

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, FEBRUARY 21, 2018**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Ruth Torres, regular member, Lorlee Bartos, alternate member, Nicholas Brooks, alternate member

MEMBERS ABSENT FROM BRIEFING: Matt Shouse, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Marla Beikman, regular member, Ruth Torres, regular member, Lorlee Bartos, alternate member, Nicholas Brooks, alternate member

MEMBERS ABSENT FROM HEARING: Matt Shouse, regular member

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Jennifer Muñoz, Senior Planner, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Kanesia Williams, Asst. City Attorney, Charles Trammell, Development Code Specialist, Jennifer Muñoz, Senior Planner, Oscar Aguilera, Senior Planner, David Nevarez, Engineering, and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **February 21, 2018 docket.**

1:13 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.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel B January 17, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2018

MOTION: None

The minutes were approved.

FILE NUMBER: BDA178-026(JM)

BUILDING OFFICIAL'S REPORT: Application of Joe Cortez for a special exception to the single family use regulations at 10932 Barbarosa Drive. This property is more fully described as Lot 9, Block 4/5372, and is zoned R 7.5(A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain an additional dwelling unit, which will require a special exception to the single family use regulations.

LOCATION: 10932 Barbarosa Drive

APPLICANT: Joe Cortez

REQUEST:

A request for a special exception to the single family use development standard regulations is made to maintain an existing 1-story additional "dwelling unit" structure on a site developed with a 1-story main single family home/dwelling unit structure.

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

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

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent use of the additional dwelling unit as rental accommodations.

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family home. The areas to the north, south, east, and west are developed with single family uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the single family use development standard regulations focuses on maintaining an existing 1-story additional “dwelling unit” structure on a site developed with a 1-story main single family home/dwelling unit structure.
- The site is zoned R-7.5(A) where the Dallas Development Code permits one dwelling unit per lot.
- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The Dallas Development Code defines “kitchen” as “any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities.”

- The Dallas Development Code defines “bathroom” as “any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink.”
- The Dallas Development Code defines “bedroom” as “any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms.”
- The submitted site plan denotes the locations of two building footprints, the larger of the two with what appears to be the existing single family main structure and the smaller of the two denoted as “one story frame”.
- The submitted floor plan of what appears to be the “one story frame” denoted on the site plan shows a number of rooms/features that Building Inspection has determined makes it an additional dwelling unit - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- This request centers on the function of what is proposed to be inside the smaller structure on the site – the “one story frame” structure, specifically its collection of rooms/features shown on the floor plan.
- The application states a request has been made for: “Additional dwelling unit does not adversely affect neighboring parties because I wish to construct the dwelling for my elder family member”.
- According to DCAD records, the “main improvement” for property addressed at 10932 Barbarosa Drive is a structure built in 1949 with 776 square feet of total/living area with the following “additional improvements”: a 480 square-foot detached garage. However, according to the site plan submitted, the main structure contains 997 square feet and the “one story frame” has 715 square feet. Additionally, a covered wooden deck and car port structure exist, as indicated on the site plan.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the site plan if they feel it is necessary to ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).
- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

Timeline:

December 14, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 9, 2018: The Board 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th 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."

February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION FEBRUARY 21, 2018

APPEARING IN FAVOR: Joe Cortex, 3168 Spyglass Dr., Grand Prairie, TX

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment, in request No. **BDA 178-026(JM)**, on application of Joe Cortex, **grant** the request to install and maintain an additional dwelling unit on a site developed with a single family structure and use as a special exception to the single family use regulations requirements in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not be used as rental accommodations, and will not adversely affect neighboring properties. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: Torres

AYES: 5 – Hounsel, Beikman, Torres, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA178-009(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Baldwin of Baldwin and Associates for a special exception to the Modified Delta Overlay District No. 1 regulations at 1917 Greenville Avenue. This property is more fully described as part of Lots 19 & 20, Block C/1983, and is zoned PD 842 (MD 1), which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The applicant proposes to carry forward nonconforming parking spaces under the delta theory lost because of a use that was discontinued or vacant for 12 months or more, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 1917 Greenville Avenue

APPLICANT: Robert Baldwin of Baldwin and Associates

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 part of 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 an office use in the vacant structure/storefront 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:

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.

ORIGINAL STAFF RECOMMENDATION (January 17, 2018):

Denial

Rationale:

- Staff had concluded that the applicant had not 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 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.

REVISED STAFF RECOMMENDATION (February 21, 2018):

Denial without prejudice

Rationale:

- Staff has determined since the January 17th public hearing there are no longer any delta credits to restore on the property.

BACKGROUND INFORMATION:

Zoning:

- Site: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- North: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- South: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- East: PD 842, MD-1 (Planned Development, Modified Delta Overlay)
- West: PD 842, MD-1 (Planned Development, Modified Delta Overlay)

Land Use:

The subject site is developed with a vacant one-story commercial structure. The areas to the north, south, and east are developed with commercial/retail uses; and the area to the west is developed with a surface parking lot.

Zoning/BDA History:

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| <ol style="list-style-type: none"> 1. BDA145-011, Property at 1909 Greenville Avenue (approximately two storefronts south of the subject site) | <p>On January 20, 2015, the Board of Adjustment Panel A granted a request for a special exception to the Modified Delta Overlay District No. 1 regulations. The case report stated the request was</p> |
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made to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on part of the site was discontinued or remained vacant for 12 months or more.

2. BDA156-010, Property at 1904 Greenville Avenue (property southeast of the subject site)

On March 22, 2016, the Board of Adjustment Panel A granted 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 part of 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 on a site that was developed with a vacant structure.

GENERAL FACTS/STAFF ANALYSIS:

- This request focused 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 made in order for the applicant to obtain a Certificate of Occupancy for an office use in the vacane structure/storefront on the site.
- The subject site is zoned PD 842, Modified Delta Overlay District 1.
- Section 51A-4.704(b)(4) of the Dallas Development Code provides the following with regard to “nonconformity as to 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 percentage 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 this district 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.
- According to DCAD, the property at 1917 Greenville Avenue is developed with a “free standing retail store” with 3,540 square feet built in 1929.
- Staff determined after the January 17th public hearing that there are no longer any delta credits to restore on the property/subject site.

Timeline:

November 14, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 1, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 4, 2017: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 5th 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.

January 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialists, the Sustainable Development and Construction Project Engineer, and the Assistant City Attorney to the Board.

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

January 17, 2018: The Board of Adjustment Panel B conducted a public hearing on this application, and delayed action on this application until their next public hearing to be held on February 21, 2018.

January 19, 2018: The Board Administrator wrote the applicant a letter of the board's action; the January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th deadline to submit additional evidence to be incorporated into the Board's docket materials.

January 19, 2018: The Sustainable Development and Construction Building Inspection Chief Planner emailed the Board of Adjustment Chief Planner/Board Administrator information about this request (see Attachment A). The Chief Planner stated that staff had confirmed that this property lost their delta credits; therefore, there were no longer any deltas left to restore. The note on the last CO from 2010 stated that all of the parking required for the Alcoholic Beverage Establishment land use was obtained via 4 parking spaces on site and a remote parking agreement. This parking agreement was terminated with notes stating that the parking agreement was terminated due to discontinuation of use, a new CO and parking agreement will be required to occupy 1917 Greenville.

February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction,

the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION **JANUARY 17, 2018**

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Shouse**

I move that the Board of Adjustment in Appeal No. **BDA 178-009** hold this matter under advisement until **February 22, 2018**.

SECONDED: **Bartos**

AYES: 5 – Hounsel, Beikman, Shouse, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION **FEBRUARY 21, 2018**

APPEARING IN FAVOR: Rob Baldwin, 3904 Elm Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 178-009(SL)**, on application of Robert Baldwin, **deny** the special exception requested by this applicant to restore delta parking credits **with** prejudice, because our evaluation of the property and the testimony shows that there are no remaining delta credits to restore.

SECONDED: **Bartos**

AYES: 5 – Hounsel, Beikman, Torres, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA178-014(SL)

BUILDING OFFICIAL'S REPORT: Application of V. C. Seth, represented by Karl A. Crawley, to appeal the decision of an administrative official at 5838 Monticello Avenue. This property is more fully described as Lot 22, Block 8/2153, and is zoned CD 11 which requires compliance with conservation district architectural standards. The applicant proposes to appeal the decision of an administrative official in the denial of a conservation district work review.

LOCATION: 5838 Monticello Avenue

APPLICANT: V. C. Seth
Represented by Karl A. Crawley

REQUEST:

A request is made to appeal the decision of the administrative official, in this particular application, the Building Official, where the submitted application states "A.O's decision to deny the use of brick and stone exterior walls to enclose side porch for guest bedroom and half bathroom" on a site that is developed with a single family home.

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 11 (Conservation District)
North: CD 11 (Conservation District)
South: CD 11 (Conservation District)
East: CD 11 (Conservation District)
West: CD 11 (Conservation District)

Land Use:

The subject site is developed with a single family use. The areas to the north, south, east and west are developed with single family uses.

Zoning/BDA History:

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| 1. BDA178-015, Property at 5838 Monticello Avenue (the subject site) | On February 21, 2018, the Board of Adjustment Panel B will consider a request for a variance to the front yard setback regulations made to maintain and to modify/maintain an existing single family home structure, a portion of which is located 28' 6" from the front property line or 7' 6" into the 36' front yard setback. |
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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:

- November 16, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 5, 2018: The Board of Adjustment Secretary assigned this appeal to Board of Adjustment Panel B.
- January 5, 2018: The Board Administrator emailed the applicant the following information:
- an attachment that provided the appeal date and panel that will consider the appeal; the January 31st deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of appeal); and the February 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- February 6, 2018: The applicant and applicant's representative submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction,

the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION FEBRUARY 21, 2018

APPEARING IN FAVOR: William Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Bill Hersch, 320 E. Jefferson, Dallas, TX

MOTION: Hounsel

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. **178-014(SL)**, on application of V.C. Seth represented by Karl A. Crawley, 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 **with prejudice**.

SECONDED: Beikman

AYES: 5 – Hounsel, Beikman, Torres, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA178-015(SL)

BUILDING OFFICIAL’S REPORT: Application of V. C. Seth, represented by Karl A. Crawley, for a variance to the front yard setback regulations at 5838 Monticello Avenue. This property is more fully described as Lot 22, Block 8/2153, and is zoned CD 11, which requires a front yard setback of 36 feet. The applicant proposes to construct and/or maintain a structure and provide a 28 foot 6 inch front yard setback, which will require a 7 foot 6 inch variance to the front yard setback regulations.

LOCATION: 5838 Monticello Avenue

**APPLICANT: V. C. Seth
Represented by Karl A. Crawley**

REQUEST:

A request for variance to the front yard setback regulations of 7' 6" is made to maintain and to modify/maintain an existing single family home structure, a portion of which is located 28' 6" from the front property line or 7' 6" into the 36' front yard setback. The existing structure on the subject site is in part a nonconforming structure (a step structure constructed in the 1920's), and in part a structure that is an illegal structure (a porch structure built in 2016).

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not substantiated how the rectangular-shaped, flat, approximately 7,250 square foot subject site cannot be developed in a manner commensurate with the development upon other parcels of land with the same CD 11 zoning district. Other than step structure in the CD 11 front yard setback that is assumed to have been built with the home constructed in the 1920's, features of the site have allowed it to be developed with an approximately 2,000 square foot single family home that had complied with front yard setbacks in the previous R-7.5(A) zoning and in the existing CD 11 zoning until a porch structure was added over the nonconforming step structure without a permit in 2016.
- Staff concluded that the applicant had not substantiated how if the Board were to grant the variance, it would not be to relieve a self-created or personal hardship, nor for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

Site: CD 11 (Conservation District)
North: CD 11 (Conservation District)
South: CD 11 (Conservation District)
East: CD 11 (Conservation District)
West: CD 11 (Conservation District)

Land Use:

The subject site is developed with a single family home. The areas to the north, south, east and west are developed with single family residential uses.

Zoning/BDA History:

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| 1. BDA178-014, Property at 5838 Monticello Avenue (the subject site) | On February 21, 2018, the Board of Adjustment Panel B will consider an appeal of the decision of an administrative official. |
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GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the front yard setback regulations of 7’ 6” focuses on: 1) maintaining a nonconforming step structure at the entry into the single family home constructed in the 1920’s, and 2) modifying and maintaining an illegal porch structure added to the existing single family home in 2016, which are located 28’ 6” from the front property line or 7’ 6” into the front yard setback.
- The site is located in CD 11 which states that minimum front yard setback is the average of the front yard of the contributing structures on the block face, with the average front yard of contributing main structures block face listed in Exhibit B of the ordinance. (Exhibit B lists that the average setback of the blockface is 36’). Prior to the creation of CD 11 in 2004, the property had been zoned R-7.5(A).
- The submitted scaled site plan indicates a “new awning over existing built area (5’ 6” x 10’) located 28’ 6” from the front property line.
- According to DCAD records, the “main improvement” for property addressed at 5838 Monticello Avenue is structure built in 1926 with 2,018 square feet of living/total area, and that “additional improvements” is a 420 square foot attached garage and pool. Because records show that the main improvement/structure on this site was built in the 1920’s, it is assumed that the part of the existing structure on the site is a nonconforming structure.
- The code defines nonconforming structure as a structure that does not conform to the regulations of the code, but which was lawfully constructed under the regulations in force at the time of construction.
- The code states that the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner’s agent.
- The code states that a person may renovate, remodel, repair, rebuild, or enlarge a nonconforming structure if the work does not cause the structure to become more nonconforming as to the yard, lot, and space regulations.
- The applicant has chosen to seek variance to the front yard setback regulations for both the nonconforming and illegal structures in the front yard setback.

- The Sustainable Development and Construction Conservation District Chief Planner has submitted a review comment sheet with the following comments: Projecting front gable at porch will not meet the architectural requirements of Ordinance 25474(k)(5)(B).” Any remodeling must match the consistent materials in type, color, coursing, joint detailing, mortaring, size, and texture.” Projection is comprised of wood spindle columns which does not match the remainder of the house which is brick and stone.
- The site is flat, rectangular in shape (145’ x 50’) and 7,250 square feet in area. The site is zoned CD 11, however the site had been zoned R-7.5(A) where lots are typically 7,500 square feet in area prior to the creation of the CD in 2004.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CD 11 zoning classification.
 - If the Board were to grant the variance, it would not be to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 11 zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document which in this case are nonconforming step and illegal porch structures that are located 28’ 6” from the front property line (or 7’ 6” into this 36’ front yard setback).
- Granting the front yard variance request will not provide any relief to architectural requirements of CD 11 some of which have been identified by the Sustainable Development and Construction Conservation District Chief Planner.

Timeline:

November 16, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 5, 2018: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the January 31st deadline to submit additional evidence for staff to factor into their analysis;

and February 9th 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."

January 30, 2018: The Sustainable Development and Construction Conservation District Chief Planner has submitted a review comment sheet with the following comments: Projecting front gable at porch will not meet the architectural requirements of Ordinance 25474(k)(5)(B)." Any remodeling must match the consistent materials in type, color, coursing, joint detailing, mortaring, size, and texture." Projection is comprised of wood spindle columns which does not match the remainder of the house which is brick and stone".

February 6, 2018: The applicant and applicant's representative submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION FEBRUARY 21, 2018

APPEARING IN FAVOR: William Cothrum, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 178-015(SL)**, on application of V.C. Seth represented by Karl A. Crawley, **grant** the seven-foot six-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

SECONDED: Hounsel

AYES: 3 – Hounsel, Bartos, Brooks

NAYS: 2 – Beikman, Torres

MOTION FAILED - 3 – 2

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 178-015(SL)**, on application of V.C. Seth represented by Karl A. Crawley, **deny** the variance to the front yard setback regulations requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: Hounsel

AYES: 4 – Hounsel, Bartos, Torres, Brooks

NAYS: 1 – Bartos

MOTION PASSED - 4 – 1

FILE NUMBER: BDA178-020(SL)

BUILDING OFFICIAL'S REPORT: Application of Robert Reeves and Associates, represented by Robert Reeves, for variances to the front and side yard setback regulations, and off-street loading regulations, and a special exception to the off-street parking regulations at 13907 Noel Road. This property is more fully described as Lot 1B, Block A/7005, and is zoned MU-3(SAH), which requires a front yard (urban form) setback of 35 feet and requires a side yard (tower spacing) setback of 13 feet 6 inches, and requires off-street loading and off-street parking spaces to be provided. The applicant proposes to construct and maintain a structure and provide a 15 foot front yard setback, which will require a 20 foot variance to the front yard (urban form) setback regulations; to construct and maintain a structure and provide a 6 foot side yard setback, which will require a 7 foot 6 inch variance to the side yard (tower spacing) setback regulations; to construct and maintain a structure with a hotel or motel use and provide 2 of the required 3 off-street loading spaces, which will require a 1 space variance to the loading regulations; and to construct and maintain a structure with a hotel or motel use, a general merchandise or food store 3500 square feet or less use, and an animal shelter or clinic without outside runs use, and provide 213 of the required 246 off-street parking spaces, which will require a 33 space special exception to the off-street parking regulations.

LOCATION: 13907 Noel Road

APPLICANT: Robert Reeves and Associates

REQUESTS:

The following requests have been made to construct and maintain a 6-story, approximately 72' high, approximately 170,000 square foot mixed structure (hotel or motel use, general merchandise or food store 3,500 square feet or less use, animal shelter or clinic without outside runs use) (Plush Galleria Hotel) on a site that is currently undeveloped:

1. Variances to the front yard setback (urban form setback) regulations of 20' are made to construct and maintain the aforementioned mixed use structure where a portion of this structure over 45' in height will be located as close as 15' from the two front property lines (Noel Road and Southern Boulevard) or 20' into the 35' urban form front yard setbacks;
2. A variance to the side yard setback (tower spacing setback) regulations of 7' 6" is made to construct and maintain the aforementioned mixed use structure where a portion of this structure over 45' in height will be located as close as 6' from one of the two side property lines (the north side property line) or 7' 6" into this 13' 6" tower spacing side yard setback;
3. A variance to the off-street loading regulations of 1 loading space is made to construct and maintain the aforementioned mixed use structure where 2 of the required 3 loading spaces are to be provided; and
4. A special exception to the off-street parking regulations of 33 spaces is made to construct and maintain the aforementioned mixed use structure with a combination of hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses where 213 of the required 246 spaces are to be provided.

STANDARD FOR A VARIANCE:

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

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

Section 51A-4.311 of the Dallas Development Code states the following:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
 - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance

establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION (front yard, side yard, and loading variances):

Denial

Rationale:

- While staff recognized that the flat subject site was slightly irregular in shape caused by a 0.2 acre street easement in its southeast corner, and that this easement reduced the approximately 1.7 acre site by approximately 13 percent, staff concluded that the applicant had not substantiated how this precludes him from developing the site in a manner commensurate with the development upon other parcels of land with the same MU-3 zoning, nor how the size, shape or slope of the site precludes him from developing it with a structure/use that could meet the front yard (urban form) and side yard (tower spacing) setback and loading regulations.
- Staff concluded that the applicant had not substantiated how if the Board were to grant these three requests for variances it would not be to relieve a self-created or personal hardship, nor for financial reasons only.
- In addition, with regard to the request for a variance to the off-street loading regulations, staff concluded that granting this variance is contrary to public interest because the Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting: “Reduction of code-required loading spaces would facilitate a substandard design and affect traffic safety. Proposed design does not accommodate adequate maneuvering of off-street loading operations: space is limited and does not allow more than one truck to operate at a time. Goods and service vehicles would park on Southern Boulevard. Loading spaces are also proposed to be located on the front yard, exposed to the garage primary access point”.

STAFF RECOMMENDATION (parking special exception):

Approval, subject to the following condition:

- The special exception of 33 spaces shall automatically and immediately terminate if and when the hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses are changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Senior Engineer indicated that he has no objections to this request.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3(SAH)(Deed restricted)* (Mixed use)
North: GO(A)(SAH)(Deed restricted) (General Office)
South: PD 887 (Planned Development)
East: PD 216 (Planned Development)
West: MU-3(SAH) (Mixed use)

- * Note that on January 4, 2018, the applicant has represented in an email to the Board Administrator/Chief Planner that the deed restrictions on this property in no way conflict with the requests made to the board of adjustment on this application.

Land Use:

The subject site is undeveloped. The areas to the north is developed with a hotel use; the area to the east is developed with multifamily use; the area to the south is developed with an office use, and the area to the west is developed with retail use.\

Zoning/BDA History:

1. BDA990-372, Property at 13907 Noel Road (the subject site)

On December 6, 2000, the Board of Adjustment Panel B granted a request for a special exception to the off-street parking regulations of 6 spaces and imposed the following condition: the special exception granted automatically and immediately terminates if and when the retail and restaurant uses on the site are changed or discontinued.

The case report stated that the request was made to construct and maintain a retail development and restaurant on the undeveloped site and provide 95 of the required 101 off-street parking spaces required by code.

GENERAL FACTS/STAFF ANALYSIS (variances):

- The requests for variances to the front (urban form) and side (tower spacing) setback regulations and off-street loading regulations focus on constructing and maintaining a 6-story, approximately 72' high, approximately 170,000 square foot mixed structure (hotel or motel use, general merchandise or food store 3,500 square

feet or less use, animal shelter or clinic without outside runs use) (Plush Galleria Hotel) on a site that is currently undeveloped.

- The subject site is located at the northwest corner of Noel Road and Southern Boulevard.
- The site is zoned MU-3(SAH).
- The site has two front yard setbacks and two side yard setbacks.
- Section 51A-4.125(f)(4)(A) and (B) states that properties zoned MU-3 are required to provide a minimum front yard setback of 15 feet and a minimum side yard setback of 20' where adjacent to or directly across an alley from residential zoning districts or no minimum in all other cases.
- But Section 51A-4.125(d)(4)(A) and (B) also states that properties zoned MU-3 have additional front and side yard setbacks for structures that exceed 45' in height. An additional 20' front yard setback (urban form setback) is required for that portion of a structure over 45' in height; and an additional side and rear yard setback (tower spacing setback) of 1' for each 2' in height above 45' is required for that portion of a structure above 45' in height up to a total setback of 30'.
- While the submitted site plan and elevations indicate that the proposed structure complies with the minimum front and side yard setbacks for the portion of it 45' or less in height, the submitted site plan and elevations indicate that the proposed 72' high structure does not provide the additional 20' front yard setback required from the front property lines along Noel Road on the east and Southern Boulevard on the south, or the additional 13' 6" side yard setback required from the side property line along the north side of the subject site.
- Section 51A-4.205(1) of the Dallas Development Code requires the following off-street loading requirements for a hotel and motel use:
 - 0 to 10,000 square feet: NONE
 - 10,000 to 50,000 square feet: 1
 - 50,000-100,000 square feet: 2
 - Each additional 100,000 square feet or fraction thereof: 1 additional
- The applicant proposes to construct an approximately 170,000 square foot hotel or motel use and provide 2 of the 3 off-street loading spaces.
- According to DCAD records, there are "no improvements" listed at 13907 Noel Road.
- The subject site is flat, slightly irregular in shape, and according to the submitted application is 1.74 acres in area. The site is zoned MU-3(SAH).
- The applicant has identified that a 0.2 acre street easement in its southeast corner, reduces the approximately 1.7 acre site by approximately 13 percent.
- The site has two front yard setbacks as any corner property has in this zoning district.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front and side yard setback and off-street loading regulations 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 variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or

slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same IM (Industrial/manufacturing) zoning classification.

- If the Board were to grant the variances, it would not be to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant the any or all of the variance requests, and impose the submitted site plan and elevations as a condition to any or all of the requests, the building footprint and heights of the structure on the site would be limited to what is shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (parking special exception):

- This request for a special exception to the off-street parking regulations of 33 spaces focuses on constructing and maintaining approximately 170,000 square foot mixed structure with a mix of hotel or motel (a 213 room hotel), general merchandise or food store 3,500 square feet or less (1,800 square feet of retail use), animal shelter or clinic without outside runs (7,000 square foot “doggy day care”) uses, and providing 213 (or 87 percent) of the 246 off-street parking spaces required by code.
- Chapter 51A requires the following off-street parking requirement:
 - Hotel or motel: one space for each unit for units 1 to 250; $\frac{3}{4}$ space for each unit for units 251 to 500, $\frac{1}{2}$ space for each unit for all units over 500; plus one space per 200 square feet of meeting room.
 - General merchandise or food store 3,500 square feet or less: one space per 200 square feet of floor area.
 - Animal shelter or clinic: One space per 300 square feet of floor area.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses does not warrant the number of off-street parking spaces required, and
 - The special exception of 33 spaces (or a 13 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 33 spaces shall automatically and immediately terminate if and when the hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses are changed or discontinued, the applicant could develop the site with these uses, and provide 213 (or 87 percent) of the 246 required off-street parking spaces.

Timeline:

- December 12, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- January 5, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case”.
- January 5, 2018: The Board Administrator 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th 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.”
- February 5 and 6, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).
- February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- February 8, 2018: The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting:
1. “Reduction of code-required loading spaces would facilitate a substandard design and affect traffic safety. Proposed design does not accommodate adequate maneuvering of off-street loading operations: space is limited and does not allow more

than one truck to operate at a time. Goods and service vehicles would park on Southern Boulevard. Loading spaces are also proposed to be located on the front yard, exposed to the garage primary access point.

2. No comment on the 20' front yard setback variance request.
3. No comment on the 7.5' side yard setback variance request.
4. No objection to the 33 space off-street parking exception request.

BOARD OF ADJUSTMENT ACTION FEBRUARY 21, 2018

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX
Victor Lissiak, 4205 Beltway, Dallas, TX
Curt Hodgson, 114 Flying Scot, Lakeway, TX

APPEARING IN OPPOSITION: Kevin Hickman, 9474 Gatetrail DR, Dallas, TX
Mitchell Vexler, Galeria LLC ,

MOTION #1: Brooks

I move that the Board of Adjustment, in Appeal No. **BDA 178-020(SL)**, on application of Robert Reeves, **deny** the variance to the front yard setback regulations requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Beikman

AYES: 5 – Hounsel, Beikman, Torres, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

MOTION #2: Brooks

I move that the Board of Adjustment, in Appeal No. **BDA 178-020(SL)**, on application of Robert Reeves, **deny** the variance to the side yard setback regulations requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Beikman

AYES: 5 – Hounsel, Beikman, Torres, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

MOTION #3: Brooks

I move that the Board of Adjustment, in Appeal No. **BDA 178-020(SL)**, on application of Robert Reeves, **deny** the variance to the off-street loading regulations requested by this applicant **with prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of

the provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: Beikman

AYES: 5 – Hounsel, Beikman, Torres, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

MOTION #4: Brooks

I move that the Board of Adjustment, in Appeal No. **BDA 178-020(SL)**, on application of Robert Reeves, **grant** the request of this applicant to provide 213 off-street parking spaces to the off-street parking regulations contained in the Dallas Development Code which require 246 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking spaces. This special exception is granted for a hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses are only. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 33 spaces shall automatically and immediately terminate if and when the hotel or motel, general merchandise or food store 3,500 square feet or less, animal shelter or clinic without outside runs uses are changed or discontinued.

SECONDED: Torres

AYES:1 – Brooks

NAYS: 4 – Hounsel, Beikman, Torres, Bartos

MOTION FAILED 4 – 1

MOTION #5: Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 178-020(SL)**, on application of Robert Reeves, **deny** the off-street parking regulations special exception requested by this applicant without prejudice because our evaluation of the property use and the testimony shows that granting the application would increase traffic hazards or increase traffic congestion on adjacent or nearby streets (**and/or**) the parking demand generated by the use does warrant the number of required parking spaces.

SECONDED: Bartos

AYES: – Hounsel, Torres, Bartos, Brooks

NAYS: 1 - Beikman

MOTION PASSED 4 – 1 (unanimously)

FILE NUMBER: BDA178-023(JM)

BUILDING OFFICIAL'S REPORT: Application of Robert Liberi for special exceptions to the fence standards regulations at 6207 Yorkshire Drive. This property is more fully described as Lot 1, Block 12/6378, and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct and or maintain an 8 foot high fence in a required front yard, which will require a 4 foot special exception to the fence standards regulations, and to construct and/or maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards regulations.

LOCATION: 6207 Yorkshire Drive

APPLICANT: Robert Liberi

REQUEST:

The following requests have been made on a site that is currently being developed with a storage structure:

1. A special exception to the fence standards related to fence height of up to 4' is made to maintain an 8' high solid masonry fence in the Royalshire Drive front yard setback; and,
2. A request for a special exception to the fence standards related to fence materials is made to maintain a fence with panels with surface areas that are less than 50 percent open (the solid masonry fence located as close as on the front lot line (or less than 5' from this front lot line).

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

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

STAFF RECOMMENDATION (fence standards):

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16,000 sq. ft.)
North: R-16(A) (Single family district 16,000 sq. ft.)
South: R-16(A) (Single family district 16,000 sq. ft.)
East: R-16(A) (Single family district 16,000 sq. ft.)
West: R-16(A) (Single family district 16,000 sq. ft.)

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (fence standards):

- The focus of the two requests for special exceptions to the fence standards (one is related to height of up to 8' (4' special exception) and the other is related to fence materials (solid nature) is maintaining the following fence in the site's platted 20' front yard along Royalshire Drive: an 8' high solid masonry (stucco) fence within the required front yard and platted setback area.
- The subject site is zoned R-16(A) which requires a 35' front yard setback. The site is a rectangular corner lot, with 113 feet of frontage along Yorkshire Drive, 168 feet of frontage along Royalshire Drive, and with over 18,900 square feet of area. The subject site has two required front yards -- a front yard setback along Yorkshire Drive (the shorter of the two frontages of the subject site which is always a front yard in this case) and a front yard setback along Royalshire Drive, (the longer of the two frontages which is typically considered a side yard where, on this R-16(A) zoned property, a 9' high fence could be erected by right). However, the site has a front yard setback along Royalshire Drive to maintain continuity of the established front yard setback along this street frontage where homes to the north of the subject site "front" on Royalshire Drive.
- While it has been ascertained that the site has two front yard setback requirements, a provision of the Dallas Development Code Sec. 8.505(e) states that, "A building line platted and recorded prior to December 13, 2006, indicating that a front yard setback has been reduced remains enforceable. Removal of the platted building line may be sought through a replat that complies with this section." Therefore, while the Royalshire Dr. frontage is regulated as a front yard requiring a 35' front yard setback, the platted 20' setback supersedes.
- The Dallas Development Code Sec. 4.602 (a) states:
 - 1) that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
 - 2) that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.
- The applicant has submitted a site plan and elevation documents of the existing fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 8 feet. Additionally, the fence panels having a surface area that

is less than 50 percent open and located less than 5' from this front lot line (from 4 inches to being located along the property line).

- The following additional information was gleaned from the submitted site plan:
 - An 8' high solid masonry (stucco) fence that is attached to the house at the southwest corner, within the Royalshire Dr. required front yard. The fence proceeds for 19' 8" parallel to Yorkshire Dr., then for 91' northbound parallel to Royalshire Dr. before aligning with the alleyway to the north for 19' 8". A four-foot gate is located within the southwest section parallel to Yorkshire Dr.
- The Board Senior Planner conducted a field visit of the site and surrounding area from Yorkshire Dr. to Parkchester Dr. and from Yorkshire Dr. and Royalshire Dr. to Meadowcrest Dr. and noted one other fence that appeared to be above 4' in height and located on a corner lot, possibly in a front yard setback, with no BDA history.
- As of February 9, 2018, one letter has been submitted in opposition to the request (Letters Folder). No letters in support have been offered.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height of 4' and to location and materials on Royalshire Dr. will not adversely affect neighboring property.
- Granting these special exceptions to the fence standards related to height of up to 4' and to location and materials on the site with a condition imposed that the applicant complies with the submitted site plan/elevation documents, would require the proposal exceeding 4' in height in the front yard setbacks and solid fence panels on the front lot line to be maintained in the location and of the heights and materials as shown on these documents.

Timeline:

December 14, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 9, 2018: The Board 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th 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."

February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION FEBRUARY 21, 2018

APPEARING IN FAVOR: Bob Liberi, 6207 Yorkshire, Dallas, TX

APPEARING IN OPPOSITION: Kathleen Dodgen, 11347 Royalshire, Dallas, TX
Luke Nolan, 6124 Meadowcrest, Dallas, TX
Francis McQuarter, 113 Yorkshire, Dallas, TX
Krisann Peters, 11354 Royalshire Dr., Dallas,

MOTION #1: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 178-023(SL)**, on application of Robert Liberi, **deny** the special exception for to the fence height requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Bartos

AYES: 4 – Hounsel, Beikman, Bartos, Brooks

NAYS: 1 – Torres

MOTION PASSED 4 – 1

MOTION #2: Beikman

I move that the Board of Adjustment, in Appeal No. **BDA 178-023(SL)**, on application of Robert Liberi, **deny** the special exception for fence panels requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that this special exception will adversely affect neighboring property.

SECONDED: Bartos

AYES: 4 – Hounsel, Beikman, Bartos, Brooks

NAYS: 1 - Torres

MOTION PASSED 4 – 1

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Bartos

AYES: 5 – Hounsel, Beikman, Torres, Bartos, Brooks

NAYS: 0

MOTION PASSED 5 – 0 (unanimously)

4:33 P.M. Board Meeting adjourned for **February 21, 2018**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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