

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
WEDNESDAY, OCTOBER 21, 2020**

MEMBERS PRESENT AT BRIEFING: Michael Schwartz, Chair, Catrina Johnson, regular member Matthew Vermillion regular member, Matt Shouse, regular member, Damian Williams, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Michael Schwartz, Chair, Catrina Johnson, regular member Matthew Vermillion regular member, Matt Shouse, regular member, Damian Williams, regular member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Attorney, Anna Holmes, Asst. City Atty., Charles Trammell, Development Code Specialist, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Neva Dean, Assistant Director.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Theresa Pham, Asst. City Attorney, Anna Holmes, Asst. City Atty., Charles Trammell, Development Code Specialist, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, Neva Dean, Assistant Director.

\*\*\*\*\*

**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 21, 2020 docket.**

**BOARD OF ADJUSTMENT ACTION: October 21, 2020**

**1:00 P.M.**

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

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel B, September 23, 2020 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: October 21, 2020**

**MOTION: Shouse**

Approval of the Board of Adjustment Panel B, September 23, 2020 public hearing minutes.

**SECONDED: Vermillion**

**AYES: 5 – Schwartz, Vermillion, Johnson, Shouse, Williams**

**NAYS: 0**

**MOTION PASSED: 5 – 0 (unanimously)**

**MISCELLANEOUS ITEM NO. 2**

Approval of the Board of Adjustment 2021 Public Hearing Calendar

**BOARD OF ADJUSTMENT ACTION: October 20, 2020**

**MOTION: Vermillion**

Approval of the Board of Adjustment 2021 Public Hearing Calendar

**SECONDED: Williams**

**AYES: 5 – Schwartz, Vermillion, Johnson, Shouse, Williams**

**NAYS: 0**

**MOTION PASSED: 5 – 0 (unanimously)**

\*\*\*\*\*

**FILE NUMBER: BDA190-090(JM)**

**BUILDING OFFICIAL’S REPORT:** Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3016 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

**LOCATION: 3016 Greenville Avenue**

**APPLICANT: Thomas Shields  
Represented by Steven Dimitt**

**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 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 for the vacant commercial structure on the subject site.

**STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING 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:**

Approval

Rationale:

- Staff concluded that the applicant had 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 the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1
- West: CD Nos. 9 with an MD Overlay District No. 1

**Land Use:**

The subject site is developed with a commercial structure. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial uses.

**Zoning/BDA History:**

While there have been no zoning/BDA cases within the area in the last five years, there are two other BDA cases at the subject site currently.

**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. Reinstating the delta credits would allow for the applicant to maintain a Certificate of Occupancy for a general merchandise or food store use [Uptown Dog] which is currently in question due to the period of vacancy discovered since the prior tenant.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3016 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of 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 percentages 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 the Community Retail District with an MD Overlay District No. 1a 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.

**Timeline:**

August 4, 2020: 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 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 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.”

September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, 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: October 21, 2020**

**APPEARING IN FAVOR:** Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

**APPEARING IN OPPOSITION:** Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

**MOTION: Shouse**

I move that the Board of Adjustment in Appeal No. BDA 190-090, **hold** this matter under advisement until **November 18, 2020**.

**SECONDED: Vermillion**

**AYES:** 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA190-091(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3018 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

**LOCATION:** 3018 Greenville Avenue

**APPLICANT:** Thomas Shields  
Represented by Steven Dimitt

**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 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 for the vacant commercial structure on the subject site.

**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:

4. A decline in the rental rates for the area which has affected the rental market.
5. An unusual increase in the vacancy rates for the area which has affected the rental market.
6. 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:**

Approval

Rationale:

- Staff concluded that the applicant had 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 the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1
- West: CD Nos. 9 with an MD Overlay District No. 1

**Land Use:**

The subject site is developed with a commercial structure. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial uses.

**Zoning/BDA History:**

While there have been no zoning/BDA cases within the area in the last five years, there are two other BDA cases at the subject site currently.

**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. Reinstating the delta credits would allow for the applicant to maintain a Certificate of Occupancy for a restaurant without drive-in service use [Window Seat] which is currently in question due to the period of vacancy discovered since the prior tenant.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3018 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of 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 percentages 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 the Community Retail District with an MD Overlay District No. 1a 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:
  4. A decline in the rental rates for the area which has affected the rental market.

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

**Timeline:**

August 4, 2020 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 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 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.”

September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, 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: October 21, 2020**

**APPEARING IN FAVOR:** Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX  
Kristen Boyd 6801 Lochwood Garland, TX

**APPEARING IN OPPOSITION:** Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

**MOTION: Vermillion**

I move that the Board of Adjustment in Appeal No. BDA 190-091, **hold** this matter under advisement until **November 18, 2020**.

**SECONDED: Williams**

**AYES: 5 - Schwartz, Shouse, Johnson, Vermillion, Williams**

**NAYS: 0**

**MOTION PASSED: 5 – 0 (unanimously)**

\*\*\*\*\*  
**FILE NUMBER: BDA190-093(JM)**

**BUILDING OFFICIAL’S REPORT:** Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3024 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

**LOCATION: 3024 Greenville Avenue**

**APPLICANT: Thomas Shields  
Represented by Steven Dimitt**

**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 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 for the vacant commercial structure on the subject site.

**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:

7. A decline in the rental rates for the area which has affected the rental market.
8. An unusual increase in the vacancy rates for the area which has affected the rental market.
9. 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:**

Approval

Rationale:

- Staff concluded that the applicant had 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 the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1
- West: CD Nos. 9 with an MD Overlay District No. 1

**Land Use:**

The subject site is developed with a commercial structure. The areas to the north, south, and west are developed with residential uses; and the area to the east is developed with commercial uses.

**Zoning/BDA History:**

While there have been no zoning/BDA cases within the area in the last five years, there are two other BDA cases at the subject site currently.

**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. Reinstating the delta credits would allow for the applicant to obtain a Certificate of Occupancy for a proposed new tenant. The previous alcoholic beverage establishment use [San Francisco Rose] Certificate of Occupancy was revoked due to an extended period of vacancy.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3024 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of 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 percentages 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 the Community Retail District with an MD Overlay District No. 1a 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:

7. A decline in the rental rates for the area which has affected the rental market.

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

**Timeline:**

August 4, 2020 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 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 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.”

September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, 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: October 21, 2020**

**APPEARING IN FAVOR:** Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX  
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

**APPEARING IN OPPOSITION:** Roger Albright 1701 N. Collins Blvd. #1100  
Richardson, TX  
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

**MOTION: Shouse**

I move that the Board of Adjustment in Appeal No. BDA 190-093, **hold** this matter under advisement until **November 18, 2020**.

**SECONDED: Vermillion**

**AYES:** 5 - Schwartz, Shouse, Vermillion, Johnson, Williams

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA190-099(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Paula Jones represented by William Howard for a for a special, exception to the side yard setback regulations to afford a handicapped person equal opportunity to use and enjoy a dwelling, and a for a special exception to the floor area ratio regulations to afford a handicapped person equal opportunity to use and enjoy a dwelling, and a for a special exception to the height regulations to afford a handicapped person equal opportunity to use and enjoy a dwelling at 3235 Bertrand Avenue. This property is more fully described as Lot 4, Block 1778, and is zoned an R-5(A) Single Family Subdistrict within Planned Development District No. 595, where an accessory structure may not exceed 25 percent of the floor area of the main structure and requires a five-foot side yard setback and the height of an accessory structure may not exceed the height of the main building. The applicant proposes to construct a single family residential accessory structure with 676 square feet of floor area (41.57 percent of the 1,626 square-foot floor area of the main structure), which will require a 269 square-foot special exception to the floor area ratio regulations, and to construct a single family residential accessory structure and provide a four-foot three-inch side yard setback, which will require a nine-inch special exception to the side yard setback regulations, and to construct a single family residential accessory structure with a building height of 13 feet two-inches, which will require a nine-inch special exception to the maximum building height regulations.

**LOCATION:** 3235 Bertrand Avenue

**APPLICANT:** Paula Jones  
represented by William Howard

**REQUESTS:**

The following requests have been made on a site being developed with a single family home:

1. a request for a special exception for the handicapped equal opportunity to enjoy, remodel, and maintain a 676 square foot accessory structure (41.57 percent of the 1,626 square-foot floor area of the main structure) which will require a 269 square-foot special exception to the floor area ratio of the main structure.
2. a request for a special exception for the handicapped equal opportunity to enjoy, remodel, and maintain an existing accessory structure which will be located four-feet three-inches from the northwest side property line or nine inches into this northwest five-foot side yard setback.
3. a request for a special exception for the handicapped equal opportunity to enjoy, remodel, and maintain an existing accessory structure with a building height of 13-feet two-inches, which will require a nine-inch special exception to the height regulations.

**STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED:**

Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**Zoning:**

- Site: PD No. 595, R-5(A) Single Family Subdistrict
- North: PD No. 595, R-5(A) Single Family Subdistrict
- South: PD No. 595, R-5(A) Single Family Subdistrict
- East: PD No. 595, R-5(A) Single Family Subdistrict
- West: PD No. 595, R-5(A) Single Family Subdistrict

**Land Use:**

The subject site and surrounding areas are developed with single family uses.

### **Zoning/BDA History:**

There have not been any recent related board or zoning cases recorded either on or near the subject site.

### **GENERAL FACTS/STAFF ANALYSIS:**

The following requests for special exceptions for the handicapped focus on remodeling and maintaining an accessory structure with 676 square feet of floor area (41.57 percent of the 1,626 square-foot floor area of the main structure), located four-feet three-inches from the northwest side property line (nine inches into the five-foot side yard setback), with a building height of 13-feet two-inches (nine inches taller than the main structure).

The site is zoned an R-5(A) Subdistrict within PD No. 595 and requires the floor area of any individual accessory structure may not exceed the height of the main building. Additionally, a five-foot side yard setback for single family structures. Finally, the height of an accessory structure may not exceed the height of the main building.

The submitted site plan (survey) denotes an existing accessory structure located five feet from the northwest side property line; however, this request is for an encroachment into the side yard of nine inches. The applicant submitted a floor plan of the proposed remodeled 676-square-foot accessory structure. According to the survey and proposed floor plan the main home is approximately 1,626 square feet in floor area and the proposed accessory structure is approximately 676 square feet. Finally, the submitted documents indicate that the elevation for the accessory is 17 feet one inch to the top of the roof and the elevation for the main structure is 13 feet eight inches. According to the measurements from Building Inspections the proposal exceeds the height by nine inches as stated in the Building Official Report.

Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:

"(h) "Handicap" means, with respect to a person -

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
2. a record of having such an impairment, or
3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21)."

Therefore, the board is to consider these special exceptions for the handicapped request solely on whether they conclude that the special exceptions are necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

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

- The special exceptions are necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
- There is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.

If the board were to grant the requests and impose conditions that compliance with the submitted site plan and elevation is required and that the special exceptions expire when a handicapped person no longer resides on the property.

**Timeline:**

- August 24, 2020 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 18, 2020 The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 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.”
- October 1, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).
- October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the

Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

October 12, 2020: The Building Inspection Senior Plans Examiners/Development Code Specialist forwarded a revised Building Official's report on this application to the Board Administrator (**Attachment B**).

**BOARD OF ADJUSTMENT ACTION: October 21, 2020**

**APPEARING IN FAVOR:** William Howard 7314 Flameleaf Place, Dallas TX.

**APPEARING IN OPPOSITION:** None.

**MOTION: Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 190-099, on application of Paula Jones, represented by William Howard, **grant** the special exception for the handicapped to the floor area ratio regulations, a special exception for the handicapped to the side yard setback regulations, and a special exception for the handicapped to the maximum building height regulations contained in the Dallas Development Code, subject to the following conditions:

1. Compliance with the submitted site plan and elevation is required.
2. The special exception expires when a handicapped person no longer resides on the property.


**SECONDED: Shouse**

**AYES:** 5 - Schwartz, Shouse, Vermillion, Johnson


**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

\*\*\*\*\*  
The meeting was adjourned at 1:23 P.M. on October 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.