

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, JUNE 28, 2016**

MEMBERS PRESENT AT BRIEFING: Clint Nolen, Vice Chair, Michael Gibson, regular member, Robert Agnich, alternate member, Lorlee Bartos, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clayton Buehrle, Engineering, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Clint Nolen, Vice Chair, Michael Gibson, regular member, Robert Agnich, alternate member, Lorlee Bartos, alternate member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Mary McCullough, Asst. City Attorney, David Cossum, Director, Todd Duerksen, Development Code Specialist, Clayton Buehrle, Engineering, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

11:07 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 28, 2016** docket.

1:06 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel May 17, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA145-037

REQUEST: To waive the two year limitation on a final decision reached by Board of Adjustment Panel A on March 17, 2015 - a request for a special exception to the landscape regulations that was granted with certain conditions.

LOCATION: 100 Crescent Court

APPLICANT: Robert Reeves of Robert Reeves and Associates

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

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

GENERAL FACTS/TIMELINE:

March 17, 2015: The Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following condition to this request: Compliance with the submitted alternate landscape plan is required. The case report stated that the request was made to replace an existing drive-through bank facility with an approximately 3,000 square foot restaurant, and not fully provide required landscaping on a site developed as an approximately 1,450,000 square foot mixed use development (The Crescent). (See Attachment A for information related to this application).

June 6, 2016: The applicant submitted a letter (with related materials) to staff requesting that the Board waive the two year limitation on the request for a special exception to the landscape regulations granted by Board of Adjustment Panel A on March 17, 2015 (see

Attachment B). This miscellaneous item request to waive the two year limitation was made in order for the applicant to file a new application for a landscape special exception on the property.

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

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

June 6, 2015: The Board Administrator emailed the applicant information regarding his miscellaneous item request (see Attachment C).

June 17, 2016: The applicant submitted additional documentation on this request (see Attachment D).

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move to waive the two year limitation on a final decision reached by Board of Adjustment Panel A on March 17, 2015 because there are changed circumstances regarding the property to warrant a new hearing.

SECONDED: **Agnich**

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-057(SL)

BUILDING OFFICIAL'S REPORT: Application of Conrad Seghers to enlarge a nonconforming use at 3810 Cedar Lake Drive. This property is more fully described as Lot 9B, Block A/5829, and is zoned CR (D), which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming multifamily use, which will require a request to enlarge the nonconforming use.

LOCATION: 3810 Cedar Lake Drive

APPLICANT: Conrad Seghers

REQUEST:

A request is made to obtain a Certificate of Occupancy for a nonconforming multifamily use on a site that was enlarged, according to a submitted floor plan of the structure, by one unit (from 16 to 17 units) over 20 years ago by a previous owner.

STANDARD FOR ENLARGING A NONCONFORMING USE:

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: CR (Community Retail)
North: PD 848 (Planned Development)
South: MF-2(A) (Multifamily residential)
East: CR (Community Retail)
West: MF-2(A) (Multifamily residential)

Land Use:

The subject site is developed as a nonconforming multifamily use that, according to the Building Inspection Senior Plans Examiners/Development Code Specialist, has 17 units – a nonconforming use enlarged by 1 unit several years ago. The area to the north is developed as a school (Adelfa Botello Callejo Elementary School), the area to the east is developed with a commercial use; the area to the south is developed with single family uses; and the area to the west is developed with a multifamily use.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on a nonconforming multifamily use on the site that was enlarged, according to a submitted floor plan of the structure, by one unit (from 16 units to 17 units) over 20 years ago by a previous owner.
- The subject site is zoned CR (Community Retail).
- A multifamily use is not permitted in CR (Community Retail).
- A multifamily use on the subject site could become a conforming use only if an application were made to and granted by the City Council through a public hearing process.
- 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.”
- 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.
- This application is made to allow the nonconforming multifamily use to remain with 17 units. (If denied, the nonconforming use could remain but would be required to be transitioned back to 16 units).
- This application is made to enlarge a nonconforming *use*. The application is *not* made to enlarge a nonconforming *structure*. However, since no request for variance or special exception has been made to any other code provision, it would appear that enlargement of the existing nonconforming use made within the existing structure is a conforming structure as it relates to development code requirements.
- Records from Building Inspection Department indicate that the multifamily use 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 floor plan, the enlargement of the nonconforming use would be limited to what is shown on this document.

Timeline:

March 28, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

May 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 11, 2016: 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 June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the nonconforming use provisions from the Dallas Development Code; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

June 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

APPEARING IN FAVOR: Conrad Seghers, 1606 Palamino Ridge, Austin, TX

APPEARING IN OPPOSITION: No one

MOTION #1: Agnich

I move that the Board of Adjustment, in Appeal No. **BDA156-057**, on application of Conrad Seghers, **deny** the request of this applicant to enlarge a nonconforming use without prejudice, because our evaluation of the property and testimony shows that the enlargement does prolong the life of the nonconforming use

SECONDED: No one
***Motion Failed for Lack of a Second.**

MOTION#2: Bartos

I move that the Board of Adjustment, in Appeal No. **BDA156-057**, on application of Conrad Seghers, **grant** the request of this applicant to enlarge a nonconforming use because our evaluation of the property and testimony shows that the enlargement does not prolong the life of the nonconforming use and would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right and will not have an adverse effect on the surrounding area. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The property/nonconforming use is limited to a 17 unit maximum.

SECONDED: Sibley
AYES: 4 – Nolen, Gibson, Bartos, Sibley
NAYS: 1 - Agnich
MOTION PASSED: 4 – 1

FILE NUMBER: BDA156-063(SL)

BUILDING OFFICIAL’S REPORT: Application of Jonathan Vinson for a variance to the front yard setback regulations at 10458 Lennox Lane. This property is more fully described as an approximately 0.77 acre unplatted tract, Block 5533, and is zoned R-1ac(A), which requires a front yard setback of 40 feet. The applicant proposes to construct and maintain a structure and provide a 25 foot 3 inch front yard setback measured at the foundation with a maximum 2 foot 6 inch roof eave, which will require a 14 foot 9 inch variance to the front yard setback regulations.

LOCATION: 10458 Lennox Lane

APPLICANT: Jonathan Vinson

REQUEST:

A request for a variance to the front yard setback regulations of 14' 9" is made to construct and maintain a two-story single family home structure, part of which is to be located 25' 3" from one of the site's two front property lines (Roxbury Lane) or 14' 9" into this 40' front yard setback on a site that is under development.

STANDARD FOR A VARIANCE:

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, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-1ac(A) zoning district in that it is restrictive in area due to having two, 40' front yard setbacks, and only approximately 34,000 square feet which is less than the 43,560 square foot area of most lots in this R-1ac(A) zoning district.
- Furthermore, the applicant provided information documenting that the proposed structure is approximately 6,700 square feet, and that the average of 12 other homes identified in the same R-1ac(A) zoning district is approximately 11,000 square feet, or over 4,000 square feet larger than the home proposed on the subject site.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA95-108, Property at 4701 Roxbury Lane (the subject site) On October 10, 1995, the Board of Adjustment denied a request for a variance to the front yard setback regulations of 20 feet without prejudice. The case report stated that the request was made in conjunction with constructing and maintaining a two-story, 4,000 square foot house.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a two-story single family home structure, part of which is to be located 25' 3" from one of the site's two front property lines (Roxbury Lane) or 14' 9" into this 40' front yard setback.
- The property is located in an R-1ac(A) zoning district which requires a minimum front yard setback of 40'.
- The subject site is located at the northeast corner of Lennox Lane and Roxbury Lane. Regardless of how the structure is proposed to be oriented to front Lennox Lane, the subject site has two 40' front yard setbacks along both streets. The site has a 40' front yard setback along Lennox Lane, the shorter of the two frontages, which is always deemed the front yard setback on a corner lot in this zoning district. The site also has a 40' front yard setback along Roxbury Lane, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a 10' side yard setback is required. But the site's Roxbury Lane frontage that would function as a side yard on the property is treated as a front yard setback nonetheless to maintain the continuity of the established front yard setback established by the lot to the east that fronts and is oriented southward towards Roxbury Lane.
- A scaled site plan has been submitted indicating that a portion of the structure is located as close as 25' 3" from the Roxbury Lane front property line or 14' 9" into this 40' front yard setback.
- Floor plans have been submitted indicating the following square footage calculations:
 - Lower heated: 4,565
 - Upper heated: 2,271

- Total heated: 6,836
 - Garage: 946
 - Cov'd entry: 393
 - Lanai: 609
 - Master porch: 10
 - Rear yard: 63
 - Apartment porch: 58
 - Upper masonry: 45
 - Lower masonry: 136
 - Total area: 9,241
- The applicant has stated that he is proposing to construct a 6,674 square foot home.
 - According to DCAD records, there is no main or additional improvement listed for property addressed at 10458 Lennox Lane.
 - The subject site is flat and rectangular in shape (250' x 135'), and according to the submitted application is 0.7754 acres (or approximately 33,800 square feet) in area. The site is zoned R-1ac(A) where lots are typically 1 acre in area.
 - Most lots in the R-1ac(A) zoning district have one 40' front yard setback, two 10' side yard setbacks, and one 10' rear yard setback; this site has two 40' front yard setbacks and two 10' side yard setbacks.
 - The 135' wide subject site has 85' of width left for development once a 40' front yard setback is accounted for on the south and a 10' side yard setback is accounted for on the north. If this lot were more typically with one front yard, two side yards, and one rear yard, the lot would have 115' of width left for development.
 - The applicant has submitted information stating that they are proposing to construct a 6,674 square foot home. The applicant has submitted an exhibit that lists 12 other properties in the 10000 block of Lennox and the 4700 block of Kelsey where the average of square footage of these is 11,007.
 - The 125' wide subject site has 75' of developable width available once a 40' front yard setback is accounted for on the south and a 10' side yard setback is accounted for on the north. If the lot were more typical to others in the zoning district with only one front yard setback, the 125' wide site would have 105' of developable width.
 - 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 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 as close as 25’ 3” from the site’s Roxbury Lane front property line (or as much as 14’ 9” into this 40’ front yard setback).

Timeline:

- April 27, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 10, 2016: 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 June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th 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.”
- June 7, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).
- June 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- June 17, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment C).

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

APPEARING IN FAVOR: Jonathan Vinson, 2323 Ross Ave., Suite 600, Dallas, TX

APPEARING IN OPPOSITION: Tara Carey, 4526 Dorset Road, Dallas, TX
Georganna Hammett, 3729 Alta Vista LN, Dallas, TX
Thomas Taff, 10446 Lennox Lane, Dallas, TX

MOTION: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA156-063**, on application of Jonathan Vinson, **grant** a 14-foot, 9 inch variance to the front yard setback regulations 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: Bartos

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-068(SL)

BUILDING OFFICIAL’S REPORT: Application of Maxwell Fisher of Masterplan for a special exception to the off-street parking regulations at 10350 N. Central Expressway. This property is more fully described as Lot 3, Block B/7292, and is zoned MU-3(SAH), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for a hotel or motel use and provide 109 of the required 124 parking spaces which will require a 15 space special exception to the off-street parking regulations.

LOCATION: 10350 N. Central Expressway

APPLICANT: Maxwell Fisher of Masterplan

REQUEST:

A request for a special exception to the off-street parking regulations of 15 spaces is made to construct and maintain a five-story, 110-room hotel use (Hilton Garden Inn) with approximately 2,700 square feet of meeting room space on a site that is in part undeveloped, and in part developed as a surface parking lot, and provide 109 of the required 124 off-street parking spaces.

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 15 spaces shall automatically and immediately terminate if and when the hotel or motel use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer indicated that he has no objections to the applicant's request.

Zoning:

Site: MU-3 (SAH) (Mixed Use)
North: MC-1 (Multiple Commercial)
South: GO(A) (General Office)
East: MU-3 (SAH) (Mixed Use)
West: MU-2 (Mixed Use)

Land Use:

The subject site is in part undeveloped and in part developed with a surface parking lot. The area to the north is under development as a hotel use and is the subject site of an application to the Board of Adjustment Panel C on June 27, 2016 (BDA156-067), the area to the east is undeveloped; the area to the south is developed with an office use, and the area to the west is North Central Expressway.

Zoning/BDA History:

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|--|---|
| <ol style="list-style-type: none">1. BDA156-067, Property at 10370 N. Central Expressway (the lot south of the subject site) | <p>On June 27, 2016, the Board of Adjustment Panel C will consider a request for a special exception special exception to the off-street parking regulations of 16 spaces made to complete and maintain a five-story, 124-room hotel use (Hampton Inn) with approximately 1,400 square feet of meeting room space, and providing 115 of the required 131 off-street parking spaces.</p> |
|--|---|

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a five-story, 110-room hotel use (Hilton Garden Inn) with approximately 2,700 square feet of meeting room space on a site that is in part undeveloped, and in part developed as a surface parking lot, and providing 109 of the required 124 off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirements:
 - Hotel or motel use: 1 space for each unit for units 1 to 250; $\frac{3}{4}$ space for each unit for units 251-500; $\frac{1}{2}$ space for all units over 500; plus 1 space per 200 square feet of meeting room.
- The applicant has submitted a parking study which states among other things that the projected peak parking demand for the proposed use based upon data from the Institute of Transportation Engineers is 0.60 parked vehicles per occupied room on a weekday and 0.66 parked vehicles per room on a Saturday, which is less than the City’s base parking requirement of 1 space per unit. (110 guestrooms parked at 0.66 spaces per room would total 73 spaces; the applicant proposes to provide 109 spaces).
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the request.
- 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 15 spaces (or a 12 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 15 spaces shall automatically and immediately terminate if and when the hotel or motel use is changed or discontinued, the applicant would be allowed to construct and maintain the structure on the site with this specific use (“hotel or motel”) with the specified square footage, and provide 109 of the 124 code required off-street parking spaces.

Timeline:

- May 6, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 13, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- May 13, 2016: 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 June 8th deadline to submit additional evidence for staff to factor into their analysis; and the

June 17th 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."

June 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

June 17, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Nolen**

I move to grant that the Board of Adjustment grant application **BDA 156-068(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 15 spaces shall automatically and immediately terminate if and when the hotel or motel use I changed or discontinued.

SECONDED: **Gibson**

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-050(SL)

ORIGINAL BUILDING OFFICIAL'S REPORT: Application of Hemant Patel, represented by Courtney Davidson, for a variance to the off-street loading regulations at 310 S. Houston Street. This property is more fully described as Lot 5A, Block 22/24, and is zoned CA-1(A), which requires for hotels and motels, one required off-street loading space must be of the large size, and at least 75 percent of the required spaces must be of the large or medium size. The applicant proposes to construct and maintain a structure for a hotel or motel use requiring three off-street loading spaces and provide one medium size off-street loading space, which will require a variance of one large size space and one of either large or medium size to the off-street loading regulations.

REVISED BUILDING OFFICIAL'S REPORT: - Application of Jonathan Vinson for a variance to the off-street loading regulation at 310 S. Houston Street. This property is more fully described as Lot 5B, Block 22/24, and is zoned CA-1(A), which requires for hotels and motels, one required off-street loading space must be of the large size, and at least 75 percent of the required spaces must be of the large or medium size. The applicant proposes to construct and maintain a structure for a hotel or motel use requiring three off-street loading spaces and provide one medium size off-street loading space, which will require a variance of one large size space and one of either large or medium size to the off-street loading regulation.

LOCATION: 310 S. Houston Street

APPLICANT: Hemant Patel
Represented by Courtney Davidson and Jonathan Vinson

REQUEST:

A request for a variance to the off-street loading regulations of 2 loading spaces is made to construct and maintain an approximately 162,000 square foot, 12-floor, 167 guestroom hotel on a site currently developed as a surface parking lot, and provide 1 of the 3 required loading spaces.

STANDARD FOR A VARIANCE:

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, 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.

ORIGINAL STAFF RECOMMENDATION (May 17, 2016):

Denial

Rationale:

- Staff recognized from the evidence submitted up until the May 3rd staff review team meeting that the subject site was of a restrictive size compared to other lots in the same CA-1(A) zoning district (approximately 16,000 square feet in area with only 64' of frontage along Houston Street and only 105' of frontage on Record Street), and of an irregular shape. However, staff concluded the applicant had not fully substantiated how the variance was necessary to permit development of the subject site with a hotel of a size that required 3 off-street loading spaces where the applicant can only provide 1 of these 3 spaces.
- Staff concluded that the applicant had not substantiated at the time of the May 3rd staff review team meeting how granting the variance would not be contrary to public interest. On May 5, 2015, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet and recommended denial of the request. The project engineer commented that the Department of Street Services does not support maneuvering for, or the action of, loading/unloading activities within City right-of-way that would obstruct vehicular and/or pedestrian traffic. In addition, the staff engineer commented that from a traffic safety and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 2 remaining required truck dock loading spaces for the proposed development; that any truck loading operations within the public traffic lanes may have an adverse impact on traffic safety and infrastructure and would therefore be contrary to the public interest.

REVISED STAFF RECOMMENDATION (June 28, 2016):

Denial

Rationale:

- Staff concluded that granting the variance does not appear to be contrary to the public interest given that the Sustainable Development and Construction Department Project Engineer has indicated no objections to the revised request with the Board imposing the applicant's submitted site plan as a condition to the request. However, staff concluded that the applicant had not substantiated at the time of the June 14th staff review team meeting how the variance was necessary to permit development of the enlarged subject site (flat, generally rectangular in shape, and according to the revised application, 0.47 acres or approximately 20,500 square feet in area) 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 CA-1(A) zoning district.

- Staff concluded the applicant had not fully substantiated how the variance was necessary to permit development of the subject site with a hotel of a size that required 3 off-street loading spaces where the applicant could only provide 1 of these 3 required loading spaces.

BACKGROUND INFORMATION:

Site: CA-1(A) (Central area)
North: CA-1(A) (Central area)
South: CA-1(A) (Central area)
East: CA-1(A) (Central area)
West: CA-1(A) (Central area)

Land Use:

The subject site is developed as a surface parking lot. The area to the north is developed with retail and office uses; the area to the east is developed with retail and surface parking uses; the area to the south is developed with a surface parking use; and the area to the west is developed with right-of-way green space.

Zoning/BDA History:

1. BDA156-018, Property at 310 S. Houston Street (the subject site)

On February 16, 2016, the Board of Adjustment Panel A denied a request to variance to the off-street loading regulations of 3 loading spaces without prejudice. The case report stated that the request was made to construct and maintain an approximately 162,000 square foot structure for a hotel or motel use on a site currently developed as a surface parking lot, and provide none of the 3 required loading spaces

GENERAL FACTS/ STAFF ANALYSIS:

- The request focuses on constructing and maintaining an approximately 162,000 square foot, 12-floor, 167 guestroom hotel on a site currently developed as a surface parking lot, and providing 1 of the 3 required off-street loading spaces.
- The Dallas Development Code requires the following off-street loading requirements for a hotel and motel use:
 - 0 to 10,000 square feet: NONE
 - 10,000 to 50,000 square feet: 1
 - 50,000-100,000 square feet: 2
 - Each additional 100,000 square feet or fraction thereof: 1 additional
- The Dallas Development Code requires the following additional loading requirements pertaining to “location and design standards”:

1. Except as specifically provided in this section, required off-street loading spaces must be provided on the same lot as the use served.
 2. The first required off-street loading space must be of the medium or large size and at least 40 percent of the required off-street loading spaces must be of the medium or large size except for hotels and motels, one required off-street loading space must be of the large size, and at least 75 percent of the required spaces must be of the large or medium size.
- The applicant submitted plans that document a hotel or motel use with approximately 112,000 square feet of “conditioned areas” and approximately 162,000 square feet of “total areas”.
 - The Building Official’s report states that the applicant proposes to construct a hotel or motel use requiring 3 off-street loading spaces and provide one medium size off-street loading space which will require a variance of one large size space and one of either large or medium size (or a total of two loading spaces) to the off-street loading space regulations.
 - The staff report prepared for the May 17th docket described the site as flat, irregular in shape, and according to the application, 0.38 acres (or approximately 16,600 square feet) in area.
 - On June 8, 2016, the applicant submitted an amended application, an amended site area, and additional information (see Attachments G and H). While the applicant has stated that the application has been amended to reflect the recent property acquisition by the applicant of the lot immediately south, the applicant stated that the size of the hotel remains the same: an approximately 162,000 square foot, 12-floor, 167 guestroom hotel.
 - As of June 8, 2016, the site is flat, generally rectangular in shape, and according to the revised application, 0.47 acres (or approximately 20,500 square feet) in area.
 - The site is zoned CA-1(A). The site has three front yards as would any lot with three street frontages that is not zoned single family, duplex, or agricultural. Furthermore, the front yard setback for properties zoned CA-1(A) is 0 feet.
 - DCAD records indicate that “no improvements” at 310 S. Houston Street.
 - On May 5, 2016, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied.” The project engineer provided the additional comments: “The Department of Street Services does not support maneuvering for, nor the action of, loading/unloading activities within City right-o-way that would obstruct vehicular and/or pedestrian traffic. From a traffic, safety, and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 2 remaining required truck dock loading spaces for the proposed development. Any truck loading operations within the public traffic lanes may have an adverse impact on traffic safety and infrastructure. For these reasons, we believe the granting of this variance would be contrary to the public interest.”
 - On June 17, 2016, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections if certain conditions are met” commenting “subject to the site plan.”
 - The applicant has the burden of proof in establishing the following:
 - That granting the variance to off-street loading regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this

chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The 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 CA-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 CA-1(A) zoning classification.
- If the Board were to grant this request and impose the submitted revised site plan as a condition, the applicant would be required to provide only 1 of the 3 off-street loading spaces in conjunction with constructing/maintaining an approximately 162,000 square foot, 12-floor, 167 guestroom hotel.

Timeline:

March 21, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

April 12, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

April 12, 2016: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 6th 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.”

April 28, 2016: The applicant’s representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A and B).

April 28, 2016: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Officials’ report to the Board Administrator (see Attachment C).

- May 2, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment D).
- May 3, 2016: A person affiliated with the application submitted additional documentation on this application beyond what was submitted with the original application (see Attachment E).
- May 3, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for May public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.
- May 5, 2016 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied." The project engineer provided the additional comments: "The Department of Street Services does not support maneuvering for, nor the action of, loading/unloading activities within City right-o-way that would obstruct vehicular and/or pedestrian traffic. From a traffic, safety, and infrastructure analysis, it does not appear that Record, Wood, nor Houston has the parking capacity to accommodate the 2 remaining required truck dock loading spaces for the proposed development. Any truck loading operations within the public traffic lanes may have an adverse impact on traffic safety and infrastructure. For these reasons, we believe the granting of this variance would be contrary to the public interest."
- May 6, 2016: A newly designated representative by the applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment F). Note that this information was not factored into the staff recommendation since it was submitted after the May 3rd staff review team meeting.
- May 17, 2016: The Board of Adjustment Panel A conducted a public hearing on this application. The applicant submitted a revised site plan to the Board at the public hearing (see Attachment G*). The Board delayed action on this application until their next public hearing to be held on June 28, 2016.
- * Note that Attachment G also includes an amended application and area of the subject site made by the applicant's representative on June 8, 2016.

- May 18, 2016: The Board Administrator wrote the applicant a letter that provided the board's action; and the June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th deadline to submit additional evidence to be incorporated into the Board's docket materials.
- June 8, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and to the Board at the May 17th public hearing (see Attachment H).
- June 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- June 17, 2016 The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections if certain conditions are met" commenting "subject to the site plan."
- June 17, 2016: The applicant submitted additional documentation on this application beyond what was submitted with the original application and to the Board at the May 17th public hearing and what was discussed / considered at the June 14th staff review team meeting (see Attachment I).

BOARD OF ADJUSTMENT ACTION: MAY 17, 2016

APPEARING IN FAVOR: Jonathan Vinson, 2323 Ross Ave, Dallas, TX
David Nevarez, 400 S Houston St, Dallas, TX
Winford (Buck) Lindsay, 344 W Pike St., Lawrenceville GA

APPEARING IN OPPOSITION: No one

MOTION: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA156-050**, hold this matter under advisement until **June 28, 2016**.

SECONDED: Agnich

AYES: 5 – Nolen, Rieves, Gibson, Agnich, Bartos

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

APPEARING IN FAVOR: Jonathan Vinson, 2323 Ross Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment, in Appeal No. **BDA156-050(SL)**, on application of Jonathan Vinson, **grant** the request for a variance to the off street loading regulations of 2 loading spaces 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 revised site plan is required.

SECONDED: **Nolen**

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA145-073(SL)

BUILDING OFFICIAL’S REPORT: Application of Jerry Stark, represented by Prabha Cinclair and Craig Melde, for variances to the front and side yard setback regulations at 3506 Cedar Springs Road. This property is more fully described as a 0.41 acre tract in Block 992, and is zoned PD 193 (O-2), which requires a front yard setback of 20 feet and requires a side yard setback of 10 feet. The applicant proposes to construct and/or maintain a structure and provide a 5 foot front yard setback measured at the foundation with a maximum 1 foot 4 inch roof eave, which will require a 15 foot variance to the front yard setback regulations, and provide a 2 foot side yard setback measured at the foundation with a maximum 1 foot 7 inch roof eave, which will require an 8 foot variance to the side yard setback regulations.

LOCATION: 3506 Cedar Springs Road

APPLICANT: Jerry Stark
Represented by Prabha Cinclair and Craig Melde

June 28, 2016 Public Hearing Notes:

- The Board Administrator submitted additional information from the applicant’s representative to the Board at the briefing (see Attachments C and D).

REQUESTS:

The following appeals have been made to modify and maintain a carport structure on a site developed with an office use/structure (Swift Property Company / The Shingle Style House) – an existing carport structure part of which is located in one of the site's two front yard setbacks (Sale Street), and in one of the site's two side yard setbacks:

1. A variance to the front yard setback regulations of 15' is made to modify and maintain the aforementioned approximately 1,800 square foot carport structure by reducing its size to approximately 1,000 square feet, and relocating 5' from the front property line along Sale Street or 15' into this required 20' front yard setback.
2. A variance to the side yard setback regulations of 8' is made to maintain the aforementioned carport structure that is located 2' from the northeastern side property line or 8' into this required 10' side yard setback.

STANDARD FOR A VARIANCE:

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, 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 that the subject site is unique and different from most lots in PD 193 (O-2) zoning district in that it is developed with a city-designated historic structure on a site with mature trees that the applicant intends to preserve. However, staff concluded that the applicant had not provided information documenting that the structure to be modified and maintained in the front and side yard setbacks is commensurate with the development found upon other parcels of land with the same PD 193 (O-2) zoning district.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD 193 (O-2)/H-12 (Planned Development District, Office, Historic)
<u>North:</u>	PD 193 (O-2) (Planned Development District, Office)
<u>South:</u>	PD 193 (O-2) (Planned Development District, Office)
<u>East:</u>	PD 193 (O-2) (Planned Development District, Office)
<u>West:</u>	PD 193 (O-2) (Planned Development District, Office)

Land Use:

The subject site is developed with an office use/structure/City historic structure – The Shingle Style House. The areas to the north, south, east and west are developed with a mix of residential and office uses.

Zoning/BDA History:

1. BDA134-082, Property at 3506 Cedar Springs Road (the subject site)

On October 21, 2014, the Board of Adjustment Panel A granted a request for a special exception to landscape regulations (and imposed the submitted alternate landscape plan as a condition with the removal of shrubs in the visibility triangle); granted requests for special exceptions to the visual obstruction regulations (and imposed the submitted site plan and revised elevation, and that no vegetation is permitted in the 20' visibility triangle at the driveway into the site from Sale Street as conditions); and denied requests for variances to the front and side yard setback regulations without prejudice. of 26 spaces.

The case report stated that the appeals were been made to maintain a carport structure on a site developed with an office use/structure (Swift Property Company / The Shingle Style House), part of which is located in one of the site's two front yard setbacks (Sale Street), and in one of the site's two side yard setbacks, and to maintain certain items in the 45' visibility triangle at the intersection of Cedar Springs and Sale Street, and in the 20' visibility triangle at the drive approach into the site from Sale Street, and to not fully provide required landscaping triggered in conjunction with the recently added carport structure on

the site.

GENERAL FACTS/STAFF ANALYSIS (front yard variance):

- This request focuses on modifying and maintaining a portion of a carport structure that is located in the one of the site's two 20' front yard setbacks (Sale Street). (While the carport is currently located in the Cedar Springs Road front yard setback, the site plan represents that the carport will be reduced in size and become compliant with the Cedar Springs Road front yard setback).
- Structures other than for single family structures on lots zoned PD 193 (O-2) are required to provide a minimum front yard setback of 20'.
- A site plan has been submitted denoting that the carport structure is located 5' from the site's Sale Street front property line or 15' into the 20' front yard setback.
- Approximately 90 percent of the modified approximately 1,000 square foot, approximately 16.5' wide carport is located in the 20' Sale Street front yard setback.
- According to DCAD records, the "improvements" at 3506 Cedar Springs Road is a "converted residence" with 4,526 square feet in area built in 1905.
- The subject site is somewhat sloped, virtually rectangular in shape, and approximately 0.4 acres or 17,400 square feet in area. The site is zoned PD 193 (O-2).
- The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- 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 193 (O-2) 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 193 (O-2) 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 is a structure located 5' from the site's Sale Street front property line (or 15' into this 20' front yard setback).

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request focuses on maintaining on maintaining a portion of a carport structure in the one of the site's two 10' side yard setbacks on the northeastern side of the property.

- Structures other than single family structures on lots zoned PD 193 (O-2) are required to provide a minimum side yard setback of 10’.
- A site plan has been submitted denoting that the carport structure is located 2’ the site’s northeastern side property line or 8’ into the 10’ side yard setback.
- It appears from calculations made by the Board Administrator from the submitted site plan that approximately 130 square feet (or approximately 13 percent) of the approximately 1,000 square foot carport structure is located in the site’s 10’ northeastern side yard setback.
- According to DCAD records, the “improvements” at 3506 Cedar Springs Road is a “converted residence” with 4,526 square feet in area built in 1905.
- The subject site is somewhat sloped, virtually rectangular in shape, and approximately 0.4 acres or 17,400 square feet in area. The site is zoned PD 193 (O-2).
- The corner property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- 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 PD 193 (O-2) 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 193 (O-2) zoning classification.
- If the Board were to grant the 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 a structure located 2’ from the site’s northeastern side property line (or 8’ into this 10’ side yard setback).

Timeline:

April 26, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

May 10, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

- May 11, 2016: 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 June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th 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."
- June 7, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).
- June 7, 2016: The Sustainable Development and Construction Historic Preservation Chief Planner emailed the Board Administrator the following information: 3506 Cedar Springs was approved in the proposed modified state by Landmark Commission on March 7, 2016 (CA156-263(MD)).
- June 13, 2016: The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachment B).
- June 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.

2:46 P.M.: Break
 2:52 P.M.: Resumed

BOARD OF ADJUSTMENT ACTION: JUNE 28, 2016

APPEARING IN FAVOR: Dwayne Brignac, 1800 Valley View Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gibson

I move that the Board of Adjustment, in Appeal No. **BDA 145-073**, hold this matter under advisement until **August 16, 2016**.

SECONDED: Nolen

AYES: 5 – Nolen, Gibson, Agnich, Bartos, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-062(SL)

BUILDING OFFICIAL’S REPORT: Application of Sidney Lande for a special exception to the Modified Delta Overlay District No. 1 regulations at 2000 Greenville Avenue. This property is more fully described as Lot 5, Block 1/1905, and is zoned PD 842 (MD-1), which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The applicant proposes to carry forward nonconforming parking spaces under the delta theory lost because of a use that was discontinued or vacant for 12 months or more, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 2000 Greenville Avenue

APPLICANT: Sidney Lande

June 28, 2016 Public Hearing Notes:

- A citizen opposing the application submitted documentation to the Board at the public hearing.

REQUEST:

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on part of the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use on the part of structure on the subject site that is vacant.

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKNG AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that

there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:

1. A decline in the rental rates for the area which has affected the rental market.
2. An unusual increase in the vacancy rates for the area which has affected the rental market.
3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concluded that the applicant had not demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

The subject site is developed with a one-story commercial structure, part of which is developed with a retail use, part of which is vacant. The areas to the north, south, and west are developed with commercial/retail uses; and the area to the east is developed with an electrical power station.

Zoning/BDA History:

1. BDA94-070, Property at 5705 Oram Street (the subject site) On June 14, 1994, the Board of Adjustment denied a request of a variance to the off-street parking regulations of 3 spaced

without prejudice.

The case report stated that the request was made to obtain a Certificate of Occupancy to operate a personal service use (tattoo parlor) where the applicant was proposing to provide none of the required off-street parking.

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

On March 22, 2016, the Board of Adjustment Panel A granted a request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on part of the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use on a site that was developed with a vacant structure.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more made in order for the applicant to obtain a Certificate of Occupancy for a retail use on the part of the structure on the site which is vacant.
- The subject site is zoned PD 842, Modified Delta Overlay District 1.
- The Dallas Development Code provides the following with regard to “nonconformity as to parking or loading”:
 - Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
 - Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
 - Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.
- In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse

of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

- In a modified delta overlay district, the city council may limit the number of percentage of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.
- An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.
- An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.
- In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in this district is expanded.
- In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:
 - The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.
- According to DCAD, the property at 2000 Greenville Avenue is developed with a “retail strip” with 10,360 square feet built in 1925.

Timeline:

- April 21, 2016: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- May 10, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

May 10, 2016: 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 June 8th deadline to submit additional evidence for staff to factor into their analysis; and the June 17th 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."

June 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: June 28, 2016

APPEARING IN FAVOR: Sidney Lande, 9025 Douglas, Dallas, TX

APPEARING IN OPPOSITION: Mike Northrup, 5703 Goliad Ave, Dallas TX
Patricia Carr, 5843 Vanderbilt, Dallas, TX

MOTION #1: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA 156-062**, on application of Sidney Lande, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony did not demonstrate an extreme circumstance to justify a lack of intent to abandon the use that was discontinued or vacant for 12 months or more.

SECONDED: Bartos

AYES: 0 –

NAYS: 5 - Nolen, Gibson, Agnich, Bartos, Sibley

MOTION FAILED: 5 – 0

*Member Bartos was excused and left the meeting before this motion was made.

MOTION #2: Nolen

I move that the Board of Adjustment, in Appeal No. **BDA 156-062**, on application of Sidney Lande, **grant** the request to carry forward delta credits as a special exception to the Modified Delta Overlay District No. 1 regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows an extreme circumstance including but not limited to a decline in the rental rates for the area which has affected the rental markets; an unusual increase in the vacancy rates for the area which has affected the rental market; obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties is affecting the marketability of the property.

SECONDED: Agnich

AYES: 4 – Nolen, Gibson, Agnich, Sibley

NAYS: 0 -

MOTION PASSED: 4– 0 (unanimously)

MOTION: Nolen

I move to adjourn this meeting.

SECONDED: Agnich

AYES: 4 – Nolen, Gibson, Agnich, Sibley

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

3:28 P. M.: Board Meeting adjourned for **June 28, 2016**

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.