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**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, JUNE 23, 2021**

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Michael Schwartz, Chair, Matt Shouse, regular member, Damian Williams, regular member, Matthew Vermillion, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Michael Schwartz, Chair, Matt Shouse, regular member, Damian Williams, regular member, Matthew Vermillion, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Pamela Daniel, Senior Planner Anna Holmes, Asst. City Atty., Charles Trammell, Development Code Specialist, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Engineering Division, Neva Dean, Assistant Director, Carolina Yumet, Interim Assistant Director and Kris Sweckard, Director.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Oscar Aguilera, Senior Planner, Pamela Daniel, Senior Planner Anna Holmes, Asst. City Atty., Charles Trammell, Development Code Specialist, LaTonia Jackson, Board Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Engineering Division, Neva Dean, Assistant Director, Carolina Yumet, Interim Assistant Director and Kris Sweckard, Director.

11:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **June 23, 2021 docket.**

BOARD OF ADJUSTMENT ACTION: June 23, 2021

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, May 19, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: June 23, 2021

MOTION: Williams

Approval of the Board of Adjustment Panel B, May 19, 2021 public hearing minutes.

SECONDED: Vermillion

AYES: 5 – Schwartz, Slade, Shouse, Williams, Vermillion

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-049(OA)

BUILDING OFFICIAL'S REPORT: Application of Juan Ruiz for a variance to the front yard setback regulations, and for a variance to the side yard setback regulations at 14541 Spicewood Drive. This property is more fully described as Lot 1A, Block 8825, and is zoned an R-10(A) Single Family District, which requires a six-foot side yard setback and requires a front yard setback of 30 feet. The applicant proposes to construct a single-family residential accessory structure and provide a three-foot front yard setback, which will require a 27-foot variance to the front yard setback regulations, and to provide a four-foot side yard setback, which will require a two-foot variance to the side yard setback regulations.

LOCATION: 14541 Spicewood Dr

APPLICANT: Juan Ruiz

REQUESTS:

The requests for variances have been made to construct and maintain an approximately 400-square-foot carport accessory structure on a site that is currently developed with a single-family home.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION (Front and Side Yard Variances):

Denial

Rationale:

Staff concluded that while the site is encumbered with two front yard setback requirements, and despite the evidence provided by the applicant in **Attachment A**, the applicant had not substantiated how the variance is necessary to permit development of the subject site or how the property 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 within the same R-10(A) Single Family District.

BACKGROUND INFORMATION:

Zoning:

Site: R-10(A) (Single family district)
North: R-10(A) (Single family district)
South: R-10(A) (Single family district)
East: R-10(A) (Single family district)
West: R-10(A) (Single family district)

Land Use:

The subject site is developed with a single-family home. The areas to the north, south, east, and west are developed with single-family uses or undeveloped/vacant lots.

GENERAL FACTS /STAFF ANALYSIS:

The requests for variances to the front and side yard setback requirements focus on maintaining an approximately 400-square-foot carport accessory structure on a site developed with a single-

family home. The site is zoned an R-10(A) Single Family District, which requires a 30-foot front yard and a six-foot side yard setback.

The property is located at the northeast corner of Edd Road and Spicewood Drive. Regardless of how the structure is proposed to be oriented towards Spicewood Drive, the lot has a 30-foot front yard setback along both street frontages to maintain the continuity of the established front yard setback established by the lots to the northeast that are oriented towards Edd Road. The same is true for maintaining the continuity of the established front yard setback established by the lots to the northwest that are oriented towards Spicewood Drive.

The submitted site plan indicates the proposed 400-square-foot carport accessory structure is to be located three feet from the Edd Road property line, or 27 feet into the 30-foot front yard setback and located four feet from the northeast side property line. or two feet into the required 6-foot side yard setback.

The subject site is flat, rectangular in shape, and according to the application, it is 0.230 acres or approximately 10,018 square feet in area. In an R-10(A) District, the minimum lot size is 10,000 square feet.

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

- That granting the variances to the front and 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 variances are 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-10(A) zoning classification.
- The variances 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-10(A) zoning classification.

If the board were to grant the variances requested and impose the submitted site plan as a condition, the single-family structure in the front yard setback would be limited to what is shown on this document.

Timeline:

April 14, 2021: 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 14, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

May 21, 2021: 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 1st deadline to submit additional evidence for staff to factor into their analysis; and the June 11th 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 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Sign Code Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

June 11, 2021: The applicant provided additional evidence (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: June 23, 2021

APPEARING IN FAVOR: Juan Ruiz 14541 Spicewood Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION#1: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-049, on application of Juan Ruiz, **grant** the 27-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Shouse

AYES: 5 - Schwartz, Shouse, Williams

NAYS: 1 - Slade

MOTION PASSED: 4 – 1

MOTION#2: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-049, on application of Juan Ruiz, **grant** the two-foot variance to the side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Slade

AYES: 4 - Schwartz, Shouse, Williams, Vermillion

NAYS: 1 - Slade

MOTION PASSED: 4 – 1

FILE NUMBER: BDA201-056(OA)

BUILDING OFFICIAL'S REPORT: Application of Michael A. Smith represented by William L. Burgin for a variance to the floor area ratio regulations at 5434 Willis Avenue. This property is more fully described as Lot 9, Block 20/1940, and is zoned Conservation District No. 15, in which an accessory structure may not exceed 25 percent of the floor area of the main structure. The applicant proposes to construct a single-family residential accessory structure with 1,353 square feet of floor area (76.7 percent of the 1,764-square-foot floor area of the main structure), which will require a 912-square-foot variance to the floor area ratio regulations.

LOCATION: 5434 Willis Ave

APPLICANT: Michael A. Smith represented by William L. Burgin

REQUESTS:

The applicant proposes to construct and maintain an accessory structure with 1,353 square feet of floor area on a site that is developed with a single-family home.

STANDARD FOR A VARIANCE:

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

- (D) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (E) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be

developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in Conservation District No. 15 considering its restrictive lot area of 7,800 square feet so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same Conservation District No. 15 zoning classification.

The applicant submitted a document (**Attachment A**) indicating that the proposed structure on the site is commensurate to 20 other lots located in the same zoning district.

BACKGROUND INFORMATION:

Zoning:

Site: Conservation District No. 15
North: Conservation District No. 15
South: Conservation District No. 15
East: Conservation District No. 15
West: Conservation District No. 15

Land Use:

The subject site and all surrounding properties 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:

This request focuses on constructing and maintaining an accessory structure with 1,353 square feet of floor area. The site is in Conservation District No. 15, in which an accessory structure may not exceed 25 percent of the floor area of the main structure. The floor area of the proposed additional accessory structure is 76.7 percent of the existing 1,764-square-foot floor area of the main structure.

DCAD records indicate the following improvements for the property located at 5434 Willis Ave: “main improvement: a structure with 1,764 square feet of living area built-in 1923” and “additional improvements: a 500-square-foot detached garage and a pool”.

The site plan denotes that the proposed 1,353-square-foot, two-story studio/garage accessory structure is equal to 76.7 percent of the existing 1,764-square-foot floor area of the main structure which will require a 912 square-foot variance to the floor area ratio of the main structure.

The property is rectangular, slightly sloped, and according to the application, contains 0.227 acres, or approximately 7,800 square feet in area. In Conservation District No. 15 the minimum lot size is 7,500 square feet.

The applicant has submitted a document comparing the lot sizes and improvement of the subject site with nine other properties in the same zoning. The average lot is 8,782 square feet with about 3,925 square feet in improvements. The proposed 1,353-square-foot structure on the site is commensurate to 20 other lots located in the same zoning district.

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

- That granting the variance to the floor area regulations for structures accessory to single-family uses 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 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 zoning classification.

If the board were to grant a variance to the floor area regulations for structures accessory to single-family uses and impose the submitted site plan as a condition, the building footprints of the structures on the site would be limited to what is shown on this document.

Timeline:

April 20, 2021: 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 14, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

May 21, 2021: 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 1st deadline to submit additional evidence for staff to factor into their analysis; and the June 11th 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 3, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

June 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Sign Code Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: June 23, 2021

APPEARING IN FAVOR: Le Anna Burgin 5431 Willis Ave. Dallas, TX
 Lyle Burgin 5461 Willis Ave. Dallas, TX
 Michael Smith 5434 Willis Ave. Dallas, TX

APPEARING IN OPPOSITION: Rick Bentley 5551 Vickery Blvd. Dallas, TX

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-056, on application of Michael A. Smith, represented by William L. Burgin, **grant** the 912-square-foot variance to the floor area ratio regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Williams

AYES: 5 - Schwartz, Shouse, Williams, Slade, Vermillion

NAYS: 0
MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA201-034(OA)

BUILDING OFFICIAL'S REPORT: Application of La Sierra Planning Group for a special exception to the front yard setback regulations for tree preservation regulations at 3612 Overbrook Drive. This property is more fully described as Lot 3A, Block 4/2022, and is zoned Conservation District No. 17, which requires a front yard setback of 83 feet. The applicant proposes to construct and maintain a residential accessory structure and provide no front yard setback (zero-feet), which will require an 83-foot special exception to the front yard setback regulations.

LOCATION: 3612 Overbrook Drive

APPLICANT: DLH Family Trust
represented by Santos Martinez of La Sierra Planning Group

REQUEST:

A request for a special exception to the minimum front yard requirements to preserve seven existing trees is made to construct and maintain an approximately 510-square-foot accessory structure and provide no front yard setback (zero-feet) from the Edgewater Street front property line or 83-feet into the 83-foot front yard setback on a property that is developed with a single-family home.

STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM FRONT YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:

Section 51(A)-4.401(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum front yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the requested special exception was compatible with the character of the neighborhood; the value of surrounding properties will not be adversely affected; and that, according to the City of Dallas Chief Arborist, the trees denoted on the submitted site plan, are worthy of preservation.

BACKGROUND INFORMATION:

Zoning:

Site: Conservation District No. 17
North: Conservation District No. 17
South: Planned Development District No. 193, Duplex District
East: Conservation District No. 17
West: Conservation District No. 17

Land Use:

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

Zoning/BDA History:

1. BDA201-038, Property at 3604 Overbrook Drive (the adjacent property to the east) On May 19, 2021, the Board of Adjustment Panel B approved a requests for to enlarge and maintain a residential single-family structure from 4,439 square feet to 7,330 square feet and to maintain accessory structures including a swimming pool and steps leading to the pool, to be located within one of the site’s two required front yard setbacks (on Edgewater) or 145 feet into this 145-foot front yard setback on a site that is developed with a single-family home and imposed the submitted site plan as a condition.

GENERAL FACTS /STAFF ANALYSIS:

This request for a special exception to the minimum front yard requirements to preserve seven existing trees is made to construct and maintain an approximately 510-square-foot accessory

structure and provide no front yard setback (zero-feet) from the Edgewater Street front property line or 83-feet into the 83-foot front yard setback.

The property is zoned CD No. 17 which requires accessory structures, carports, garages, and porte cocheres to be in the rear 50 percent of the lot. Additionally, on corner lots, accessory structures may not be located closer to the cornerside lot line than the main structure. Since the conservation district prohibits garages in the front yard, the request is to provide no front yard; thereby, allowing the accessory structure in what is no longer a front yard.

The submitted site plan depicts a proposed 510-square-foot accessory structure and provide no front yard setback (zero-feet) from the Edgewater Street front property line or 83-feet into the 83-foot front yard setback form the Edgewater Street property line. Two trees are depicted within the front yard setback as well.

The City of Dallas Chief Arborist submitted a memo regarding this request (**Attachment B**) and stated the following: "The assessment of a tree, or trees, to be preserved for the special exception for a front yard entails a review of seven trees identified by an independent arborist, Mr. Michael Sultan, for the applicant. My statements are based on the details from the March 27, 2021, independent arborist's report, and my opinion of site conditions.

The proposed garage requested under the special exception would have the potential for a significant impact on the roots of two trees (#1 and #7) in the report. The ability to sustain the trees throughout and after construction would likely be based on the construction methods employed to construct in the proposed location. That being said, the two trees are considered worthy of preservation.

Trees #2 through #6 of the arborist's report, which the owner desires to retain, are mentioned in relation to their potential impact if a new garage is built within the required setback. I agree with Mr. Sultan that the five trees are worthy of preservation."

All healthy protected trees are regulated under the permit and replacement requirements of the conservation district. The owner may only remove trees for construction with an approved tree removal application. The property is not subject to Article X tree conservation regulations.

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

- Whether the requested special exception is compatible with the character of the neighborhood.
- Whether the value of surrounding properties will be adversely affected.
- Whether the tree is worthy of preservation.

If the board were to grant the special exception request and impose the submitted site plan as a condition, the structure in one of the two front yard setbacks would be limited to what is shown on this document.

Timeline:

- February 24, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- March 4, 2021: The Board of Adjustment Secretary assigned this case to the Board of Adjustment Panel B.
- March 8, 2021: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the March 30, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the April 9, 2021 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."
- March 28, 2021: The applicant submitted additional documentation on this application beyond what was submitted with the original application (**Attachment A**).
- April 1, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the May public hearings. Review team members in attendance included the Assistant City Attorney to the board and the following from the Sustainable Development and Construction Department: Board of Adjustment staff including the Interim Chief Planner/Board Administrator, the Senior Planner, and the Assistant Director; Building Inspection Division staff including the Senior Plans Examiner, Building Official, and Assistant Building Official; and Engineering Division staff including the Senior Engineer and Assistant Director.
- April 4, 2021: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application (**Attachment B**).
- April 6, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "Recommends Denial". (**Attachment C**).
- June 1, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment D**).

June 4, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the June public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Sign Code Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Santos Martinez 12 Tanager Terrace Angel Fire, NM

APPEARING IN OPPOSITION: Fred Albrecht 3606 Edgewater Dallas, TX
Michael Dalton 3604 Edgewater Dallas, TX
Larry Shosid 4234 Glenwood Dallas, TX
Susan Griffin 3610 Edgewater Dallas, TX

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 201-034, hold this matter under advisement until June 23, 2021.

SECONDED: Williams

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

NAYS: 0-

MOTION PASSED: 5 –0(unanimously)

BOARD OF ADJUSTMENT ACTION: June 23, 2021

APPEARING IN FAVOR: Santos Martinez P.O. Box 1275 Angel Fire, NM

APPEARING IN OPPOSITION: Michael Dalton 3604 Edgewater St. Dallas, TX
Fred Albrecht 3606 Edgewater St. Dallas, TX

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. 201-034, on application of DLH Family Trust, represented by La Sierra Planning Group, **grant** the request of this applicant for a 83-foot special exception to the front yard setback regulations to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation.

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

Compliance with the revised site plan is required.

SECONDED: Williams

AYES: 5 - Schwartz, Shouse, Slade, Williams, Vermillion

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA201-023(JM)

BUILDING OFFICIAL’S REPORT: Application of Dallas City Council Resolution 20-1935 to require compliance of a non-conforming use at 3606 Greenville Avenue Suite A. This property is more fully described as Lots 1A and 2A, 1/2888, and is zoned a CR Community Retail District, which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a non-conforming alcoholic beverage establishment use.

LOCATION: 3606 Greenville Avenue Suite A

APPLICANT: Dallas City Council by Resolution 20-1935
Represented by Zinzi Bonilla and Naomi Green

REQUEST:

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

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

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

(1) Amortization of nonconforming uses.

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

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

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

- (i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly

transferred to another site) on the property before the time the use became nonconforming.

- (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

The subject site is zoned a CR Community Retail District. On June 23, 1993, City Council passed Ordinance No. 21735 which added a requirement that alcoholic beverage establishment uses must obtain a Specific Use Permit (SUP) in all zoning districts. However, a Certificate of Occupancy (CO) was issued for an alcoholic beverage establishment use DBA Fish Dance on January 30, 1991—predating the ordinance requiring an SUP. The Dallas Development Code defines a “nonconforming use” as “a use that does not conform to the use regulations of this chapter but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.” Therefore, the use was legally established in 1991 and became nonconforming with the passing of Ordinance No. 21735 in 1993.

After a period of vacancy, the site lost nonconforming rights to operate an alcoholic beverage establishment without compliance to the SUP requirement. The property owners successfully argued for reinstatement of nonconforming rights on January 18, 2005.

Most recently, a CO was issued on August 28, 2008 for an alcoholic beverage establishment DBA OT Tavern with remarks indicating the BDA action taken in 2005 to reinstate the nonconforming use rights and furthermore adding, “NO INCREASE IN FLOOR AREA, SAME PARKING, 7/26/06-nonconforming 300 sf dance floor area, CORRECTION TO TENANT NAME 1/23/07. LICENSE PE, MB, LB, 02/20/2008. SEE REVISED(CORRECTED) PATIO PLAN DATED 9-1-10 CENTRAL FILES FOR MORE INFO. KM. OCUPANT [sic] LOAD OF dining=188/ PATIO= 67, UPDATE 4/27/17 sw.” This use is still in operation today.

BACKGROUND INFORMATION:

Zoning:

Site: CR-MD-1 (Community retail- Modified delta-1)

North: CR-MD-1 (Community retail- Modified delta-1)

South: CR-MD-1 (Community retail- Modified delta-1)

East: MF-2(A)-MD-1 (Multifamily 1- Modified delta-1)

West: CR-MD-1 (Community retail- Modified delta-1)

Land Use:

The subject site is developed with a multitenant commercial structure housing two nonconforming alcoholic beverage establishments. The areas to the north, south and west are developed with retail uses; and the area to the east is developed with residential uses.

Zoning/BDA History:

1. BDA 045-133, 3606 Greenville Avenue, Suite A (the subject site) On January 18, 2005, the Board of Adjustment Panel A approved a special exception reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses.
2. BDA 045-136, 3606 Greenville Avenue, Suite B (the lot immediately north of the subject site) On January 18, 2005, the Board of Adjustment Panel A approved a special exception reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses.
3. BDA201-030, 3606 Greenville Avenue, Suite B (the lot immediately north of the subject site) On May 19, 2021, the Board of Adjustment Panel B denied an application of Dallas City Council Resolution 21-0263 to require compliance of a non-conforming alcoholic beverage establishment use, without prejudice.

TIMELINE:

- December 18, 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.
- February 11, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.
- February 12, 2021: The Board of Adjustment Chief Planner/Board Administrator sent the record owner of the property (Uptown Ventures LLC & Hillcrest Towers LLC) and the tenant/operator of the use (G P Sports NSL Inc. % Shaun Merchant) a certified letter (with a copy to Jill Haning, Zinzi Bonilla, and Naomi Green) informing them that a Board of Adjustment case had been filed against the nonconforming alcoholic beverage establishment use. The letter included following enclosures:
1. A copy of the Board of Adjustment application and related materials.
 2. Dallas Development Code Section 51A-3.102 describing the Board of Adjustment.
 3. Dallas Development Code Section 51A-2.102(90), which defines a nonconforming use.
 4. Dallas Development Code Section 51A-4.704, provisions for nonconforming uses and structures.

5. Dallas Development Code Section 51A-4.703, Board of Adjustment hearing procedures.
6. City of Dallas Board of Adjustment Working Rules of Procedures.
7. The hearing procedures for Board of Adjustment amortization of a nonconforming use.

The letter also informed the owners and tenant/operator of the date, time, and location of the public hearing, and provided a deadline of March 5th to submit any information that would be incorporated into the board's docket.

- February 25, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- March 2, 2021 The representative for the tenant/operator requested the case be held under advisement until April 21, 2021 (minimum of 45 days from motion for continuance provided as **Attachment A**).
- March 8, 2021 The representative for city council submitted a letter to the board (**Attachment C**).
- March 20, 2021 The Panel B hearing was cancelled due to a lack of quorum.
- March 12, 2021 The representative for the tenant/operator submitted a letter to the board (**Attachment D**).
- April 9, 2021 The representative for city council revised their letter to the board (**Attachment C**).
- April 21, 2021 The Board of Adjustment Panel B held this matter under advisement until June 23, 2021.
- June 11, 2021 The representative for the tenant/operator submitted additional evidence to the board (**Attachment E**).

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Naomi Green 1500 Marilla St. 7DN Dallas, TX

Kimberly Quirk 1701 N. Collins Blvd. #1100
Richardson, TX
Craig Sheils 1701 N. Collins Blvd. #1100 Richardson,
TX
Jacob Broom 5703 Anita St. Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX
Bob Helterbran 5732 Penrose Ave. Dallas, TX
Joe Phy 3428 Hamilton Ave. Dallas, TX
Darren Dattalo 5911 Goliad Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-023, hold this matter under advisement until June 23, 2021.

SECONDED: Johnson

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

NAYS: 0-

MOTION PASSED: 5 –0(unanimously)

BOARD OF ADJUSTMENT ACTION: June 23, 2021

APPEARING FOR PUBLIC TESTIMONY: Jenna Steinbaugh 580 McCommas Blvd
Dallas, TX
Alida Borg 5813 Penrose Ave. Dallas, TX
Martha Carlson 5506 Matalee Ave. Dallas,
TX
Jennifer Bailey 4828 Hollow Ridge Dallas, TX
Darren Dattalo 5911 Goliad Dallas, TX
Nicole Hoffman 5725 Martel Ave. #B Dallas,
TX
Dennis Lemons 5819 Penrose Ave. Dallas,
TX
Betsie Bolger 571 Marquita Ave. Dallas, TX
Bob Helterbran 5732 Penrose Ave. Dallas,
TX
Bruce Richardson 5607 Richmond Ave.
Dallas, TX

APPEARING IN FAVOR: Naomi Green 1500 Marilla St. 7DN Dallas,
TX
Joe Phy 3428 Hamilton Ave. Ft. Worth, TX.
Hope Covington 320 E. Jefferson Dallas, TX

APPEARING IN OPPOSITION: Craig Sheils 1701 N. Collins Blvd. #1100 Dallas, TX
Kimberly Quirk 1701 N. Collins Blvd. #1100 Dallas, TX
Luke Jana 3606 Greenville Ste A Dallas TX
Shaun Merchant 3606 Greenville Ste A Dallas TX

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-023, hold this matter under advisement until **August 18, 2021**.

SECONDED: Williams

AYES: 5 - Shouse, Slade, Williams, Schwartz, Vermillion

NAYS: 0-

MOTION PASSED: 5 –0(unanimously)

MOTION: Vermillion

I move to adjourn the Panel B hearing.

SECONDED: Slade

AYES: 5 - Shouse, Slade, Williams, Schwartz

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

The meeting was adjourned at 2:58 P.M. on June 23, 2021.



CHAIRPERSON *Nick Brooks*



BOARD ADMINISTRATOR



BOARD SECRETARY

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