

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL B**  
**WEDNESDAY, MARCH 18, 2009**

**Briefing: 10:00 A.M. 5/E/S**  
**Public Hearing: 1:00 P.M. COUNCIL CHAMBERS**

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

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

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

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03-18-2009

ZONING BOARD OF ADJUSTMENT, PANEL B  
WEDNESDAY, MARCH 18, 2009  
AGENDA

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BRIEFING PUBLIC HEARING	5ES COUNCIL CHAMBERS	10:00 A.M. 1:00 P.M.
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**Donnie Moore, Chief Planner**  
**Steve Long, Board Administrator**  
**Kyra Blackston, Senior Planner**

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**MISCELLANEOUS ITEMS**

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	Approval of the <b>Wednesday, February 18, 2009</b> Board of Adjustment Public Hearing Minutes	M1
BDA 078-086	19009 Preston Road <b>REQUEST:</b> Of Tommy Mann of Winstead to waive the two year time limitation on a request for a special exception to the off-street parking regulations that was granted by Board of Adjustment Panel B (with conditions) on August 13, 2008	M2
Unassigned	19009 Preston Road <b>REQUEST:</b> Of Tommy Mann of Winstead to waive the filing fee to be submitted in conjunction with a potential board of adjustment appeal	M3

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**UNCONTESTED CASES**

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BDA 089-028(K)	8207 S. Hampton Road <b>REQUEST:</b> Application of Kenneth D. Baca for a special exception to the vehicle stacking regulations	1
BDA 089-031(K)	1401 Rowan Avenue <b>REQUEST:</b> Application of Isidro Torres for a variance to the front yard setback regulations	2

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**HOLDOVER CASES**

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BDA 089-016(K)	9310 Havencove Drive <b>REQUEST:</b> Application of Denny McEvoy for a	3
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variance to the height regulations, for a special exception to the side yard setback regulations for tree preservation, and for a variance to the side yard setback regulations

BDA 089-019 3309 McKinney Avenue 4  
**REQUEST:**Application of John Hamilton, represented by Santos Martinez of Masterplan, for a variance to the front yard setback regulations

BDA 089-020 3309 McKinney Avenue 5  
**REQUEST:**Application of John Hamilton, represented by Santos Martinez of Masterplan for a special exception to the landscape regulations

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**REGULAR CASE**

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BDA 089-029(K) 1610 Cedar Springs Road 6  
**REQUEST:** Application of Mehul Patel represented by Robert Baldwin for a variance to the parking regulations

## EXECUTIVE SESSION NOTICE

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

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

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B February 18, 2009 public hearing minutes.

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 078-086

**REQUEST:** To waive the two year limitation on a request for a special exception to the off-street parking regulations that was granted with conditions by Board of Adjustment Panel B on August 13, 2008

**LOCATION:** 19009 Preston Road

**APPLICANT:** Tommy Mann of Winstead

**STANDARD FOR WAIVING THE TWO YEAR TIME LIMITATION ON A FINAL DECISION REACHED BY THE BOARD:**

The Dallas Development Code states that the board may waive the two year time limitation on a final decision reached by the board if there are changed circumstances regarding the property sufficient to warrant a new hearing.

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to board action:
  - Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
  - If the board renders a final decision of denial without prejudice, the two year limitation is waived.
  - The applicant may apply for a waiver of the two year limitation in the following manner:
    - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
    - The board may waive the two year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.
- On March 6, 2009, the applicant for BDA078-086 submitted a letter to the Board Administrator requesting him to schedule for the board's consideration, a request to waive the two year time limit in place in conjunction with a request for a special exception to the off-street parking regulations of 74 spaces that was granted by Board of Adjustment Panel B on August 13, 2008. (See Attachment A). On August 13, 2008, the Board of Adjustment granted the request for a special exception to the off-street parking regulations of 74 spaces imposing the following conditions: 1) The special exception shall automatically and immediately terminate if and when the

office, personal service, restaurant without drive-in or drive-through service, and general merchandise or food store less than 3500 square feet uses on the site are changed or discontinued; and 2) The special exception shall terminate one year from today.

- On March 9, 2009, the Board Administrator responded to the applicant's request, and shared the following additional information:
  - the public hearing date and panel that will consider the miscellaneous request;
  - 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."
- The August 2008 case report regarding BDA078-086 stated that a special exception to the off-street parking regulations was made in conjunction with constructing and maintaining a nonresidential structure for office use, personal service use, restaurant without drive-in or drive-through service use, and general merchandise or food store use less than 3500 square feet, and provide 303 of the required 377 parking spaces.

**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** Unassigned

**REQUEST:** To waive the filing fee to be submitted in conjunction with a potential Board of Adjustment appeal

**LOCATION:** 19009 Preston Road

**APPLICANT:** Tommy Mann of Winstead

**STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:**

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

**GENERAL FACTS:**

- The Dallas Development Code states the following with regard to requests for Board of Adjustment fee waivers/reimbursements:
  - The board may waive the filing fee if the board finds that payment of the fee would result in substantial financial hardship to the applicant.
  - The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
  - If the issue is placed on the miscellaneous docket, the applicant may not file the application until the merits of the request for a waiver have been determined by the board.
  - In making this determination, the board may require the production of financial documents.
- The applicant submitted a letter to the Board Administrator requesting him to schedule for the board's consideration a waiver of the filing fee to be submitted in conjunction with a potential appeal to the Board of Adjustment (see Attachment A). (Although the applicant did not specifically mention the fee to be waived in conjunction with the new application, the applicant did specify that the filing fee for the original request was \$8,320.00).

**Timeline:**

March 6, 2009      The applicant submitted a letter requesting a waiver of the filing fee for a Board of Adjustment application that may be

submitted/requested at the address referenced above (see Attachment A).

March 9, 2009: The request was assigned to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

March 9, 2009: The Board Administrator contacted the applicant and shared the following information via email:

- the public hearing date and panel that will consider the miscellaneous request;
- 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."

**FILE NUMBER:** BDA 089-028(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Kenneth D. Baca for a special exception to the vehicle stacking regulations at 8207 S. Hampton Road. This property is more fully described as Lot 1A in City Block A/7556 and is zoned PD-598 (Tract 3), which requires stacking to be provided. The applicant proposes to construct a nonresidential structure for a car wash use and provide 19 of the required 25 stacking spaces which will require a special exception of 6 spaces (25% reduction).

**LOCATION:** 8207 S. Hampton Road

**APPLICANT:** Kenneth D. Baca

**REQUEST:**

A special exception to the vehicle stacking regulations is requested in conjunction with the construction and maintenance of a carwash. The applicant seeks to provide 19 of the required 25 stacking (parking) spaces.

**STAFF RECOMMENDATION:**

Approval:

- Subject to compliance with the submitted site plan.

Rationale:

- The City's Senior Engineer does not have any objections to the request.
- The applicant has submitted a traffic study to substantiate how the reduction in required stacking spaces will not create a traffic hazard.

**STANDARD FOR A SPECIAL EXCEPTION:**

Section 51A-4.304(d) (1) of the Dallas Development Code states that the board of adjustment may grant a special exception to authorize a reduction in the number of off-street stacking spaces required under this article if the board finds, after a public hearing, that the stacking demand generated by the use does not warrant the number of off-street stacking 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 subsection is two spaces for each of the first two drive-through windows, if any, or 25 percent of the total number of required spaces, whichever is greater, minus the number of spaces currently not provided due to already existing nonconforming rights.

- (2) In determining whether to grant a special exception under Paragraph (1), the board shall consider the following factors:
- (A) The stacking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (B) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (C) The availability of public transit and the likelihood of its use.
- (3) In granting a special exception under Paragraph (1), the board shall specify the use or 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 under Paragraph (1), the board may:
- (A) establish a termination date for the special exception or otherwise provide for the reassessment of conditions after a specific period of time;
  - (B) impose restrictions on access to or from the subject property; or
  - (C) impose any other reasonable condition that would have the effect of improving traffic safety or lessening congestion on the streets.
- (5) The board shall not grant a special exception under Paragraph (1) to reduce the number of off-street stacking spaces required in:
- (A) a planned development district; or
  - (B) an ordinance granting or amending a special use permit.

**GENERAL FACTS:**

- The site is located in Planned Development District 598 Tract 3, that allows for a carwash.
- The subject site is developed with a gas station. The proposed use of the site, a carwash, requires 25 stacking spaces for each tunnel unit.
- The Dallas Development Code allows for the Board of Adjustment to consider a request to reduce the number of stacking spaces for this property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 598 (Tract 3) (Planned Development District)  
North: PD 751 (Tract 2) (Planned Development District)  
South: PD 598 (Tract 3) (Planned Development District)  
East: PD 598 (Tract 3) (Planned Development District)  
West: PD 598 (Tract 3) (Planned Development District)

**Land Use:**

The subject site is developed with a gas station. The properties to the north and west are undeveloped. The property to the east is developed with a commercial/retail use. The property to the south is developed with Interstate 20.

**Zoning/BDA History:**

There is no zoning history or Board of Adjustment history in the immediate area.

**Timeline:**

January 23, 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.

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

February 24, 2009: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via letter:

- 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 March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the March 6<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 March public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

March 4, 2009

The Development Services Senior Engineer submitted a comment sheet (see attachment B).

**STAFF ANALYSIS:**

- The proposed use of the subject site is a car wash on property that is 1.14 acres.
- A scaled site plan has been submitted that illustrates a car wash with one tunnel unit and building totaling 8,790 square feet. The site plan shows that 19 stacking (parking) spaces will be provided for the tunnel and 23 parking spaces will be provided on the property.
- The Dallas Development Code states that a carwash must provide 25 stacked spaces for each tunnel unit. The applicant proposes to provide 19 of the required 25 stacked spaces (or 75% of the required stacking spaces).
- The applicant submitted a detailed traffic analysis that indicates a projected annual volume of 85,000 cars per year. The projected highest daily volume for the facility is 408 washes, and hourly peak of 49 washes.
- The applicant submitted a letter dated January 23, 2009, that states the car wash unit can hold up to 6 cars running through the tunnel at one time and the average wash time for each car is 3 to 4 minutes.
- The Senior Engineer has reviewed the traffic analysis and does not have any objections to the request.
- The applicant has the burden of proof to show how the stacking demand generated by the use does not warrant the number of off-street stacking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- Should the Board vote to grant the special exception to the stacking requirements, staff recommended imposing the following condition:
  - this special exception shall terminate automatically and immediately if and when that use is changed or discontinued.

**FILE NUMBER:** BDA 089-031(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Isidro Torres for a variance to the front yard setback regulations at 1401 Rowan Avenue. This property is more fully described as Lot 5B in City Block 1453 and is zoned R-5(A), which requires a front yard setback of 20 feet. The applicant proposes to construct a residential structure and provide a 15 foot front yard setback which will require a variance of 5 feet.

**LOCATION:** 1401 Rowan Avenue

**APPLICANT:** Isidro Torres

**REQUEST:**

- A variance to the front yard setback on Ware Street.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan.

Rationale:

- The site is different from other parcels of land in the R-5(A) zoning, in that it has two front yard setbacks.
- The variance is necessary to develop this parcel of land that has a restrictive developable area.
- Granting this variance does not appear to be contrary to the public interest.

**STANDARD FOR A VARIANCE:**

The Board of Adjustment may 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 R 5(A) are required to provide a minimum front yard setback of 20 feet.
- The site is flat and rectangular in shape, having the dimensions of 120' x 47'.
- The applicant submitted a site plan and elevations showing the proposed construction will be 15 feet from the northern property line (Ware Street).
- The applicant is requesting the front yard variance on Ware St. only.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: R-5 (A) (Single family district 5,000 square feet)  
North: MF-2(A) (Multi family)  
South: R-5 (A) (Single family district 5,000 square feet)  
East: MF-2(A) (Multi family)  
West: R-5 (A) (Single family district 5,000 square feet)

#### **Land Use:**

The subject site is undeveloped. The property to the north is undeveloped. The properties to the east and south are developed with single family structures. The property to the east is developed with an abandoned structure.

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

There is no case history for this site or other properties in the immediate area.

#### **Timeline:**

- January 30, 2009      The applicant submitted an "Application to the Board of Adjustment" and related documents which have been included as part of this case report.
- February 20, 2009:    The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- February 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 March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the March 6<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 March public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 3, 2009

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

**STAFF ANALYSIS:**

- The subject site is approximately 5,640 square feet and is undeveloped. The lot is flat and rectangular in shape.
- Once all required setbacks have been accounted for there is 2,375 square feet of developable area (95' x22') or 42% of the total lot.
- This site is different from other properties in the R-5(A) zoning in that it has two front yard setbacks, one along Rowan Ave. and another on Ware St.
- The applicant is seeking a variance to the front yard setback on Ware Street. The applicant has submitted a site plan illustrating a single family structure that exceeds the minimum 20 foot front yard setback requirement on Rowan Street.
- The applicant has the burden of proof in establishing that granting the variance to the front yard setback is necessary to develop a specific parcel of land that differs from other parcels on land by being of a restrictive, shape and slope, that it cannot be developed in a manner commensurate with development of other parcels of land in the same R-5(A) zoning.
- 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.

**FILE NUMBER:** BDA 089-016(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Denny McEvoy for a variance to the height regulations, for a special exception to the side yard setback regulations for tree preservation, and for a variance to the side yard setback regulations at 9310 Havencove Drive. This property is more fully described as Lot 9 in City Block B/6736 and is zoned R-7.5(A), which requires that the height of an accessory structure may not exceed the height of the main building and requires a side yard setback of 5 feet. The applicant proposes to construct a single family residential accessory structure with a building height of 18 feet, 4 inches which will require a variance of 1 foot to the maximum building height regulations, and to construct and maintain a single family residential accessory structure and provide a 4 foot, 6 inch side yard setback which will require a special exception or variance of 6 inches to the side yard setback regulations.

**LOCATION:** 9310 Havencove Drive

**APPLICANT:** Denny McEvoy

**REQUEST:**

- A variance to the maximum building height regulation for an accessory structure; variance to the side yard setback; and a special exception to the side yard setback for tree preservation.

**STAFF RECOMMENDATION (variance to maximum height and side 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 R-7.5(A) zoning, in that it has an irregular shape.
- The variance to the maximum height is necessary to develop this parcel of land that has a restrictive slope.
- The applicant is requesting this variance to maintain an existing residential accessory structure that exceeds the height of the main structure by one foot.
- Granting this variance does not appear to be contrary to the public interest.

**STAFF RECOMMENDATION (special exception for tree preservation):**

Denial.

Rationale:

- The tree in question is a non-protected tree under Article X.
- The Chief Arborist has determined that the tree it is not worthy of preservation.

**STANDARD FOR A VARIANCE:**

The Board of Adjustment may 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.

**STANDARD FOR A SPECIAL EXCEPTION FOR TREE PRESERVATION:**

The board may grant a special exception to the minimum side yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

**GENERAL FACTS:**

- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5 feet.
- The site is sloped, irregular in shape and approximately 19,455 square feet in area.
- According to DCAD, the site was developed in 1965 with a residential structure that is 1,763 square feet.
- The applicant submitted a site plan and elevations showing the proposed construction will be 4 feet and 6 inches from the western side property line.
- The Dallas Development Code states that an accessory structure cannot exceed the height of a main use in a residential zoning.
- The proposed accessory structure will be 18 feet and 4 inches in height.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5 (A) (Single family district 7,500 square feet)

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

**Land Use:**

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

**Zoning/BDA History:**

There is no case history for this site or other properties in the immediate area.

**Timeline:**

- December 18, 2008 The applicant submitted an “Application to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 22, 2009: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- January 26, 2009: The Board of Adjustment Senior Planner contacted the applicant and shared the following information by letter and telephone:
- 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 February 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the February 6<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 February public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.
- February 3, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February 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.

February 18, 2009 The Board of Adjustment Panel B held this case under advisement until March 18, 2009.

March 2, 2009 The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

### **STAFF ANALYSIS:**

- According to DCAD, the site was developed in 1965 with a 1,763 square foot single-family structure.
- This site is different from other properties in the R-7.5(A) zoning in that it has an irregular shape and steep slope.
- The shape and the slope of the lot preclude it from being developed in the same manner as other properties in the R-7.5(A) zoning.
- The applicant is seeking a variance to maintain an existing detached garage structure that sits 6 inches in the required side yard and that exceeds the maximum height for an accessory structure by 1 foot
- The submitted elevation illustrates the proposed height of the structure to be 18 feet and 4 inches in height, requiring a 1 foot variance to the maximum height regulation.
- The Dallas Development Code states the height of a residential accessory structure cannot exceed the height of the single family structure.
- The applicant is seeking a variance to be able to maintain the current structure that exceeds the height of the residential structure by 1 foot.
- The applicant has submitted rendered elevations illustrating the completed accessory structure will have a design compatible with the main structure.
- The applicant has the burden of proof in establishing that granting the variance to the side yard setback and a variance to the maximum height regulations to maintain an existing residential accessory structure is necessary to develop a specific parcel of land that differs from other parcels on land by being of a restrictive, shape and slope, that it cannot be developed in a manner commensurate with development of other parcels of land in the same R 7.5(A) zoning
- The applicant has the burden of proof in establishing that granting the special exception to the side yard setback is necessary to preserve a tree that is worthy of preservation, the value of surrounding properties will not be adversely affected, and the special exception is compatible with the character of the neighborhood.
- Should the Board choose to grant the request for the variance to the side yard setback and maximum height, staff recommends a condition of compliance with the submitted site plan and elevation. Should the Board choose to grant the special exception to the side yard setback for tree preservation, staff recommends a condition of compliance with the submitted site plan and elevation.

**FILE NUMBER:** BDA 089-019

**BUILDING OFFICIAL'S REPORT:**

Application of John Hamilton, represented by Santos Martinez of Masterplan, for a variance to the front yard setback regulations at 3309 McKinney Avenue. This property is more fully described as part of Lot 11 in City Block 9/972 and is zoned PD-193 (LC) which requires a front yard setback of 10 feet. The applicant proposes to maintain a structure and provide a 0 foot front yard setback which will require a variance of 10 feet to the front yard setback regulations.

**LOCATION:** 3309 McKinney Avenue.

**APPLICANT:** John Hamilton  
Represented by Santos Martinez of Masterplan

**REQUEST:**

- A variance to the front yard setback regulations of 10' is requested in conjunction with maintaining a covered canopy dining area structure recently added to an existing restaurant (Primo's Bar & Grille) and located in the 10' front yard setback. Although a revised site plan was submitted on March 6th (see Attachment B) that identified that the existing/original structure was only 9' from the property line (or 1' into the 10' setback), the applicant's representative stated in the March 6<sup>th</sup> email that this portion of this structure is a legal nonconforming structure and that applicant does not request that the board vary this structure.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case requested to maintain the canopy covering an existing patio. The site is not irregular in shape whereby this characteristic (nor its size at over 16,000 square feet or its slope - flat) creates hardship or precludes the applicant from developing it in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. There is no physical characteristic of the subject site that warrants a covered canopy dining area structure in the front yard setback on this site.
- The applicant had not substantiated how the physical features of the flat, parallelogram-shaped, 0.37 acre site constrain it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification while simultaneously complying with

code standards including front yard setback regulations. Although the applicant has provided a document that appears to be a list of patios in the Uptown area of the City compiled in 2007, this document list only provides business names, addresses, and phone numbers, and does not provide any qualitative or quantitative information such as whether the patios are covered, whether the patios are located in required setbacks, or the size of the patios relative to the structures that they are attached to and the lots that they are located on.

### **STANDARD FOR A VARIANCE:**

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

- The minimum front yard setback for “other permitted structures” (which would include the covered patio/enclosed dining area) on lots zoned PD No. 193 (LC Subdistrict) is 10’.  
A revised site plan has been submitted denoting a “hatched area indicates the location of canopy over patio dining area” structure located on the site’s McKinney Avenue front property line (or 10’ into the 10’ front yard setback) (see Attachment B). The revised site plan also denotes a portion of this hatched area located in the public right of way – an area that according to the applicant’s representative was licensed by the City of Dallas in 2004.  
An elevation has been submitted denoting a “canopy façade at McKinney Avenue” to be 31’ 9” long and 13’ high. The elevation describes the canopy with notes including “retractable canopy,” “permanent sail,” and “roll up curtains.”
- According to calculations taken by the Board Administrator from the revised site plan, the area of the canopied dining area structure located in the 10’ front yard setback is approximately 34’ long and 10’ wide. Virtually the entire recently added covered patio dining area structure is located in the 10’ front yard setback. The originally submitted site plan denoted that the existing restaurant structure (without the addition) is approximately 72’ long and 82’ wide.
- The site is flat, parallelogram-shaped, (100’ x 163.50’) and approximately 16,350 square feet (or 0.37 acres) in area. The site is zoned PD No. 193 (LC).

- DCAD records indicate that the site is developed with a 5,625 square foot restaurant structure in good condition built in 1935.
- The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a letter that provided additional details about the request;
  - a site plan and photographs of the subject site; and
  - a document entitled "2007 Uptown Patios."
- On February 18, 2009, the Board of Adjustment conducted a public hearing on this request and delayed action until March 18, 2009. The applicant provided testimony at the public hearing that the existing original structure was most likely located in the front yard setback in addition to the recently added covered canopy dining area structure – information that was contrary to what was conveyed to the board in the docket material and conveyed on the submitted site plan and floor plan. Given this testimony, the Board Administrator cautioned the board from granting the request and imposing the submitted site plan as a condition to the variance since it was not clear whether the submitted site plan was an accurate representation of the location of the original and added structures on the site in relation to the front property line.
- The applicant's representative submitted information beyond what was submitted with the original application and what was submitted prior to the February public hearing (see Attachment B). This information included a revised site plan.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (LC) (Planned Development Light Commercial)  
North: PD No. 193 (LC) (Planned Development Light Commercial)  
South: PD No. 193 (LC) (Planned Development Light Commercial)  
East: PD No. 193 (LC) (Planned Development Light Commercial)  
West: PD No. 193 (PDS 13) (Planned Development, Planned Development)

**Land Use:**

The subject site is developed with a restaurant use (Primo's Bar & Grille). The areas to the north, east, south, and west are developed with a mix of residential, retail, and office uses.

**Zoning/BDA History:**

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. BDA 989-020, Property 3309 McKinney Avenue (the subject site)</li> </ol> | <p>On February 18, 2009, the Board of Adjustment Panel B considered a request for a special exception to the landscape regulations requested in conjunction with maintaining an enclosed patio dining area structure added to an existing restaurant (Primo's Bar &amp; Grille). The board delayed</p> |
|--|--|

action on this request until March 18, 2009.

**Timeline:**

- Dec. 18, 2008: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Jan. 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Jan. 22, 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 February 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 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.”
- Feb. 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of Development Services – Current Planning; 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.
- The Development Services Program Manager – Long Range Planning submitted a review comment sheet marked “Has no objections.”
- Feb. 18, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their March 18<sup>th</sup> public hearing.
- Feb. 20 & 24, 2009: The Board Administrator emailed the applicant’s representative and sent a letter that conveyed the following information:
- the delayed public hearing date;
  - the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence;” and
- the following additional materials to be submitted before the March 3<sup>rd</sup> staff review team meeting: 1) a revised site/landscape plan that accurately represents the location of the original and added structures on the site in relation to the front property line, and 2) a document that clearly states what structure/structures you want the board to vary –the recently added canopy, or that canopy PLUS (depending on the results of his research) a portion of the original structure in the setback.

March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

March 6, 2009: The applicant’s representative forwarded additional information to the Board Administrator (see Attachment B).

**STAFF ANALYSIS:**

- The focus of this front yard variance request is a covered canopy dining area structure that is located on the site’s front property line (or 10’ into the 10’ front yard setback). Although a revised site plan denotes that part of the original structure is in the front yard setback as well as the recently added covered canopy dining area structure, the applicant’s representative stated in a March 6<sup>th</sup> email that this portion of the original structure is a legal nonconforming structure and that applicant does not request that the board consider a variance for this structure.
- According to calculations taken from the submitted site plans, the area of the canopied dining area structure located in the 10’ front yard setback is approximately 34’ long and 10’ wide. Virtually the entire recently added covered patio dining area structure is located in the 10’ front yard setback. The originally submitted site plan denoted that the existing restaurant structure (without the addition) is approximately 72’ long and 82’ wide
- The site is flat, parallelogram-shaped, (100’ x 163.50’) and approximately 16,350 square feet (or 0.37 acres) in area. The site is zoned PD No. 193 (LC).
- DCAD records indicate that the site is developed with a 5,625 square foot restaurant structure in good condition built in 1935.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations requested in conjunction with maintaining a canopy structure over an existing patio will not be contrary to the public interest when, owing to special conditions, a literal

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

- The variance is necessary to permit development of the subject site (a site that is developed with a structure built in 1935, that is flat, parallelogram-shaped, and approximately 16,350 square feet (or 0.37 acres in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) 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 (LC) zoning classification.
- If the Board were to grant the front yard variance request, imposing a condition whereby the applicant must comply with the submitted revised site plan, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is a canopy structure located on the front property line (or 10' into the 10' front yard setback).
- If the board were inclined to additionally want to impose the submitted elevation of the existing canopy, the structure in the front yard setback would be limited to what is shown on this plan – which in this case is a structure described with the following notations: "canopy façade at McKinney Avenue" that is 31' 9" long and 13' high with "retractable canopy," "permanent sail," and "roll up curtains."
- Granting the variance with the revised site plan imposed as a condition to this request would not "vary" any part of the structure labeled on this plan as "existing restaurant" or deemed "nonconforming structure" by the city since the applicant has only requested that the board consider "varying" the recently added covered canopy dining area structure labeled on the revised site plan as "hatched area indicates area of canopy above." As a result, the applicant/owner/subsequent owner will be required to adhere to the Dallas Development Code nonconforming structure provisions with regard to the portion of the structure the City deems as a "nonconforming structure" – provisions stating that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent. However, except in the scenario where the structure is destroyed by the intentional act of the owner, a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.

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

APPEARING IN FAVOR: Santos Martinez, 900 Jackson, Dallas, TX  
Nick Galanos, 2630 Welborn, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-019**, **hold** this matter under advisement until **March 18, 2009**.

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

**FILE NUMBER:** BDA 089-020

**BUILDING OFFICIAL'S REPORT:**

Application of John Hamilton, represented by Santos Martinez of Masterplan, for a special exception to the landscape regulations at 3309 McKinney Avenue. This property is more fully described as part of Lot 11 in City Block 9/972 and is zoned PD-193 (LC) which requires mandatory landscaping. The applicant proposes to maintain a structure and provide an alternate landscape plan which will require a special exception to the landscape regulations.

**LOCATION:** 3309 McKinney Avenue

**APPLICANT:** John Hamilton  
Represented by Santos Martinez of Masterplan

**REQUEST:**

- A special exception to the landscape regulations is requested in conjunction with maintaining a covered canopy dining area structure recently added to an existing restaurant (Primo's Bar & Grille) – a structure that triggers full compliance with the landscape regulations.

**STAFF RECOMMENDATION:**

Approval, subject to the following conditions:

1. Compliance with the submitted site/landscape plan is required.
2. The open pedestrian sidewalk nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions.
3. All plant materials must be maintained in a healthy, growing condition at all times. Automatic irrigation is not required.

Rationale:

- The City's Chief Arborist recommends approval of this request whereby if the conditions mentioned above are imposed the special exception would not compromise the spirit and intent of the landscaping requirements of PD No. 193.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS  
IN OAK LAWN:**

Section 26(a)(4) of Ordinance No. 21859, which establishes PD No. 193, specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit

and that the property comply with a landscape plan as a condition to granting the special exception.

### **GENERAL FACTS :**

- PD No. 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood tornado, riot, act of the public enemy, or accident of any kind.  
The applicant submitted a site/landscape plan that according to the City of Dallas Chief Arborist, is deficient in meeting the street tree, sidewalk, special planting area, and parkway planting area requirements of the PD No. 193 landscape regulations.
- The City of Dallas Chief Arborist has submitted a memo to the Board Administrator and the Board of Adjustment Chief Planner pertaining to the submitted landscape plan (see Attachment B). The memo stated the following:
  - The applicant is requesting a special exception to the landscape requirements of PD 193 (LC), more specifically, relief is sought from most standards required in the ordinance including sidewalk, street tree, landscape site area, general planting area, and special planting area designations.
  - Trigger: Permitting of a canopy structure creating additional floor area to the property
  - Deficiencies (Street trees, sidewalk, landscape site area, general planting area, and parkway planting area):
    1. The applicant is required to provide 3 street trees in the required tree planting zone that is between 2.5' – 5' from curb.  
The applicant is providing 0 street trees.
    2. The applicant is required to provide a 6' wide sidewalk between 5' – 12' from the back curb.  
The applicant is providing a 5' 4" wide sidewalk located at the curb.
    3. The applicant is required to provide certain amounts of landscape site area, general planting area, and special planting area.  
The applicant is deficient in all three areas.
  - Factors for consideration:
    - The property use is pre-existing. The permit requirements for the canopy structure create additional floor area for the restaurant use and triggers PD No. 193 landscape requirements.
    - The open passable sidewalk width has been measured by staff to be 5' 4" in width from back of curb to the fence line. PD 193 requires a minimum of 6' for non-residential areas. The provided landscape plan does not illustrate the correct width of the open sidewalk area.
    - The owner has established planters with mixed evergreen, and annual, plant materials, and decorative "hardscape" to enhance the visual appearance of the property.
    - Overhead utility lines exist over the required tree planting zone.

- Recommendation:
  - No objection with recommendations for conditions:
    1. If approved, the open pedestrian sidewalk nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions.
    2. If approved, all plant materials must be maintained in a healthy, growing condition at all times. Automatic irrigation is not required.
  - The applicant's representative submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
    - a letter that provided additional details about the request;
    - a site plan and photographs of the subject site; and
    - a document entitled "2007 Uptown Patios."
  - On February 18, 2009, the Board of Adjustment conducted a public hearing on this request and delayed action until March 18, 2009. The applicant provided testimony at the public hearing that the existing original structure was most likely located in the front yard setback in addition to the recently added covered canopy dining area structure – information that was contrary to what was conveyed to the board in the docket material and conveyed on the submitted site plan and floor plan. Given this testimony, the Board Administrator cautioned the board from granting the request and imposing the submitted landscape plan as a condition to the special exception since it was not clear whether the submitted landscape plan was an accurate representation of the location of the original and added structures on the site in relation to the front property line.
  - The applicant's representative submitted information beyond what was submitted with the original application and what was submitted prior to the February public hearing (see Attachment C). This information included a slightly revised landscape plan – a plan identical to the originally submitted plan with the following added notation: Refer to sheet "site" for building dimensions and patio dimensions. Landscape shown for graphics only."

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD No. 193 (LC) (Planned Development Light Commercial)  
North: PD No. 193 (LC) (Planned Development Light Commercial)  
South: PD No. 193 (LC) (Planned Development Light Commercial)  
East: PD No. 193 (LC) (Planned Development Light Commercial)  
West: PD No. 193 (PDS 13) (Planned Development, Planned Development)

**Land Use:**

The subject site is developed with a restaurant use (Primo's Bar & Grille). The areas to the north, east, south, and west are developed with a mix of residential, retail, and office uses.

## **Zoning/BDA History:**

1. BDA 089-019, Property 3309 McKinney Avenue (the subject site)

On February 18, 2009, the Board of Adjustment Panel B considered a request for variance to the front yard setback regulations of 10' requested in conjunction with maintaining an enclosed patio dining area structure added to an existing restaurant (Primo's Bar & Grille) in the front yard setback. The board delayed action on this application until March 18, 2009. Note that if the board denies this variance request (019), there is no longer a need for the applicant to obtain the landscape special exception request (020) since the structure triggering full compliance with the landscape regulations will be required to be removed.

## **Timeline:**

- Dec. 18, 2008: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Jan. 22, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- Jan. 22, 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 February 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 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."
- Feb. 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included: the Assistant Director of Development Services – Current Planning; 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

The Development Services Program Manager – Long Range Planning submitted a review comment sheet marked “Has no objections.”

Feb. 9, 2009 The City of Dallas Chief Arborist submitted a memo that provided his comments regarding the request (see Attachment B).

Feb. 18, 2009 The Board of Adjustment conducted a public hearing on this request and delayed action until their March 18<sup>th</sup> public hearing.

Feb. 20 & 24, 2009: The Board Administrator emailed the applicant’s representative and sent a letter that conveyed the following information:

- the delayed public hearing date;
- the March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the March 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence;” and
- the following additional materials to be submitted before the March 3<sup>rd</sup> staff review team meeting: 1) a revised site/landscape plan that accurately represents the location of the original and added structures on the site in relation to the front property line, and 2) a document that clearly states what structure/structures you want the board to vary –the recently added canopy, or that canopy PLUS (depending on the results of his research) a portion of the original structure in the setback.

March 3, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for March public hearings. Review team members in attendance included: the Assistant Building Official, 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, the Development Services Senior Engineer and the Assistant City Attorney to the Board.

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

March 3, 2009: The applicant’s representative forwarded additional information to the Board Administrator (see Attachment C).

**STAFF ANALYSIS :**

- This landscape special exception request is triggered by a covered canopy dining area structure recently added to an existing restaurant.

- If the separately filed request for a variance to the front yard setback regulations on the subject site (BDA089-019) is denied by the Board of Adjustment on March 18<sup>th</sup>, there is no longer a need for the applicant to obtain approval of this request for a landscape special exception on the subject site (BDA089-020) since the covered patio structure would be required to be removed and there would no longer be any new structure triggering full compliance with the PD No. 193 landscape ordinance.
- The applicant seeks exception from the landscape requirements in the following ways: 1) providing none of the required 3 street trees in their required locations; 2) providing a 5' 4" wide sidewalk located at the curb rather than a 6' wide sidewalk located 5' to 12' from the curb; and; 3) not providing required amounts of landscape site area, general planting area, and special planting area.
- The City of Dallas Chief Arborist supports the request with conditions that if approved, the open pedestrian sidewalk nearest the curb must remain open at no less than its current width with no additional temporary or permanent obstructions, and that all plant materials must be maintained in a healthy, growing condition at all times.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate site/landscape plan has been submitted that is deficient in meeting the street tree, sidewalk, special planting area, and parkway planting area requirements of the PD No. 193 landscape regulations) will not compromise the spirit and intent of the section of the ordinance (Section 26: Landscape, streetscape, screening, and fencing standards).
- If the Board were to grant this request and impose the submitted site/landscape plan and the two additional conditions suggested by staff/the Chief Arborist, the site would be clearly "excepted" from full compliance to street tree, sidewalk, special planting area, and parkway planting area requirements of the Oak Lawn PD landscape ordinance.

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

APPEARING IN FAVOR: Santos Martinez, 900 Jackson, Dallas, TX  
Nick Galanos, 2630 Welborn, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Chernock**

I move that the Board of Adjustment, in Appeal No. **BDA 089-020**, **hold** this matter under advisement until **March 18, 2009**.

SECONDED: **Beikman**

AYES: 5– Reynolds, Gillespie, Beikman, Chernock, Wilson

NAYS: 0 –

MOTION PASSED 5 – 0(Unanimously)

**FILE NUMBER:** BDA 089-029(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Mehul Patel represented by Robert Baldwin for a variance to the parking regulations at 1610 Cedar Springs Road. This property is more fully described as Lot 1 in City Block A/297 and is zoned PD-193 (I-2), which requires parking to be provided. The applicant proposes to construct a nonresidential structure for hotel or motel use and provide 199 of the required 239 parking spaces which will require a variance of 40 spaces (16.7% reduction).

**LOCATION:** 1610 Cedar Springs Road

**APPLICANT:** Mehul Patel  
Represented by Robert Baldwin

**REQUEST:**

- A variance to the off street parking regulation to reduce the required amount of parking by 16.7%. The applicant proposes to provide 199 of the 239 required parking spaces.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Development Services Senior Engineer recommends that this request be denied based on the lack of a parking study to justify the reduction.
- The applicant had not substantiated how the parking demand generated by the existing and proposed uses does not warrant the number of off-street parking spaces required, and the variance would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

The applicant has not substantiated how this parcel of land differs from other parcels of land by being of such restrictive area, shape, or slope zoned PD 193 and cannot be developed in a manner commensurate with other parcels of land in the same zoning

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

The Board of Adjustment may 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 parking, 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:**

- The subject site is currently a parking lot. The proposed use is a hotel/motel use and restaurant.
- The site is in Planned Development District No. 193. The Dallas Development Code requires the following off-street parking:
  - 1 space per each guest room up to 250 rooms
  - 1 space per every 100 square feet of restaurant floor area.
- The applicant proposes to provide 199 of the 239 off-street parking spaces required.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD 193 (I-2) (Industrial)  
North: PD 193 (I-2) (Industrial)  
South: PD 193 (I-2) (Industrial)  
East: PD 193 (PDS 24)  
West: PD 193 (MF-3) (multi-family)

#### **Land Use:**

The subject site is developed with a parking lot. The property to the north is developed with a parking lot. The property to the east is under construction. The property to the south is developed with a restaurant use. The property to the west is developed with a multi-family use.

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

There is no case history for this site or sites in the immediate area.

#### **Timeline:**

January 29, 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.

February 20, 2009: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 24, 2009: The Board of Adjustment's Senior Planner contacted the applicant's representative and shared the following information via letter:

- 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 March 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board's docket;
- the March 6<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 March public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

March 2, 2009: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

March 2, 2009: The applicant's representative submitted a letter to the Board for its consideration (see attachment B).

### **STAFF ANALYSIS:**

- The site is located in Planned Development District No. 193 which requires a hotel/motel use to provide 1 space per guest room up to 250 guest rooms and 1 space per 100 square feet of floor area for restaurant use.
- The applicant is seeking a parking variance of 40 spaces of 16.7% in conjunction with the construction and maintenance of a hotel/motel and restaurant use. The applicant proposes to provide 199 of the required 239 parking spaces.
- The submitted site plan illustrates the site will provide 199 off-street parking spaces in a 5 level parking garage. The proposed restaurant use is comprised of two restaurants, one on the north corner of the property and the other on the west corner.
- The total floor area of the restaurants is 8055 square feet and requires 81 parking spaces. The hotel will have 158 guest rooms and requires 158 off-street parking

spaces. The applicant proposes to provide 41 of the required 81 parking spaces for the restaurant uses and 158 of the required 158 parking spaces for the guest rooms.

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- If the Board grants the variance to the off-street parking regulations, staff recommends imposing the submitted site plan as a condition.