ZONING BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, JANUARY 16, 2019
AGENDA

BRIEFING
L1FN AUDITORIUM
1500 MARILLA STREET
DALLAS CITY HALL
11:00 A.M.

PUBLIC HEARING
L1FN AUDITORIUM
1500 MARILLA STREET
DALLAS CITY HALL
1:00 P.M.

Neva Dean, Assistant Director
Steve Long, Board Administrator/Chief Planner
Oscar Aguilera, Senior Planner

MISCELLANEOUS ITEMS

Approval of the November 14, 2018 Board of Adjustment Panel B Public Hearing Minutes M1

UNCONTESTED CASES

BDA178-139(OA) 10221 Hollow Way Road
REQUEST: Application of Steven Wood of Texas Permit for variances to the front and side yard setback regulations

BDA189-007(OA) 505 S. Peak Street
REQUEST: Application of Rob Baldwin of Baldwin and Associates for a special exception to the landscape regulations

BDA189-008(OA) 7027 Day Street
REQUEST: Application of Juan V. Tovar for a special exception to the side yard setback regulations for a carport

BDA189-009(OA) 220 W 10th Street
REQUEST: Application of Tony Zapata to enlarge a nonconforming use

BDA189-011(OA) 3040 W Mockingbird Lane
REQUEST: Application of Getra Thomason Sanders, represented by Bryan M. Burger, P.E., for a special exception to the off-street parking regulations

REGULAR CASE

BDA189-006(OA) 3235 Elihu Street
 REQUEST: Application of Devin Hall, represented by Ann Bagley of Bagley Associates, for a variance to the front yard setback regulations
EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]

2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]

3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]

4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]

5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices. [Tex. Govt. Code §551.076]

6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.087]

7. deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementations of security personnel, critical infrastructure, or security devices. [Tex. Govt. Code §551.089]
FILE NUMBER: BDA178-139(OA)

BUILDING OFFICIAL’S REPORT: Application of Steven Wood of Texas Permit for variances to the front and side yard setback regulations at 10221 Hollow Way Road. This property is more fully described as Lot 1, Block J/5517, and is zoned R-1ac(A), which requires a front yard setback of 40 feet and a side yard setback of 10 feet. The applicant proposes to construct and/or maintain a structure and provide a 16 foot 6 inch front yard setback, which will require a 23 foot 6 inch variance to the front yard setback regulations, and provide a 8 foot side yard setback, which will require a 2 foot variance to the side yard setback regulations.

LOCATION: 10221 Hollow Way Road

APPLICANT: Steven Wood of Texas Permit

REQUESTS:

The following requests have been made on a site that is developed with a single-family home:
1. A variance to the front yard setback regulations of 23’ 6” is made to construct and maintain an attached garage structure 16’ 6” from the front property line or 23’ 6” into the 40’ front yard setback; and
2. A variance to the side yard setback regulations of 2’ is made to construct and maintain an attached garage structure 8’ from the side property line (the north side property line) or 2’ into the 10’ side 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 (front yard and side yard variances):

Approval, subject to the following condition:
- Compliance with the submitted site plan is required.

Rationale:
- Staff concluded that the subject site is unique and different from most lots in the R-1ac(A) zoning district by its restrictive in area caused by a creek that bisects the property), irregular shape, and slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-1ac(A) zoning district.
- Furthermore, staff concluded that the applicant that the total home size of the proposed home once the garage is added at approximately 3,600 square feet is commensurate to 10 other homes in the same R-1ac(A) zoning district that have an average home size of approximately 13,500 square feet.

BACKGROUND INFORMATION:

Zoning:

<table>
<thead>
<tr>
<th>Site</th>
<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site: R-1ac (A) (Single family district 1 acre)</td>
<td>North: R-1ac (A) (Single family district 1 acre)</td>
<td>South: R-1ac (A) (Single family district 1 acre)</td>
<td>East: R-1ac (A) (Single family district 1 acre)</td>
<td>West: R-1ac (A) (Single family district 1 acre)</td>
</tr>
</tbody>
</table>

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:

1. BDA87-266, Property at 10040 Meadowbrook Drive (two lots south of the subject site)  
   On December 8, 1987, the Board of Adjustment approved a 25-foot setback request for a variance to the front yard setback regulations. The applicant proposed to construct a guest pavilion 15 feet from the property line requiring a setback variance of 25 feet and the Board of Adjustment approved a 5 feet special exception to the height requirement for fences to maintain a 7-foot fence with eight feet columns on the front property line. The board imposed the submitted revised site plan showing the location and fence details and requested to
submit a registered survey showing the exact location of the proposed structure.

**GENERAL FACTS/STAFF ANALYSIS (front yard variance):**

- This request focuses on constructing and maintaining an attached garage structure 16’ 6” from the front property line or 23’ 6’ into the 40’ front yard setback on a site that is developed with a single family home.
- Structures on lots zoned R-1ac (A) are required to provide a minimum front yard setback of 40’.
- A site plan has been submitted denoting the proposed 800 square foot attached garage structure is located as near as 16’ 6” from the site’s front property line (or 23’ 6” into the 40’ front yard setback).
- DCAD records indicate the following improvements for property located at 10221 Hollow Way Road: “main improvement”: a structure with 3,600 square feet of total area built in 1970, and “additional improvements”: a 140 square foot storage building and a pool.
- The subject site is irregular in shape, significantly sloped, and according to the application, is 1 acre or 43,560 square feet in area. The site is zoned R-1ac (A) where lots are typically 43,560 square feet in area. The site has a creek that bisects the property.
- The applicant submitted a document indicating that the total home size of the proposed main structure on the subject site is approximately 3,600 square feet, and the average of 10 other properties in the same zoning is approximately 13,400 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 R-1ac(A) 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 R-1ac(A) zoning classification.
- If the Board were to grant this front yard setback variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document which is an attached garage structure to be located as close as 16’ 6” from the site’s front property line or as much as 23’ 6” into the required 40’ front yard setback.
- Granting this request for a variance to the front yard setback regulations would provide no relief to the flood plain regulations on the subject site.
GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request focuses on constructing and maintaining an attached garage structure 8’ from the side property line (the north side property line) or 2’ into the 10’ side yard setback on a site developed with a single family home.
- Structures on lots zoned R-1ac (A) are required to provide a minimum side yard setback of 10’.
- A site plan has been submitted denoting the proposed attached garage structure is located as near as 8’ from the north side property line or 2’ into this 10’ side yard setback.
- It appears from the submitted site plan that about half of the proposed approximately 800 square foot attached garage structure is located in the site’s northern 10’ side yard setback.
- DCAD records indicate the following improvements for property located at 10221 Hollow Way Road: “main improvement”: a structure with 3,600 square feet of total area built in 1970, and “additional improvements”: a 140 square foot storage building and a pool.
- The subject site is irregular in shape, significantly sloped, and according to the application, is 1 acre or 43,560 square feet in area. The site is zoned R-1ac(A) where lots are typically 43,560 square feet in area. The site has a creek that bisects the property.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side 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 R-1ac(A) 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 R-1ac(A) zoning classification.
- If the Board were to grant this side yard setback variance request and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document which is an attached garage structure to be located 8’ from the side property line (the north side property line) or 2’ into this 10’ side yard setback.
- Granting this request for a variance to the side yard setback regulations would provide no relief to the flood plain regulations on the subject site.

Timeline:
September 28, 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.

December 3, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 5, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.

December 21, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

December 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the 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.

No review comment sheets were submitted in conjunction with this application.
<table>
<thead>
<tr>
<th>Address</th>
<th>Lot Size</th>
<th>Structure Size</th>
<th>Lot Coverage</th>
</tr>
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<td>3577</td>
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<td>10160 Gaywood</td>
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<td>10140 Gaywood</td>
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<td>10760 Hollow Way</td>
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<td>10040 Holllow Way</td>
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<td>29919</td>
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<tr>
<td>5466 Defoe</td>
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<td>5486 Northbrook</td>
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<td><strong>Average</strong></td>
<td>85120.0</td>
<td>13343.8</td>
<td>16%</td>
</tr>
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</table>
City of Dallas

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 178-139
Date: 9-28-18

Data Relative to Subject Property:

Location address: 10001 Hollow Way RD
Zoning District: R-1(AC)
Lot No.: 1 Block No.: 8
Acreage: 1
Census Tract: 76.05
Street Frontage (in Feet): 1) 25 4) 2
2) 25 5) 2

To the Honorable Board of Adjustment:

Owner of Property (per Warranty Deed): WAYNE BUCKHEAD
Applicant: STEVEN WOOD TEXAS PERMIT
Telephone: 817-682-2718
Mailing Address: PO Box 3293 Zip Code: 75226
E-mail Address: stevenc@xpermitt.com

Represented by: Telephone:
Mailing Address: Zip Code:
E-mail Address:

Affirm that an appeal has been made for a Variance X, or Special Exception _, of FYSB off
23'6" and 2 of 34'5". To provide 16'6" front
yard and 8' sideyard for garage.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas
Development Code, to grant the described appeal for the following reason:
The lot shape, size and slope is hindering the future
development of this lot. This will be obverse to
and not adversely affecting the neighborhood.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a
permit must be applied for within 180 days of the date of the final action of the Board, unless the Board
specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared STEVEN WOOD (Affiant/Applicant's name printed)
who on (his/her) oath certifies that the above statements are true and correct to his/her best
knowledge and that he/she is the owner/or principal/or authorized representative of the subject
property.

Respectfully submitted: STEVEN WOOD (Affiant/Applicant's signature)

Subscribed and sworn to before me this 28 day of September 2018

LUCINA CASAS Notary Public
STATE OF TEXAS
ID#12835311-0

Notary Public in and for Dallas County, Texas
Building Official's Report

I hereby certify that STEVEN WOOD did submit a request for a variance to the front yard setback regulations, and for a variance to the side yard setback regulations at 10221 Hollow Way Road.

BDA178-139. Application of STEVEN WOOD for a variance to the front yard setback regulations, and for a variance to the side yard setback regulations at 10221 HOLLOW WAY RD. This property is more fully described as Lot 1, Block J/5517, and is zoned R-1ac(A), which requires a 10 foot side yard setback and requires a front yard setback of 40 feet. The applicant proposes to construct a single family residential structure and provide a 16 foot 6 inch front yard setback, which will require a 23 foot 6 inch variance to the front yard setback regulations, and to construct a single family residential structure and provide a 8 foot side yard setback, which will require a 2 foot variance to the side yard setback regulations.

Sincerely,

Philip Sikes, Building Official
The number '0' indicates City of Dallas Ownership

NOTIFICATION

1:2,400

200'

AREA OF NOTIFICATION

11

NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: BDA178-139

Date: 12/14/2018
12/13/2018

Notification List of Property Owners

BDA178-139

11 Property Owners Notified

<table>
<thead>
<tr>
<th>Label #</th>
<th>Address</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10221 HOLLOW WAY RD</td>
<td>BURKHEAD WAYNE Z</td>
</tr>
<tr>
<td>2</td>
<td>10122 GAYWOOD RD</td>
<td>WALLENSTEIN DAVID ET AL</td>
</tr>
<tr>
<td>3</td>
<td>10140 GAYWOOD RD</td>
<td>SMITH HENRY J &amp; JANE M</td>
</tr>
<tr>
<td>4</td>
<td>10025 MEADOWBROOK DR</td>
<td>SANDERS RODGER M &amp; NANCY</td>
</tr>
<tr>
<td>5</td>
<td>10300 GAYWOOD RD</td>
<td>PHILLIPS GENE E &amp;</td>
</tr>
<tr>
<td>6</td>
<td>10040 MEADOWBROOK DR</td>
<td>SCHWIMMER CRAIG L &amp; SHANON G</td>
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<td>7</td>
<td>10203 HOLLOW WAY RD</td>
<td>GULIS MARK D &amp; CYNTHIA E</td>
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<td>8</td>
<td>10210 GAYWOOD RD</td>
<td>SMALL JUSTIN &amp; NICOLE</td>
</tr>
<tr>
<td>9</td>
<td>10200 HOLLOW WAY RD</td>
<td>PRICE FAMILY TRUST</td>
</tr>
<tr>
<td>10</td>
<td>10211 HOLLOW WAY RD</td>
<td>CASSIDY SALLY O TR</td>
</tr>
<tr>
<td>11</td>
<td>10160 GAYWOOD RD</td>
<td>HOLLISTER CHRISTOPHER W &amp; HELEN C</td>
</tr>
</tbody>
</table>
BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin and Associates for a special exception to the landscape regulations at 505 S. Peak Street. This property is more fully described as Lot 1A, Block 3/807, and is zoned CS, which requires mandatory landscaping. The applicant proposes to construct a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 505 S. Peak Street

APPLICANT: Rob Baldwin of Baldwin and Associates

REQUEST: A request for a special exception to the landscape regulations is made to construct and maintain an approximately 26,500 square foot addition to an existing approximately 2,800 square foot auto repair/warehouse structure on the subject site, and not fully provide the required landscaping, more specifically, the design option points and street buffer landscape area requirements on the subject site.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:

The board may grant a special exception to the landscape 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 City of Dallas Chief Arborist supports this request based in part on the location and configuration of the existing property and use, where given conditions on the site, a fully accommodating/compliant landscape plan is difficult to attain while retaining the property’s function and maneuverability at street side. The Chief Arborist recommends approval on the basis that strict compliance with the full requirements of 51A-10.100 and 51A-10.120 will unreasonably burden the continued use of the property that is under renovation, and that the exception would not adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

<table>
<thead>
<tr>
<th>Site</th>
<th>CS (Commercial Service)</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>CS (Commercial Service)</td>
</tr>
<tr>
<td>South</td>
<td>CS (Commercial Service)</td>
</tr>
<tr>
<td>East</td>
<td>CS (Commercial Service)</td>
</tr>
<tr>
<td>West</td>
<td>CS (Commercial Service)</td>
</tr>
</tbody>
</table>

Land Use:

The subject site is developed with commercial service use. The areas to the north, south, east, and west are developed with commercial and automobile service 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 constructing and maintaining an approximately 26,500 square foot addition to an existing 2,850 square foot auto repair/warehouse structure on the subject site and not fully providing the required landscaping, more specifically, more specifically, the design option points and street buffer landscape area requirements on the subject site.
• 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 landscape regulations of Article X, as amended in 2018, for the renovation and addition to an existing use. A vote of approval would provide exception for design option points (10.126) and the placement of a street buffer landscape area along a portion of Terry Street and along Santa Fe Avenue (10.125(b)(1)).

The Chief Arborist’s memo states the following with regard to “provision”:
- The property at 505 S Peak is about 1.5 acres in size, which negates any option for an artificial lot to separate a construction zone from the remainder of the lot.
- The alternate landscape plan does not alter the existing site conditions along Terry Street, but it does retain required parking spaces. One additional landscape island is created to compensate for the decrease of the Street Buffer Zone (SBZ). The remainder of Terry Street, all of South Peak Street, and all of contiguous property adjacent to Santa Fe Avenue will include the required SBZ. The SBZ for Santa Fe is entirely within the public right-of-way and the tree placement will be subject to final city approval at permitting. A mixture of tree species is included in these landscape areas along the street frontages.
- The mandatory provisions for Residential Buffer Zone and Interior Zone are not applicable.
- The proposed trees are medium to small trees that meet landscape requirements.

The Chief Arborist’s memo states the following with regard to “deficiencies”:
- Landscape Design Options (10.126). The property requires a minimum of 20 points based on the site area of 1.44 acres. The listed landscape design options of enhanced buffer zone area and low impact development are not applicable in the submitted design.
- The SBZ is not fully applied along Terry Street, and the listed bioswales are not introduced on the plan submitted for approval. I cannot identify any required design option points of the 20 points required. Under the present design and limited landscape availability, additional full options would likely be limited to 1) a short area of screening of off-street parking for Peak Street only, 2) additional plant materials in the front yard (along Peak Street) for a maximum of 5 points, or a 3) a 3-year landscape maintenance plan (3 pts.).
- Mandatory provisions (10.125(b)). The property is deficient a SBZ for most of Terry Street, but it does provide for the total required number of trees along Peak and Santa Fe. The SBZ along Santa Fe is completely within the public right-of-way due to development to the property boundary.
- The property requires 16 site trees but provides for 13 trees along Peak and Terry Streets. The five trees along Santa Fe Avenue are identified off the property and are subject to City approval before installation.

The Chief Arborist’s memo states the following with regard to “recommendation”:
- Based on the location and configuration of the existing property and use, a fully compliant landscape plan is difficult to attain while retaining the property’s function and maneuverability at street side. The chief arborist recommends...
approval of the alternate landscape plan on the basis that strict compliance with the full requirements of 51A-10.100 and 51A-10.120 will unreasonably burden the continued use of the property under renovation. The exception would not adversely affect 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 approval would provide exception for design option points (10.126) and exception to the placement of a street buffer landscape area along a portion of Terry Street and along Santa Fe Avenue.

**Timeline:**

October 19, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 3, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

December 5, 2018: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.

December 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the 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.
January 2, 2019: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).
Memorandum

Date January 2, 2019
To Oscar Aguilera, Board Administrator
Subject BDA #189-007 505 S Peak Street Arborist report

Request
The applicant is requesting a special exception to the landscape regulations of Article X, as amended in 2018, for the renovation and addition to an existing use. A vote of approval would provide exception for design option points (10.126) and the placement of a street buffer landscape area along a portion of Terry Street and along Santa Fe Avenue (10.125(b)(1)).

Provision
- The property at 505 S Peak is about 1.5 acres in size, which negates any option for an artificial lot to separate a construction zone from the remainder of the lot.
- The alternate landscape plan does not alter the existing site conditions along Terry Street, but it does retain required parking spaces. One additional landscape island is created to compensate for the decrease of the Street Buffer Zone (SBZ). The remainder of Terry Street, all of South Peak Street, and all of contiguous property adjacent to Santa Fe Avenue will include the required SBZ. The SBZ for Santa Fe is entirely within the public right-of-way and the tree placement will be subject to final city approval at permitting. A mixture of tree species is included in these landscape areas along the street frontages.
- The mandatory provisions for Residential Buffer Zone and Interior Zone are not applicable.
- The proposed trees are medium to small trees that meet landscape requirements.

Deficiency
- Landscape Design Options (10.126). The property requires a minimum of 20 points based on the site area of 1.44 acres. The listed landscape design options of enhanced buffer zone area and low impact development are not applicable in the submitted design.
- The SBZ is not fully applied along Terry Street, and the listed bioswales are not introduced on the plan submitted for approval. I cannot identify any required design option points of the 20 points required. Under the present design and limited landscape availability, additional full options would likely be limited to 1) a short area of screening of off-street parking for Peak Street only, 2) additional plant materials in the front yard (along Peak Street) for a maximum of 5 points, or a 3) a 3-year landscape maintenance plan (3 pts.).
- Mandatory provisions (10.125(b)). The property is deficient a SBZ for most of Terry Street, but it does provide for the total required number of trees along Peak and Santa Fe. The SBZ along Santa Fe is completely within the public right-of-way due to development to the property boundary.
- The property requires 16 site trees, but provides for 13 trees along Peak and Terry Streets.
The five trees along Santa Fe Avenue are identified off the property and are subject to City approval before installation.

**Recommendation**

Based on the location and configuration of the existing property and use, a fully compliant landscape plan is difficult to attain while retaining the property’s function and maneuverability at street side. The chief arborist recommends approval of the alternate landscape plan on the basis that strict compliance with the full requirements of 51A-10.100 and 51A-10.120 will unreasonably burden the continued use of the property under renovation. The exception would not adversely affect neighboring properties.

Philip Erwin  
Chief Arborist  
Building Inspection
APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA/189-007

Date: October 9, 2018

Panel B

Data Relative to Subject Property:

Location address: 505 S. Peak Street  Zoning District: CS

Lot No.: 1A  Block No.: 3/807  Acreage: 1.44 acres  Census Tract: 24.00

Street Frontage (in Feet): 1) 243 2) 244 3) 181 4) 5)

To the Honorable Board of Adjustment:

Owner of Property (per Warranty Deed): SAMADIAN FAMILY LIMITED PARTNERSHIP

Applicant: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Represented by: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance __ , or Special Exception X , of landscaping

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:
The property is developed with an office and warehouse from approx. 1975/1980 according to DCAD. The proposed addition to the building will require landscaping, which full compliance is difficult given the three street frontages, one of which is I.H. 30 frontage road. Peak Street has overhead utilities. An alternate landscaping plan is proposed that will provide for limited landscaping due to these factors and the operation of the commercial uses on the property.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Robert Baldwin
(Affiant/Applicant’s name printed)

who on (his/her) oath certifies that the above statements are true and correct to (his/her) best knowledge and that (he/she) is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted:
(Affiant/Applicant’s signature)

Subscribed and sworn to before me this 10th day of October, 2018

VICKIE L. RADER
Notary Public in and for Dallas County, Texas

(Rev. 08-01-11)
Building Official's Report

I hereby certify that BALDWIN AND ASSOCIATES did submit a request for a special exception to the landscaping regulations at 505 S. Peak Street.

189-007. Application of BALDWIN AND ASSOCIATES for a special exception to the landscaping regulations at 505 S PEAK ST. This property is more fully described as Lot 1A, Block 3/807, and is zoned CS, which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

Sincerely,

[Signature]
Philip Sikes, Building Official
## Notification List of Property Owners

**BDA189-007**

12 Property Owners Notified

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BUILDING OFFICIAL’S REPORT: Application of Juan V. Tovar for a special exception to the side yard setback regulations for a carport at 7027 Day Street. This property is more fully described as West 60 ft of Lot 11, Block J/5826, and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a carport and provide a 2 foot setback, which will require a 3 foot special exception to the side yard setback regulations.

LOCATION: 7027 Day Street

APPLICANT: Juan V. Tovar

REQUEST:

A request for a special exception to the side yard setback regulations of 3’ is made to maintain a carport located 2’ from the site’s western side property line or 3’ into this 5’ 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-7.5(A) (Single-family district 7,500 square feet)
North: R-7.5(A) (Single-family district 7,500 square feet)
South: R-7.5(A) (Single-family district 7,500 square feet)
East:  R-7.5(A) (Single-family district 7,500 square feet)
West:  R-7.5(A) (Single-family district 7,500 square feet)

**Land Use:**

The subject site is developed with a single-family home. The 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 request for a special exception focuses on maintaining an approximately 470 square foot carport that is located 2’ from the site’s western side property line or 3’ into this 5’ side yard setback on a site developed with a single-family home structure/use.
- The subject site is zoned R-7.5(A) which requires a 5’ side yard setback.
- The applicant has submitted a document (a site plan/elevation) indicating the size and materials of the carport, and its location 2’ from the site’s western side property line.
- The submitted site plan represents the following:
  - The carport is approximately 42’ in length and approximately 11’ in width (approximately 470 square feet in total area) of which approximately 40 percent is located in the western 5’ side yard setback.
- The submitted elevations represent the following:
  - Ranging in height from approximately 9’ – 11’.
  - Galvanized steel roof with 4x4 treated wood column embedded into a concrete footing.
- The Senior Planner conducted a field visit of the area approximately 500 feet east and west of the subject site and noted one other carport that appeared to be located in a side yard immediately south of the subject site with no recorded BDA history.
- As of January 4, 2019, no letters had been submitted in support of or in opposition to this application.
- The applicant has the burden of proof in establishing the following:
  - that granting this special exception to the side yard setback regulations of 3’ 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 this document:
  1. Compliance with the submitted site plan/elevation 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/elevation as a condition to the request, the structure in the side setback would be limited to that which is shown on this document – a carport located 2’ from the site’s western side property line or 3’ into this required 5’ side yard setback.

**Timeline:**

October 23, 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.

December 3, 2018: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

December 5, 2018: The Board Administrator emailed the applicant the following information:
  • a copy of the application materials including the Building Official’s report on the application;
  • an attachment that provided the public hearing date and panel that will consider the application; the December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.

December 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the 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.
No review comment sheets were submitted in conjunction with this application.
APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 189-008

Data Relative to Subject Property:

Location address: 7027 N. Way St. Zoning District: R-7.5 (F.)
Lot No.: 10+1 Block No.: 5/3724 Acreage: 0.21 Census Tract: 85-00
Street Frontage (in Feet): 1) 41.92 2) 159.72 3) 37.73 4) 159.39 5)

To the Honorable Board of Adjustment:

Owner of Property (per Warranty Deed): Juan V. Tovar Jesuiza L. Tovar
Applicant: Juan V. Tovar Telephone: 469-667-0928
Mailing Address: 7027 N. Way St. Zip Code: 75237
E-mail Address: Jsd Tovar @ aol.com

Represented by: Telephone: 
Mailing Address: Zip Code: 
E-mail Address: 

Affirm that an appeal has been made for a Variance , or Special Exception , or carpet
in required six yard of 3' to the required 5' side
yard setback & provide a 2' side yard setback.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Jesuiza L. Tovar (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best

knowledge. The undersigned is the owner/or principal/or authorized representative of the subject
property.

Respectfully submitted: Juan V. Tovar (Affiant/Applicant's signature)
Subscribed and sworn to before me this 18 day of August, 2018

Carolee Welch Notary Public in and for Dallas County, Texas
Building Official's Report

I hereby certify that JUAN V TOVAR did submit a request for a special exception to the side yard setback regulations at 7027 Day Street.

BDA189-008. Application of JUAN V TOVAR for a special exception to the side yard setback regulations at 7027 DAY ST. This property is more fully described as West 60 ft c Lot 11, Block J/5826, and is zoned R-7.5(A), which requires a side yard setback of 5 feet.

The applicant proposes to construct a carport for a single family residential dwelling in a required side yard and provide a 2 foot setback, which will require a 3 foot special exception to the side yard setback regulations.

Sincerely,

Philip Sikes, Building Official
Notification List of Property Owners

BDA189-008

31 Property Owners Notified

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BUILDING OFFICIAL’S REPORT: Application of Tony Zapata to enlarge a nonconforming use at 220 W. 10th Street. This property is more fully described as Lot 16, Block 41/3161, and is zoned PD 830 (Sub-district 3), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming “medical clinic or ambulatory surgical center” use, which will require a request to enlarge a nonconforming use.

LOCATION: 220 W. 10th Street

APPLICANT: Tony Zapata

REQUEST: A request is made to enlarge a nonconforming “medical clinic or ambulatory surgical center” use (Peralta Chiropractic), which in this particular case, involves the remodeling/“enlarging” of an existing approximately 1,400 square foot structure on the site by approximately 2,300 square feet whereby the total square footage, if enlarged, would be approximately 3,700 square feet.

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:

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.

BACKGROUND INFORMATION:

Zoning:

Site: PD 830 (Planned Development)
North: PD 830 (Planned Development)  
South: PD 316 (Planned Development)  
East: PD 830 (Planned Development)  
West: PD 830 (Planned Development)

Land Use:

The subject site is developed as a “medical clinic or ambulatory surgical center” use (Peralta Chiropractic). The area to the north is developed with office uses, the areas to the east and west are developed with medical clinic or ambulatory surgical center uses; and the area to the south is developed with commercial uses.

Zoning/BDA History:

1. BDA156-048, Property at 218 W. 10TH Street (the lot east of the subject site)
   On May 16, 2016, Board of Adjustment Panel C approved a request to restore/reinstate nonconforming use rights for a medical clinic or ambulatory surgical center use on the subject site that was discontinued for a period of six months or more was made to obtain a Certificate of Occupancy (CO) for this use.

   General Facts/Staff Analysis:

   • This request focuses on the enlargement of a nonconforming “medical clinic or ambulatory surgical center” use (Peralta Chiropractic) on the subject site, which in this particular case, involves the remodeling/“enlarging” an existing approximately 1,400 square foot structure on the site by approximately 2,300 square feet whereby the total square footage, if enlarged, would be approximately 3,700 square feet.
   • The subject site is zoned PD 830.
   • A “medical clinic or ambulatory surgical center” use is not permitted in this PD 830 district lot.
   • Section 51A-2.102(89) of the Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
   • 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.
   • It appears from research conducted by the Board Senior Planner that the medical clinic or ambulatory surgical center” use became a nonconforming use on August 11, 2010 when (during the establishment of Planned Development 830 that changed the zoning from LO-1 to Planned Development 830 Subdistrict 3) the property that
had been zoned LO-1 (that permitted medical clinic or ambulatory surgical center uses) was changed to PD 830 Subdistrict 3 (that does not permit medical clinic or ambulatory surgical center use for this particular lot in this particular PD 830). The City has recognized the “medical clinic or ambulatory surgical center” use on the property to be a legal nonconforming use.

- This application is made to allow the nonconforming medical clinic or ambulatory surgical center” use to be enlarged to a total of approximately 3,700 square feet. (If denied, the nonconforming use could remain, but would not be allowed to add a approximately 2,300 square foot addition).
- The applicant has submitted a floor plan indicating that the total size of the proposed structure on the subject site is to be enlarged from 1,377 square feet to 3,698 square feet.
- This application is made to enlarge a nonconforming use. The application is not made to enlarge a nonconforming structure. The structure that comprise the nonconforming “medical clinic or ambulatory surgical center” use (Peralta Chiropractic) would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, parking requirements, etc. Therefore, the existing enlargement made to the structure would be a conforming structure as it relates to development code requirements, located within a broader land use classification (medical clinic or ambulatory surgical center) that can only be deemed a conforming use once and if the zoning is changed.
- Records from Building Inspection Department indicate that the “medical clinic or ambulatory surgical center” use (Peralta Chiropractic) has been identified by Building Inspection as a nonconforming use.
- 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 nonconforming 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 and floor plan, the enlargement of the nonconforming use would be limited to what is shown on these documents.
Timeline:

September 11, 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.

December 3, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 5, 2018: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the provision from the Dallas Development Code that provides the standard as to how the board is able to grant a request to enlarge a nonconforming use. (51A-4.704(b)(5)), and the entire section from the code related to nonconforming uses and structures (51A-4.704), advising the applicant that his request does not eliminate the nonconforming status of the use on the site as much as it potentially (if the board chooses to grant your request) merely allows it to be enlarged; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the 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.

No review comment sheets were submitted in conjunction with this application.
APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 189-009

Data Relative to Subject Property:

Location address: 2200 W. Tenth St Dallas, TX
Lot No.: 10 Block No.: 41/3161 Acreage: 0.182
Census Tract: 417.00
Zoning District: PD 830 (Sub-3)
Street Frontage (in Feet): 1) 50' 2) 3) 4) 5)  

To the Honorable Board of Adjustment:

Owner of Property (per Warranty Deed): Edgar Peralta / Peralta Chiropractic, Inc.
Applicant: Tony Zapata Telephone: 469-556-7728
Mailing Address: 4783 CR 2526 Royse City, TX Zip Code: 75189
E-mail Address: tonyzapata@tnghomebuilders.com

Represented by: Telephone:
Mailing Address: Zip Code:
E-mail Address:

Affirm that an appeal has been made for a Variance or Special Exception of THE EXPANSION OF A NON CONFORMING USE

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

IN 2010 ZONING OF PROPERTY WAS CHANGED FROM AN LC-1 WHICH ALLOWED THE USE BY RIGHT TO PD 830 SUB-AREA 3 WHICH DOES NOT ALLOW THE USE ON THE PROPERTY

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared

(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted:

(Affiant/Applicant’s signature)

Subscribed and sworn to before me this 11 day of September 2018

Notory Public in and for Dallas County, Texas

BDA189-009
Building Official's Report

I hereby certify that Tony Zapata did submit a request to enlarge a nonconforming use at 220 W. Tenth Street.

BDA189-009. Application of Tony Zapata to enlarge a nonconforming use at 220 W 10TH ST. This property is more fully described as Lot 16, Block 41/3161, and is zoned PD-830- (Sub-district 3), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming medical clinic or ambulatory surgical center use, which will require a special exception to the nonconforming use regulations.

Sincerely,

Philip Sikes, Building Official
General Notes:
1. This plan is to show the proposed building footprint as defined by the metes and bounds of the recorded plat.
2. Dimensions, setbacks, easements, plan details, and any other information shown here in shall be verified at permitting and prior to construction for accuracy and compliance with all applicable codes and ordinances.
3. Builder is solely responsible for ensuring that the footprint is contained within the proposed building pad. The building pad shall be set high enough to allow for adequate drainage.
4. All calculations are approximate. They must be verified prior to permitting, purchasing, and/or construction.

Legend:
- Fence
- Lot
- Building Line
- Easement

SUBDIVISION PLAT
DALLAS LAND & LOAN COMP. ADDITION NO. 2
LOT 16
220 W. TENTH STREET
DALLAS, TX

PLOT PLAN
ENGINEERED FOR
220 W. TENTH STREET
DALLAS, TX

DAE: 7/3/18  OIN: J.G.  ODK: S.G.  Scale: 1" = 10'
PAGE 1 of 1
The use in the above appeal, 

**Medical Clinic of Ambulatory Surg. Ctr.**

has been identified by Building Inspection to be a nonconforming use.

**Appeal for a special exception to enlarge a nonconforming use per Sec. 51A-4.704(b)(5)**

Section 51A-4.704. Nonconforming uses and structures.
(b) Changes to nonconforming uses.
(5) **Enlargement of a nonconforming use.**
(A) In this subsection, 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.
(B) The board may allow the enlargement of a nonconforming use when, in the opinion of the board, the enlargement:
   (i) does not prolong the life of the nonconforming use;
   (ii) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
   (iii) will not have an adverse effect on the surrounding area.

**Appeal to establish a compliance date for a nonconforming use per Sec. 51A-4.704(a)(1)(A)**
or

**Appeal to reinstate a nonconforming use per Sec. 51A-4.704(a)(2)**

SECTION 51A-4.704. NONCONFORMING USES AND STRUCTURES.
(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.

   (2) The right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. The board 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.
ARTICLE 830.

PD 830.

SEC. 51P-830.101. LEGISLATIVE HISTORY.

PD 830 was established by Ordinance No. 27944, passed by the Dallas City Council on August 11, 2010. (Ord. 27944)

SEC. 51P-830.102. PROPERTY LOCATION AND SIZE.

PD 830 is established on property located along the Bishop Avenue Corridor between Colorado Boulevard and Davis Street; property located along the Davis Street Corridor, bounded by Plymouth Road on the west and Zang Boulevard on the east; and excluding property zoned Planned Development District No. 160, Planned Development No. 340, Planned Development No. 87/Historic District 15, Conservation District No. 1, and Conservation District 7. The size of PD 830 is approximately 290.5 acres. (Ord. 27944)

SEC. 51P-830.103. CREATION OF SUBDISTRICTS.

This district is divided into the following subdistricts:

1. Subdistricts 1 and 1A: Bishop Avenue.

2. Subdistrict 2: Subdistrict 2 is not created as part of this PD. See Conservation District No. 7 (Bishop/Eighth Street Conservation District) for the use regulations and development standards in that area.


5. Subdistrict 5: Kings Highway Gateway.

6. Subdistricts 6 and 6A: Davis Corridor.

7. Subdistrict 7: Winnetka Heights Village.

8. Subdistricts 8 and 8A: West Garden District. (Ord. Nos. 27944; 28733; 28745; 29126; 29678; 30374)
# Certificate of Occupancy

City of Dallas

**Address:** 220 W 10TH ST 75208  
**Issued:** 11/15/2012

**Owner:** PERALTA CHIROPRACTIC  
220 W 10TH ST, DALLAS TEXAS 75208-4523 UNITED STATES OF AMERICA

**DBA:** PERALTA CHIROPRACTIC INC.

**Land Use:** (6517) MEDICAL CLINIC OR AMBULATORY SURGICAL CENTER

**Occupied Portion:**

**C.O.#:** 1211071026

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**Remarks:** EXISTING USE CO#0401071052

Larry Holmes, Building Official

This certificate shall be displayed on the above premise at all times.

Sustainable Development and Construction | Building Inspection Division | 214/948-4480 | www.dallascityhall.com
Certificate of Occupancy
Job 002187461-001 (0401071052)

DBA: DR. STERLING WOOD
Status: Issued

Parent Job:
Specific Location:

Created By: CONV
Date Issued: Jan 07, 2004
Date Completed: Jan 13, 2004
Date Created: Jan 07, 2004
Address... 220 W 10TH ST
AddressType1 N
AddressType2 N
Airport N
Alcohol N
Applicant Name Lookup... N
Arborist N
Base Zoning LO1
Bl Flag N
Bl Flag Comments N
Bl Flag Override N
Bio-Diesel N
Block N
Board of Adjustment N
Building N
Certificate Type N
Comments N
Conditions SAME USE
Construction Type N
Create ProjectDox Project N
Dance Floor N
Deed Restriction N
Diesel N
District 17
District Office OCMC
Doing Business As DR. STERLING WOOD
Dry Y
Dwelling Units 0
Electric N
Email N
Expiration Date N
Flood Plain N
Fraction N
Gas N
GIS Flagged Area N
GIS NSOName N
Health N
Health Inspection Needed N
Health Permit Fee to Use N
Health Permit Number N
Historic N
Land Use "(6517) MEDICAL CLINIC OR AMBULATORY SURGICAL CENTER"
Lot N
Manager Approval N
Manager Name N
MD Overlay N
MD Review Needed N
Moratorium Override N
Natural Gas N
Occupancy B
Occupancy Load N
Occupied Portion N
Other Fuel N
Other Fuel Type N
OverBlock BDA189-009
Dec 03, 2018 09:48
Name: _CertificateofOccupancy Objectid: 2187461
Owner Address Lookup
220 W 10TH ST, DALLAS TEXAS 75208-4523 UNITED STATES OF AMERICA
Owner Address Override
000220 W 10TH ST DALLAS TX 75208
Owner Code
PRIVATE
Owner Name Lookup
WOOD HOMER
Owner Name Override
WOOD STERLING
Owner Phone Number

Parking Agreement N
PDD 0
Postage N
Propane N
Proposed Parking 0
Required Parking 0
Residential Adjacency Review N
Sprinkler
Square Footage 1,000
Stories 1
Suite 1
Suite 2
SUP
TaxParcelLegal5 3161 041 016 2003161 041
Temporary Address
Use Of Property

Details
Parcel: Historical 220 W 10TH ST
00000255691000000
Address: Account
220 W 10TH ST

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<th>Outcome</th>
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| Converted from BU - 150 |
Perform CO Electrical Inspection
Paul Cookson      | Complete | Pass    | Jan 13, 2004 00:00:00 |
| Converted from EL - 350 |
Perform CO Mechanical Inspection
Mark Daniel       | Complete | Pass    | Jan 13, 2004 00:00:00 |
| Converted from ME - 450 |
Perform CO Plumbing Inspection
Mark Daniel       | Complete | Pass    | Jan 13, 2004 00:00:00 |
| Converted from PL - 260 |
Ext Fees

Fee (EXT): 0401071052 Converted Certificate of Occupancy Fee $215.00
Adjusted: $0.00 Paid: $215.00 Owed: $0.00

Audit
# Notification List of Property Owners

**BDA189-009**

16 Property Owners Notified

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<tr>
<th>Label #</th>
<th>Address</th>
<th>Owner</th>
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</thead>
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<tr>
<td>1</td>
<td>220 W 10TH ST</td>
<td>PERALTA CHIROPRACTIC INC</td>
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<td>CMWOC PROPERTIES I LLC</td>
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<td>4</td>
<td>219 W 10TH ST</td>
<td>EXXIR TREEHAUS LLC</td>
</tr>
<tr>
<td>5</td>
<td>209 W 10TH ST</td>
<td>EXC VENTURES LLC</td>
</tr>
<tr>
<td>6</td>
<td>237 SUNSET AVE</td>
<td>DERASAUGH MARGARET &amp;</td>
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<td>7</td>
<td>112 S MADISON AVE</td>
<td>SALA JASON BRANDON</td>
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<td>MERCADO FRANCISCA M</td>
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<td>PEREZ ARMINDA</td>
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<tr>
<td>16</td>
<td>218 W 10TH ST</td>
<td>GOOD SPACE INC</td>
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</table>
BUILDING OFFICIAL’S REPORT: Application of Getra Thomason Sanders, represented by Bryan M. Burger, P.E., for a special exception to the off-street parking regulations at 3040 W Mockingbird Lane. This property is more fully described as Lot 1D, Block A/2571, and is zoned IR, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a restaurant with drive-through use and provide 29 of the required 38 parking spaces, which will require a 9 space special exception to the off-street parking regulations.

LOCATION: 3040 W Mockingbird Lane

APPLICANT: Getra Thomason Sanders
Represented by Bryan M. Burger, P.E.

REQUEST:
A request for a special exception to the off-street parking regulations of 9 spaces is made to construct and maintain a 900 square foot addition (in this case, a roof/cover to be located over an existing outdoor seating area) to an existing approximately 2,900 square foot restaurant with drive-in or drive through service use, and provide 29 (or 76 percent) of the 38 off-street parking spaces required by code.

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

Section 51A-4.311 of the Dallas Development Code states the following:
1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative
parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

2) In determining whether to grant a special exception, the board shall consider the following factors:
   (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
   (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
   (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
   (D) The current and probable future capacities of adjacent and nearby streets based on the city’s thoroughfare plan.
   (E) The availability of public transit and the likelihood of its use.
   (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.

3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.

4) In granting a special exception, the board may:
   (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
   (B) Impose restrictions on access to or from the subject property; or
   (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.

5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.

6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
   (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
   (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- The special exception of 9 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive through service use is changed or discontinued.

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

**BACKGROUND INFORMATION:**

**Zoning:**

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<th>Site:</th>
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<tr>
<td>South:</td>
<td>IR (Industrial/research)</td>
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<tr>
<td>East:</td>
<td>IR (Industrial/research)</td>
</tr>
<tr>
<td>West:</td>
<td>IR (Industrial/research)</td>
</tr>
</tbody>
</table>

**Land Use:**

The subject site is developed with a restaurant with drive-in or drive through service. The area to the north is developed with an airport/public utility use; the areas to the east, west, south are developed with industrial 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 off-street parking regulations of 9 spaces focuses on constructing and maintaining a 900 square foot addition (in this case, a roof/cover to be located over an existing outdoor seating area) to an existing approximately 2,900 square foot restaurant with drive-in or drive through service use and providing 29 (or 76 percent) of the 38 off-street parking spaces required by code.

• Chapter 51A-4.210 (25) (C) requires the following off-street parking requirement:
  – Restaurant with drive-in or drive through service: one space per 100 square feet of floor area; with a minimum of four spaces.

• The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “Has no objections”.

• The applicant has the burden of proof in establishing the following:
  – The parking demand generated by the proposed restaurant with drive-in or drive through service uses does not warrant the number of off-street parking spaces required, and
  – The special exception of 9 spaces (or a 24 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

• If the Board were to grant this request, and impose the condition that the special exception of 9 spaces shall automatically and immediately terminate if and when the restaurant with drive-in or drive through service is changed or discontinued, the
applicant could construct and maintain the addition to the existing restaurant use on the site, and provide 29 (or 76 percent) of the 38 required off-street parking spaces.

**Timeline:**

October 22, 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.

December 3, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 5, 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 December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.”

December 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the 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.

December 27, 2018: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Has no objections”.

Parking Analysis
For
A Special Exception Request
To Benefit Chick-fil-A
3040 West Mockingbird Lane
Dallas, Texas 75235

Burger Engineering, LLC
Texas Registered Engineering Firm F-12997
17103 Preston Road, Suite 180N
Dallas, Texas 75248
Introduction:

On July 25, 2018 Chick-fil-A, Inc. opened a 2,887 S.F. drive-through only restaurant at 3040 West Mockingbird Lane, located at the southwest corner of West Mockingbird Lane and Cedar Springs Road. The current site plan consists of a 2,431 S.F. building utilized as restaurant area, 456 S.F. of covered roof patio area utilized for customer order queuing and outdoor dining, and 901 S.F. of open roof patio area utilized for outdoor dining. The drive-through only restaurant is supported by 29 on-site parking spaces provided within the property boundary as well as pedestrian access to adjoining sidewalks along Cedar Springs Road and West Mockingbird Lane. The site also provides a multi-lane drive-through configuration with two ordering stations providing approximately 23 stacking spaces to support the drive-through only restaurant.

Chick-fil-A currently operates from 6:00 a.m. to 10:00 p.m. Monday through Saturday. Peak operating times are 12:00 p.m. to 2:00 p.m. for the lunch hours and 6:00 p.m. to 8:00 p.m. for the dinner hours.

The Chick-fil-A development is one lot of a three lot retail development. Adjacent to Chick-fil-A to the west is an approximately 3,000 S.F. Burger King restaurant providing 31 parking spaces which currently operates between the hours of 6:00 a.m. to 12:00 a.m. seven days a week. The third lot west of Burger King is currently a parking lot development that Chick-fil-A currently leases and it contains 9 parking spaces that Chick-fil-A currently utilizes for employee parking. A site plan of the development is included as Exhibit A.

Proposed Improvements:

Chick-fil-A is requesting a special exception to provide a covered roof patio over the remaining 901 S.F. of open roof patio area currently utilized for outdoor dining. The special exception would reduce the required parking from 38 parking spaces to 29 parking spaces resulting in a 25% reduction in the required parking. The additional roof covered patio seating would provide additional shielding from weather related elements such as sun and rain while customers utilizing the outdoor patio area. The patio area would still be an open air patio and not an enclosed space. The addition of the covered roof will not modify the number of existing patio tables currently located on the Chick-fil-A site.

Site Parking Analysis:

Parking counts were collected by a representative of Burger Engineering, LLC between December 11, 2018 and December 15, 2018. Counts were conducted during peak periods between 12:00 p.m. to 2:00 p.m. during lunch hour and 6:00 p.m. to 8:00 p.m. during dinner hour. Available parking spaces were recorded for all three retail lots within the development. Exhibit B indicates the available parking for each of the three developments during the peak hour periods at twenty minute intervals.
Conclusion:

Based upon data collected by Burger Engineering, LLC between December 11, 2018 and December 15, 2018, and illustrated on Exhibit B, the Chick-fil-A restaurant provides sufficient parking to accommodate the requested parking space special exception. Between the peak hours of 12:00 p.m. to 2:00 p.m. the minimum available parking count recorded was 8 spaces and between the peak hours of 6:00 p.m. to 8:00 p.m. the minimum recorded parking count was 8 spaces. In addition to the available parking within Chick-fil-A lot the adjacent Burger King lot provided 6 available spaces during the afternoon peak hours and 17 available spaces during the evening peak. The remote parking lot leased by Chick-fil-A provided 0 available spaces during the afternoon peak hours and 7 available spaces during the evening peak hours.

The current special exception request does not increase the amount of available seating or restaurant space from what currently exists on the Chick-fil-A site today. The request will simply provide those customers choosing to eat their meals on the outdoor patio the option of not sitting in the rain or direct sunlight during the intense Dallas summers.

Based upon the available spaces provided on the Chick-fil-A lot in conjunction with the surrounding contiguous properties providing adequate parking for their uses, a parking special exception does not appear to impact the overall function of the existing three lot development.
EXHIBIT B

CHICK-FIL-A PARKING DATA

### AVAILABLE PARKING SPACES AT SPECIFIC TIMES

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APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA/189-011

Data Relative to Subject Property:

Date: 10-22-18

Location address: 3040 W. Mockingbird Lane Zoning District: IR

Lot No.: 1D Block No.: A/2571 Acreage: 0.74 Census Tract: 4.06

Street Frontage (in Feet): 1) 203' 2) 156' 3) 4) 5)

To the Honorable Board of Adjustment:

Owner of Property (per Warranty Deed): Weichsel Farm Limited Partnership / JOHN R. SEARS

Applicant: Gertra Thomason Sanders Telephone: 404-765-8000

Mailing Address: 5200 Buffington Road, Atlanta, GA Zip Code: 30349

E-mail Address: getra.sanders@cfacorp.com

Represented by: Bryan M. Burger, P.E. Telephone: 972-630-3360

Mailing Address: 17103 Preston Road, Suite 180N, Dallas, TX Zip Code: 75248

E-mail Address: bburger@burgerengineering.com

Affirm that an appeal has been made for a Variance __, or Special Exception X, of reduction of 9 parking spaces (23.7%) to provide covered outdoor patio seating.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: Chick-fil-A customers are continually requesting outdoor covered seating at this location to support the existing drive-through restaurant. Patio tables currently exist on the property but are not covered from the elements.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared John R. Sears

(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/authorized representative of the subject property.

Respectfully submitted:

(Affiant/Applicant's signature)

Subscribed and sworn to before me this 26th day of October, 2018

(Rev. 08-01-11)

ROBYN P. DELOZIER
My Notary ID # 1679829
Expires December 14, 2020

Notary Public in and for Dallas County, Texas
Building Official's Report

I hereby certify that
represented by
did submit a request
at

Getra Thomason Sanders
BRYAN M BURGER
for a special exception to the parking regulations
3040 W Mockingbird Lane

BDA189-011. Application of Getra Thomason Sanders represented by BRYAN M BURGER for a special exception to the parking regulations at 3040 W MOCKINGBIRD LN. This property is more fully described as Lot 1D, Block A/2571, and is zoned IR, which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for a restaurant with drive-through use, and provide 29 of the required 38 parking spaces, which will require a 9 space special exception (23.7% reduction) to the parking regulation.

Sincerely,

Philip Sikes, Building Official
This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
Notification List of Property Owners

BDA189-011

17 Property Owners Notified

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FILE NUMBER:  BDA178-006(OA)

BUILDING OFFICIAL’S REPORT: Application of Devin Hall, represented by Ann Bagley of Bagley Associates, for a variance to the front yard setback regulations at 3235 Elihu Street. This property is more fully described as Lot 1, Block 21/812, and is zoned PD 595 (MF-1(A)), which requires a front yard setback of 15 feet. The applicant proposes to construct a structure and provide a 10 foot front yard setback, which will require a 5 foot variance to the front yard setback regulations.

LOCATION:  3235 Elihu Street

APPLICANT:  Devin Hall
Represented by Ann Bagley of Bagley Associates

REQUEST:

A request for a variance to the front yard setback regulations of 5’ is made to construct and maintain a three-story 5-unit multi-family structure with a “total building size” of approximately 8,400 square feet, part of which is to be located 10’ from one of the site’s two front property lines (J. B. Jackson, Jr. Boulevard) or 5’ into this 15’ front yard setback on a site that is undeveloped.

STANDARD FOR A VARIANCE:

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

(A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

(B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

(C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STAFF RECOMMENDATION:

Denial

Rationale:
Staff concluded from the information submitted by the applicant at the time of the December 27th staff review team meeting that the applicant had not substantiated how the variance is necessary to permit development of the subject site (a site that is approximately 7,000 square foot, virtually rectangular in shape, and flat) where these conditions preclude the applicant from developing it in a manner commensurate with the development upon other parcels of land with the same PD 595 (MF-1(A)) zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

- **Site:** PD 595 (MF-1(A)) (Planned Development) (Multi-family)
- **North:** PD 595 (MF-1(A)) (Planned Development) (Multi-family)
- **South:** PD 595 (MF-1(A)) (Planned Development) (Multi-family)
- **East:** PD 595 (MF-1(A)) (Planned Development) (Multi-family)
- **West:** PD 595 (MF-1(A)) (Planned Development) (Multi-family)

**Land Use:**

The subject site is undeveloped. The areas to the north and east are developed with multi-family, commercial uses and vacant lots; and the areas to the west and south are developed with multi-family uses.

**Zoning/BDA History:**

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

**GENERAL FACTS /STAFF ANALYSIS:**

- This request for a variance to the front yard setback requirement of 5' focuses on constructing and maintaining a three-story 5-unit multi-family structure with a “total building size” of approximately 8,400 square feet, part of which is to be located 10’ from one of the site’s two front property lines (J. B. Jackson, Jr. Boulevard) or 5’ into this 15’ front yard setback on a site that is undeveloped.
- The property is located in PD 595 (MF-1(A)) zoning district which requires a minimum front yard setback of 15 feet.
- The subject site is located at the northwest corner of Elihu Street and J B Jackson Jr. Boulevard.
- The site has two front yard setbacks given that it fronts two streets as any corner property would have that is not zoned a single family, duplex, or agricultural district.
- The submitted site plan indicates the proposed structure is located 10’ from the J. B. Jackson, Jr. Boulevard’s front property line or 5’ into this 15’ front yard setback.
- According to DCAD records, there are “no main improvement” or “no additional improvements” for property addressed at 3235 Elihu Street.
The subject site is flat, virtually rectangular in shape, and approximately 7,000 square feet in area, (approximately 50’ x 140’). The site is, according to the submitted application, is 0.16 acres (or approximately 7,000 square feet) in area.

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 PD 595 (MF-1(A)) 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 PD 595 (MF-1(A)) zoning classification.

If the Board were to grant the variance request and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure that would be located 10’ from the site’s J. B. Jackson, Jr. Boulevard front property line (or 5’ into this 15’ front yard setback).

**Timeline:**

October 8, 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.

December 4, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 5, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the December 19th deadline to submit additional evidence for staff to factor into their analysis; and the January 4th 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.
December 24, 2018: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

December 27, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the 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.

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

December 28, 2018: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B). (Note that this information was not factored into the staff recommendation since it was submitted after the December 27th staff review team meeting).

December 31, 2018: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment C). Note that this information was not factored into the staff recommendation since it was submitted after the December 27th staff review team meeting).
Additional Supporting Information
BOA 189-006
3235 Elihu

The property at 3235 Elihu Street is zoned PD 595 MF-1 on the corner of Elihu and J.B. Jackson. The corner lot measures 54’ 7”x 137’6”. This is generally considered small for a multifamily development. There numerous new, urban developments if this type being built in Dallas—most are north of IH-30 and generally in Planned Development (PD) districts. The applicant wishes to proceed with the straight zoning for MF-1 rather than create a new PD within PD 595.

PD 595 MF-1 zoning criteria is found in Section 51A-4.116(a), “MF-1(A) and MF-1(SAH) districts and specifies a front yard setback of 15 feet. Since this is a corner lot, the requirement specifies that there are two front yards, although the address is on Elihu. In general, the narrower side of the lot is considered the front which in this case is on Elihu. J. B. Jackson, when reconstructed, will continue to function as a slip street parallel to Robert B. Cullum Boulevard so there is no direct access to J. B. Jackson from the units.

There are no similar projects in the immediate area. Examples of MF-1 in or near PD 595 are provided on page 2. In looking in the north, east, and southeast areas of Dallas from the site, there are few MF-1 zoned properties. Since there is no minimum lot size for MF-1, the sizes range widely. The 60 percent lot coverage will be maintained on the Elihu site.

This is a new opportunity to have attractive, affordable housing in the South Dallas/Fair Park area that is so much in demand north of IH-30. It is effectively a shared access type of development similar. Pictures are included to demonstrate where this type of design is prevalent. See pages 3-6 for examples of this type of setbacks.

Support for Variance
The variance request of a five foot reduction is necessary to develop the property in that the special condition is that the lot is small, smaller than other identifiable MF-1 lots. With this reduction the spirit of the ordinance will be observed, and substantial justice done.

The development of the site with a new 10 foot building line on the J.B. Jackson side will not be contrary to the public interest. It has the potential to bring new and different housing to the South Dallas Fair Park area like other redeveloping areas of Dallas.
Below are three identifiable MF-1 properties compared to the Elihu property.

**Examples of MF-1 in or near PD 595**

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</tr>
<tr>
<td>4001-4011 Malcom X Boulevard</td>
<td>42,730</td>
<td>23,500</td>
<td>2</td>
<td>46</td>
</tr>
<tr>
<td>4722 Meadow at Elsie Faye Heggins</td>
<td>855,300</td>
<td>301,226</td>
<td>2</td>
<td>264</td>
</tr>
<tr>
<td>3235 Elihu</td>
<td>7,507</td>
<td>2,208</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>

On the following page are examples of double fronted lots.
Here are examples of corner lots/ double front yard setbacks that appear to be less than the 15 foot setback. The examples below generally come from lower Greenville and Live Oak vicinities where most of the new residential units are in PDs.

**Examples of Double Front Setbacks**

<table>
<thead>
<tr>
<th>1301 Skiles Street</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="1301_Skiles.jpg" alt="Image" /></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3200 Ross Ave</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="3200_Ross.jpg" alt="Image" /></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1731 Hall Street</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="1731_Hall.jpg" alt="Image" /></td>
</tr>
<tr>
<td>Live Oak at Haskell</td>
</tr>
<tr>
<td>-------------------</td>
</tr>
<tr>
<td><img src="image" alt="Live Oak at Haskell" /></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LaVista at Matilda</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="LaVista at Matilda" /></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Live Oak at Peak</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="Live Oak at Peak" /></td>
</tr>
</tbody>
</table>
Prospect at Matilda

3201 San Jacinto at Pavillion

3198 Ross
Below are three identifiable MF-1 properties compared to the Elihu property.

**Examples of MF-1 in or near PD 595**

<table>
<thead>
<tr>
<th>Address</th>
<th>Lot Sq. Ft</th>
<th>Bldg. Sq. Ft</th>
<th>Stories</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>4815 Barry @ Haskell</td>
<td>9,651</td>
<td>5,600</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>4001-4011 Malcom X Boulevard</td>
<td>42,730</td>
<td>23,500</td>
<td>2</td>
<td>46</td>
</tr>
<tr>
<td>4722 Meadow at Elsie Faye Heggins</td>
<td>855,300</td>
<td>301,226</td>
<td>2</td>
<td>264</td>
</tr>
<tr>
<td>3235 Elihu</td>
<td>7,507</td>
<td>8,395</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>

On the following page are examples of double fronted lots
### MF-1 A in PD 595

<table>
<thead>
<tr>
<th>Address</th>
<th>Lot Size</th>
<th>Bldg. Sq. Ft</th>
<th>Stories</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>4815 Barry @ Haskell 91 feet frontage on Haskell and on Barry</td>
<td>9,651 sq ft 0.22 ac</td>
<td>5,600</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>4001-4011 Malcom X Boulevard</td>
<td>0.98 ac</td>
<td>23,500</td>
<td>2</td>
<td>46</td>
</tr>
<tr>
<td>Elsie Faye Heggins (west side) between Myrtle and Leland Cross street Crozier</td>
<td>Approximately 4 acre, approximately 3 of which are vacant</td>
<td>N/A</td>
<td>1 and 2</td>
<td>1 SF 2 duplex 4 4plex</td>
</tr>
<tr>
<td>5712 Bexar at Pilgrim (Formerly Rochester Park)</td>
<td>44.04 ac</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>4722 Meadow at Elsie Faye Heggins</td>
<td>19.34 ac</td>
<td>301,226</td>
<td>2</td>
<td>264</td>
</tr>
<tr>
<td>4311 Robert L Parish Sr. Ave Carpenter Cove</td>
<td>5.36 ac</td>
<td>2</td>
<td>2</td>
<td>163</td>
</tr>
<tr>
<td>Address</td>
<td>Lot Size</td>
<td>Bldg. Sq. Ft</td>
<td>Stories</td>
<td>Units</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>----------</td>
<td>-------------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>4838 Elise Fay Heggins Mill City/ Wahoo/Fraizer</td>
<td>11.43 ac</td>
<td>143,880</td>
<td>1 and 2</td>
<td>128</td>
</tr>
<tr>
<td>3650 Dixon Prince Hall Chambers Apts</td>
<td>13.75 ac</td>
<td>166,336</td>
<td>2</td>
<td>192</td>
</tr>
<tr>
<td>3604 Agnes Southdale (New Horizon) Apts</td>
<td>8.76 ac</td>
<td>128,734</td>
<td>2</td>
<td>114</td>
</tr>
<tr>
<td>MF-1 (A) zoned in the area surrounding 3235 Elihu</td>
<td>Approximately Total 9.52 ac Developable area of 1.79 ac See Note below</td>
<td>0</td>
<td>0 0</td>
<td></td>
</tr>
<tr>
<td>3235 Elihu</td>
<td>7,507 sq ft 0.17 ac</td>
<td>8,395</td>
<td>3</td>
<td>5</td>
</tr>
</tbody>
</table>

**Note:** There are approximately 9.52 acres of area zoned MF-1(A). There are approximately 2.87 acres of other zoning, WR-5 and WMU-5. DART owns approximately 4.66 acres
APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 169-006

Date: October 7, 2018

Data Relative to Subject Property:

Location address: 3235 Elkhorn Street  Zoning District: PD595 MF1(A)

Lot No.: 1  Block No.: 21/812  Acreage: 0.16  Census Tract: 203

Street Frontage (in Feet): 1) 54’7”  2) 137’6”  3) 4) 5)

To the Honorable Board of Adjustment:

Owner of Property (per Warranty Deed): HCUBED DEVELOPMENT

Applicant: DEVIN HALL  Telephone: 214.876.1235

Mailing Address: P.O. Box 271101  Zip Code: 75227

E-mail Address: halldevin@msn.com

Represented by: ANN BAGLEY, BAGLEY ASSOCIATES  Telephone: 214.766.8720

Mailing Address: 8139 Barbaree Blvd  Zip Code: 75228

E-mail Address: ann@bagleyworks.com

Affirm that an appeal has been made for a Variance ✓, or Special Exception _, of 5 feet to the 15’ foot front yard setback on street frontage of 137’6”.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

The property is zoned MF1(A) in PD595. The lot of 54’7” x 137’6” is significantly smaller than normal for multifamily development in PD595 and in Dallas. There are two (2) front yards which is uncommon in MF1(A). The five feet (5’) reduction will allow parking in the rear and remove the need for driveway on J.B. Jackson.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared ____________ (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: ____________ (Affiant/Applicant's signature)

Subscribed and sworn to before me this ___ day of ____________, 2018

Notary Public in and for Dallas County, Texas
Building Official's Report

I hereby certify that DEVIN HALL
represented by ANN C BAGLEY
did submit a request for a variance to the front yard setback regulations
at 3235 Elihu St

BDA189-006. Application of DEVIN HALL represented by ANN C BAGLEY for a variance to the front yard setback regulations at 3235 ELIHU ST. This property is more fully described as Lot 1, Block 21/612, and is zoned PD-595 (MF-1(A)), which requires a front yard setback of 15 feet. The applicant proposes to construct a single family residential structure and provide a 10 foot front yard setback, which will require a 5 foot variance to the front yard setback regulations.

Sincerely,

Philip Sikes, Building Official
This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. (Texas Government Code § 2051.102)
TEXAS STATE FAIR AND DALLAS EXPOSITION GROUNDS.
### Notification List of Property Owners

**BDA189-006**

**14 Property Owners Notified**

<table>
<thead>
<tr>
<th>Label #</th>
<th>Address</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3235 ELIHU ST</td>
<td>URBAN MIXED USE LLC &amp;</td>
</tr>
<tr>
<td>2</td>
<td>907 J B JACKSON JR BLVD</td>
<td>JOHNS TRAINS INC</td>
</tr>
<tr>
<td>3</td>
<td>907 J B JACKSON JR BLVD</td>
<td>DART</td>
</tr>
<tr>
<td>4</td>
<td>3227 GUNTER AVE</td>
<td>DALLAS AREA RAPID TRANSIT</td>
</tr>
<tr>
<td>5</td>
<td>3231 ELIHU ST</td>
<td>URBAN MIXED USE LLC &amp;</td>
</tr>
<tr>
<td>6</td>
<td>3209 ELIHU ST</td>
<td>URBAN MIXED USE LLC</td>
</tr>
<tr>
<td>7</td>
<td>1005 J B JACKSON JR BLVD</td>
<td>BURNS SHIRLEY</td>
</tr>
<tr>
<td>8</td>
<td>1100 ROBERT B CULLUM BLVD</td>
<td>BAKRI MOHAMED A</td>
</tr>
<tr>
<td>9</td>
<td>3220 ELIHU ST</td>
<td>HAMILTON DOUGLAS E</td>
</tr>
<tr>
<td>10</td>
<td>3222 ELIHU ST</td>
<td>HAMILTON DOUG</td>
</tr>
<tr>
<td>11</td>
<td>3226 ELIHU ST</td>
<td>HALL FLOYDELL</td>
</tr>
<tr>
<td>12</td>
<td>3230 ELIHU ST</td>
<td>7839 FERGUSON LLC</td>
</tr>
<tr>
<td>13</td>
<td>1109 J B JACKSON JR BLVD</td>
<td>BOONE RICHARD E LF EST &amp;</td>
</tr>
<tr>
<td>14</td>
<td>3221 ELIHU ST</td>
<td>3221 FLATS LLC</td>
</tr>
</tbody>
</table>