obtained.

Rationale:

- Staff concludes that the proposed swimming pool structure is needed to afford a handicapped person (in this case, the applicant who according to doctors’ assessments has arthritis where water therapy would help his medical condition) equal opportunity to use and enjoy his dwelling unit. There appears to be no other location for the pool for the applicant/handicapped person other than in the 20’ Hall Street front yard setback given that there is only a 20’ distance between the Hall Street front property line and the existing structure, a 15’ distance between the Hall Court front property line and the existing single family structure, and approximately 3’ and 11’ distances between the side property lines and the existing structure.

**STANDARD FOR A SPECIAL EXCEPTION TO AFFORD A HANDICAPPED PERSON EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING:**

Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling

unit. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

### **GENERAL FACTS:**

- Structures on residential development tracts zoned in MF-2 (Multifamily) Subdistrict of PD No. 193 are required to provide a 20’ front yard setback.

A revised survey plat/site plan has been submitted indicating a pool structure that is approximately 34’ long and 10’ wide is located 4’ from the site’s Hall Street front property line or 16’ into the 20’ front yard setback.

- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the “handicap” definition from this act was provided to the Board Administrator by the City Attorney’s Office. Section 3602 of this act states the following:

“(h) “Handicap” means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person’s major life activities,
  2. a record of having such an impairment, or
  3. being regarded as having such an impairment,
- but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”

- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a revised survey plat/site plan;
  - a letter that provides additional information about the request,
  - letters from doctors that describe the medical condition of the owner of the site; and
  - emails and documents related to the proposal.
- The Board of Adjustment conducted a public hearing on this application on August 18, 2009. The board delayed action on this application until September 15, 2009, and encouraged the applicant to consider the following: 1) whether he or the owner would be amenable to any or all of the conditions suggested in a letter from the Oak Lawn Committee (see Attachment B); and 2) whether the owner could further substantiate that he is “handicapped” as referenced in Chapter 51A– “as that term is defined in the Federal Fair Housing Amendments Act of 1988.”
- As of September 8, 2008, the applicant had not submitted any additional information to staff.

### **BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (MF-2) (Planned Development District, Multifamily)  
North: PD No. 193 (MF-2) (Planned Development District, Multifamily)  
South: PD No. 193 (MF-2) (Planned Development District, Multifamily)  
East: PD No. 193 (MF-2) (Planned Development District, Multifamily)  
West: PD No. 193 (MF-2) (Planned Development District, Multifamily)

**Land Use:**

The subject site is developed with an attached single family home. The areas to the north, east, south, and west are developed with residential 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:**

April 23, 2009 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 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 14, 2009: The Board Administrator contacted the applicant by phone and shared the following information via email:

- an attachment that provided the public hearing date and panel that will consider the application; the July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 7<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.”

July 16 & 24, 2009 The applicant submitted additional information to the Board Administrator (see Attachment A).

July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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.

August 18, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their September 15<sup>th</sup> public hearing in order for the applicant to consider the following: 1) whether he or the owner would be amenable to any or all of the conditions suggested in a letter from the Oak Lawn Committee (see Attachment B); and 2) whether the owner could further substantiate that he is “handicapped” as referenced in Chapter 51A– “as that term is defined in the Federal Fair Housing Amendments Act of 1988.”

August 20, 2009: 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 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials (which may include documentation of any conditions suggested by the Oak Lawn Committee that he is amenable to, and further documentation on the handicapped status of the owner of the subject site);
- the criteria/standard that the board will use in their decision to approve or deny the requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September 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, Building Inspection Development Code Specialists, 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 focuses on a special exception for the handicapped to allow the construction/maintenance of an approximately 320 square foot swimming pool

structure 4' away from the site's Hall Street front property line (or 16' into the required 20' front yard setback).

- Unlike most requests where the board is considering to allow a structure that is encroaching into a setback via a variance (where property hardship must be demonstrated), the board is to consider this structure that would encroach into a front yard setback via a special exception for the handicapped based solely on whether the Board concludes that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit.
- Two medical doctors have submitted a letter concerning the applicant's arthritic condition and stating how either the swimming pool would help to improve his medical condition or how the pool is "Medically Necessary to help his medical condition."
- The applicant has the burden of proof in establishing the following:
  - The special exception (which in this case is requested to construct/maintain a swimming pool structure in the site's Hall Street front yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit; and
  - there is a person with a "handicap" (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that: 1) compliance with the submitted survey plat/site plan is required, 2) that the special exception expires when a handicapped person no longer resides on the property, and 3) all applicable building codes must be obtained, the swimming pool could be constructed and maintained of the size and location shown on this plan (upon obtaining all necessary building permits required by the building code) for as long as the applicant or any other handicapped person resides on the property.

### **BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009**

APPEARING IN FAVOR: Ed Simons, 900 Jackson St., #640, Dallas, TX

APPEARING IN OPPOSITION: No one

### **MOTION#1: Harris**

I move that the Board of Adjustment, in Appeal No. **BDA 089-073**, on application of Ed Simons, **deny** the special exception for the handicapped requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the special exception is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**SECONDED: NO ONE**

**MOTION FAILED FOR LACK OF A SECOND**

**MOTION#2: Schweitzer**

I move that the Board of Adjustment in Appeal No. **BDA 089-073**, hold this matter under advisement until **September 15, 2009**.

**SECONDED: Gabriel**

**AYES:** 4 – Richmond, Schweitzer, Gabriel, Jackson

**NAYS:** 1 - Harris

**MOTION PASSED:** 4– 1

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 15, 2009**

**APPEARING IN FAVOR:** Ed Simons, 900 Jackson St., #640, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Harris

I move that the Board of Adjustment, in Appeal No. **BDA 089-073**, on application of Ed Simons, **deny** the special exception for the handicapped requested by this applicant **without prejudice**, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that the special exception is not necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**SECONDED: Schweitzer**

**AYES:** 5 – Richmond, Schweitzer, Gabriel, Harris, Gaspard

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA 089-088(K)

**BUILDING OFFICIAL’S REPORT:**

Application of Randy Edwards represented by Robert Baldwin for a special exception to the fence height regulations at 5233 Stonegate Road. This property is more fully described as Lot 6 in City Block B/5668 and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 7 foot, 7 inch fence in a required front yard setback which will require a special exception of 3 feet, 7 inches.

**LOCATION:** 5233 Stonegate Road

**APPLICANT:** Randy Edwards  
Represented by Robert Baldwin

**REQUESTS:**

A special exception to the fence height regulations of 3 foot and 7 inches is requested to construct a fence that is 7 feet and 7 inches in a required front yard.

**STAFF RECOMMENDATION (fence height special exception):**

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:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**GENERAL FACTS:**

- The site is zoned R 16(A) and has a front yard setback of 35 feet.
- The applicant proposes to maintain a 7 foot 7 inch high fence.
- The Dallas Development Code limits the height of fences in front yard setbacks to 4 feet in residential zoning.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16 (A) (Single family residential 16,000 square feet).  
North: R-16 (A) (Single family residential 16,000 square feet).  
South: R-16 (A) (Single family residential 16,000 square feet).  
East: R-16 (A) (Single family residential 16,000 square feet).  
West: R-16 (A) (Single family residential 16,000 square feet).

**Land Use:**

The subject site is developed with a single family structure. The properties to the north, south, and east are developed with single family structures.

**Zoning/BDA History:**

BDA 045-128. On January 18, 2005, the Board of Adjustment, Panel A, granted the request to maintain an additional dwelling unit on the property located at 5222 Farquhar Drive.

**Timeline:**

- June 22, 2009: The applicant's representative submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- July 16, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- July 23, 2009: The Board Senior Planner contacted the applicant's representative by telephone and email and the following information:
- the public hearing date and panel that will consider the application;
  - the criteria and 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 July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and recommendation;
  - the August 5<sup>th</sup> 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 June public hearing after considering the information, evidence and testimony presented to them by the applicant and all other interested parties.
- July 28, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

August 18, 2009 The Board of Adjustment voted to hold this case under advisement until September 15, 2009

September 1, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- The property is developed with a single family structure and the surrounding properties are developed with single-family structures.
- The applicant proposes to construct and maintain a solid board on board fence that is seven-feet and seven-inches in height.
- The proposed fence runs 120 feet parallel to the front property line.
- During the site visit the senior planner did not observe any other fences over four-feet in the neighboring properties' front yards.
- The applicant has the burden of proof in establishing that granting the special exception to the fence height regulation will not adversely affect neighboring properties.
- If the Board grants the special exception to the fence height regulations, staff recommends imposing the submitted site plan and elevation as a condition.

### **BOARD OF ADJUSTMENT ACTION: SEPTEMBER 15, 2009**

APPEARING IN FAVOR: Rob Baldwin, 401 Exposition, Dallas, TX

APPEARING IN OPPOSITION: Pat White, 4714 Wildwood Rd., Dallas, TX  
Nancy Kenty, 8723 Canyon Dr., Dallas, TX

**\*Member Jim Gaspard recused himself and did not hear or vote on this matter**

MOTION: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 089-088**, on application of Randy Edwards, represented by Rob Baldwin, **deny** the special exception requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: **Gabriel**

AYES: 4 – Richmond, Schweitzer, Gabriel, Harris

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 089-101

**BUILDING OFFICIAL’S REPORT:**

Application of Phaiboon Promniang, represented by William A. Bratton III, to appeal the decision of an administrative official at 11308 Emerald Street, Suite 102 . This property is more fully described as an approximately 0.560 acre tract of land in City Block 6547 and is zoned IM which requires a certificate of occupancy for its use. The building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations; or a required license to operate the use has not been issued. The applicant proposes to appeal the decision of the administrative official in the revocation of a certificate of occupancy.

LOCATION: 11308 Emerald Street, Suite 102

APPLICANT: Phaiboon Promniang  
Represented by William A. Bratton III

**REQUEST:**

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official’s May 15, 2009 revocation of certificate of occupancy no. 0708221075 for a personal service use (Moon Night) at 11308 Emerald Street, Suite 102. The applicant alleges that this revocation was based “on an incorrect finding that the premise being used as a massage establishment without proper license from state. “

Note however that staff documented in the case report prepared for this application for the August 18<sup>th</sup> docket that on July 29, 2009, the Building Inspection Development Code Specialist emailed the Board Administrator the following information: “The Cert Mail green card for the letter sent notifying the applicant of the requirement to post the notification sign was rec’d and signed by the applicant on 07/13/09. And 14 days later, the deadline for obtaining and posting the notification signs would have been Monday 07/27/09. So..., too late.” (Note that the Board Administrator forwarded a copy of this email to the applicant’s representative on August 6, 2009).

- On August 18, 2009, the Board of Adjustment Panel A made a motion to postpone the hearing on this application until September 15, 2009.

Note however that on August 19, 2009, 4:35 p.m., more than 24 hours after the case was postponed on August 18, 2009 before this hearing was officially adjourned at 1:59 p.m., an email was forwarded to the Board of Adjustment Chief Planner from the Building Inspection Development Code Specialist that he “found no evidence of a sign purchase” - see Attachment B. (The Board Administrator forwarded this email to the applicant’s representative on August 24, 2009 to which no response was given).

As a result of this point made by the Building Inspection Development Code Specialist pertaining to the posting of required notification signs, the Board of Adjustment should determine once again if the applicant complied with the Dallas Development Code provision related to the posting of notification signs code – a provision that states “If the board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

**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 May 15<sup>th</sup> letter to Aeion, LLC, Stanley F Carpenter PC, and Phaiboon Promniang states the following:
  - This letter is to inform you that certificate of occupancy no. 0708221075 is hereby revoked, and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
  - An application for a certificate of occupancy must include a detailed description of the use that will be operated; the services offered; and whether a city, county, state, or federal license, permit, or registration is required to operate the use. The Dallas Police Department has informed me that you are operating a massage establishment at the Property without a license. A license is required to operate a massage establishment. Your application for this certificate of occupancy did not state that the use would be operated as a massage establishment, not did you supply a copy of a massage establishment license.
  - Therefore, the application for this certificate of occupancy provided false, incomplete, and incorrect information about the use being operated and the requirements of a massage establishment license. The building official is required to revoke a certificate of occupancy if the building official determines that the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, or any state laws or regulations; or a required license to operate the use has not been issued.

- Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter. Questions about the appeal process should be directed to the building official at 214-948-4320.
- On July 29, 2009, the Building Inspection Development Code Specialist emailed the Board Administrator the following information: “The Cert Mail green card for the letter sent notifying the applicant of the requirement to post the notification sign was rec’d and signed by the applicant on 07/13/09. And 14 days later, the deadline for obtaining and posting the notification signs would have been Monday 07/27/09. So..., too late.” (Note that the Board Administrator forwarded a copy of this email to the applicant’s representative on August 6, 2009).
- The Board Administrator forwarded a copy of an August 13<sup>th</sup> email that included an August 12<sup>th</sup> letter from the applicant’s representative to the Board of Adjustment at the briefing that was conducted on this application on August 18<sup>th</sup> (see Attachment A). The letter requested a delay on the hearing for approximately two weeks to assure the applicant’s representative’s availability given that he had just received notice that the hearing date on this application was to coincide with the beginning of a jury trial that he was also involved with that he stated was almost certain of going to trial and extend past the current scheduled time for the hearing on this application.
- The Board of Adjustment moved to postpone the hearing on this application on August 18<sup>th</sup> until September 15, 2009.  
Note however that on August 19, 2009, 4:35 p.m., more than 24 hours after the case was postponed on August 18, 2009 before this hearing was officially adjourned at 1:59 p.m., an email was forwarded to the Board of Adjustment Chief Planner from the Building Inspection Development Code Specialist that he “found no evidence of a sign purchase” – see Attachment B. (The Board Administrator forwarded this email to the applicant’s representative on August 24, 2009 to which no response was given).
- The Dallas Development Code states that “The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.” The code additionally states “If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”

**BACKGROUND INFORMATION:**

**Zoning:**

Site: IM (Industrial Manufacturing)  
North: IR (Industrial Research)  
South: IR (Industrial Research)  
East: IR (Industrial Research)  
West: IR (Industrial Research)

**Land Use:**

The subject site is developed as a commercial structure with a use doing business as Moon Night. The areas to the north, south, and west are developed with a mix of commercial/retail, office, and warehouse uses; and the area to the east is undeveloped/vacant.

**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, 2009: 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 9, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 16, 2009: 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 July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the outline of procedure for appeals from decisions of the building official to the board of adjustment;
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 28, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the August 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.

The Trinity River Corridor Senior Planner submitted a review comment sheet marked "Recommends that this be denied."

August 13, 2009 The applicant's representative submitted additional information to the Board Administrator (see Attachment A).

August 18, 2009 The Board of Adjustment postponed action until their September 15<sup>th</sup> public hearing in order for the applicant to comply with the Dallas Development Code provisions related to the posting of notification signs.

August 20, 2009: The Board Administrator emailed the applicant's representative the following information:

- the board's decision to postpone the application until September 15<sup>th</sup>,
- an attachment that provided the public hearing date and panel that will consider the application; the August 31<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 4<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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

August 24, 2009 The Board Administrator forwarded a copy of an August 20, 2009 (4:35 PM) email written by the Building Inspection Development Code Specialist to the Board of Adjustment Chief Planner stating that he found "no evidence of a sign purchase (see Attachment B).

### **STAFF ANALYSIS:**

- The applicant is requesting that the Building Official's revocation of certificate of 0708221075 for a personal service use (Moon Night) at 11308 Emerald Street, Suite 102 on May 15, 2009 be overturned/reversed.
- On July 29, 2009, the Building Inspection Development Code Specialist emailed the Board Administrator the following information: "The Cert Mail green card for the letter sent notifying the applicant of the requirement to post the notification sign was rec'd and signed by the applicant on 07/13/09. And 14 days later, the deadline for obtaining and posting the notification signs would have been Monday 07/27/09. So..., too late." (Note that the Board Administrator forwarded a copy of this email to the applicant's representative on August 6, 2009).
- On August 18, 2009, the Board of Adjustment Panel A made a motion to postpone the hearing on this application until September 15, 2009.

- On August 19, 2009, 4:35 p.m., more than 24 hours after the case was postponed on August 18, 2009 before this hearing was officially adjourned at 1:59 p.m., an email was forwarded to the Board of Adjustment Chief Planner from the Building Inspection Development Code Specialist that he “found no evidence of a sign purchase” - see Attachment B. (The Board Administrator forwarded this email to the applicant’s representative on August 24, 2009 to which no response was given).
- The Board of Adjustment should determine if the applicant complied with the Dallas Development Code provision related to the posting of notification signs. The Dallas Development Code states that “The applicant shall post the required number of notification signs on the property within 14 days after an application is filed. The signs must be legible and remain posted until a final decision is made on the application. For tracts with street frontage, signs must be evenly spaced over the length of every street frontage, posted at a prominent location adjacent to a public street, and be easily visible from the street. For tracts without street frontage, signs must be evenly posted in prominent locations most visible to the public.” The code additionally states “If the city plan commission, landmark commission, or board of adjustment determines that the applicant has failed to comply with the provisions of this section, it shall take no action on the application other than to postpone the public hearing for at least four weeks, or deny the applicant’s request, with or without prejudice. If the hearing is postponed, the required notification signs must be posted within 24 hours after the case is postponed and comply with all other requirements of this section.”
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs and uphold the Building Official’s decision, the certificate of occupancy no. 0708221075 for a personal service use (Moon Night) on the subject site will remain revoked.
- If the Board of Adjustment were to determine that the applicant complied with the Dallas Development Code provision related to the posting of notification signs and reverse the Building Official’s decision, the certificate of 0708221075 for a personal service use (Moon Night) on the subject site will be reinstated.

**BOARD OF ADJUSTMENT ACTION: AUGUST 18, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melissa Miles, Asst. City Atty, 1500 Marilla, 5DN

MOTION: **Harris**

I move that the Board of Adjustment in Appeal No. **BDA 089-101**, hold this matter under advisement until **September 15, 2009**.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Jackson  
NAYS: 0 -  
MOTION PASSED: 5– 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 15, 2009**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Melissa Miles, Asst. City Atty, 1500 Marilla, 5DN

MOTION: **Harris**

Having fully evaluated the evidence pertaining to the absence of the necessary signage in Appeal No. **BDA 089-101**, on application of Phaiboon Promniang, represented by William Bratton, I move that the Board of Adjustment **deny** the relief requested by the applicant **with prejudice**.

SECONDED: **Gabriel**

AYES: 5 – Richmond, Schweitzer, Gabriel, Harris, Gaspard

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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FILE NUMBER: BDA 089-099

**BUILDING OFFICIAL’S REPORT:**

Application of Ed Simons for a variance to the off-street parking regulations at 3818 Cedar Springs Road. This property is more fully described as an approximately .788 acre tract in City Block N/1223 and is zoned PD-193 (GR) which requires parking to be provided. The applicant proposes to maintain a structure with retail uses and provide 21 of the required 25 parking spaces which will require a variance of 4 spaces.

LOCATION: 3818 Cedar Springs Road

APPLICANT: Ed Simons

**REQUEST:**

- A variance to the off-street parking regulations of 4 spaces is requested in conjunction with transitioning/leasing approximately 1,450 square feet of vacant office use space/suite within an existing 5,350 square foot structure/four-suite center to any of the 21 uses listed in the “retail use” category in PD No. 193. The applicant proposes to provide 21 (or 84%) of the required 25 parking spaces that are required for leasing the entire existing center/structure with retail uses.

## **STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant had not substantiated how granting the variance would not be contrary to the public interest. (The Development Services Senior Engineer has recommended that this request be denied and commented that there is no supporting documentation for the reduction of 4 parking spaces or 16 percent).
- In addition, the applicant had not substantiated how the variance to the parking regulations requested to lease/occupy a suite in an existing structure with specific uses that generate more required off-street parking than can be provided is necessary to permit development of the site which is different from other lots by its restrictive size, shape, or slope. Although the site is somewhat irregular in shape, this characteristic nor its slope or area preclude the applicant from complete utilization of the existing structure on the site with uses that would not generate more than the required number of parking spaces that can be provided on the site.

## **STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that:

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

## **GENERAL FACTS:**

- PD No. 193 requires that 19 of the 21 uses listed in its retail use category provide a parking requirement of 1 space per 220 square feet of floor area. (Feed store use must provide 1 space per 500 square feet of floor area; furniture store use must provide 1 space per 550 square feet of floor area).  
According to application and Building Official's Report, the applicant proposes to provide 21 (or 84%) of the required 25 parking spaces that would be required if the entire 5,350 square foot center were leased/occupied with one or all of the 21 uses

listed in the retail use category of PD No. 193. (According to the application and the Building Official's Report, 16 of the provided required spaces are actually provided on the site; 2 of the provided required spaces are from the transit fund; and 3 of the provided required spaces are from delta credits).

- PD No. 193 requires that this board of adjustment parking reduction request of 16% for these specific uses be "varied" rather than "special excepted" - the option on parcels on land outside PD No. 193 where the reduction is less than 25% of the required parking.
- The subject site is flat, slightly irregular in shape (generally 105' x 125') or about 13,000 square feet in area. The site is zoned PD No. 193 (GR).
- DCAD records indicate that the site is developed with a "retail strip" with 13,953 square feet built in 1948.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 193 (GR) (Planned Development General Retail)  
North: PD No. 193 (GR ) (Planned Development General Retail)  
South: PD No. 193 (GR & H/22) (Planned Development General Retail and Historic)  
East: PD No. 193 (GR) (Planned Development General Retail)  
West: PD No. 193 (GR) (Planned Development General Retail)

#### **Land Use:**

The subject site is developed with a strip center. The area to the north is developed with a retail uses; 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:**

- June 29, 2009: 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 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 20, 2009: 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 31<sup>st</sup> deadline to

submit additional evidence for staff to factor into their analysis; and the September 4<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."

Sept. 1, 2009 The Board of Adjustment staff review team meeting was held regarding this application and the others scheduled for the September 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, Building Inspection Development Code Specialists, and the Assistant City Attorney to the Board.

Sept. 3, 2009 The Development Services Senior Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments:

- "There is no supporting documentation for the reduction of 4 parking spaces or 16 percent. "

#### **STAFF ANALYSIS:**

- This request focuses on providing 84 percent of the required off-street parking in conjunction with transitioning/leasing approximately 1,450 square feet of vacant office space/suite within an existing 5,350 square foot structure/four-suite center to any of the 21 uses listed in the "retail use" category in PD No. 193. ("Office" use is required to provide 1 space per 366 square feet of floor area, most "retail" uses in PD No. 193 are required to provide 1 space per 200 square feet of floor area.)
- The request to reduce the number of the required 25 parking spaces on the site by 4 spaces must be considered by the board as a *variance* request given what is being requested and that the site is located in PD No. 193. (If the site were located outside of PD No. 193 in a general zoning classification, the same 4 space reduction could be made as a *special exception* to the parking regulations since the amount of reduction being requested is less than 25% of the total number of parking spaces required).
- The subject site is flat, slightly irregular in shape (generally 105' x 125') or about 13,000 square feet in area. The site is zoned PD No. 193 (GR).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the parking regulations of 4 spaces requested in conjunction with transitioning approximately 1,450 square feet of vacant office space/suite within an existing 5,350 square foot structure/four-suite center to any of the 21 uses listed in the "retail use" category in PD No. 193 will not be contrary to the public interest when, owing to special conditions, a literal enforcement of

this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site (a subject site that is developed with an existing 5,350 square foot structure/four-suite center, and is flat, slightly irregular in shape, and approximately 13,000 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (GR) zoning classification.
- The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the PD No. 193 (GR) zoning classification.
- The Development Services Senior Engineer has commented that this request should be denied since there is no supporting documentation for the reduction of 4 parking spaces or a 16 percent reduction.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 15, 2009**

APPEARING IN FAVOR: Ed Simons, 900 Jackson #640, Dallas, TX  
Jody Hawn, 4508 Varsailles, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Schweitzer**

I move that the Board of Adjustment, in Appeal No. **BDA 089-099**, on application of Ed Simons, **deny** the variance to the off-street parking regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Gabriel**

AYES: 0 –

NAYS: 5 – Richmond, Schweitzer, Gabriel, Harris Gaspard

MOTION FAILED: 5– 0

MOTION #2: **Gaspard**

I move that the Board of Adjustment, in Appeal No. **BDA 089-099**, on application of Ed Simons, **grant** the 4-space variance to the off-street parking regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of

the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

**SECONDED: Gabriel**

**AYES:** 5 – Richmond, Schweitzer, Gabriel, Harris, Gaspard

**NAYS:** 0 –

**MOTION PASSED:** 5– 0(unanimously)

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**MOTION: Gaspard**

I move to adjourn this meeting.

**SECOND: Gabriel**

**AYES:** 5– Richmond, Schweitzer, Gabriel, Harris, Gaspard

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

**1:57 P.M.** - Board Meeting adjourned for **September 15, 2009.**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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