

BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY HALL, COUNCIL CHAMBERS
MONDAY, AUGUST 16, 1999

MEMBERS PRESENT AT BRIEFING: Sheffie Kadane, Vice-Chair; Kelly Bishop, Ron Natinsky, Manuel Ybarra, and Bryan Stone, alternate.

MEMBERS PRESENT AT HEARING: Sheffie Kadane, Vice-Chair; Kelly Bishop, Ron Natinsky, Manuel Ybarra, and Bryan Stone, alternate.

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Sharon Seguin, Board Secretary, Kaye Mead, Secretary, Deesha Brown, Asst. City Attorney, and Phil Sikes, Zoning Technical Manager, Ronald Robinson, Code Enforcement, and Melissa Lindelow, Compliance Case Administrator.

11:10 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 16, 1999 docket.

1:30 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, which are presented before the Board of Adjustment at this public hearing as well as the Board's inspection of the property.

Steve Long, Board Administrator called the cases on the Uncontested Docket and removed Case No. 1, BDA 989-150 and Case No. 3, BDA 989-257 and placed them on the Regular Docket.

FILE NUMBER: BDA 989-268

BUILDING OFFICIAL'S REPORT:

Application of George Poston, represented by John M. Kenny, for a variance to the front, side and rear setback regulations at 3407 N. Hall, which is northwest of the intersection of Hall and Turtle Creek. This property is more fully described as Lots 15 and 16 in City Block A/992 and is zoned PD 193 O-2 which requires a 20 foot front yard setback for all nonresidential structures and a 50 front yard setback for portions of structures above 36 feet in height. It also requires a side and rear yard setback of 50 feet for portions of structures above 36 feet in height. The applicant proposes to construct an office/multifamily building and provide an eight (8) foot front yard setback for a drop-off canopy, a 25 foot front yard setback for the portion of the building over 36 feet in height, a ten (10) foot side yard setback for portions of the building over 36 feet in height, and a 39 foot 4.5 inch rear yard setback for portions of the building over 36 feet in height. This would require a variance to the front yard regulations of 12 feet for the drop-off canopy and 25 feet for the building above 36 feet in height, a variance to the side yard regulations of 40 feet for the portion of the building above 36 feet in height, and a variance to the rear yard regulations of 10 feet 7.5 inches for the portion of the building above 36 feet in height. This appeal is being referred to the Board of Adjustment in accordance with Section 51A-3.102(d)(10) of the Dallas Development Code, as amended, which states the power of the Board to grant variances.

LOCATION: 3407 N. Hall

APPLICANT: George Poston
Represented by: John M. Kenny

STAFF RECOMMENDATION:

Denial of the requests for variances to the front, side, and rear yard setback regulations without prejudice.

SUMMARY:

- Requests for:
 1. a variance to the front yard setback regulations of 25';
 2. a variance to the side yard setback regulations of 40';
 3. a variance to the rear yard setback regulations of 10' 7.5"; andare needed in conjunction with constructing/maintaining an 17-story, approximately 100,000 square foot mixed use tower. (The applicant has provided information stating that the project will include approximately 55,000 square foot of office space, 42,500 square feet of residential space, and approximately 2,500 square feet of restaurant space).

- Note that all of these requests are for the setback variances needed for the portion of the proposed building over 36' in height. Additionally, all of these requests are needed to comply with regulations imposed on mixed-use projects. (There would not be a need for any of these variances if the proposal could be deemed totally residential in use). (Attachment C is a copy of the Oak Lawn Special Purpose District "WHEREAS" clauses which explain the intent for the differentiation of setbacks for residential and nonresidential projects).
- Additionally, the applicant had originally requested a variance to the front yard setback regulations of 12' for a car drop-off structure or porte-cochere. However, on July 29, 1999, the applicant expressed written interest to withdraw this request.
- The applicant cannot comply with the PD No. 193 (O-2) 50-foot front yard setback for all portions of a mixed use structure above 36 feet in height because a portion of the proposed structure above 36' in height will be located only 25' from the front property line along Hall Street.
- The applicant cannot comply with the PD No. 193 (O-2) 50-foot side yard setback for all portions of a mixed use structure above 36 feet in height because a portion of the proposed structure above 36' in height will be located only 10' from the site's side yard property lines.
- The applicant cannot comply with the PD No. 193 (O-2) 50-foot rear yard setback for all portions of a mixed use structure above 36 feet in height because a portion of the proposed structure above 36' in height will be located only 39' 4.5" from the site's rear yard property line.
- Staff concludes that the requests for the variances to the front, side, and rear yard setback regulations should be denied without prejudice. This recommendation has been made because the applicant has not demonstrated the burden of proof to establish how a literal enforcement of the regulations would result in an unnecessary hardship whereby the variance 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 the parcel cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.

Additionally, the applicant has not demonstrated the burden of proof to establish how granting the variances would not be contrary to the public interest.

BACKGROUND INFORMATION:

Zoning and Land Use

<u>Site:</u>	PD No. 193 (O-2)	Undeveloped
<u>North:</u>	PD No. 193 (MF-2)	Park
<u>South:</u>	PD No. 193 (O-2)	Residential (under development)
<u>East:</u>	PD No. 193 (O-2)	Office
<u>West:</u>	PD No. 193 (O-2)	Residential (under development)

Zoning/BDA History: There have not been any recent board of zoning cases recorded either on or in the immediate vicinity of the subject site.

Land Use: The site is moderately-sloped, slightly irregularly-shaped (118' x 135' x 98' x 135'), and approximately 22,000 square foot in area. The site is currently developed with an office use and an undeveloped lot. The area to the north is developed as a park (Lee Park); the area to the east is developed with office use; and the areas to the south and west are being developed with residential uses.

Landscaping: N/A

Miscellaneous: The applicant stated on the case application that a request has been made to:

- "City of Dallas."

The applicant submitted an attachment in conjunction with the case application which generally states that the requests should be granted for the following reasons:

- Side yard setback:
 - To be reduced from 50' (as required for office use) to 10' (same setback as required for residential use).
 - If the building were constructed using a 50' setback, the building width would be approximately 30 feet – which is unusable for a modern office building.
 - In addition, residential floors are proposed above the office floors.
 - If the building were constructed per PD 193, the residential floors would extend over the office floors by 20' on both sides (an unworkable design).
- Front yard setback:
 - Requested for the drop-off canopy since the property depth does not allow for a front and rear setback, and a building drive and workable floor plan.
- Rear yard setback:
 - To be reduced from 50' (as required for office uses per PD 193) to 39' (29' more than the required residential setback in PD 193).
 - The building is planned with approximately 6000 square foot floor plans above the 3rd floor. However, market conditions may prove that larger floor plans are required and the additional depth could be needed.
- Time period to allow for building permit:

- Be increased from 180 days to 365 days needed for pre-leasing and pre-sales. (Note that the applicant has been informed that this request should be made per the Board's Rules of Procedure after approval has been given for a variance as a Miscellaneous Item upon the person requesting the time extension establishing the burden of establishing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In addition, however, in no event, may the panel extend the time period beyond 18 months from the date of its favorable action.

On July 14, 1999, the Board Administrator spoke with the applicant's representative and shared the following information:

- the criteria that the Board will use in their decision to approve or deny the requests;
- the importance of evidence submitted by the applicant 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 significance of how comments from the Oak Lawn Committee may factor into the Board's action on any site located in PD No. 193; and
- the July 23, 1999 deadline to submit additional evidence for staff to factor into their recommendation.

On July 21, 1999, the applicant's representative submitted a letter to the Board Administrator to further explain the merits and scope of this case (see Attachment A).

On July 27, 1999, the Board of Adjustment Review Team meeting was held regarding this case. Review team members in attendance at this meeting included the Board Administrator, the Building Inspection Zoning Technical Manager, the City of Dallas Chief Arborist, the Board of Adjustment Review Team Transportation Engineer, and the Board of Adjustment Assistant City Attorneys.

The following "Review Comment Sheets" were submitted to the Board Administrator:

- The Board of Adjustment Review Team Water Department Representative submitted a Review Comment Sheet marked "Has no objections" commenting "Prior to developing, contact Nancy Shreve at 214/948-4337 to discuss water/wastewater requirements."
- The Board of Adjustment Review Team Transportation Engineer submitted a Review Comment Sheet marked "Has no objections."

Although no other "Review Comment Sheets" with comments were submitted to the Board Administrator, the Chief Zoning Planner/Oak Lawn Special Purpose District Planner verbally relayed comments to the Board Administrator to deny the requests given that the applicant had not demonstrated burden of proof in this case to warrant favorable action by the Board.

On July 29, 1999, after the staff recommendations had been formed, the applicant forwarded additional information to the Board Administrator to further explain the merits and scope of the case (see Attachment A). (Note that the letter expresses the applicant's desire to withdraw the request for a front yard setback variance for the porte cochere. The applicant's representative is aware, however, that an amended plan would have to be submitted to indicate the removal of the porte cochere structure out of the setback. The applicant's representative is aware and amenable to having the request for a front yard variance denied without prejudice given that an amended plan has not been submitted to reflect a change in the site plan (i.e. a site plan which would eliminate the part of the structure that the applicant states he no longer intends to develop).

BASIS FOR REQUESTS FOR A VARIANCE TO THE SETBACK REGULATIONS:

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

BOARD OF ADJUSTMENT ACTION: August 16, 1999

APPEARING IN FAVOR: John M. Kenny, 6607 Gaston Avenue, Dallas
David Collins, 6740 Avalon Avenue, Dallas

APPEARING IN OPPOSITION: None

MOTION: Natinsky

I move that the Board of Adjustment, in Appeal No. **BDA 989-268** on application of George Poston, **grant** the variance to the front, side and rear yard setback regulations, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show 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. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code: subject to compliance with the submitted conceptual site and elevation plan is required.

SECONDED: Stone

AYES: 5 – Kadane, Bishop, Natinsky, Ybarra, Stone

NAYS: 0 - None

MOTION CARRIED: 5 – 0 (Unanimous)

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

FILE NUMBER: Miscellaneous Item No. 1

REQUEST: Consideration of an authorization of a public hearing to begin compliance proceedings for a nonconforming use on property more fully described as Lots 1 through 5 in City Block 1/1589. This item is being referred to the Board of Adjustment in accordance with Section 51A-4.703 of the Dallas Development Code, as amended, which states the power of the Board to authorize a public hearing on issues within the Board's jurisdiction.

LOCATION: 5510 Junius Street

APPLICANT: N/A

STAFF RECOMMENDATION: None

BOARD OF ADJUSTMENT ACTION: **August 16, 1999**

APPEARING IN FAVOR: None

APPEARING IN OPPOSITION: Joan Snider, 723 Parkmont, Dallas
Leo Sims, 5412 Junius, Dallas

MOTION: Ybarra

I move to authorize a public hearing to begin compliance proceedings for a nonconforming multifamily use.

SECONDED: Stone

AYES: 5 – Kadane, Bishop, Natinsky, Ybarra, Stone

NAYS: 0 - None

MOTION CARRIED: 5 – 0 (Unanimous)

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