

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, January 21, 2020**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Chair, Jay Narey, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member

MEMBERS ABSENT FROM BRIEFING: Taylor Adams, regular member

STAFF PRESENT AT BRIEFING: Sarah May, Interim Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, Elaine Hill, acting board secretary, LaTonia Jackson, Board Secretary, David Nevarez, Engineering

MEMBERS PRESENT AT HEARING: Cheri Gambow, Chair, Jay Narey, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member

MEMBERS ABSENT FROM HEARING: Taylor Adams, regular member

STAFF PRESENT AT HEARING: Sarah May, Interim Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, Elaine Hill, acting board secretary, LaTonia Jackson, Board Secretary, David Nevarez, Engineering

11:28 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 21, 2020** docket.

1:07 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel A, January 21 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: January 21, 2020

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA189-109(SM)

BUILDING OFFICIAL'S REPORT: Application of Garcia Desinor, Jr. for special exceptions to the single-family regulations at 5952 Joyce Way. This property is more fully described as Tracts 1 & 2, Block 5612, and is zoned R-1ac(A), which limits the number of dwelling units to one and requires that a single-family dwelling use in a single family, duplex, or townhouse district may be supplied by not more than one electrical utility service, and metered by not more than one electrical meter. The applicant proposes to construct and/or maintain an accessory dwelling unit and have more than one electrical utility service or electrical meter on a lot with a single-family use, which requires special exceptions to the single-family zoning use regulations.

LOCATION: 5952 Joyce Way

APPLICANT: Garcia Desinor, Jr.

REQUESTS:

The following requests for special exceptions to the single-family use regulations are made 1) to maintain the original two-story home which fronts on Joyce Way as an accessory dwelling unit to the new home on Lupton Road and 2) to authorize more than one electrical utility service or electrical meter on a site with a single family use.

STANDARDS:

For these requests, the applicant has the burden of proof in establishing the following standards have been met.

Special exception to the single-family use regulations to authorize an additional dwelling unit (first request):

Section 51(A)-4.209(6)(E)(1) of the Dallas Development Code specifies that the board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize a rentable accessory dwelling unit on a lot when, in the opinion of the board, the accessory dwelling unit will not adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to:

1. deed restrict the subject property to require owner-occupancy on the premises and
2. annually register the rental property with the city's single-family non-owner-occupied rental program.

Special exception to the single-family use regulations to authorize more than one electrical utility service or more than one electrical meter (second request):

The board may grant a special exception to authorize more than one electrical utility service or more than one electrical meter for a single-family use on a lot in a single family zoning, duplex, or townhouse district when, in the opinion of the board, the special exception will not:

1. be contrary to the public interest;
2. adversely affect neighboring properties; and
3. be used to conduct a use not permitted in the zoning district.

STAFF RECOMMENDATIONS:

Special exception for an accessory dwelling unit (first request):

No staff recommendation is made on this or any request for a special exception to authorize a rentable accessory dwelling unit since the basis for this type of appeal is *when in the opinion of the board*, the accessory dwelling unit will not adversely affect neighboring properties.

Special exception to authorize more than one electrical utility service or more than one electrical meter (second request):

No staff recommendation is made on this or any request for a special exception to authorize more than one electrical utility service or more than one electrical meter for a single family use on a lot in a single family zoning district since the basis for this type of appeal is *when in the opinion of the board*, the standards described above are met.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single Family District)
North: R-1ac(A) (Single Family District)
East: R-10(A) (Single Family District)

South: R-1ac(A) (Single Family District)

West: R-1ac(A) (Single Family District)

Land Use:

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

Zoning/BDA History:

There have been no related board or zoning cases near the subject site within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

The purpose of these requests for special exceptions to the single-family use regulations are to maintain the original two-story home which fronts on Joyce Way as an accessory dwelling unit to the new home on Lupton Road and to authorize more than one electrical utility service or electrical meter. The site is developed with three structures: the original two-story single-family structure on Joyce Way, with approximately 2,300 square feet of floor area, according to permit records; a new one-story detached garage at the southwest corner of Joyce Way and Preston Road, and a new two-story single family structure with approximately 7,449 square feet of floor area, according to permit records, on Lupton Road.

The Dallas Development Code states that *single family* means one dwelling unit located on a lot and that a *dwelling unit* means one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens¹, one or more bathrooms², and one or more bedrooms³.

The building site extends from Joyce Way on the north and Lupton Drive on the south and is approximately twice the size of other lots on the same block. The applicant proposes to retain a portion of the original house that was constructed on Joyce Way as an additional dwelling unit and has recently undergone a partial demolition that reduced the original home's size from approximately 3,444 square feet to 2,300 square feet,

¹ KITCHEN means any room or area used for cooking or preparing food and containing one or more ovens, stoves, hot plates, or microwave ovens; one or more refrigerators; and one or more sinks. This definition does not include outdoor cooking facilities. Reference §51A-2.102(57.1) of the Dallas Development Code, as amended.

² BATHROOM means any room used for personal hygiene and containing a shower or bathtub, or containing a toilet and sink. Reference §51A-2.102(8.1) of the Dallas Development Code, as amended.

³ BEDROOM means any room in a dwelling unit other than a kitchen, dining room, living room, bathroom, or closet. Additional dining rooms and living rooms, and all dens, game rooms, sun rooms, and other similar rooms are considered bedrooms. Reference §51A-2.102(9) of the Dallas Development Code, as amended.

according to permit records. The floor plans for the first and second floors of the proposed additional dwelling unit structure denote a number of rooms/features that Building Inspection has determined makes a second dwelling unit apart from the new single-family dwelling unit on Lupton Drive, which are comprised of a kitchen on the first floor and bedrooms and bathrooms on both floors.

As of December 31, 2019, no letters had been submitted in support of or in opposition to these requests for special exceptions to the single-family regulations.

If the board was to grant these requests, the applicant could modify the existing accessory structure into a dwelling unit with separate utilities. However, if the board was to deny these requests, the applicant could still modify the existing accessory structure, but it may not be constructed with all three elements that constitute a dwelling unit or with separate utilities.

Timeline:

July 25, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

September 16, 2019: The application was returned to Building Inspection at the request of the applicant to modify the original request to allow rental accommodations.

December 5, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

December 9, 2019: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official’s report on the application;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

December 30, 2019: 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 following: The Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.
No review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: January 21, 2020

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 189-109, application of Garcia Desinor Jr., **grant** the request of this applicant to construct and maintain an accessory dwelling unit and to install and maintain an additional electric meter on the property as special exceptions to the single-family zoning use regulations contained in the Dallas Development Code, as amended, are **granted**, subject to the following conditions:

The applicant must deed restrict the subject property to require owner-occupancy on the premises and annually register the rental property with the city's single family non-owner-occupied rental program.

SECONDED: Narey

AYES: 4 – Gambow, Lamb, Narey, Halcomb

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-006

BUILDING OFFICIAL'S REPORT: Application of Rob Baldwin of Baldwin Associates for a special exception to the sign regulations at 5555 W Lovers Lane. This property is more fully described as Lots 1 and 2, Block 1/5012, and is zoned CR, which prohibits non-monument signs within 250 feet of either private property in a non-business zoning district or a public park of more than one acre. The applicant proposes to construct and/or maintain a detached premise non-monument (AKA pole) sign on a

nonresidential premise within 250 feet of private property in a non-business zoning district, which requires a special exception to the sign regulation.

LOCATION: 5555 W Lovers Lane

APPLICANT: Rob Baldwin of Baldwin Associates

REQUEST: A request for a special exception to the sign regulations is made to replace and maintain a non-monument sign within the 250-foot distance requirement from a residential property on a site developed with retail uses (Pet Bar, Jenny Craig, Orangetheory Fitness).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A NON-MONUMENT SIGN WITHIN 250 FEET OF PRIVATE PROPERTY IN A NON-BUSINESS ZONING DISTRICT⁴:

The Board of Adjustment may grant a special exception to allow a non-monument sign within 250 feet of private property in a non-business zoning district when, in the opinion of the board, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the sign regulations to allow a non-monument sign within 250 feet of private property in a non-business zoning district since the basis for this type of appeal is when, in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail District)
North: R-7.5(A) (Single Family Residential District)
South: CR (Community Retail District)
East: CR (Community Retail District)
West: CR (Community Retail District)

Land Use:

⁴ Reference Section 51A-7.304(b)(3) of the Dallas Development Code.

The site is being developed with retail uses (Pet bar, Jenny Craig, Orangetheory Fitness). The areas to the north are developed with single family uses; the areas to the south, east and west are developed with retail uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- The request focuses on replacing and maintaining a non-monument sign within 250 feet from residential property on a site being developed with retail uses (Pet Bar, Jenny Craig, Orangetheory Fitness).
- The Dallas Development Code states non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre.
- The applicant has submitted a site plan and sign elevation. The site plan notes that the signboard of the proposed replacement sign would be oriented to face east and west. The sign is not visible to the non-business zoning district immediately north of the subject site.
- The subject sign is located approximately 200 feet from the nearest residential lot located north of the subject site.
- The applicant is replacing the existing signs on an existing pole with three new signs in order to advertise three new retail tenants (Pet Bar, Jenny Craig, Orangetheory Fitness).
- In October of 2004, the sign regulations were amended in ways that added the provision the applicant is seeking an exception from – non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park more than one acre.
- The applicant submitted a document stating, among other things, that the proposed replacement signs will be a 128-square-foot flag mount illuminated LED cabinet. The proposed detached sign is not visible from the single family properties to the north of the subject site.
- The applicant has the burden of proof in establishing the following:
 - That allowing a non-monument sign within 250 feet of private property in a non-business zoning district when, in the opinion of the board, the special exception will not adversely affect neighboring property.
- If the board were to grant this request and impose the submitted site plan as a condition to the request, the sign would be held to the location as shown on this plan – a site plan that notes that the signboard of the proposed replacement sign would

be oriented to face east and west, and not to the non-business zoning district immediately north of the subject site.

- Staff does not recommend imposing any sign elevation as a condition to this request since granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code (i.e. height, effective area, or setback requirements) other than allowing a non-monument sign within 250 feet of private property in a non-business zoning district.

TIMELINE:

October 30, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 5, 2019: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

December 18, 2019: 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 26th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th deadline to submit additional evidence to be incorporated into the board’s docket materials;
- the criteria/standards that the board will use in their decision to approve or deny the requests; and
- The Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

December 30, 2019: 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 following: The Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

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

BOARD OF ADJUSTMENT ACTION: January 21, 2020

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 190-006, application of Rob Baldwin of Baldwin Associates, **grant** the request of this applicant for a special exception to the sign regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Narey

AYES: 4 – Gambow, Narey, Lamb, Halcomb

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-008(SM)

BUILDING OFFICIAL’S REPORT: Application of DK Patel of Lovefield Hospitality LP, represented by Maxwell Fisher, AICP, of Masterplan, for a special exception to the parking regulations at 4860 Harry Hines Boulevard. This property is more fully described as Lot 1E, Block-5745, and is zoned MU-2, which requires parking to be provided. The applicant proposes to construct and/or maintain a hotel or motel use and provide 121 of the required 147 parking spaces, which will require a 26-space special exception (18% reduction) to the parking regulations.

LOCATION: 4860 Harry Hines Boulevard

**APPLICANT: DK Patel of Lovefield Hospitality LP
Represented by Maxwell Fisher, AICP, of Masterplan**

REQUEST:

A request for a special exception to the off-street parking regulations of 26 spaces is made to construct a new hotel or motel use with 141 guest rooms and 1,200 square feet of meeting space and will provide 121 parking spaces (or 82 percent) of the 147 required parking spaces for the subject site.

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

- 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 26 spaces shall automatically and immediately terminate if and when a hotel or motel use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Senior Engineer indicated that he has no objections to the request which is based on latest hotel parking trends and other recent requests of similar hotel developments in the Dallas-Fort Worth metroplex.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MU-2 (Mixed Use)
<u>Northeast:</u>	IR (Industrial Research) and PD No. 663 (Planned Development)
<u>Southeast:</u>	IR (Industrial Research)
<u>Southwest:</u>	IR (Industrial Research)
<u>Northwest:</u>	IR (Industrial Research)

Land Use:

The subject site is proposed to be developed with a 141-room hotel. Surrounding uses include a multifamily use to the northeast, across the DART light rail tracks; an Office/showroom/warehouse is to the southeast; parking lots to the southwest and a

hospital across Harry Hines farther to the southwest; and an ambulatory surgical center to the northwest.

Zoning/BDA History:

There has been one related zoning case and no related board cases recorded in the vicinity within the last five years.

1. On September 25, 2019, the City Council approved an MU-2 Mixed Use District on property zoned an IR Industrial Research District for the subject site.

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the off-street parking regulations of 26 spaces (or an 18-percent reduction of the parking spaces required) is to construct a new hotel or motel use with 141 guest rooms and 1,200 square feet of meeting space and provide 121 parking spaces (or 82 percent) of the 147 required parking spaces for the subject site.

The Dallas Development Code requires, one space for each unit for hotel or motel uses with less than 250 units plus one space per 200 square feet of meeting room. Therefore, the proposed hotel or motel use requires 147 parking spaces.

The applicant has submitted a study, based upon the updated Institute of Transportation Engineers (ITE) Parking Generation Manual estimates peak parking demand is during weekdays and is 0.77 spaces per guest room. The study that represents that the “projected peak parking demand” for the proposed hotel is 109 spaces and the applicant proposes to provide a total 121 spaces.

On December 31, 2019, the Sustainable Development Department Senior Engineer submitted a review comment sheet marked “Has no objections” and “Engineering staff recommends approval based on latest hotel parking trends and other recent requests of similar hotel developments in the Dallas-Fort Worth metroplex.”

The applicant has the burden of proof in establishing the following:

- The parking demand generated by the hotel or motel use on the site does not warrant the number of off-street parking spaces required, and
- The special exception of 26 spaces (or an 18-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 condition recommended by staff, the applicant could construct and maintain the site with 41 guest rooms and 1,200 square feet of meeting space and provide 121 parking spaces (or 82 percent) of the 147 required parking spaces on the subject site.

Timeline:

November 11, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 5, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

December 9, 2019: The Interim Board of Adjustment Chief Planner/Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

December 30, 2019: 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 following: the Assistant Director of Sustainable Development and Construction Current Planning Division, the Assistant Director of Sustainable Development and Construction Engineering Division, the Building Official, the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Interim Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

December 30, 2019: The City of Dallas Sustainable Development and Construction Senior Engineer submitted a memo regarding this application (see Attachment A).

BOARD OF ADJUSTMENT ACTION: January 21, 2020

APPEARING IN FAVOR: Maxwell Fisher, 2201 Main St. #1280, Dallas, TX

APPEARING IN OPPOSITION: No One

MOTION: Gambow

I move that the Board of Adjustment, in Appeal No. BDA 190-008, on application of DK Patel of Love field Hospitality, LP, represented by Maxwell Fischer of Masterplan, **grant** the special exception to the parking regulations contained in the Dallas Development Code, subject to the following condition:

The special exception of 26 spaces shall automatically and immediately terminate if and when the hotel or motel use is changed or discontinued.

SECONDED: Narey

AYES: 4 – Gambow, Narey, Lamb, Halcomb

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-009(OA)

BUILDING OFFICIAL’S REPORT: Application of John Ascenzo for a variance to the front yard setback regulations at 4632 Weldon Street. This property is more fully described as Lot 17, Block D/2002, and is zoned MF-2(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and/or maintain a single-family structure and provide a 10-foot front yard setback, which will require a 15-foot variance to the front yard setback regulations.

LOCATION: 4632 Weldon Street

APPLICANT: John Ascenzo

REQUEST:

A request for a variance to the front yard setback regulations of 15 feet has been made to demolish an existing structure, construct and maintain a three-story duplex with approximately 5,431 square feet of floor area, (2,877 square feet in Unit A and 2,554 square feet in Unit B) part of which is to be located 10 feet from one of the site’s two front property lines on Kirby Street or 15 feet into the 25-foot front yard setback on a site developed with a single family structure.

STANDARD FOR A VARIANCE⁵:

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,

⁵ Reference Section 51(A)-3.102(d)(10) of the Dallas Development Code.

height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the MF-2(A) zoning district as it is restrictive in area because it has an irregular shape that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same MF-2(A) zoning district.
- In addition, staff concluded that the applicant has demonstrated by submitting a document indicating, among other things, that the total structure size of the proposed duplex on the subject site is approximately 5,431 square feet, and the average of nine other properties in the same MF-2 zoning is approximately 8,402 square feet.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily District)
North: R-7.5(A) (Single Family District)
East: R-7.5(A) (Single Family District)
South: MF-2(A) (Multifamily District) & R-7.5(A) (Single Family District)
West: MF-2(A) (Multifamily District)

Land Use:

The subject site is developed with a single-family home that the applicant intends to demolish and construct a three-story duplex. The areas to the north, south, west, and east are developed with duplex and single-family homes.

Zoning/BDA History:

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

GENERAL FACTS /STAFF ANALYSIS:

- This request for a variance to the front yard setback requirement of 15 feet focuses on constructing a three-story duplex structure with approximately 5,431 square feet of floor area (2,877 square feet in Unit A and 2,554 square feet in Unit B), part of which is to be located 10 feet from one of the site's two front property lines on Kirby Street or 15 feet into the 25-foot front yard setback on a site currently developed with a single family structure:
- The property is located in an MF-2(A) zoning district which requires a minimum front yard setback of 15 feet. However, since the the blockface is divided by two zoning districts, MF-2(A) and R-7.5(A), the entire blockface must comply with the requirements of the district with the greatest front yard requirement, which is 25 feet.
- The subject site is located at the south corner of Weldon Street and Kirby Street. Regardless of how the structure is proposed to be oriented, the site has two front yard setbacks because it fronts two streets and the longer frontage on the southwest line of Kirby Street has block continuity with other lots with front yard setbacks on the southwest line of Kirby Street.
- The submitted site plan indicates the proposed structure is located 10 feet from the Kirby Street's front property line or 15 feet into the 25-foot front yard setback.
- DCAD records indicate the "main improvement" for the property at 4632 Welton Road is a structure built in 1944 with 952 square feet of living/total area with "additional improvements" that are listed as an 80-square-foot storage building.
- The subject site is flat, irregular in shape, and, according to the submitted application, is 8,262 square feet in area.
- The applicant submitted a document indicating that the total structure size of the proposed units on the subject site is approximately 5,431 square feet, and the average of other properties in the same zoning district is approximately 8,402 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 MF-2(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 MF-2(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.

Timeline:

November 11, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 5, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 17, 2019: The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official’s report on the application;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

December 30, 2019: 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 following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction

Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

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

BOARD OF ADJUSTMENT ACTION: January 21, 2020

APPEARING IN FAVOR: John Ascenzo Weldon Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. **BDA 190-009**, on application of John Ascenzo, **grant** the 15-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Narey

AYES: 4 – Gambow, Narey, Lamb, Halcomb

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA 190-001

BUILDING OFFICIAL’S REPORT: Application of the Dallas City Council, pursuant to Resolution 19-0916, represented by Keisha Crane and Zinzi Bonilla, to require compliance of a nonconforming use at 1101 S Haskell Avenue. This property is more fully described as parts of Lots 14 and 15, Block 24/1270, and is zoned CS, which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a nonconforming alcoholic beverage establishment.

LOCATION: 1101 S Haskell Avenue

APPLICANT: Dallas City Council Resolution 19-0916
Represented by Keisha Crane and Zinzi Bonilla

REQUEST:

A request is made for the Board of Adjustment to establish a compliance date for a nonconforming alcoholic beverage establishment use (Club Linares Bar) on the subject site.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

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

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

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

- (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
 - (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
 - (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.
- (C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.
- (D) Determination of amortization period.
- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
 - (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- City records indicate the following:

- The nonconforming use at 1101 S. Haskell Avenue is an alcoholic beverage establishment.
- Reason the use is classified as nonconforming: On June 23, 1993, City Council passed Ordinance No. 21735 which added a requirement that alcoholic beverage establishment uses must obtain a Specific Use Permit (SUP).
- Date that the use became nonconforming: June 23, 1993
- Date the nonconforming use was discontinued: June 5, 2019
- Current zoning of the property on which the use is located: CS
- A Certificate of Occupancy was issued on 05-05-2008 for property at 1101 S Haskell Avenue to owner Edgar Romano land use (5821) alcoholic beverage establishment with remarks: "Alcoholc [sic] beverage est. nonconforming per last CO#0401091101. See attached TABC records & letter. No change in ownership. Added square footage per record 3-23-15 BW."
- 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 the regulations in force at the beginning of operation and has been in regular use since that time."
- The subject site is zoned CS Commercial Service district, which does not permit an alcoholic beverage establishment use without a Specific Use Permit (SUP).

BACKGROUND INFORMATION:

Zoning:

Site: CS (Commercial Service)
North: CS (Commercial Service)
East: CS (Commercial Service)
South: IR (Industrial Research)
West: IR (Industrial Research)

Land Use:

The site is currently developed with a vacant structure. Surrounding land uses include a warehouses to the north, south, and west and undeveloped land separates the subject site from a retail business to the east.

Zoning/BDA History:

There have been no recent Board of Adjustment or zoning cases on or in the immediate vicinity of the subject site.

TIMELINE:

October 18, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 31, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

November 14, 2019: The Interim Board Administrator wrote/sent the record owner of the property and use (Fermin and Gloria Lopez) a letter (with a copy to Keisha Crane) informing them that a Board of Adjustment case had been filed against the nonconforming alcoholic beverage establishment use. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials.
2. Dallas Development Code Section 51A-3.102 describing the Board of Adjustment.
3. Dallas Development Code Section 51A-2.102(90), which defines a nonconforming use.
4. Dallas Development Code Section 51A-4.704, provisions for nonconforming uses and structures.
5. Dallas Development Code Section 51A-4.703, Board of Adjustment hearing procedures.
6. City of Dallas Board of Adjustment Working Rules of Procedures.
7. The hearing procedures for board of adjustment amortization of a nonconforming use.

The letter also informed Mr. and Mrs. Lopez of the date, time, and location of the public hearing, and provided a deadline of January 10th to submit any information that would be incorporated into the board’s docket.

December 24, 2019: The US Postal Service returned the above unopened letter with a note that the letter was unclaimed and unable to forward.

December 30, 2019: 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 following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and

Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

January 8, 2020: The applicant requested the case be held under advisement until March 17, 2020 (Attachment A).

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

BOARD OF ADJUSTMENT ACTION: January 21, 2020

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gambow

I move that the Board of Adjustment in Appeal No. BDA 190-001, hold this case under advisement until March 17, 2020.

SECONDED: Narey

AYES: 4 – Gambow, Narey, Lamb, Halcomb

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-014(OA)

BUILDING OFFICIAL’S REPORT: Application of Welch Liles of AP Blanton Deep Ellum, LLC, represented by Karl A. Crawley of Masterplan, for a special exception to the parking regulations at 2801 Virgil Street. This property is more fully described as part of Lots 6 and 7, Block 12/192, and is zoned PD No. 269 (Tract A), which requires parking to be provided. The applicant proposes to construct and/or maintain a nonresidential structure for an inside commercial amusement use, and provide five of the required 17 parking spaces, which will require a 12-space special exception (75% reduction) to the parking regulations.

LOCATION: 2801 Virgil Street

**APPLICANT: Welch Liles of AP Blanton Deep Ellum, LCC
Represented by Karl A. Crawley of Masterplan**

REQUEST:

A request for a special exception to the off-street parking regulations of 12 spaces is made to remodel and maintain an inside commercial amusement structure contain 5,900 square feet of floor area and provide five of the 17 required off-street parking spaces.

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 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
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

Denial

Rationale:

- The Sustainable Development and Construction Department finds that the special exception would create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 269 (Planned Development Tract A)
North: PD No. 269 (Planned Development Tract A)
South: PD No. 269 (Planned Development Tract A)
East: PD No. 269 (Planned Development Tract A)
West: PD No. 269 (Planned Development Tract A)

Land Use:

The subject site is proposed to be converted into an inside commercial amusement use. The areas to the north, east, south, and west are developed with nonresidential uses.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request for a special exception to the off-street parking regulations of 12 spaces focuses on converting a structure into an inside commercial amusement use with 5,900 square feet of floor area with providing five on-street parking spaces of the 17 off-street required parking spaces.
- PD No. 269 does not require inside commercial amusement uses provide off-street parking spaces for the first 2,500 square feet of floor area in a ground-level use that has a separate certificate occupancy in an original building. A minimum of one space per 100 square feet of floor area is required for the remaining floor area of an inside commercial amusement use. PD No. 269 also allows a 10-percent reduction to off-street parking requirements when a use is located within one-fourth mile of a DART light-rail station.
- The Sustainable Development and Construction Department Senior Engineer submitted a review comment sheet marked “denial”.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the proposed inside amusement structure with 5,900 square feet of floor area does not warrant the number of off-street parking spaces required; and
 - The special exception of 12 spaces (or a 75-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 12 spaces shall automatically and immediately terminate if and when the inside commercial amusement use with 5,900 square feet of floor area is changed or discontinued.

TIMELINE:

November 14, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

December 5, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

December 17, 2019: The Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the December 27th deadline to submit additional evidence for staff to factor into their analysis; and the January 10th deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

December 30, 2019: 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 following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

December 30, 2019: The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Denial".

BOARD OF ADJUSTMENT ACTION: January 21, 2020

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gambow

I move that the Board of Adjustment in Appeal No. BDA 190-014, hold this case under advisement until February 18, 2020.

SECONDED: Narey

AYES: 4 – Gambow, Narey, Lamb, Halcomb
NAYS: 0
MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA189-124(SL)

BUILDING OFFICIAL’S REPORT: Application of Verizon Wireless, represented by Vincent G. Huebinger, for a variance to the side yard (tower spacing) setback regulations at 7817 Forest Lane. This property is more fully described as Lot 1, Block A/7740, and is zoned MU-3, which requires a side yard setback of 30 feet for tower spacing. The applicant proposes to construct and/or maintain a structure and provide a 22-foot side yard setback, which will require an eight-foot variance to the side yard (tower spacing) setback regulations.

LOCATION: 7817 Forest Lane

APPLICANT: Verizon Wireless
Represented by Vincent G. Huebinger

REQUEST:

A request for a variance to the “tower spacing” side yard setback regulations of 8’ is made to maintain a construct and maintain a 5’ wide, 125’ high cellular communications tower “structure” located 22’ from the site’s eastern side property line or 8’ into this 30’ side yard setback on a site developed with a commercial use.

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:

- (D) 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;
- (E) 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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan/elevation is required.

Rationale:

- Staff concluded that this request should be granted because the width of the subject site where the proposed 5' wide, 125' high cellular communications tower "structure" is to be located is 57 feet, and the height of this structure requires two 30' side yard (tower spacing) setbacks.
- Staff concluded that granting this variance would not be contrary to public interest in that if the board were to grant this request and impose the submitted site plan/elevation as a condition, the side yard (tower spacing) encroachment would be limited to that what is shown on this document – a 5' wide, 125' high cellular communications tower "structure" located 22' from the site's eastern side property line or 8' into this 30' side yard setback.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3 (Mixed Use)
North: MU-3 (Mixed Use)
East: MU-3 (Mixed Use)
South: MU-1 (Mixed Use)
West: MU-3 (Mixed Use)

Land Use:

The subject site is developed with a commercial use. The areas to the north, east, south and west are developed with a mix of residential and nonresidential 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 variance to the side yard setback regulations of 8' focuses on constructing and maintaining a 5' wide, 125' high cellular communications tower "structure" located 22' from the site's eastern side property line or 8' into this 30' side yard setback on a site developed with a commercial use.
- The property is zoned MU-3 which states the following:
 - Minimum side and rear yard is:
 - (aa) 20 feet where adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district; and
 - (bb) no minimum in all other cases.
 - Tower spacing. An additional side and rear yard setback of one foot for each two feet in height above 45 feet is required for that portion of a structure above 45 feet in height, up to a total setback of 30 feet. This subparagraph does not require a total side or rear yard setback greater than 30 feet.
- The submitted site plan/elevation represents a 125' high structure cellular communications tower "structure" located 22' from the site's eastern side property line or 8' into this 30' side yard setback and 30' from the site's western side property line or in compliance with this side yard setback.
- According to DCAD records the "main improvement" listed for property addressed at 7817 Forest Lane is an "automotive service" structure built in 2016 with 1,082 square feet of total area.
- The subject site is flat, slightly irregular in shape (approximately 59' on the north, approximately 80' on the south, approximately 329' on the east, and approximately 318' on the west), and is, according to the application, 0.46 acres (or approximately 20,000 square feet) in area. The site is zoned MU-3.
- The applicant states (and the site plan represents) that the property in question is 57' wide where the monopole is proposed.
- 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 MU-3 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 MU-3 zoning classification.

- If the Board were to grant the variance request, and impose the submitted site plan/ elevation as a condition, the structure in the side yard setback would be limited to what is shown on this document which in this case is a 125' high cellular communications tower "structure" located 22' from the site's eastern side property line or 8' into this 30' side yard setback.

Timeline:

August 21, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 14, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

October 14, 2019: The Board of Adjustment Chief Planner/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 October 30th deadline to submit additional evidence for staff to factor into their analysis; and the November 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

October 31, 2019: The applicant's representative submitted additional documentation to staff (see Attachment A).

November 5, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included the following: the Assistant Director of Sustainable Development and Construction Current Planning Division, the Assistant Director of Sustainable Development and Construction Engineering Division, the Building Official, the Board of

Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Interim Chief Planner, the Sustainable Development and Construction Senior Engineer, the Chief Arborist, Sustainable Development and Construction Department Board of Adjustment Senior Planners, and the Assistant City Attorney to the Board.

November 19, 2019: The board held this item under advisement to allow the applicant time to provide additional evidence that this application would not interfere with nearby air traffic.

November 20, 2019: The applicant provided additional information regarding its air space study (see Attachment B).

December 12, 2019: The applicant provided additional information regarding its air space study (see Attachment C).

December 30, 2019: 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 following: the Interim Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Department Building Inspection Senior Plans Examiner, the Sustainable Development and Construction Senior Engineer, Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the board.

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

BOARD OF ADJUSTMENT ACTION: January 21, 2020

APPEARING IN FAVOR: Vincent G. Huebinger, 1715 Capital Tx Hwy, Austin, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 189-124, on application of Verizon Wireless, represented by Vincent Huebinger, **grant** the eight-foot variance to the side yard setback regulations for tower spacing requested by this applicant because our evaluation of the property and testimony shows that the physical character of this

property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan/elevation is required.

SECONDED: Halcomb
AYES: 2 – Lamb, Halcomb
NAYS: 2 -- Gambow, Narey
MOTION FAILED: 2 – 2

MOTION #2: Narey

I move that the Board of Adjustment, in Appeal No. BDA 189-124, on application of Verizon Wireless, represented by Vincent Huebinger, **deny** the variance to the side yard setback regulations for tower spacing requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: Gambow
AYES: 4 – Lamb, Halcomb, Narey, Gambow
NAYS: 0
MOTION PASSED: 4-0 (unanimously)

1:33 P.M. Board Meeting adjourned for **January 21, 2020.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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