

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, March 20, 2019**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Chair, Marla Beikman, regular member, Rodney Milliken, regular member, Joanna Hampton, regular member and Philip Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Chair, Marla Beikman, regular member, Rodney Milliken, regular member, Joanna Hampton, regular member and Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary, and Phil Erwin, Chief Arborist

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary, and Phil Erwin, Chief Arborist

11:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 20, 2019 docket.**

BOARD OF ADJUSTMENT ACTION March 20, 2019

1:06 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 February 20, 2019 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: March 20, 2019

MOTION: None

The minutes were approved.

FILE NUMBER: BDA189-028(OA)

BUILDING OFFICIAL’S REPORT: Application of Jim Moll, represented by Kori Haug, for a special exception to the landscape regulations at 2328 W. Illinois Avenue. This property is more fully described as Tract 29, Block 21/6026, and is zoned CR, which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 2328 W. Illinois Avenue.

APPLICANT: Jim Moll
Represented by Kori Haug

REQUEST:

A request for a special exception to the landscape regulations is made to replace the existing restaurant with drive-in or drive-through structure on the site, and not fully meet the landscape regulations, more specifically, to not meet the required street buffer zone or interior zone requirements.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The Chief Arborist recommends approval of the alternative landscape plan on the basis that full compliance with the requirements of Article X will unreasonably burden the use of the property and that the special exception would not have a negative effect on neighboring properties.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community retail)
North: CR (Community retail)
South: CR (Community retail)
East: CR (Community retail)
West: CR (Community retail)

Land Use:

The subject site is currently developed with a restaurant with drive-in or drive-through service. The areas to the north, south, east, and west are developed with and retail uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the landscape regulations focuses on replacing the restaurant with drive-in or drive-through structure on the site, and not fully meeting the landscape regulations, more specifically, not providing the required site trees, street trees and landscape design requirements.

- The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A).
- The Chief Arborist's memo states the following with regard to "request":
 - The applicant is requesting a special exception to the landscaping regulations of Article X (2018). The alternative landscape plan is for new construction of a restaurant to replace the original structure existing from before 1986 landscape regulations. The project is an upgrade from the original structure with a renovation of the same lot area to continue its initial use.
- The Chief Arborist's memo states the following with regard to "provision":
 - The new construction of new floor area on the commercial lot requires the site to be in compliance with current landscape regulations. However, the conditions for parking and maneuvering are changing minimally and the floor area of the new structure is somewhat reduced from the original dimensions. The alternative landscape plan provides landscaping in the scarce space made available under the specific limited conditions for available landscape area and due to conflicts with visibility triangles and existing utilities. The existing public right-of-way will be retained in its current function except the drive entry on Illinois Avenue will be closed and a screening hedge will be provided across the north frontage. The overall landscape conditions will be upgraded from their current provision.
- The Chief Arborist's memo states the following with regard to "deficiencies":
 - The plan does not comply with any of the minimum requirements of Article X for street buffer zone or the interior zone. It does provide for foundation planting as a landscape design option. No screening is provided along Hampton Road due to restricted space. A screening fence is not recommended due to the limited public walk space which could create a pedestrian public safety concern from the bus stop to the street corner.
- The Chief Arborist recommends approval of the alternative landscape plan on the basis that full compliance with the requirements of Article X will unreasonably burden the use of the property and that the special exception would not have a negative effect on neighboring properties.
- The applicant has the burden of proof in establishing the following:
 - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition to the request, the applicant would be provided exception from fully meeting the street buffer zone or interior zone requirements on the subject site.

Timeline:

January 8, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

February 13, 2019: The Development and Construction Department Board of Adjustment Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 27th deadline to submit additional evidence for staff to factor into their analysis; and the March 8th 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.

March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

March 7, 2019 The City of Dallas Chief Arborist submitted a memo regarding the applicant’s revised landscape plan (see Attachment A).

BOARD OF ADJUSTMENT ACTION: March 20, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment, in Appeal No. BDA 189-028, on application of Jim Moll, represented by Kori Haug, **grant** the request of this applicant for a special exception to the landscape regulations contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

SECONDED: Hampton

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Milliken

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA189-029(SL)

BUILDING OFFICIAL’S REPORT: Application of Kathryn Rodgers, represented by Pedro Tucker, for a variance to the front yard setback regulations at 810 N. Clinton Avenue. This property is more fully described as Lot C, block 6/3460, and is zoned CD 1 (Subarea 1), which requires a front yard setback of 25 feet. The applicant proposes to construct and/or maintain a structure and provide a 7-foot 4 inch front yard setback, which will require a 17 foot 8 inch variance to the front yard setback regulations.

LOCATION: 810 N. Clinton Avenue

APPLICANT: Kathryn Rodgers
Represented by Pedro Tucker

REQUEST:

A request for a variance to the front yard setback regulations of 17’ 8” is made to construct and maintain a porch addition structure to a 1920’s single family home/nonconforming structure, to be located 7’ 4” from the site’s front property line or 17’ 8” into the 25 front yard setback.

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:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the variance should be granted because of the irregular shape and restrictive area of the subject site. Furthermore, the applicant had substantiated how these features preclude the lot from being developed in a manner commensurate with the development upon other parcels of land with the same CD 1 zoning by submitting a list of 10 other properties in the zoning district where the average total area is approximately 1,850 square feet – slightly larger than that was is proposed to be on the total square footage on site at approximately 1,700 square feet.
- Granting the variance would not be contrary to public interest given that the structure that the applicant seeks variance is an approximately 90 square foot porch addition structure that would align with the existing nonconforming structure on the site built in the 1920's.

BACKGROUND INFORMATION:

Zoning:

Site: CD 1 (Subarea 1) (Conservation District)
North: CD 1 (Subarea 1) (Conservation District)
South: CD 1 (Subarea 3) (Conservation District)
East: CD 1 (Subarea 1) (Conservation District)
West: CD 1 (Subarea 1) (Conservation District)

Land Use:

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

Zoning/BDA History:

1. BDA167-119, Property 810 N. Clinton Avenue (the subject site)

On November 15, 2017, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 17' 2" and imposed the submitted site plan as a condition to the request.

The case report stated that the request was made to construct and maintain a porch addition structure to a 1920's single family home/nonconforming structure, to be located 7' 10" from the site's front property line or 17' 2" into the 25' front yard setback.

(On November 14, 2018, the Board of Adjustment Panel B granted the applicant's request to waive the two-year limitation on a final decision reached on this application which allowed him to re-file a new application for a variance to the front yard setback regulations on this site.

GENERAL FACTS/STAFF ANALYSIS:

- The request for a variance to the front yard setback regulations of 17' 8" focuses on constructing and maintaining an approximately 90 square foot porch addition structure to a one-story single family home structure constructed (according to DCAD) in 1921, to be located 7' 4" from the site's front property line or 17' 8" into the 25' front yard setback.
- This request is essentially made for the same request granted by the Board in 2017 but to increase the variance by merely 6". In November of 2017, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 17' 2" for a similar porch structure, however the applicant is returning because the porch that was never added to the home is 6" closer to the front property line than what was shown on the applicant's proposal in 2017. BDA167-119 was an application made and granted for a porch addition structure that was to be located 7' 10" from the site's front property line or 17' 2" into the 25' front yard setback.
- The subject site is zoned CD 1 (Subarea 1) which requires a minimum 25' front yard setback and minimum 5' side and rear yard setbacks for residential uses.
- The subject site is an irregular-shaped property that has a 25' front yard setback and a 5' side yard setback.
- The submitted site plan denotes the footprint of a "one story frame" and garage structures along with a representation of the footprint of the proposed porch structure that are located within the 25' front yard setback.

- According to DCAD records, the “main improvement” for property addressed at 810 N. Clinton Avenue is structure built in 1921 with 1,554 square feet of living/total area, and that “additional improvements” is a 432 square foot detached garage.
- While the existing single family home and garage structures are located in the 25’ front yard setback, it is assumed that these structures are nonconforming structures because records show that the main improvement/structures on this site were built in the 1920’s.
- 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 owner has informed staff that she has chosen to seek variance to the front yard setback regulations for only the proposed addition, and not to remedy/address the nonconforming aspect of the existing nonconforming structures in the front yard setback.
- All of the proposed approximately 90 square foot porch addition structure would be located in the 25’ front yard setback.
- The subject site is flat, irregular in shape, and according to the submitted application is 0.1768 acres (or approximately 7,400 square feet) in area. The site had been zoned R-7.5(A) before the zoning changed to CD 1 in 1988 where lots are typically 7,500 square feet in area.
- The applicant’s representative submitted a document representing that the proposed improvement will increase the total home area from approximately 1,550 square feet to approximately 1,650 square feet, and that the average total area of 10 other properties in CD 1 is 1,850 square feet.
- 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 1 (Subarea 1) zoning classification.
 - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CD 1 (Subarea 1) zoning classification.
- If the Board were to grant the 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 is a porch addition structure to be located 7’ 4” from the front property line or 17’ 8” into the 25’ front yard setback.

- Note that the applicant is aware that granting the request for a variance to the front yard setback regulations will not provide any relief to the existing nonconforming structures in this setback since the applicant did not request that the Board consider this aspect as part of this application, nor to any existing noncompliance on the property with regard to fence standard regulations.

Timeline:

January 8, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2019: 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”.

February 12, 2019: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the February 27th deadline to submit additional evidence for staff to factor into their analysis; and the March 8th 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.

March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

While no review comment sheets with comments were submitted in conjunction with this application, the Sustainable Development and Construction Conservation District Chief Planner emailed the Board Administrator on February 27, 2019 that he has “no issue” with what is proposed.

BOARD OF ADJUSTMENT ACTION: March 20, 2019

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. BDA 189-029, on application of Kathryn Rodgers, represented by Pedro Tucker, **grant** the request of this applicant for a variance to the front yard setback regulations contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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: Hampton

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Milliken

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

FILE NUMBER: BDA189-031(SL)

BUILDING OFFICIAL’S REPORT: Application of the Dallas City Council, represented by Edwin P. Voss, Jr., to require compliance of a nonconforming use at 2702 Martin Luther King Jr. Boulevard. This property is more fully described as Lots 1-6, Block 21/1290, and is zoned PD 595 (CC) (Tract 4), which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming retail car wash use.

LOCATION: 2702 Martin Luther King Jr. Boulevard

APPLICANT: Dallas City Council
Represented by Edwin P. Voss, Jr.

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming car wash use (Jim’s Car Wash) on the subject site.

BACKGROUND INFORMATION:

Zoning:

- On March 20, 2019, the board of adjustment shall hold a public hearing to determine whether continued operation of the nonconforming car wash use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

DALLAS DEVELOPMENT CODE SECTION 51A-4.704 - COMPLIANCE REGULATIONS FOR NONCONFORMING USES:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection 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.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is

final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

(i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

(ii) The following factors must be considered by the board in determining a reasonable amortization period:

(aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

(bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.

(cc) Any return on investment since inception of the use, including net income and depreciation.

(dd) The anticipated annual recovery of investment, including net income and depreciation.

(E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

Timeline:

January 11, 2019: 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 17, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 17, 2019: The Board Administrator wrote/sent the record owner of the property (Freddy Davenport) a letter (with a copy to the applicant's representative, Edwin P. Voss) that informed him that a Board of Adjustment case had been filed against the nonconforming "outside sales" use on the property. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials submitted in conjunction with the application by the applicant or by the city staff.
2. A copy of the section of the Dallas Development Code that describes the Board of Adjustment (Section 51A-3.102).

3. A copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102 (90)).
4. A copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704).
5. A copy of the section of the Dallas Development Code that describes the Board of Adjustment hearing procedures (Section 51A-4.703).
6. A copy of the City of Dallas Board of Adjustment Working Rules of Procedures.
7. A copy of the hearing procedures for board of adjustment amortization of a nonconforming use.

The letter noted that the request was scheduled to be heard by Board of Adjustment Panel B at a public hearing on Wednesday, March 20, 2019, Dallas City Hall, L1 Conference Center Auditorium, 1500 Marilla Street, 1:00 p.m., that staff will brief the board on this matter prior to the public hearing on the morning of the same day, in the same room of Dallas City Hall, that the briefing was an open meeting which he/she was welcome to attend; that his attendance at this briefing/public hearing was strongly encouraged; and that notification signs posted by the City should remain on the property in the approximate locations posted by the director; and that if there was any information that he/she would like to have incorporated into the board’s docket, please submit this information to him at steve.long@dallascityhall.com, no later than 1 p.m., Friday, March 8th.

January 17, 2019: The Board Administrator emailed the applicant’s representative the following information:

1. The submitted application materials.
2. A copy of the section from the Dallas Development Code that describes the Board of Adjustment (Section 51A-3.102).
3. A copy of the City of Dallas Board of Adjustment Working Rules of Procedure.
4. A copy of the section of the Dallas Development Code that provides the definition of “nonconforming use” (Section 51A-2.102 (90)).
5. A copy of the section of the Dallas Development Code that describes the Board of Adjustment hearing procedures (Section 51A-4.703).
6. The standard as to how the board is able to consider/grant a request to establish a compliance date for a nonconforming use (Section 51A-4.703(a)(1)(A)).
7. A copy of the procedure for board of adjustment amortization of a nonconforming use.
8. A document that provides the public hearing date and other deadlines for submittal of additional information to staff/the board beyond what is included in the attached application materials, noting that no staff recommendation will be made on your application to the board.

9. The board's rule pertaining to documentary evidence.

The Board Administrator requested that the applicant's representative review the attached application materials to make sure they were complete and the Building Official's Report/second page of the application; and that he contact the Building Inspection Senior Plans Examiners/Development Code Specialist at 214/948-4618 no later than noon, Wednesday, February 27th with regard to any amendment to the Building Official's report that he felt was necessary to address the issue at hand.

January 30, 2019: The Board Administrator emailed the applicant's representative one additional piece of information that he had intended to include in his January 17th email that being the board's rule pertaining to documentary evidence.

March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

March 8, 2019: The applicant's representative submitted "Applicant's Additional Materials" concerning BDA189-031 electronically and in paper form, which notebooks included a computer disk and flash-drive of videos referenced in Tab 12.

March 11, 2019: The attorney representing the record owner of the nonconforming use on the subject site submitted a "response" and "some documentation that we will discuss at the March 20, 2019 hearing".

BOARD OF ADJUSTMENT ACTION: March 20, 2019

APPEARING IN FAVOR:

Ken Smith, 4615 Bradshaw, Dallas, TX
Edwin P. Voss, Jr., 9627 Hillview Dr., Dallas, TX
Council Member Kevin D. Felder, 1500 Marilla St., Dallas, TX
Diane Ragsdale, 3611 Dunbar St., Dallas, TX
Hank Lawson, 2402 Park Row, Dallas, TX
Traswell C. Livingston, III, 2700 BLK South Blvd., Dallas, TX
Kedric McKnight, 1600 Pennsylvania Ave., Dallas, TX,
Dorothy Hopkins, 4716 Elsie Faye Higgins, Dallas, TX

APPEARING IN OPPOSITION:

Sky Miller, 2424 Swiss Ave., Dallas, TX,

Warren Norred, 515 E. Bender, Arlington, TX
Dale Davenport, 805 Autumn Hill, Wylie, TX
Marshall Cornelius, 2706 Peabody Ave., Dallas,
TX,
Patti Priesing, 9147 Bretshire Dr., Dallas, TX

MOTION: Hounsel

I move that the Board of Adjustment, in Appeal No. BDA 189-031, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use will have an adverse effect on nearby properties, based on the following factors:

1. The character of the surrounding neighborhood.

With the finding of fact, the neighborhood being the immediate area on MLK Blvd. zoned CC. There are a series of undeveloped and underdeveloped properties none of which on this area are a similar car use.

2. The degree of incompatibility of the use with the zoning district in which it is located.

With the finding of fact, this has been established through the through the representation of the applicant in the CC district there's high degree of incompatible with these related usage on the property.

3. The manner in which the use is being conducted.

With the finding of fact, there are 24/7 operations going on all the time with a limited amount of employee time spent at the property.

4. The hours of operation of the use.

24/7 operations being impactful on the property.

5. The extent to which continued operation of the use may threaten public health of safety.

With the finding of fact, there were crime operations on the property possibly and likely drawn by the use itself to that property.

6. The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust and odor.

With the finding of fact, noise, glare and trash impacted on the property were witnessed.

7. The extent to which public disturbances may be created or perpetuated by continued operation of the use.

With the finding of fact, shown through additional crime incidents which may or may not be reported.

8. The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

With the finding of fact, there were testimony related to the traffic blockages that were noted from time to time on the property which were impactful here again as well.

SECONDED: Sahuc

AYES: 5 - Hounsel, Beikman, Sahuc, Hampton, Milliken

NAYS: 0

MOTION PASSED: 5 – 0 (Unanimously)

FILE NUMBER: BDA189-034(SL)

BUILDING OFFICIAL'S REPORT: Application of Brandon Zuniga, represented by Michelle Zuniga, for a special exception to allow the reconstruction of a structure in an FP (Flood Plain) area at 7610 Goforth Road. This property is more fully described as Lot 7, Block C/5446, and is zoned R-7.5(A), which limits construction within a flood plain. The applicant proposes to reconstruct a structure within an FP (Flood Plain) area, which would require a special exception to the flood plain regulations.

LOCATION: 7610 Goforth Road

APPLICANT: Brandon Zuniga
Represented by Michelle Zuniga

REQUEST:

A request for a special exception to the flood plain regulations is made in conjunction with (according to the application) “constructing a new house within the existing structure’s footprint” on a site developed with a single family home.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW THE RECONSTRUCTION OF A STRUCTURE IN AN (FP) FLOOD PLAIN AREA:

Section 51A-5.104 states that the board of adjustment may grant a special exception to allow the reconstruction of a structure in an FP area upon a showing of good and sufficient cause, a determination that failure to allow the reconstruction would result in exceptional hardship to the property owner, and a determination that the reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other laws. The board may not grant a special exception to authorize reconstruction within any designated floodway if any increase in flood levels during the base flood discharge would result. Any special exception granted must be the minimum necessary, considering the flood hazard, to afford relief. The reconstruction of a structure in an FP area may not increase the lot coverage of the structure.

(A) The director of water utilities shall notify in writing the owner of a structure in an FP area that:

(i) the granting of a special exception to reconstruct the structure below the base flood level will result in increased premium rates for flood insurance that will commensurate with the increased risk; and

(ii) the construction below the base flood level increases risks to life and property. The notification letter must be maintained with the record of the board's action.

(B) The FP administrator shall maintain a record of all actions involving applications for special exceptions and shall report special exceptions to FEMA upon request.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded based on the information submitted by the application at the time of the March 5th staff review team meeting that the special exception should be denied because of the City of Dallas Water Utilities Senior Engineer’s objections to this request. The Dallas Water Utilities Senior Engineer did not support the request based on the facts submitted by the applicant at this time, because, if granted, the reconstruction of the structure in the FP area would result in extraordinary public expense, and cause fraud on or victimization of the public.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a single family structure. The areas to the north, south, and east are developed with single family uses, and the area to the west is developed with a park (Olive Shapiro Park).

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 flood plain regulations focuses on constructing a new house within the existing structure’s footprint” on a site developed with a single family home.
- The Dallas Development Code defines FLOOD PLAIN (FP) as “any land area susceptible to inundation by the design flood.”
- The Dallas Development Code states that the owner of a structure in an FP area shall not make any improvements to the structure without first obtaining approval from the director of water utilities. The director of water utilities may approve proposed improvements if the cumulative value of all improvements for the previous ten years is less than 50 percent of the market or tax appraisal value of improvements on the property, whichever is greater. No substantial improvements

are permitted. Any improvement must comply with the requirements of Section 51A-5.105(g).

- The Dallas Development Code requires that the director of water utilities shall notify in writing the owner of a structure in an FP area that:
 - 1) the granting of a special exception to reconstruct the structure below the base flood level will result in increased premium rates for flood insurance that will commensurate with the increased risk; and
 - 2) the construction below the base flood level increases risks to life and property.
The notification letter must be maintained with the record of the board's action.
- According to DCAD records, the “main improvement” for property addressed at 7610 Goforth Road is a structure built in 1965 with 2,380 square feet of living/total area with the following “additional improvement”: a pool.
- On March 1st and 5th, the City of Dallas Water Utilities Senior Engineer submitted documents with objections to the request. These documents provided details as to why Dallas Water Utilities concluded that, if granted, the reconstruction of the structure in the FP area would result in extraordinary public expense, and cause fraud on or victimization of the public (see Attachments C and D).
- The applicant has the burden of proof in establishing the following:
 - The board of adjustment may grant a special exception to allow the reconstruction of a structure in an FP area upon a showing of good and sufficient cause, a determination that failure to all the reconstruction would result in exceptional hardship to the property owner, and a determination that the reconstruction will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other laws. The board may not grant a special exception to authorize reconstruction within any designated floodway if any increase in flood levels during the base flood discharge would result. Any special exception granted must be the minimum necessary, considering the flood hazard, to afford relief. The reconstruction of a structure in an FP area may not increase the lot coverage of the structure
- Granting this special exception with the condition imposed that the applicant comply with the submitted site plan would allow the construction of a new house within the existing structure’s footprint on a site developed with a single family home.

Timeline:

January 24, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 12, 2019: The Board Administrator emailed the applicant’s representative the following information:

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

and the March 8th 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 26 &
March 2, 2019:

The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

March 1 & 5, 2019: The City of Dallas Water Utilities Senior Engineer submitted documents to staff that provides a record of objections to the request (see Attachments C and D).

March 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

March 7, 2019: The applicant's representative submitted additional information to staff beyond what was submitted with the original application and beyond what was discussed and review at the March 5th staff review team meeting (see Attachment E). As a result, this information was not factored into the staff recommendation.

March 8, 2019: The City of Dallas Water Utilities Senior Engineer submitted additional information to staff beyond what was submitted with the original application and beyond what was discussed and review at the March 5th staff review team meeting (see Attachment F). As a result, this information was not factored into the staff recommendation.

March 8, 2019: The applicant's representative submitted additional information to staff beyond what was submitted with the original application and beyond what was discussed and review at the March 5th staff review team meeting (see Attachment G). As a result, this information was not factored into the staff recommendation.

BOARD OF ADJUSTMENT ACTION: March 20, 2019

APPEARING IN FAVOR: Michelle Zuniga, 7610 Goforth Rd., Dallas, TX

Brandon Zuniga, 7610 Goforth Rd., Dallas, TX
Loren Schiele, 8733 Fawn Dr., Dallas, TX
Victor Moreland, 8723 Fawn Dr., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hampton**

I move that the Board of Adjustment, in Appeal No. BDA 189-034, on application of Brandon Zuniga, represented by Michelle Zuniga, **grant** the request of this applicant to reconstruct and maintain a structure in the flood plain as a special exception to the flood plain regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows there is good and sufficient cause to grant the special exception, failure to allow the reconstruction would result in exceptional hardship to the property owner, and the reconstruction will not result in increased flood heights, additional threats to the public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other laws.

I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.
- Raising the living level above the BFE by a minimum of 3 feet is required.

SECONDED: **Sahuc**

AYES: 4 - Beikman, Sahuc, Hampton, Milliken

NAYS: 1 - Hounsel

MOTION PASSED: 4 – 1

5:29 P.M. Board Meeting adjourned for **March 20, 2019**

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.