

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL COUNCIL CHAMBERS
WEDNESDAY, October 17, 2018**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Chair, Ruth Torres, regular member, Marla Beikman, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM BRIEFING: Terrance Perkins, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Chair, Ruth Torres, regular member, Marla Beikman, regular member, Philip Sahuc, alternate member

MEMBERS ABSENT FROM HEARING: Terrance Perkins, regular member

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, Neva Dean, Asst. Director.

STAFF PRESENT AT HEARING: Kris Sweckard, Director, Neva Dean, Asst. Director, Steve Long, Chief Planner/ Board Administrator, Theresa Pham, Asst. City Attorney, Charles Trammell, Development Code Specialist, Oscar Aguilera, Senior Planner, Elaine Hill, Board Secretary

11:04 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 17, 2018 docket.**

BOARD OF ADJUSTMENT ACTION October 17, 2018

1:00 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 August 22, 2018 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: October 17, 2018

MOTION: None

The minutes were approved.

MISCELLANEOUS ITEM NO. 2

Consideration and approval of Panel B's 2019 Public Hearing Calendar.

BOARD OF ADJUSTMENT ACTION: October 17, 2018

MOTION: None

The calendar was approved.

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA178-013

REQUEST: To waive the two-year limitation on a final decision reached by Board of Adjustment Panel B on January 17, 2018 - a request for a special exception to the landscape regulations that was granted subject to compliance with the submitted alternate landscape plan.

LOCATION: 5750 E. Lovers Lane

APPLICANT: Karl A. Crawley

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

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

GENERAL FACTS/TIMELINE:

January 17, 2018: The Board of Adjustment Panel B granted a request for special exception to the landscape regulations imposing the submitted alternate landscape plan as a condition to this request.

The case report stated that the request was made to allow the extension of the City's Trail Network (hike-and-bike) on a site developed with an approximately 96,000 square foot general merchandise or food store use (Central Market), and not fully meet the landscape regulations, more specifically to not provide the perimeter buffer landscape requirements for residential adjacency in the southeastern quadrant of the property. (See Attachment A for information related to this application).

September 24, 2018: The applicant submitted a letter to staff requesting that the Board waive the two-year limitation on the request for a special exception to the landscape regulations granted by Board of Adjustment Panel B in January of 2018 (see Attachment B). This miscellaneous item request to waive the two-year limitation was made in order for the applicant to file a new application for a landscape special exception on the property.

Note that The Dallas Development Code states the following with regard to board action:

- Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
- If the board renders a final decision of denial without prejudice, the two-year limitation is waived.
- The applicant may apply for a waiver of the two-year limitation in the following manner:
 - The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.
 - The board may waive the two-year time limitation if there are changed circumstances regarding the property sufficient to warrant a new hearing. A simple majority vote by the board is required to grant the waiver. If a rehearing is granted, the applicant shall follow the process outlined in the code.

September 24, 2018: The Board Administrator emailed the applicant information regarding his miscellaneous item request (see Attachment C).

BOARD OF ADJUSTMENT ACTION OCTOBER 17, 2018

APPEARING IN FAVOR: Karl Crawley, 900 Jackson Street, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move to that the Board of Adjustment grant the request to waive the two-year limitation on a final decision reached by Board of Adjustment Panel B on January 17, 2018 - a request for a special exception to the landscape regulations that was granted subject to compliance with the submitted alternate landscape plan.

SECONDED: Beikman

AYES: 4 – Hounsel, Beikman, Torres, Sahuc

NAYS: 0

MOTION PASSED 4 – 0 (unanimously)

FILE NUMBER: BDA178-111(OA)

BUILDING OFFICIAL’S REPORT: Application of Karl Crawley for special exceptions to the fence standards regulations at 10650 Strait Lane. This property is more fully described as Lot 4B, Block 5519, and is zoned R-1ac(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 a 9 foot high fence in a required front yard, which will require a 5 foot special exception to the fence standards regulations, and to construct and/or maintain 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: 10650 Strait Lane

APPLICANT: Karl Crawley

REQUESTS:

The following requests for special exceptions to the fence standards regulations have been made on a site that is developed with a single-family home:

1. a special exception to the fence height regulations of 5’ is made to construct and maintain a 7’ high combination solid stone veneer/wrought iron picket fence with 9” high stone veneer columns and an 8’ 4” high solid wood and decorative steel entry gate located in this front yard setback; and
2. a special exception to the fence standards related to fence materials with panels with surface areas that are less than 50 percent open less than 5’ from the front lot line is made to construct and maintain the aforementioned 7’ high combination solid stone veneer/wrought iron picket fence with 9” high stone veneer columns located less than 5’ from this front lot line.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

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

STAFF RECOMMENDATION:

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-1ac (A) (Single family district 1 acre)
North: R-1ac (A) (Single family district 1 acre)
South: R-1ac (A) (Single family district 1 acre)
East: R-1ac (A) (Single family district 1 acre)
West: R-1ac (A) (Single family district 1 acre)

Land Use:

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

Zoning/BDA History:

1. BDA156-066, Property at 10650 Strait Lane (the subject site)
On June 29, 2016, Board of Adjustment Panel B denied a request for a special exception to fence height regulations of 9' 9" without prejudice.
The case report stated the request was made to construct and maintain a 7' high solid stone veneer fence with 7' 8" high stone veneer columns and a 9' 9" high solid metal entry gate on an undeveloped site.
2. BDA156-005, Property at 10650 Strait Lane (the subject site)
On January 20, 2016, the Board of Adjustment Panel B denied a request for a special exception to fence height regulations of 9' 9" without prejudice.
The case report stated the request was made to replace an existing approximately 5' high open wrought iron fence and approximately 9' high arched wrought iron entry gate with a 7' 4" high solid stone veneer fence with 8' 4" high stone veneer columns and a 9' 9" high metal entry gate on an undeveloped site.

3. BDA023-113, Property at 10647 Strait Lane (the lot northwest of the subject site)

On August 26, 2003, the Board of Adjustment Panel A granted a request for a special exception to fence height regulations of 4' 9" and imposed the submitted scaled elevation/site plan as a condition to the request.

The case report stated the request was made to construct and maintain a 6' high open wrought iron fence with 7' high brick columns and two 6' – 8' 9" high open wrought iron entry gates.

4. BDA001-172, Property at 10660 Strait Lane (the lot north of the subject site)

On March 27, 2001, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 6' and a special exception to allow a 2nd electrical meter on the site. The Board imposed the submitted elevation and site/landscape plan as a condition to these requests.

The case report stated the requests were made to construct and maintain a maximum 7' high combination open fence with a 2' 4" solid masonry base and a 10' high PVC-coated metal tennis court fence, and a special exception to allow a 2nd electrical meter on a site.

4. BDA012-221, Property at 10620 Strait Lane (the lot south of the subject site)

On August 13, 2002, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations of 8' 1" and imposed the submitted site plan and fence elevations as a condition to this request.

The case report stated the requests were made to construct and maintain an 8' high open metal fence with 8' 1" high metal posts, 9' 4.5" high entry columns and a 12' 1" high arched entry gate.

GENERAL FACTS/STAFF ANALYSIS:

- The focus of the requests for special exceptions to the fence standard regulations are twofold:
 1. a special exception related to the height of 5' focuses on constructing and maintaining a 7' high combination solid stone veneer/wrought iron picket fence with 9" high stone veneer columns and an 8' 4" high solid wood and decorative steel entry gate located in this front yard setbacks.
 2. a special exception related to a fence with panels with surface areas less than 50 percent open focuses on constructing and maintaining the aforementioned 7'

high combination solid stone veneer/wrought iron picket fence with 9" high stone veneer columns located less than 5' from this front lot line.

- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The Dallas Development Code states that no fence panel having less than 50 percent open surface area may be located less than five feet from the front lot line.
- The subject site is zoned R-1ac(A) and has a 40' front yard setback.
- The applicant has submitted a site plan and elevation of the proposal with a fence that reaches up to 9' in height and with fence panels having a surface area that is less than 50 percent open and located less than 5' from this front lot line.
- The following additional information was gleaned from the submitted full site plan:
 - The proposal is represented as being approximately 230' in length parallel to Strait Lane.
 - The proposed fence is represented as being located on the front property line, or approximately 16' from the pavement line, and the proposed gate is represented as being located 12' from the front property line, or approximately 28' from the pavement line.
- The Board Senior Planner conducted a field visit of the site and surrounding area (approximately 400 feet north and south of the subject site) and noted a number of other fences over 4' in height and in front yard setbacks. These properties have recorded BDA history for requests for special exceptions to fence height regulations.
- As of October 5, 2018, no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards regulations related to height over 4' in the front yard setback and related to a fence with panels with surface areas less than 50 percent open less than 5' from the front lot line will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setback and with fence panels less than 50 percent open to be constructed and maintained in the location and of the heights and materials as shown on these documents.

Timeline:

July 30, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 11, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. This assignment was made 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."

September 13, 2018: The Sustainable Development and Construction Department Senior Planner, emailed the applicant's representative 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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."

September 25, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: October 17, 2018

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Beikman**

I move that the Board of Adjustment **grant** the following application **BDA 178-111** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. 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 and elevation is required.

SECONDED: **Sahuc**

AYES: 4 - Hounsel, Torres, Beikman, Sahuc

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

FILE NUMBER: BDA178-121(SL)

BUILDING OFFICIAL'S REPORT: Application of Costco Wholesale, represented by Jenifer Murillo, for requests for a special exception to restore a nonconforming use and to enlarge a nonconforming use at 8282 Park Lane. This property is more fully described as Lot 3A, Block 12/5203, and is zoned MU-2, which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming “general merchandise or food store 100,000 square feet or more” use, which will require a special exception to the nonconforming use regulations, and to enlarge a nonconforming general merchandise or food store 100,000 square feet or more” use, which will require a request to enlarge a nonconforming use.

LOCATION: 8282 Park Lane

APPLICANT: Costco Wholesale
Represented by Jenifer Murillo

REQUESTS:

The following requests have been made on the subject site that is developed with a vacant “general merchandise or food store 100,000 square feet or more” use:

1. A request for a special exception to restore/reinstate nonconforming use rights for a “general merchandise or food store 100,000 square feet or more” use on the subject site that was discontinued for a period of six months or more is made to obtain a Certificate of Occupancy (CO) for this use; and
2. A request is made to enlarge the approximately 133,900 square foot “general merchandise or food store 100,000 square feet or more” use specifically by adding approximately 18,200 square feet to the building footprint.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: Section 51A-4.704(a)(2) of the Dallas Development Code states that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to this provision only if the owner can show that there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

STANDARD FOR ENLARGING A NONCONFORMING USE:

Section 51A-4.704(b)(5)(B) of the Dallas Development Code states the board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was

originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION (special exception to reinstate a nonconforming use):

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

STAFF RECOMMENDATION (request to enlarge a nonconforming use):

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, *in the opinion of the Board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

Zoning:

Site: MU-2 (Mixed Use)(Deed restricted)*
North: MU-2 (Mixed Use)
South: LI (Light Industrial) and MU-2 (Mixed Use)
East: MF-2(A) (Multifamily)
West: MU-3 (Mixed Use)

- * The applicant has provided a record of how the proposal on the subject site meets the aspects of the deed restrictions on the property. (A copy of this written response has been filed in the case file).

Land Use:

The subject site is developed with, according to DCAD, a 136,122 square foot “discount store” built in 1992. The areas to the north, south, and west are developed mostly with retail uses, and the area to the west is developed with multifamily use.

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 (special exception to reinstate a nonconforming use):

- This request focuses on restoring/reinstating nonconforming use rights for a “general merchandise or food store 100,000 square feet or more” use on the subject

site that was discontinued for a period of six months or more in order for the applicant to obtain a Certificate of Occupancy (CO) for this use.

- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time”.
- The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The site is zoned MU-3 that permits a “general merchandise or food store 100,000 square feet or more” use only with a Specific Use Permit (SUP).
- According to DCAD records, the “improvements” for the property addressed at 8282 Park Lane is a 136,122 square foot “discount store” built in 1992.
- A document is included in the case file that establishes that the “general merchandise or food store 100,000 square feet or more” use on the subject site is a nonconforming use and became nonconforming in 2004.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of six months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance date that is provided 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.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “general merchandise or food store 100,000 square feet or more” use on the site even though the use was discontinued for six months or more.

- Granting this request would reinstate/restore the “general merchandise or food store 100,000 square feet or more” use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).
- The applicant could make an application for an SUP that, if approved by the City Council, would make the “general merchandise or food store 100,000 square feet or more” use on the property a conforming use.

GENERAL FACTS/STAFF ANALYSIS (request to enlarge a nonconforming use):

- This request focuses on the enlargement of a nonconforming “general merchandise or food store 100,000 square feet or more” use on the subject site, which in this particular case, involves adding approximately 18,200 square feet to the existing approximately 133,900 square foot building footprint. (The applicant is aware of the fact that consideration of this request by the Board at the October 17th public hearing is contingent whether the board grants the request for a special exception to reinstate the nonconforming use on the subject site).
- A site plan has been submitted that documents the size and location of the existing structure on the site and the proposed addition.
- The site is zoned MU-3 that permits a “general merchandise or food store 100,000 square feet or more” use only with a Specific Use Permit (SUP).
- According to DCAD records, the “improvements” for the property addressed at 8282 Park Lane is a 136,122 square foot “discount store” built in 1992.
- A document is included in the case file that establishes that the “general merchandise or food store 100,000 square feet or more” use on the subject site is a nonconforming use and became nonconforming in 2004.
- Section 51A-4.704(b)(5)(A) of the Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if 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 that nonconforming use - a compliance date that is provided 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.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and

3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted site plan, the enlargement of the nonconforming use would be limited to what is shown on this document.

Timeline:

August 13, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

September 11, 2018: The Board Administrator emailed the applicant’s representative 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 27, 2018: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded a revised Building Official’s report regarding the application (see Attachment A). This revised report reflected the applicant’s added request for the Board to consider enlargement of the nonconforming use.

September 27, 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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 added request;
- the section from the Dallas Development Code pertaining to +nonconforming uses and structures;
- the fact that the added request for the board to consider enlarging the nonconforming use scheduled for October 17th will be contingent upon the board granting the original request at

this hearing – that the recent added request to enlarge the nonconforming use will be only for the board to consider (and grant) if the board first grants the request to reinstate the nonconforming use at this hearing.

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

October 5, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment B).

BOARD OF ADJUSTMENT ACTION: October 17, 2018

APPEARING IN FAVOR: Jim Harris, 1722 Routh St., Dallas, TX
David Whitley, 6251 Mewby Ln, Dallas, TX
Tev Pallez, 7407 Fair Oaks, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Torres

I move that the Board of Adjustment, in Appeal No. BDA 178-121, on application of Costco Wholesale, represented by Jenifer Murillo, **grant** the request to restore a nonconforming general merchandise or food store 100,000 square feet or more use as a special exception to the use regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

SECONDED: Beikman

AYES: 4 - Hounsel, Torres, Beikman, Sahuc

NAYS: 0

MOTION PASSED: 4– 0 (unanimously)

MOTION 2 of 2: Torres

I move that the Board of Adjustment, in Appeal No. BDA 178-121, on application of Costco Wholesale, represented by Jenifer Murillo, **grant** the request of this applicant to increase the floor area of a nonconforming use by approximately 18,200 square feet, because our evaluation of the property and the testimony shows that enlarging the

nonconforming use (1) will not prolong the life of the nonconforming use; (2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and (3) will not have an adverse effect on the surrounding area.

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: Beikman

AYES: 4 - Hounsel, Torres, Beikman, Sahuc

NAYS: 0

MOTION PASSED: 4– 0 (unanimously)

FILE NUMBER: BDA178-115(OA)

BUILDING OFFICIAL’S REPORT: Application of Terry Burt for a special exception to the single-family use regulations at 5222 Maple Springs Boulevard. This property is more fully described as Lot 20, Block C/2334, and is zoned PD-193 (R-7.5A), which limits the number of dwelling units to one. The applicant proposes to construct and/or maintain a structure for servants’ or caretakers’ quarters, which will require a special exception to the single-family use regulations.

LOCATION: 5222 Maple Springs Boulevard

APPLICANT: Terry Burt

REQUEST:

A request for a special exception to the single-family use regulations is made to construct and maintain a two-story servants’ or caretakers’ quarters” on a site developed with a one-story main single-family home/dwelling unit structure.

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

Section 51P.193.107(a)(1)(E)(i) states that the board may grant a special exception to authorize the use of a structure or a portion of a structure for servants’ or caretakers’ quarters in any subdistrict when, in the opinion of the board, the structure or portion of the structure will be used by bonafide servants or caretakers and will not be 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 structure or portion of the structure will be used by bonafide servants or caretakers and will not be rental accommodations.

BACKGROUND INFORMATION:

Zoning:

Site: PD 193 (R-7.5) (Planned Development, Single-family)
North: PD 193 (R-7.5) (Planned Development, Single-family)
South: PD 193 (R-7.5) (Planned Development, Single-family)
East: PD 193 (R-7.5) (Planned Development, Single-family)
West: PD 193 (R-7.5) (Planned Development, Single-family)

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 have 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 regulations focuses on constructing and maintaining a two-story “servants’ or caretakers’ quarters” on a site developed with a one-story main single-family home/dwelling unit structure.
- The site is zoned PD 193 (R-7.5) where the Dallas Development Code permits one dwelling unit per lot.
- Section 51P-193.107(1) states that only one dwelling unit may be located on a lot.
- Section 51P-193.107(a)(1)(E)(i) states that the board of adjustment may grant a special exception to authorize the use of a structure or a portion of a structure for servants’ or caretakers’ quarters in any subdistrict when, in the opinion of the board, the structure or portion of the structure will be used by bonafide servants or caretakers and will not be rental accommodations.
- Section 51P-193.106(1) defines “single family” use as “one dwelling unit located on a lot.”
- 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 “line of the new second floor above existing garage”.
- This request centers on the function of what is proposed to be inside the smaller structure on the site – the “line of new second floor above existing garage” structure, specifically its collection of rooms/features shown on the floor plan.
- According to DCAD records, the “main improvement” for property addressed at 5222 5222 Maple Springs Boulevard is a structure built in 1928 with 1,228 square feet of

total/living area with the following “additional improvements”: 400 square foot detached quarters.

- According to the submitted site plan the main structure contains 1,234 square feet and the caretakers’ quarters contains 522 square feet.
- On September 26, 2018, the applicant provided four letters from his neighbors supporting the proposed “servants’ or caretakers’ quarters, located at 5222 Maple Springs Boulevard, to the Board of Adjustment Senior Planner (see Attachment A).
- The applicant has the burden of proof in establishing that the use of the structure for servants’ or caretakers’ quarters will be used by bonafide servants or caretakers and will not be rental accommodations.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant complies with the site plan if they feel it is necessary to ensure that the special exception will be used by bonafide servants or caretakers and will not be rental accommodations. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing a servants’ or caretakers’ quarters on the site (i.e. development on the site must meet all other code requirements).

Timeline:

August 14, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

September 13, 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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.”

September 26, 2018: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

October 1, 2018: The applicant’s representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board

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

APPEARING IN FAVOR: Terry Burt, 5222 Maple Springs, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Sahuc**

I move that the Board of Adjustment, in request No. BDA 178-115 on application of Terry Burt, **grant** the request to construct and/or maintain a servants' or caretakers' quarters on a site developed with a single family structure and use as a special exception to the single family use regulations requirements contained in PD 193, because our evaluation of the property and the testimony shows that this special exception will be used by bonafide servants or caretakers and will not be rental accommodations.

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 servants' or caretakers' quarters as rental accommodations.

SECONDED: **Beikman**

AYES: 4 - Hounsel, Torres, Beikman, Sahuc

NAYS: 0

MOTION PASSED: 4- 0 (unanimously)

FILE NUMBER: BDA178-114(OA)

BUILDING OFFICIAL'S REPORT: Application of Matthew Shipley for a special exception to the side yard setback regulations for a carport at 1508 El Campo Drive. This property is more fully described as Lot 2, Block J/5317, and is zoned R-10(A), NSO 5, which requires a side yard setback of 12 feet. The applicant proposes to construct and/or maintain a carport and provide a 5-inch setback, which will require a 11 foot 7-inch special exception to the side yard setback regulations.

LOCATION: 1508 El Campo Drive

APPLICANT: Matthew Shipley

REQUEST:

A request for a special exception to the side yard setback regulations of 11' 7" is made to maintain a carport located as close as 5" from the site's southeastern side property line or 11' 7" into this 12' required side yard setback required side yard setback on a site developed with a single-family home structure/use.

STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in the construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is, when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) NSOD-5(Single-family district 10,000 square feet) (Neighborhood Stabilizing District 5)

North: R-10(A) NSOD-5(Single-family district 10,000 square feet) (Neighborhood Stabilizing District 5)

South: R-10(A) NSOD-5(Single-family district 10,000 square feet) (Neighborhood Stabilizing District 5)

East: R-10(A) NSOD-5(Single-family district 10,000 square feet) (Neighborhood Stabilizing District 5)

West: R-10(A) NSOD-5(Single-family district 10,000 square feet) (Neighborhood Stabilizing District 5)

Land Use:

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

Zoning/BDA History:

There have 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:

- The special exception to the side yard setback regulations of 11' 7" focuses on maintaining an approximately 253 square foot carport 5 inches away from the site's side southeastern property line or 11' 7" into this 12' side yard setback on a site developed with a single-family home structure/use.
- The subject site is zoned R-10(A) NSOD-5 which requires a 12' side yard setback.
- The submitted site plan and the submitted three elevations represent the size and materials of the carport and its location in the site's side southeastern property line or 11' 7" into this 12' side yard setback on a site developed with a single-family home structure/use.
- The submitted site plan represents the following:
 - The carport is approximately 22' in length and approximately 12' in width (approximately 253 square feet in total area) of which all of it is located in the side yard setback.
- The submitted elevations represent the following:
 - Ranging in height from approximately 9' 7" – 10'.
 - Cedar rooftop with roof shingles.
 - Notes "structure constructed of cedar wood with 5/8 type X sheathing 1-hour fireproof materials".
 - Notes "minimum 1 hour rated wall, non-combustible materials and UL listing per Dallas Building Code".
- The Senior Planner Board Administrator conducted a field visit of the area approximately 500 feet north and south of the subject site and noted no other carports that appeared to be located in a side yard setback.
- As of October 5, 2018, a petition with seven signatures had been submitted in support of the request and five letters had been submitted in opposition.
- The applicant has the burden of proof in establishing the following:
 - that granting this special exception to the side yard setback regulations of 11' 7" will not have a detrimental impact on surrounding properties.
- Granting this request and imposing the following conditions would require the carport to be maintained in the location and of the heights and materials as shown on these documents:
 1. Compliance with the submitted site plan and elevations is required.
 2. The carport structure must remain open at all times.
 3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
 4. All applicable building permits must be obtained.
 5. No item (other than a motor vehicle) may be stored in the carport.
- If the Board were to grant this request and impose the submitted site plan and elevations as a condition to the request, the structure in the side setback would be limited to that what is shown on these documents – a carport located 5" away from the southeastern side property line or 11' 7" into this required 12' side yard setback.

Timeline:

August 7, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 11, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

September 13, 2018: The Board Administrator emailed the applicant’s representative 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 September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 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.”

September 25, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 2, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October 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 Sustainable Development and Construction Senior Engineer, the Chief Arborist, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

APPEARING IN FAVOR: Matthew Shipley, 1508 El Campo Dr., Dallas, TX
Ronda Kay Moreland, 9914 Losa Dr., Dallas, TX

APPEARING IN OPPOSITION: Marva Wescott, 1560 San Saba Dr., Dallas, TX
Jim Witter, 1560 San Saba Dr., Dallas, TX

MOTION: Beikman

I move that the Board of Adjustment, in Appeal No. BDA 178-114, on application of Matthew Shipley, **deny** the special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that this special exception will detrimentally impact surrounding properties.

SECONDED: Sahuc
AYES: 4 - Hounsel, Torres, Beikman, Sahuc
NAYS: 0
MOTION PASSED: 4- 0 (unanimously)

MOTION: Beikman

I move to adjourn this meeting.

SECONDED: Torres
AYES: 4 – Torres, Beikman, Hounsel, Sahuc
NAYS: 0
MOTION PASSED:4 – 0 (unanimously)

2:44 P.M. Board Meeting adjourned for **October 17, 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.