

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
WEDNESDAY, JANUARY 19, 2022**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Joseph Cannon, regular member

MEMBERS ABSENT FROM BRIEFING: Herlinda Resendiz, regular member

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Joseph Cannon, regular member

MEMBERS ABSENT FROM HEARING: Herlinda Resendiz, regular member

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Charles Trammell, Development Code, Secretary, Robyn Gerard, Senior Public Information Officer, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Daniel Moore, Asst. City Atty., LaTonia Jackson, Board Secretary, Charles Trammell, Development Code, Secretary, Robyn Gerard, Senior Public Information Officer, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director

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**11:06 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's January 19, 2022 docket.

**BOARD OF ADJUSTMENT ACTION: January 19, 2022**

**1:02 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**

Approval of the Board of Adjustment Panel B, November 17, 2021 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: January 19, 2022**

**MOTION: Cannon**

Approval of the Board of Adjustment Panel B, November 17, 2021 public hearing minutes.

**SECONDED: Karnowski**

**AYES: 4 – Shouse, Karnowski, Gambow, Cannon**

**NAYS: 0**

**MOTION PASSED: 4 – 0 (unanimously)**

**MISCELLANEOUS ITEM NO. 2**

Approval of the 2021 Board of Adjustment Annual Report

**BOARD OF ADJUSTMENT ACTION: January 19, 2022**

**MOTION: Cannon**

Approval of the 2021 Board of Adjustment Annual Report.

**SECONDED: Karnowski**

**AYES: 4 – Shouse, Karnowski, Gambow, Cannon**

**NAYS: 0**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA201-120(PD)**

**BUILDING OFFICIAL’S REPORT:** Application of Rickey Booker represented by Angie Chapa to restore a nonconforming use at 3022 W. Davis Street. This property is more fully described as Lot 1 within City Block 9/4161, and is zoned an LMU Light Mixed-Use District within Tract 2 of Planned Development District No. 631 which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming alcoholic beverage establishment use, which will require a special exception to the nonconforming use regulations.

**LOCATION: 3022 W. Davis Street**

**APPLICANT: Rickey Booker represented by Angie Chapa**

**REQUEST:**

A request for a special exception to restore/reinstate nonconforming use rights for an alcoholic beverage establishment use that previously operated at the subject site since October 2017 under Certificate of Occupancy # (CO) 1611031101 and Doing Business As (DBA) Pink Lounge. The use ceased operations for over six months and is no longer allowed to operate/obtain a new CO.

**STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE:**

Section 51A-4.704(a)(2) of the Dallas Development Code states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more and that the board of adjustment may grant a special exception to this provision only if the owner can show that there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

**STAFF RECOMMENDATION:**

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

**Zoning:**

Site: PDD No. 631 (LMU) Tract 2  
North: PDD No. 631 (LMU) Tract 2  
East: PDD No. 631 (LMU) Tract 2  
South: PDD No. 631 (LMU) Tract 2  
West: PDD No. 631 (LMU) Tract 2

**Land Use:**

The subject site is developed with a commercial structure last used as an ABE, alcoholic beverage establishment, DBA, Pink Lounge. Surrounding properties adjacent to the west, north, and east are developed with auto-related uses. While the property developed to the south, along N. Barnett Avenue is contains a surface parking lot.

**Zoning/BDA History:**

There have not been any related board or zoning cases in the immediate vicinity within the last five years.

**GENERAL FACTS/STAFF ANALYSIS:**

This request focuses on restoring/reinstating nonconforming use rights for an alcoholic beverage establishment ABE use on the subject site that was discontinued for six months or more. The request is made for the applicant to obtain a Certificate of Occupancy (CO) for this use.

The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time”.

The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the

regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

The site is currently zoned PDD No. 631 (LMU) Tract 2 which prohibits an ABE, alcoholic beverage establishment use. According to documentary evidence provided by the representative (**Attachments A thru J**), the ABE use has been in constant operation since 2016. According to Dallas Central Appraisal District, the approximately 2,048-square-foot commercial structure was constructed in 1948 with an approximately 1,152-square-foot addition of a cocktail lounge in 1950, and second addition with approximately 1,392 square feet of floor area constructed in 1954. During each of the aforementioned years, the commercial use was zoned an HC, Heavy Commercial District under Chapter 51 and permitted an ABE use by Specific Use Permit, SUP. In 1988 Chapter 51 transitioned to Chapter 51A and the zoning changed to a CR, Community Retail District. On June 23, 1993, the requirement to obtain an SUP for a bar, lounge, or taven use was added. On November 13, 1979, CO# 7911165564 was issued for an ABE use (DBA Lady's Choice).

Planned Development District No. 631, the West Davis Special Purpose District was established by Ordinance No. 25209 on March 26, 2003 to: 1) protect residential areas from incompatible land uses; 2) increase the commercial viability along West Davis Street, and, 3) enhance the image of the State Highway/thoroughfare.

**Timeline of internal records are as follows:**

- **November 13, 1979:** CO #7911165564 was issued citing owner, Debra Pena with the following remarks: "TEXAS EIGHT BALL DEBRA CAME W/COPY OF CO UPDATED 4/98 SEE 3020-3030 DBA.CNG/FRM.LDY.CHOICE TO CLB.SABSURA 6/9/00 REF:9605161071 TO A3 2/04";
- **February 19, 2010:** CO #1002181100 was issued citing a new owner, Choe Mun Suk with the following remarks: "Non – conforming / letters attached - / Alcohol affidavit attached OCC LOAD PER CO #7911165564";
- **July 18, 2011:** CO Inspection Request with validation # 1107111034 citing owner, Debra Pena with the following remarks: "NONCONFORMING CHECK WITH ALCOHOL SUPPLIER AND VERIFIED LAST DAY OF SALES TO LOCATION WAS FEB 17 2011";
- **March 3, 2014:** CO Inspection Request with validation #1402051069 was provided with the following remarks: "INFORMED CUSTOMER THAT THEY MUST PROVE NON-CONFORMING RIGHTS BY SUBMITTING COMBINATION OF DOCS'S. USE CURRENTLY NOT ALLOWED IN PD 631 LMU TRACT 2";

- **July 7, 2014:** Assistant Building Official determined that “the nonconforming status proof on file is not sufficient to prove that the business operated continuously”;
- **March 17, 2015:** CO #1402051069 was issued, BDA Lady’s Choice Club with the following remarks: “INFORMED CUSTOMER THAT THEY MUST PROVE NON-CONFORMING RIGHTS BY SUBMITTING COMBINATION OF DOCS’S. USE CURRENTLY NOT ALLOWED IN PD 631 LMU TRACT 2”;
- **March 27, 2015:** Application was submitted to Building Inspections for a change of DBA Trade name on CO to “Pin Ups Nite Club”;
- **August 31, 2015:** CO #1508311001 was created, issued on September 1, 2015, and completed on November 17, 2015 with the following remarks: “LIQ N , NL AFFIDAVITS ON FILE”;
- **August 31, 2015:** the above CO#1508311001 was rejected and a hold placed on the address;
- **September 1, 2015:** CO Inspection Request with validation #1508311001 was submitted, DBA, Dallas Kush Private Club, Inc.”;
- **August 25, 2016:** City water ceased consumption;
- **September 6, 2016:** wastewater past due more than 90 days resulting in cancelled service;
- **September 16, 2016:** Conduct Surety Bond notice of cancellation, reason cited for cancellation is “agent’s request”;
- **September 20, 2016:** Texas Mixed Beverage Gross Receipts Tax Report reports a zero dollar amount for gross sales;
- **October 7, 2016:** CO application submitted to Building Inspection;
- **October 8, 2016:** cable bill collection notice issued;
- **November 30, 2016:** CO Inspection Request with validation # 1611031101 (DBA Pink Lounge) was provided with the following remarks: “LAST SAME #1508311001 NONCONFORMING USE”;
- **July 5, 2017:** City water was reconnected;
- **October 2, 2017:** CO #1611031101 issued (DBA Pink Lounge, LLC) was issued with the following remarks: “LAST SAME #1508311001 NONCONFORMING USE”;
- **October 2, 2017 to June 17, 2021:** the use operated under CO #1611031101 (DBA Pink Lounge, LLC) until served with a cease-and-desist notice from the City of Dallas.

Building Inspection has stated that these types of special exception requests originate when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is nonconforming. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period over six months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.

The applicant has the burden of proof in establishing the following related to the special exception request:

- There was **not** a clear intent to abandon the nonconforming ABE use on the subject site even though the use was discontinued for six months or more.

Granting this request would reinstate/restore the nonconforming ABE use rights that were lost when the use was abandoned for six months or more.

If restored/reinstated, the nonconforming use would be subject to compliance with the use regulations of the Dallas Development Code as any other nonconforming use in the city.

**Timeline:**

October 27, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

November 23, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

December 16, 2021: The Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the December 29, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the January 7, 2022 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.

Dec. 29, 2021: The representative submitted evidence (**Attachment A**) to staff.

Dec. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief

Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.

**BOARD OF ADJUSTMENT ACTION: January 19, 2022**

**APPEARING IN FAVOR:** Rickey Booker 3022 W. Davis St. Dallas, TX  
Alvin Williams 1811 Highland St. Glenn Heights, TX  
Jonathan Smith 221 Sandlewood Ln. Cedar Hill. TX

**APPEARING IN OPPOSITION:** Barbara Barbee 303 N. Barnett St. Dallas, TX  
Robert Brodner 227 N. Barnett St. Dallas, TX  
Nellie Brodner 419 Barnett St. Dallas, TX  
Kelly Brodner 419 Barnett St. Dallas, TX

**MOTION: Cannon**

I move that the Board of Adjustment, in Appeal No. BDA 201-120, on application of Ricky Booker represented by Angie Chapa, **deny** the restoration of a nonconforming use requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows there was an intent to abandon the use for six months or more.

**SECONDED: Karnowski**  
**AYES: 4 – Shouse, Karnowski, Gambow, Cannon**  
**NAYS: 0 -**  
**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA201-123(PD)**

**BUILDING OFFICIAL'S REPORT:** Application of Alex Oshmyansky represented by Colt Granquist for a special exception to the visibility obstruction regulations at 3015 Taylor Street. This property is more fully described as Lot 11A in City Block 21/201, and is zoned Tract A within Planned Development District No. 269, the Deep Ellum/Near East Side Special Purpose District which requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to a commercial structure in the required visibility triangles at the drive approach along South Walton Street, which will require special exception to the visibility obstruction regulations.

**LOCATION: 3015 Taylor Street**

**APPLICANT: Alex Oshmyansky represented by Colt Granquist**

**REQUESTS:**

A request for a special exception to the visual obstruction regulations is made to construct a commercial structure in a required 20-foot visibility triangle at a drive approach into the property from South Walton Street. The request site is currently under construction.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the board, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when in the opinion of the board, the special exception will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Transportation Development Services Department Senior Engineer has completed review of this project and recommends denial of the request. The recommendation of denial is rendered since the proposed driveway and loading dock operations for commercial trucks to back in or out of driveway would create a significant impact to neighboring to neighboring properties. (**Attachment A**).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: Tract A within PDD No. 269 and SUP No. 2408  
Northwest: Tract A within PDD No. 269  
Northeast: Tract A within PDD No. 269  
East: Tract A within PDD No. 269  
South: Tract A within PDD No. 269  
Southeast: Tract A within PDD No. 269  
Southwest: Tract A within PDD No. 269  
West: Tract A within PDD No. 269

**Land Use:**

The subject site is currently under construction but previously was developed with an office/showroom warehouse use. Surrounding uses consist of office showroom/warehouse uses to the northeast, multifamily uses to the northwest and southeast, a police station to the east and a surface parking lot with vacant uses to the west.

**Zoning/BDA History:**

There has been one related zoning case recorded in the vicinity of the subject site within the last five years.

1. **Z190-354:** On Wednesday, January 30, 2021, the City Council approved an application and ordinance granting a Specific Use Permit for a manufacturing laboratory use on property zoned Tract A within Planned Development District No. 269, the Deep

Ellum/Near East Side Special Purpose District located on the north side of Taylor Street, east of North Walton Street.

**GENERAL FACTS/STAFF ANALYSIS:**

The request for a special exception to the visual obstruction regulations focuses on constructing a one-story commercial structure with approximately 22,898 square feet of floor area. The property is located along the north side of Taylor Street, east of North Walton Street. The proposed structure would obstruct one 20-foot visibility triangle into the property (driveway) from South Walton Street.

The property is located in Tract A within Planned Development District No. 269, the Deep Ellum/Near East Side Special Purpose District, with visual obstruction regulations reverting back to the Dallas Development Code. The Code requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection shall be maintained.

Visibility triangles are further defined in Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys on properties zoned single family); and
- between two-and-a-half and eight-feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

A site plan submitted with the request indicates portions of the proposed commercial development encroach 10 feet into the required 20-foot visibility triangle at a drive approach into the site from South Walton Street providing approximately 10 feet of unobstructed area for visibility.

The Transportation Development Services Department Senior Engineer has completed review of this project and recommends denial of the request. The recommendation of denial is rendered since the proposed driveway and loading dock operations for commercial trucks to back in or out of driveway would create a significant impact to neighboring to neighboring properties. (**Attachment A**).

The applicant has the burden of proof in establishing how granting the encroachments into portions of 20-foot visibility triangle at the drive approaches on properties will or will not constitute a traffic hazard.

Granting the request with a condition imposed that the applicant complies with the submitted site plan will limit the structures to be located and maintained into the one required 20-foot

visibility triangle at the drive approach into the site from South Walton Street, as shown on the proposed plan.

**Timeline:**

November 5, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

November 23, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

December 16, 2021: The Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the December 29, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the January 7, 2022 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.

Dec. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No review comment sheets were submitted in conjunction with this application.

Dec 31, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked “recommends denial” (**Attachment A**).

**BOARD OF ADJUSTMENT ACTION: January 19, 2022**

**APPEARING IN FAVOR:** Colt Granquist 4826 Swiss Ave. Dallas, TX  
Alexander Oshmyansky 3015 Taylor St. Dallas, TX

**APPEARING IN OPPOSITION:** Jeff LaBarba 333 S. Hall St. Dallas, TX

**MOTION: Karnowski**

I move that the Board of Adjustment, in Appeal No. BDA 201-123, on application of Alex Oshmyansky represented by Colt Granquist Griot, **deny** the special exception requested by this

applicant to maintain items in the visibility triangle at the drive approach **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

**SECONDED: Cannon**

**AYES: 4 – Shouse, Karnowski, Gambow, Cannon**

**NAYS: 0 -**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA190-090(JM)**

**BUILDING OFFICIAL’S REPORT:** Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3016 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

**LOCATION: 3016 Greenville Avenue**

**APPLICANT: Thomas Shields  
Represented by Steven Dimitt**

**UPDATE:**

On August 18, November 17, and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request. **As of the publishing of this docket on 1-12-22, no new case details were provided. However, the zoning case Z201-213 did go to City Council earlier today and was approved with no parking required for legacy buildings.**

**REQUEST:**

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use for the vacant commercial structure on the subject site.

**STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKNG AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:**

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by

proving the occurrence of an extreme circumstance, which shall include *but not be limited* to the following:

1. A decline in the rental rates for the area which has affected the rental market.
2. An unusual increase in the vacancy rates for the area which has affected the rental market.
3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

**STAFF RECOMMENDATION:**

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1
- West: CD Nos. 9 with an MD Overlay District No. 1

**Land Use:**

The subject site is developed with a commercial structure. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial uses.

**Zoning/BDA History:**

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

**GENERAL FACTS/STAFF ANALYSIS:**

This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more. Reinstating the delta credits would allow for the applicant to maintain a

Certificate of Occupancy for a general merchandise or food store use [Uptown Dog] which is currently in question due to the period of vacancy discovered since the prior tenant.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3016 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of parking or loading:

- Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
- Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

In a modified delta overlay district, the city council may limit the number of percentages of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.

An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to **any portion** of the nonconforming parking or loading **not needed** to meet the new requirements **are lost**.

An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.

In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in the Community Retail District with an MD Overlay District No. 1a is expanded.

In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
  1. A decline in the rental rates for the area which has affected the rental market.
  2. An unusual increase in the vacancy rates for the area which has affected the rental market.
  3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

**Timeline:**

August 4, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application.
- 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.”

September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development

Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on November 18, 2020.

October 26, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.

November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.

January 26, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

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

**January 12, 2022: As of the publishing of this docket, no new case details were provided. However, the zoning case Z201-213 did go to City Council and was approved with no parking required for legacy buildings.**

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.  
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until January 19, 2022.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until November 17, 2021.

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Richard Soltes 5607 Monticello Dallas, TX.  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until August 18, 2021.

SECONDED: Williams

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX

APPEARING IN OPPOSITION: Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Pasha Heidari 3020 Greenville Ave. Dallas, TX.  
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION#1: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 190-090, on application of Thomas Shields, represented by Steve Dimitt, grant the request to carry forward delta credits as a special exception to the Modified Delta Overlay District No. 1 regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance including:

Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties is affecting the marketability of the property.

SECONDED: Schwartz  
AYES: 3 - Schwartz, Brooks, Jones  
NAYS: 2 – Vermillion, Shouse  
MOTION FAILED: 3 – 2

MOTION#2: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 190-090, on application of Thomas Shields, represented by Steven Dimitt, deny the special exception requested by this applicant without prejudice, because our evaluation of the property and the testimony did not demonstrate an extreme circumstance to justify a lack of intent to abandon the use that was discontinued or vacant for 12 months or more.

SECONDED: Jones  
AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks  
NAYS: 0  
MOTION PASSED: 5 – 0 (unanimously)

MOTION#3 (Motion to Reconsider): Brooks

I move that the Board of Adjustment reconsider the decision to deny the applicant's request in appeal number BDA 190-090.

SECONDED: Vermillion  
AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks  
NAYS: 0  
MOTION PASSED: 5 – 0 (unanimously)

MOTION#4: Brooks

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until January 20, 2021.

SECONDED: Vermillion

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: October 21, 2020

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Shouse

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until November 18, 2020.

SECONDED: Vermillion

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 19, 2022

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Cannon

I move that the Board of Adjustment, in Appeal No. BDA 190-090, on application of Thomas Shields, represented by Steven Dimitt, **deny** the special exception requested by this applicant **with** prejudice, because our evaluation of the property and the testimony did not demonstrate an extreme circumstance to justify a lack of intent to abandon the use that was discontinued or vacant for 12 months or more.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA190-091(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3018 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

**LOCATION:** 3018 Greenville Avenue

**APPLICANT:** Thomas Shields  
Represented by Steven Dimitt

**UPDATE:**

On August 18, November 17, and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request. **As of the publishing of this docket on 1-12-22, no new case details were provided. However, the zoning case Z201-213 did go to City Council earlier today and was approved with no parking required for legacy buildings.**

**REQUEST:**

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use for the vacant commercial structure on the subject site.

**STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:**

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include *but not be limited to* the following:

4. A decline in the rental rates for the area which has affected the rental market.
5. An unusual increase in the vacancy rates for the area which has affected the rental market.
6. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

**STAFF RECOMMENDATION:**

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1
- West: CD Nos. 9 with an MD Overlay District No. 1

**Land Use:**

The subject site is developed with a commercial structure. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial uses.

**Zoning/BDA History:**

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

**GENERAL FACTS/STAFF ANALYSIS:**

This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more. Reinstating the delta credits would allow for the applicant to maintain a Certificate of Occupancy for a restaurant without drive-in service use [Window Seat] which is currently in question due to the period of vacancy discovered since the prior tenant.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3018 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of parking or loading:

- Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.

- Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

In a modified delta overlay district, the city council may limit the number of percentages of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.

An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to **any portion** of the nonconforming parking or loading **not needed** to meet the new requirements **are lost**.

An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.

In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in the Community Retail District with an MD Overlay District No. 1a is expanded.

In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
  4. A decline in the rental rates for the area which has affected the rental market.
  5. An unusual increase in the vacancy rates for the area which has affected the rental market.

6. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

**Timeline:**

- August 4, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- September 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - 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.”
- September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).
- October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request until the next public hearing to be held on November 18, 2020.
- October 26, 2020: The Board Administrator wrote the applicant a letter of the board’s action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board’s docket materials.

- October 29,2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.
- November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.
- January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.
- January 26, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.
- No review comment sheets with comments were submitted in conjunction with this application.
- January 12, 2022: As of the publishing of this docket, no new case details were provided. However, the zoning case Z201-213 did go to City Council and was approved with no parking required for legacy buildings.**

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.  
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until January 19, 2022.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until November 17, 2021.

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Kristen Boyd 6801 Lochwood Garland, TX

APPEARING IN OPPOSITION: Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Richard Soltes 5607 Monticello Dallas, TX.  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until August 18, 2021.

SECONDED: Williams

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX  
Kristin Boyd 6801 Lochwood, Garland, TX

APPEARING IN OPPOSITION: Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Pasha Heidari 3020 Greenville Ave. Dallas, TX.  
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION#1: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 190-091, on application of Thomas Shields, represented by Steve Dimitt, grant the request to carry forward delta credits as a special exception to the Modified Delta Overlay District No. 1 regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance including:

Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties is affecting the marketability of the property.

SECONDED: Jones

AYES: 3 - Schwartz, Shouse, Jones,

NAYS: 2 - Vermillion, Brooks

MOTION FAILED: 3 – 2

MOTION#2: Shouse

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until January 20, 2021.

SECONDED: Brooks

AYES: 5 - Schwartz, Shouse, Jones, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: October 21, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Kristen Boyd 6801 Lochwood Garland, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until November 18, 2020.

SECONDED: Williams

AYES: 5 - Schwartz, Shouse, Johnson, Vermillion, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 19, 2022

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION:

Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

**MOTION: Cannon**

I move that the Board of Adjustment, in Appeal No. BDA 190-091, on application of Thomas Shields, represented by Steven Dimitt, **deny** the special exception requested by this applicant **with** prejudice, because our evaluation of the property and the testimony did not demonstrate an extreme circumstance to justify a lack of intent to abandon the use that was discontinued or vacant for 12 months or more.

**SECONDED: Karnowski**

**AYES: 4 – Shouse, Karnowski, Gambow, Cannon**

**NAYS: 0 -**

**MOTION PASSED: 4 – 0 (unanimously)**

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**FILE NUMBER: BDA190-092(JM)**

**BUILDING OFFICIAL’S REPORT:** Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3018 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which requires that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued in error. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

**LOCATION: 3018 Greenville Avenue**

**APPLICANT: Thomas Shields  
Represented by Steven Dimitt**

**REQUEST:**

A request is made to appeal the decision of the administrative official, more specifically, the Building Official’s authorized representative, the Chief Planner in the Building Inspection Division, revocation of a certificate of occupancy for a restaurant use located at 3018 Greenville Avenue.

**UPDATE:**

On August 18, November 17, and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request. **As of the publishing of this docket on 1-12-22, no new case details were provided. However, the zoning case Z201-213 did go to City Council earlier today and was approved with no parking required for legacy buildings.**

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov’t Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: CD No. 11 with an MD Overlay District No. 1  
North: CD Nos. 9 and 11 with an MD Overlay District No. 1  
South: CD No. 11 with an MD Overlay District No. 1  
East: CD No. 11 with an MD Overlay District No. 1  
West: CD Nos. 9 with an MD Overlay District No. 1

#### **Land Use:**

The subject site is developed with a commercial structure. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial uses.

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

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

### **GENERAL FACTS/STAFF ANALYSIS:**

The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

#### **Timeline:**

August 4, 2020: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 18, 2020 The Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application.
- 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.”

October 5, 2020: The applicant’s representative requested a postponement to the November docket (**Attachment A**).

October 29,2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

November 6. 2020: Additional evidence was submitted by the city attorney for the administrative official (**Attachment B**).

November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request until the next public hearing to be held on January 20, 2021.

November 23, 2020: The Board Administrator wrote the applicant a letter of the board’s action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board’s docket materials.

January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request until the August 18, 2021.

January 26, 2021: The Board Administrator wrote the applicant a letter of the board’s action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board’s docket materials.

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

**BOARD OF ADJUSTMENT ACTION:** November 17, 2021

**APPEARING IN FAVOR:** Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

**APPEARING IN OPPOSITION:** Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.  
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment in Appeal No. BDA 190-092, hold this matter under advisement until January 19, 2022.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Kristin Boyd 6801 Lochwood, Garland, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Richard Soltes 5307 Monticello Dallas, TX  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX  
Sarah May 320 E. Jefferson Dallas TX  
Chris Gunter 1500 Marilla St Dallas, TX

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-092, hold this matter under advisement until August 18, 2021.

SECONDED: Johnson

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX  
Kristin Boyd 6801 Lochwood, Garland, TX  
Brad Williams 2728 N. Harwood St. #500, Dallas, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Pasha Heidari 3020 Greenville Ave. Dallas, TX.  
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-092, hold this matter under advisement until January 20, 2021.

SECONDED: Jones  
AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks  
NAYS: 0  
MOTION PASSED: 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: January 19, 2022**

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.  
Chris Gunther 1500 Marilla St. Dallas, TX  
Sarah May 320 E. Jefferson Blvd. Dallas, TX

MOTION: Cannon

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 190-092, on application of Thomas Shields, represented by Steven Diwitt, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **affirm** the decision of the administrative official and **deny** the relief requested by the applicant.

SECONDED: Karnowski  
AYES: 4 – Shouse, Karnowski, Gambow, Cannon  
NAYS: 0 -  
MOTION PASSED: 4 – 0 (unanimously)

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FILE NUMBER: BDA190-093(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3024 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 3024 Greenville Avenue

APPLICANT: Thomas Shields  
Represented by Steven Dimitt

**UPDATE:**  
On August 18, November 17, and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request. **As of the publishing of this docket on 1-12-22, no new case details were provided. However, the zoning case Z201-213 did go to City Council earlier today and was approved with no parking required for legacy buildings.**

**REQUEST:**

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use for the vacant commercial structure on the subject site.

**STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:**

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include *but not be limited* to the following:

7. A decline in the rental rates for the area which has affected the rental market.
8. An unusual increase in the vacancy rates for the area which has affected the rental market.
9. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

**STAFF RECOMMENDATION:**

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1

West: CD Nos. 9 with an MD Overlay District No. 1

**Land Use:**

The subject site is developed with a commercial structure. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial uses.

**Zoning/BDA History:**

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

**GENERAL FACTS/STAFF ANALYSIS:**

This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more. Reinstating the delta credits would allow for the applicant to obtain a Certificate of Occupancy for a proposed new tenant. The previous alcoholic beverage establishment use [San Francisco Rose] Certificate of Occupancy was revoked due to an extended period of vacancy.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3024 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of parking or loading:

- Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
- Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

In a modified delta overlay district, the city council may limit the number of percentages of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number

of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.

An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to **any portion** of the nonconforming parking or loading **not needed** to meet the new requirements **are lost**.

An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.

In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in the Community Retail District with an MD Overlay District No. 1a is expanded.

In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
  7. A decline in the rental rates for the area which has affected the rental market.
  8. An unusual increase in the vacancy rates for the area which has affected the rental market.
  9. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

**Timeline:**

August 4, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application.
- 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."

September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

October 2,2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on November 18, 2020.

October 26, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

October 29,2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.

November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into

their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.

January 26, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

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

January 12, 2022: **As of the publishing of this docket, no new case details were provided. However, the zoning case Z201-213 did go to City Council and was approved with no parking required for legacy buildings.**

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.  
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until January 19, 2022.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING NEUTRAL: Jeffrey Karetnick 5739 Marquita Ave. Dallas, TX  
April Segovia 5739 Marquita Ave. Dallas, TX

APPEARING IN OPPOSITION: Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Richard Soltes 5607 Monticello Dallas, TX  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until August 18, 2021.

SECONDED: Williams

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX  
Jeffrey Karetnick 3024 Greenville Ave., Dallas, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Pasha Heidari 3020 Greenville Ave. Dallas, TX.  
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.  
Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Jones

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until January 20, 2021.

SECONDED: Vermillion

AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: October 21, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Shouse

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until November 18, 2020.

SECONDED: Vermillion

AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

**BOARD OF ADJUSTMENT ACTION: January 19, 2022**

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

**MOTION: Cannon**

I move that the Board of Adjustment, in Appeal No. BDA 190-093, on application of Thomas Shields, represented by Steven Dimitt, **deny** the special exception requested by this applicant **with** prejudice, because our evaluation of the property and the testimony did not demonstrate an extreme circumstance to justify a lack of intent to abandon the use that was discontinued or vacant for 12 months or more.

**SECONDED: Karnowski**

**AYES: 4** – Shouse, Karnowski, Gambow, Cannon

**NAYS: 0** -

**MOTION PASSED: 4 - 0** (unanimously)

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**MOTION: Gambow**

I move to adjourn the Panel B hearing.

**SECONDED: Cannon**

**AYES: 4** – Shouse, Karnowski, Gambow, Cannon

**NAYS: 0** -

**MOTION PASSED: 4 - 0** (unanimously)

Recess: 2:28 p.m.

Resume: 2:35 p.m.

The meeting was adjourned at **3:21 P.M. on January 19, 2022**

*Cheri Gambow*

signed 2-25-22

\_\_\_\_\_  
CHAIRPERSON

*Jennifer Munoz*

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

*[Signature]*

\_\_\_\_\_  
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.