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CITY SECRETARY  
DALLAS, TEXAS

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
TUESDAY, MAY 18, 2021**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair- regular member, Lawrence Halcomb, regular member, Jay Narey, regular member, Sarah Lamb, regular member, Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: None

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

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair- regular member, Lawrence Halcomb, regular member, Jay Narey, regular member, Sarah Lamb, regular member, Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: None

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

**11:04 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 18, 2021** docket.

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**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.

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel A, April 20, 2021 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: May 18, 2021**

**MOTION: Lamb**

Approval of the Board of Adjustment Panel A, April 20, 2021 public hearing minutes.

**SECONDED: Halcomb**

**AYES:** 5 – Gambow, Lamb, Halcomb, Narey, Slade

**NAYS:** 0

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

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**FILE NUMBER:** BDA201-040(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Davidson Sylvester represented by Peter Kavanagh for a special exception to the parking regulations at 3518 Spring Avenue This property is more fully described as Lot 3, Block 1/1831, and is zoned a CC Community Commercial Subdistrict within Planned Development District No. 595, which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for a restaurant without drive-in or drive-through service use, and provide 11 of the required 14 parking spaces, which will require a three-space special exception or (21 percent reduction) to the parking regulation.

**LOCATION:** 3518 Spring Avenue

**APPLICANT:** Davidson Sylvester  
Represented by Peter Kavanagh

**REQUEST:**

A request for a special exception to the off-street parking regulations of three spaces is made to maintain a restaurant without drive-in or drive-through service use [Lela Mae’s Café] and provide 11 of the required 14 off-street parking spaces. An addition was made to the restaurant to provide for additional office space, but no parking was added.

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

Section 51A-4.311 of the Dallas Development Code states the following:

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article *if the board finds*, after a public hearing, that *the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.* The maximum

reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or

amending regulations governing a specific planned development district. This prohibition does not apply when:

- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51; or
- (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this request for a special exception to the parking demand since the basis for this type of appeal is whether the board finds 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 applicant submitted a parking memo describing the operations of the restaurant (**Attachment A**).

To assist the board in its decision-making, the Sustainable Development and Construction Department Senior Engineer reviewed the area of request and information provided by the applicant. A comment sheet (**Attachment B**) submitted in review of the request states, "Applicant's rationale is sufficient to understand the operations of the existing restaurant. The three-space exception is not expected to create overspill beyond existing demand." There are no objections to the request.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD No. 595, CC Community Commercial Subdistrict
- Northwest: PD No. 595, D(A) Duplex Subdistrict
- Northeast: PD No. 595, Community Commercial Subdistrict
- Southeast: PD No. 595, Community Commercial Subdistrict
- Southwest: PD No. 595, Community Commercial Subdistrict

**Land Use:**

The subject site is developed with a vacant restaurant without drive-in or drive-through service use. The areas to the northwest zoned for duplex use are vacant lots. Farther northwest are church uses. Single family uses are adjacent to the site on the northeast. Auto-related uses are found to the east and across Scyene Road to the south.

**Zoning/BDA History:**

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

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

A request for a special exception to the off-street parking regulations of three spaces is made to maintain a restaurant without drive-in or drive-through service use [Lela Mae's Café] and provide 11 of the required 14 off-street parking spaces. An addition was made to the restaurant to provide for additional office space, but no parking was added.

The site is zoned a CC Community Commercial Subdistrict within Planned Development District No. 595, which requires parking to be provided per Chapter 51A. Accordingly, per SEC 51A-4.210(b)(24), a restaurant without drive-in or drive-through service use is defined as an establishment principally for the sale and consumption of food on the premises. This use does not include a restaurant with drive-in or drive-through service. The off-street parking requirement is one space per 100 square feet of floor area.

The applicant provided a memo related to the parking and business operations to support the request (**Attachment A**). According to the information provided in review of the request, the restaurant operated legally under a Certificate of Occupancy granted April 17, 2018 and permitting 1,050 square feet of floor area with 11 parking spaces provided. The applicant states that the restaurant closed temporarily due to the pandemic. At this time, an office addition was done without permits. In August of 2020, permits were sought, and it was discovered that the addition required parking at the restaurant ratio, adding three required off-street parking spaces to the total for the restaurant use, a total of 14 spaces.

The Sustainable Development and Construction Department Senior Engineer has no objections to the request (**Attachment B**).

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

- The parking demand generated by the restaurant structure does not warrant the number of off-street parking spaces required: and
- The special exception of three spaces (or a 21 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 a condition may be imposed that the special exception of three spaces shall automatically and immediately terminate if and when the restaurant without dine-in or drive-through service use is changed or discontinued.

## **Timeline:**

March 16, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.

April 7, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

April 8, 2021: The Board of Adjustment Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 7<sup>th</sup> 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 27, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

April 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Senior Engineer, the Board of Adjustment Senior Planner the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the board.

May 2, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "no objection" (**Attachment B**)

**BOARD OF ADJUSTMENT ACTION: May 18, 2021**

**APPEARING IN FAVOR:** Peter Kavanaugh 1620 Handley Dr. Ste. A Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION: Halcomb**

I move that the Board of Adjustment, in Appeal No. BDA 201-040, on application of Davidson Sylvester, represented by Peter Kavanagh, **grant** the request of this applicant to provide 11 off-street parking spaces as a special exception to the off-street parking regulations contained in the Dallas Development Code, as amended, which require 14 off-street parking spaces, because our evaluation of the property use and the testimony shows that this special exception will not increase traffic hazards or increase traffic congestion on adjacent or nearby streets, and the parking demand generated by the use does not warrant the number of required parking

spaces. This special exception is granted for a restaurant without drive-in or drive-through service use only.

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

The special exception of three spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive-through service use is changed or discontinued.

**SECONDED: Narey**

**AYES:** 5 – Gambow, Lamb, Halcomb, Narey, Slade

**NAYS:** 0 –

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

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**FILE NUMBER:** BDA201-041(OA)

**BUILDING OFFICIAL'S REPORT:** Application Shuja Siddique represented by Nicolen Padayachee for a variance to the front yard setback regulations at 1710 Avenue B. This property is more fully described as Lot 3, Block B/5911, and is zoned an R-5(A) Single Family District, which requires a front yard setback of 20 feet. The applicant proposes to construct a single-family residential structure and provide a five-foot front yard setback, which will require a 15-foot variance to the front yard setback regulations.

**LOCATION:** 1710 Avenue B

**APPLICANT:** Shuja Siddique represented by Nicolen Padayachee

**REQUEST:**

A request for a variance to the front yard setback regulations of 15 feet is made to construct and maintain a three-story single family structure with a total square footage of 3,250 square feet, part of which is to be located five feet from one of the site's two front property lines (Crete Street) or 15 feet into this 20-foot front yard setback on a site that is currently undeveloped.

**STANDARD FOR A VARIANCE:**

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

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- compliance with the submitted site plan is required. C

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-5(A) District considering:
  - a. its restrictive lot area of 2,526 square feet
  - b. its restrictive area due to having two, 20-foot front yard setbacks when most lots in this zoning district have one 20-foot front yard setback. This reduces the developable area of the lot to 585 square feet, so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-5(A) zoning districtis.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-5(A) (Single Family District)  
North: R-5(A) (Single Family District)  
East: R-5(A) (Single Family District)  
South: R-5(A) (Single Family District)  
West: R-5(A) (Single Family District)

**Land Use:**

The subject site is undeveloped. The areas to the north, south, west, and east 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 request for a 15-foot variance to the front yard setback requirement of 20 feet focuses on constructing and maintaining a three-story single family structure with a total square footage of 3,250 square feet, part of which is to be located five feet from one of the site's two front property lines (Crete Street) or 15 feet into this 20-foot front yard setback.

The site is currently undeveloped and zoned an R-5(A) Single Family District. The subject site is located at the southeast corner of Avenue B and Crete Street. Regardless of how the structure is proposed to be oriented to front Avenue B, the property has a 20-foot front yard setback along both street frontages. The site has a 20-foot front yard setback along Avenue B, 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 20-foot front yard setback along Crete Street, the longer of the two frontages of this corner lot, which is typically regarded as a side yard where a five-foot side yard setback is required. However, the site's Crete Street's 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 south that is oriented southwest towards Crete Street.

The submitted site plan indicates the proposed structure is located five feet from the Crete Street front property line or 15 feet into this 20-foot front yard setback.

According to DCAD records, there are "no main improvements" or "no additional improvements" for the property addressed at 1710 Avenue B.

The subject site is flat, rectangular (approximately 40 feet x 64 feet), and according to the submitted application is 0.058 acres (or 2,526 square feet) in area. The R-5(A) District has a minimum lot size of 5,000 square feet. The subject lot is far smaller than the minimum, but was established by plat long before the zoning district. Additionally, most lots in the R-5(A) District have one 20-foot front yard setback, two five-foot side yard setbacks, and one five-foot rear yard setback. This site has two 20-foot front yard setbacks and two five-foot side yard setbacks reducing the development area of the lot to 585 square feet. The site plan represents that approximately two-thirds of the structure is located in the 20-foot setback required for the Crete Street front yard. The 40-foot wide lot has 15 feet of developable width available once a 20-foot front yard setback is accounted for on the southwest, a five-foot side yard setback is accounted for on the northwest. If the lot were more typical to others in the zoning district with only one front yard setback, the 40 feet by 64 feet wide site would have 15 by 40 feet of developable area. However, the variance would still be necessary since the lot is only 2,526 square feet and the property would not be able to be developed commensurate with the development upon other parcels of land in this zoning district.

The applicant has submitted a document indicating among other things that the lot area of the proposed home on the subject site is approximately 2,526 square feet, and the average of eight other properties in the same zoning is approximately 7,701 square feet.

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

- That granting the variance to the front yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject

site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same an R-5(A) Single Family District 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-5(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 five feet from the site’s Crete Street front property line or 15 feet into this 20-foot front yard setback (i.e. development on the site must meet visual obstruction regulation and all other code requirements).

**Timeline:**

March 19, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

April 7, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

April 8, 2021: The Board of Adjustment Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 7<sup>th</sup> 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 22, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

April 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included the following: the Building Official, the Assistant Building Official, the Board of Adjustment Chief

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

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

**BOARD OF ADJUSTMENT ACTION: May 18, 2021**

**APPEARING IN FAVOR:** Shuja Siddique 1710 Avenue B Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION: Lamb**

I move that the Board of Adjustment, in Appeal No. BDA 201-041, on application of Shuja Siddique, represented by Nicolene Padayachee, **grant** the variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required

**SECONDED: Narey**

**AYES: 5 – Gambow, Lamb, Halcomb, Narey, Slade**

**NAYS: 0**

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

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**FILE NUMBER: BDA201-037(OA)**

**BUILDING OFFICIAL'S REPORT:** Application of Dallas City Council Resolution 21-0264 to require compliance of a non-conforming use at 1519 Martin Luther King Blvd. This property is more fully described as part of Lot 6 and all of Lot 7, Block 5/1139, and is zoned an FWMU-3 Form Walkable Mixed-Use Subdistrict within Planned Development District No. 595 with an SH Shopfront Overlay, 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 liquor store use.

**LOCATION: 1519 Martin Luther King Blvd**

**APPLICANT: Dallas City Council by Resolution 20-0264  
Represented by Jill Haning and J. Evan Farrior**

**REQUEST:**

A request is made for the Board of Adjustment to establish a compliance date for a non-conforming liquor store use (Good Price Liquor) 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 an FWMU-3 Form Walkable Mixed-Use Subdistrict within Planned Development District No. 595 with an SH Shopfront Overlay. On September 26, 2001, City Council passed Ordinance No. 24726 which added a requirement that liquor store uses must obtain a Specific Use Permit (SUP) in this zoning. However, a Certificate of Occupancy (CO) was issued for an alcoholic beverage establishment use, Good Price Liquor, April 30, 1998—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 1998 and became nonconforming with the passing of Ordinance No. 24726 in 2001. This use is still in operation today.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

North: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

South: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

East: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

West: PD No. 595, FWMU-3 Form Walkable Mixed-Use Subdistrict, SH Overlay

#### **Land Use:**

The subject site is developed with a commercial structure housing one nonconforming liquor store. The areas to the north, south, west, and east are developed with mixed uses.

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

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

#### **TIMELINE:**

February 16, 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 9, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel A.

February 12, 2021: The Board of Adjustment Senior Planner sent the record owner of the property (SDL RE LLC) and the tenant/operator of the use (SHRESTHA ABHAY GOOD PRICE LIQUOR) a letter (with a copy to Jill Haning and James Farrior) informing them that a Board of Adjustment case had been filed against the nonconforming liquor store 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 May 7, 2021 to submit any information that would be incorporated into the board's docket.

April 29, 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 Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

May 7, 2021

The representative for the tenant/operator requested the case be held under advisement to provide the representative time to adequately prepare for this case (**Attachment A**).

**BOARD OF ADJUSTMENT ACTION: May 18, 2021**

**APPEARING IN FAVOR:**

Evan Farrior 1500 Marilla St. Dallas, TX  
Bernardo Bueno 5411 Bexar St. Dallas, TX  
Margarita Ortez 11405 Fenald Ave. Dallas, TX  
Dr. Terry Flowers 1600 Pennsylvania Dallas, TX  
Ferrell Fellows 2314 South Blvd. Dallas, TX  
Dennis Roosien 4120 Amherst Dallas, TX  
Danielle Lindsey 5005 Galleria Rd. #3133 Dallas, TX  
Jeanette Fellows 2314 South Blvd. Dallas, TX  
Jeremy Connally 1414 Belleview St. #1111 Dallas, TX  
Dennis Bryant 2818 MLK Jr. Blvd Dallas, TX

APPEARING IN OPPOSITION:

Shamaila Malik 320 Decker Dr. #100 Dallas, TX  
Parvez Malik 320 Decker Dr. #100 Dallas, TX  
Abhay Shrestha 1519 MLK Jr. Blvd Dallas, TX  
Ang Sam Chrouk 516 Charringotn Dr. Dallas, TX  
Hank Lawson 2402 Park Row Ave. Dallas, TX

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 201-037, hold this case under advisement until **June 22, 2021**.

SECONDED: Halcomb

AYES: 5 – Gambow, Lamb, Halcomb, Narey, Slade

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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MOTION: Gambow

I move to adjourn the Panel A hearing.

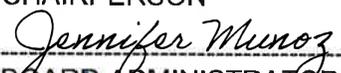
SECONDED: Lamb

AYES: 5 - Gambow, Lamb, Halcomb, Narey, Slade

NAYS: 0 -

MOTION PASSED (unanimously): 5 - 0

**2:01 P.M.** Board Meeting adjourned for **May 18, 2021**

  
\_\_\_\_\_  
CHAIRPERSON  
  
\_\_\_\_\_  
BOARD ADMINISTRATOR  
  
\_\_\_\_\_  
BOARD SECRETARY

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