

RECEIVED

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, NOVEMBER 17, 2021**

2021 JAN 8 5 AM 08:15

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Joseph Cannon, regular member

MEMBERS ABSENT FROM BRIEFING: None.

MEMBERS PRESENT AT HEARING: Cheri Gambow, Vice-Chair, Matt Shouse, regular member, Michael Karnowski, regular member, Joseph Cannon, regular member

MEMBERS ABSENT FROM HEARING: None.

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes and Daniel Moore, Asst. City Attys., LaTonia Jackson, Board Secretary, Charles Trammell, Development Code, Secretary, Robyn Gerard, Senior Public Information Officer, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes and Daniel Moore, Asst. City Attys., LaTonia Jackson, Board Secretary, Charles Trammell, Development Code, Secretary, Robyn Gerard, Senior Public Information Officer, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director

11:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 17, 2021 docket.**

BOARD OF ADJUSTMENT ACTION: November 17, 2021

1:02 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, October 20, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: November 17, 2021

MOTION: Karnowski

Approval of the Board of Adjustment Panel B, October 20, 2021 public hearing minutes.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the 2022 Board of Adjustment Calendar

BOARD OF ADJUSTMENT ACTION: November 17, 2021

MOTION: Cannon

Approval of the Board of Adjustment Panel B, October 20, 2021 public hearing minutes.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-102 (PD)

BUILDING OFFICIAL’S REPORT: Application of Dan Foster represented by Eddie Fisher for a special exception to the fence standards regulations at 8000 Lake June Road. This property is more fully described as Lot 1, in City Block C/6301, and is zoned Subarea 2 within Planned Development District No. 366, the Buckner Boulevard Special Purpose District, which reverts to the Dallas Development Code pertaining to fence materials and prohibits the use of certain materials. The applicant proposes to construct and maintain an eight-foot-high fence in a required side and rear yard utilizing prohibited materials (corrugated metal) which will require a special exception to the fence standards regulations regarding materials.

LOCATION: 8000 Lake June Road

APPLICANT: Dan Foster represented by Eddie Fisher

REQUEST:

The applicant is seeking to construct and maintain an eight-foot-high fence using prohibited steel metal sheet material (corrugated metal) on the fence and sliding gate on a property

currently developed with an approximately 7,350-square-foot, concrete and wood-frame commercial structure constructed in 1945.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

Site: Subarea 2 within PDD No. 366
North: Subarea 2 within PDD No. 366
East: Subarea 2 within PDD No. 366
South: Subarea 2 within PDD No. 366
West: Subarea 2 within PDD No. 366

Land Use:

The subject site is currently developed with a commercial use. Surrounding properties to the north, east, south, and west are developed with commercial uses consisting of auto-related uses to the northwest and south, a vacant structure to the west, and retail and personal service uses to the northeast and east.

Zoning/BDA History: There have been two related board or zoning cases in the vicinity within the last five years.

1. **BDA201-103:** On November 17, 2021, the Panel B, Board of Adjustments will hear a request for a special exception to the fence regulations prohibited materials at 8002 Lake June Road. ****adjacent site****
2. **Z156-183:** On August 9, 2017, City Council approved a hearing to determine proper zoning on property zoned Planned Development District No. 366, with consideration given to appropriate zoning for the area including use, development standards, and other appropriate regulations in Planned Development District No. 366. The authorized hearing is to focus on urban design, land use, parking and streetscape, and ensure provisions that encourage future development by proposing amendments such as: 1) consolidation of subareas, 2) update landscape, sidewalk, accessory and land use regulations, and 3) the introduction of residential components including mixed use projects

GENERAL FACTS/STAFF ANALYSIS:

The property is currently developed with an approximately 7,350-square-foot, one-story concrete and wood frame commercial structure erected in 1945. The applicant proposes to construct and maintain an eight-foot-high fence made of steel metal sheet material along the side yard and rear yard of the property. Currently the site operates as a retail or personal service use, more specifically a pawn shop. The rear of the structure where the fence is proposed will contain outside storage of material for the main use.

Section 51A-4.602(9)(B) states that except as provided in this subsection, the following fence materials are prohibited:

- (A) Sheet metal;
- (B) Corrugated metal;
- (C) Fiberglass panels;
- (D) Plywood;
- (E) Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
- (F) Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and,
- (G) Barbed wire and razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.

The following information is shown on the submitted site plan:

- The proposed fence consists of a steel sheet metal gate located along the side yard and rear yard setbacks.
- The proposed eight-foot-high fence extends 45 linear feet along the side yard setback then 25 linear feet along the rear yard which fronts along an unimproved alley.
- The fence is proposed to be constructed of steel sheet metal more commonly known as corrugated metal.

As of November 5, 2021, no letters have been submitted in support of the request and no letters have been submitted in opposition of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to materials located on Gardenview Drive will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to materials would require the proposal to be maintained in the locations, heights and materials as shown on the site plan and elevation.

Staff conducted a site visit of the subject site and surround area and noted several other fences constructed of prohibited materials S. Buckner Boulevard, Buckner Boulevard, and adjacent streets such as Pleasant Drive and Maddox Street, many of which do not have recorded BDA history.

Additionally, the representative provided supporting evidence with the application materials presented to staff which contain eight photographs of properties with prohibited fence materials within the vicinity of the subject property that have not been granted special exceptions to the fence standard regulations.

Timeline:

August 13, 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.

October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

October 15, 2021: The Board 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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.

Oct. 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted with this request.

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING IN FAVOR: Eddie Fisher 2900 Amherst Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: **Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 201-102, on application of Dan Foster, represented by Eddie Fisher, **grant** the special exception to the fence standards regulations contained in the Dallas Development Code subject to the following condition(s):

Compliance with the submitted site plan and elevation plan is required.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-103 (PD)

BUILDING OFFICIAL’S REPORT: Application of Dan Foster represented by Eddie Fisher for a special exception to the fence standards regulations at 8002 Lake June Road. This property is more fully described as Lot 2, in City Block C/6301, and is zoned Subarea 2 within Planned Development District No. 366, the Buckner Boulevard Special Purpose District, which reverts to the Dallas Development Code pertaining to fence materials and prohibits the use of certain materials. The applicant proposes to construct and maintain an eight-foot-high fence in a required rear yard utilizing prohibited materials (corrugated metal) which will require a special exception to the fence standards regulations regarding materials.

LOCATION: 8002 Lake June Road

APPLICANT: Dan Foster represented by Eddie Fisher

REQUEST:

The applicant is seeking to install and maintain an eight-foot-high fence using prohibited steel metal sheet material (corrugated metal) on the fence and sliding gate on a property currently developed with an approximately 7,350-square-foot, concrete and wood-frame commercial structure constructed in 1945.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Subarea 2 within PDD No. 366
<u>North:</u>	Subarea 2 within PDD No. 366
<u>East:</u>	Subarea 2 within PDD No. 366
<u>South:</u>	Subarea 2 within PDD No. 366
<u>West:</u>	Subarea 2 within PDD No. 366

Land Use:

The subject site is currently developed with a commercial uses. Surrounding properties to the north, east, south, and west are developed with commercial uses consisting of auto-related uses to the northwest and south, a vacant structure to the west, and retail and personal service uses to the northeast and east.

Zoning/BDA History: There have been two related board or zoning cases in the vicinity within the last five years.

3. **BDA201-102:** On November 17, 2021, the Panel B, Board of Adjustments will hear a request for a special exception to the fence regulations prohibited materials at 8000 Lake June Road. ****adjacent site****
4. **Z156-183:** On August 9, 2017, City Council approved a hearing to determine proper zoning on property zoned Planned Development District No. 366, with consideration given to appropriate zoning for the area including use, development standards, and other appropriate regulations in Planned Development District No. 366. The authorized hearing is to focus on urban design, land use, parking and streetscape, and ensure provisions that encourage future development by proposing amendments such as: 1) consolidation of subareas, 2) update landscape, sidewalk, accessory and land use regulations, and 3) the introduction of residential components including mixed use projects

GENERAL FACTS/STAFF ANALYSIS:

The property is currently developed with an approximately 7,350-square-foot, one-story concrete and wood frame commercial structure erected in 1945. The applicant proposes to construct and maintain an eight-foot-high fence made of steel metal sheet material along the rear yard of the property. Currently the site operates as a retail or personal service use, more specifically a pawn shop. The rear of the structure where the fence is proposed will contain outside storage of material for the main use.

Section 51A-4.602(9)(B) states that except as provided in this subsection, the following fence materials are prohibited:

- (H) Sheet metal;
- (I) Corrugated metal;
- (J) Fiberglass panels;

(K) Plywood;

(L) Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;

(M) Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and,

(N) Barbed wire and razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.

The following information is shown on the submitted site plan:

- The proposed fence consists of a steel sheet metal gate located along the side yard and rear yard setbacks.
- The proposed eight-foot-high fence extends 25 linear feet along the rear yard which fronts along an unimproved alley.
- The fence is proposed to be constructed of steel sheet metal more commonly known as corrugated metal.

As of November 5, 2021, no letters have been submitted in support of the request and no letters have been submitted in opposition of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to materials located along the unimproved alley will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to materials would require the proposal to be maintained in the locations, heights and materials as shown on the site plan and elevation.

Staff conducted a site visit of the subject site and surround area and noted several other fences constructed of prohibited materials S. Buckner Boulevard, Buckner Boulevard, and adjacent streets such as Pleasant Drive and Maddox Street, many of which do not have recorded BDA history.

Additionally, the representative provided supporting evidence with the application materials presented to staff which contain eight photographs of properties with prohibited fence materials within the vicinity of the subject property that have not been granted special exceptions to the fence standard regulations.

Timeline:

August 13, 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.

October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

October 15, 2021: The Board 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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.

Oct. 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted with this request.

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING IN FAVOR: Eddie Fisher 2900 Amherst Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: **Gambow**

I move that the Board of Adjustment, in Appeal No. BDA 201-103, on application of Dan Foster, represented by Eddie Fisher, **grant** the special exception to the fence standards regulations contained in the Dallas Development Code subject to the following condition(s):

Compliance with the submitted site plan and elevation plan is required.

SECONDED: **Karnowski**

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-108(PD)

BUILDING OFFICIAL'S REPORT: Application of Majahual LP represented by Philip Kingston for a variance to the front yard setback regulations at 4511 McKinney Avenue. This property is more fully described as Lot 1A in City Block K/1535 and is zoned an LC Light Commercial Subdistrict in Planned Development District No. 193, the Oak Lawn Special Purpose District which requires a front yard setback of 10 feet. The applicant proposes to construct a commercial structure (outdoor patio) with no front yard setback (zero feet), which will require a 10-foot variance to the front yard setback regulations.

LOCATION: 4511 McKinney Avenue

APPLICANT: Majahual LP represented by Philip Kingston

REQUESTS:

A request for a variance to the front yard setback regulations of 10 feet is made to construct and maintain a commercial structure containing a restaurant without drive-through or drive-in use (outdoor patio) within the subject site's 10-foot front yard setback on a site that is currently developed and situated on a corner lot.

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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial.

- Compliance with the submitted site plan is required.

Rationale:

- The applicant/representative failed to submit evidence to prove the site bears a hardship and cannot be developed in a manner commensurate with developments upon other parcels of land within the same LC Subdistrict. Further, with no evidence, staff could not conclude how the encroachment into the front yard for an optional outdoor patio is not a self-created hardship nor requested for financial gain solely and how it is not being requested to permit a person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same LC Subdistrict zoning.

BACKGROUND INFORMATION:

Zoning:

- Site: LC Light Commercial Subdistrict in PDD No. 193
- Northwest: LC Light Commercial Subdistrict in PDD No. 193
- North: LC Light Commercial Subdistrict in PDD No. 193
- East: LC Light Commercial Subdistrict in PDD No. 193
- Southeast: LC Light Commercial Subdistrict in PDD No. 193
- South: LC Light Commercial Subdistrict in PDD No. 193
- Southwest: Planned Development Subdistrict No. 141 w/in PDD No. 193

Land Use:

The subject site is developed with a restaurant without drive-through or drive-in service use. Surrounding properties include an undeveloped tract to the northwest and restaurant without drive-through or drive-in service uses to the northwest, west, and southwest, multi-story parking garage use to the north, and showroom warehouse uses to the east, southeast and south.t.

Zoning/BDA History:

There has been one related board case in the vicinity within the last five years.

1. **BDA190-051:** On June 4, 2020, the Panel B, Board of Adjustments granted a special exception to the landscape regulations to construct and maintain a nonresidential structure and provide an alternative landscape plan.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining an outdoor patio commercial structure within the 10-foot front yard setback on a site that is currently developed and situated on a corner lot containing a restaurant without drive-through or drive-in use.

The subject site is developed with an approximately 8,022 square foot structure situated along two front yards (McKinney Avenue and Armstong Avenue) with approximately 85 off-street parking spaces along both fronts. An 85-square-foot outdoor patio currently exists on the site within the boundaries of the property and along the drive aisle coming into the site from McKinney Avenue. The site plan depicts extending the outdoor patio 797 square feet, beyond the side yard, with the roof overhanging into the McKinney Avenue right-of-way. As proposed, the patio would encompass about 980 square feet and be located outside the boundaries of the property; however, the Board of Adjustment does not have the purview to grant an encroachment into the right-of-way, for which a license must be obtained from the City.

Structures on lots zoned an LC Light Commercial Subdistrict must have a minimum front yard setback of 10 feet. A site plan has been submitted denoting the proposed outdoor patio structure will be located wholly into the front yard setback, into the pedestrian sidewalk and right-of-way, and into the vehicular right-of-way which is McKinney Avenue.

The subject site is not irregular in shape and is approximately 37,026 square feet in lot area. An LC Light Commercial Subdistrict requires lots to have a minimum lot size of 3,000 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 LC Light Commercial Subdistrict 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 LC Light Commercial Subdistrict zoning classification.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or

- The municipality consider the structure to be a nonconforming structure.

As of November 5, 2021, no letters have been submitted in support of the request nor in opposition of the request.

If the board were to grant this front yard setback variance request and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting this variance request will not provide any relief to the Dallas Development Code regulations.

Timeline:

September 24, 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.

October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

October 15, 2021: The Board 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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.

October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING IN FAVOR: Philip Kingston 5901 Palo Pinto Ave. Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION#1: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 201-108, on application of Majahual, L.P, represented by Philip Kingston, **grant** the ten-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: 3 – Shouse, Karnowski, Gambow, Cannon

NAYS: 1 - Gambow

MOTION FAILED: 3 – 1

MOTION#2: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 201-108, on application of Majahual LP., represented by Philip Kingston, **deny** the variance to the front yard setback regulations requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

SECONDED: Gambow

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 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

UPDATE:

On August 18 and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request. No changes have been made. The zoning case is still pending and the applicant is seeking a new holdover.

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 three 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 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."

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.

October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on November 18, 2020.

October 26, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

October 29,2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing 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.

November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.

November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into

their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.

January 26, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

August 23, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

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

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until November 17, 2021.

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

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
Richard Soltes 5607 Monticello Dallas, TX.
Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until August 18, 2021.

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Pasha Heidari 3020 Greenville Ave. Dallas, TX.
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.
Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION#1: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 190-090, on application of Thomas Shields, represented by Steve Dimitt, grant the request to carry forward delta credits as a special exception to the Modified Delta Overlay District No. 1 regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows 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 including:

Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties is affecting the marketability of the property.

SECONDED: Schwartz

AYES: 3 - Schwartz, Brooks, Jones

NAYS: 2 – Vermillion, Shouse

MOTION FAILED: 3 – 2

MOTION#2: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 190-090, on application of Thomas Shields, represented by Steven Dimitt, deny the special exception requested by this applicant without prejudice, because our evaluation of the property and the testimony did not demonstrate an extreme circumstance to justify a lack of intent to abandon the use that was discontinued or vacant for 12 months or more.

SECONDED: Jones

AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION#3 (Motion to Reconsider): Brooks

I move that the Board of Adjustment reconsider the decision to deny the applicant's request in appeal number BDA 190-090.

SECONDED: Vermillion
AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks
NAYS: 0
MOTION PASSED: 5 – 0 (unanimously)

MOTION#4: Brooks

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until January 20, 2021.

SECONDED: Vermillion
AYES: 5 - Schwartz, Shouse, Vermillion, Johnson, Williams
NAYS: 0
MOTION PASSED: 5 – 0 (unanimously)

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)

BOARD OF ADJUSTMENT ACTION: **November 17, 2021**

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

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: **Cannon**

I move that the Board of Adjustment in Appeal No. BDA 190-090, **hold** this matter under advisement until **January 19, 2022**.

SECONDED: **Karnowski**
AYES: 4 – Shouse, Karnowski, Gambow, Cannon
NAYS: 0 -
MOTION PASSED: 4 – 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

UPDATE:

On August 18 and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request. No changes have been made. The zoning case is still pending and the applicant is seeking a new holdover.

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:

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 three 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 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.”
- 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.
- October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request until the next public hearing to be held on November 18, 2020.
- October 26, 2020: The Board Administrator wrote the applicant a letter of the board’s action; the deadline to submit additional evidence for staff to factor into

their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing 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.

November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.

November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.

January 26, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

August 23, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

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

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until November 17, 2021.

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

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
Richard Soltes 5607 Monticello Dallas, TX.
Mike Northrup 5703 Goliad Ave., Dallas, 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 August 18, 2021.

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX
Kristin Boyd 6801 Lochwood, Garland, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Pasha Heidari 3020 Greenville Ave. Dallas, TX.
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.
Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION#1: Shouse

I move that the Board of Adjustment, in Appeal No. BDA 190-091, on application of Thomas Shields, represented by Steve Dimitt, grant the request to carry forward delta credits as a special exception to the Modified Delta Overlay District No. 1 regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows 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 including:

Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties is affecting the marketability of the property.

SECONDED: Jones

AYES: 3 - Schwartz, Shouse, Jones,

NAYS: 2 - Vermillion, Brooks

MOTION FAILED: 3 – 2

MOTION#2: Shouse

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until January 20, 2021.

SECONDED: Brooks

AYES: 5 - Schwartz, Shouse, Jones, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

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)

BOARD OF ADJUSTMENT ACTION: November 17, 2021

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

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment in Appeal No. BDA 190-091, **hold** this matter under advisement until **January 19, 2022**.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-092(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 requires that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued in error. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 3018 Greenville Avenue

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

REQUEST:

A request is made to appeal the decision of the administrative official, more specifically, the Building Official’s authorized representative, the Chief Planner in the Building Inspection Division, revocation of a certificate of occupancy for a restaurant use located at 3018 Greenville Avenue.

UPDATE:

On August 18 and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request. No changes have been made. The zoning case is still pending and the applicant is seeking a new holdover.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

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 three other BDA cases at the subject site currently.

GENERAL FACTS/STAFF ANALYSIS:

The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

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 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 5, 2020: The applicant's representative requested a postponement to the November docket (**Attachment A**).

October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing 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.

November 6, 2020: Additional evidence was submitted by the city attorney for the administrative official (**Attachment B**).

November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.

November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.

January 26, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

August 23, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into

their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

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

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment in Appeal No. BDA 190-092, hold this matter under advisement until November 17, 2021.

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

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

APPEARING IN OPPOSITION: Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Richard Soltes 5307 Monticello Dallas, TX
Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX
Sarah May 320 E. Jefferson Dallas TX
Chris Gunter 1500 Marilla St Dallas, TX

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-092, hold this matter under advisement until August 18, 2021.

SECONDED: Johnson

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR: Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX
Kristin Boyd 6801 Lochwood, Garland, TX
Brad Williams 2728 N. Harwood St. #500, Dallas, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Pasha Heidari 3020 Greenville Ave. Dallas, TX.
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.
Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-092, hold this matter under advisement until January 20, 2021.

SECONDED: Jones

AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX

APPEARING IN OPPOSITION:

Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: Cannon

I move that the Board of Adjustment in Appeal No. BDA 190-092, **hold** this matter under advisement until **January 19, 2022**.

SECONDED: Karnowski

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 – 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

UPDATE:

On August 18 and January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request. No changes have been made. The zoning case is still pending and the applicant is seeking a new holdover.

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:

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:

<u>Site:</u>	CD No. 11 with an MD Overlay District No. 1
<u>North:</u>	CD Nos. 9 and 11 with an MD Overlay District No. 1
<u>South:</u>	CD No. 11 with an MD Overlay District No. 1
<u>East:</u>	CD No. 11 with an MD Overlay District No. 1
<u>West:</u>	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 three 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 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."
- 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.
- October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on November 18, 2020.
- October 26, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.
- October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing 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.

November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.

November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.

January 26, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

August 23, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.

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

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until November 17, 2021.

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: January 20, 2021

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

APPEARING NEUTRAL:

Jeffrey Karetnick 5739 Marquita Ave. Dallas, TX
April Segovia 5739 Marquita Ave. Dallas, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Richard Soltes 5607 Monticello Dallas, TX
Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until August 18, 2021.

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Tom Shields 418 E. Shore Dr. Clearlake Shores, TX
Jeffrey Karetnick 3024 Greenville Ave., Dallas, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Pasha Heidari 3020 Greenville Ave. Dallas, TX.
Chuck DeShazo 400 S. Houston St. #330, Dallas, TX.
Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Jones

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until January 20, 2021.

SECONDED: Vermillion

AYES: 5 - Schwartz, Shouse, Vermillion, Jones, Brooks

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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)

BOARD OF ADJUSTMENT ACTION: November 17, 2021

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

APPEARING IN OPPOSITION: Mike Northrup 5703 Goliad Ave., Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.
Chris Gunther 1500 Marilla St. Dallas, TX

MOTION: **Cannon**

I move that the Board of Adjustment in Appeal No. BDA 190-093, **hold** this matter under advisement until **January 19, 2022**.

SECONDED: **Karnowski**
AYES: 4 – Shouse, Karnowski, Gambow, Cannon
NAYS: 0 -
MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-109(JM)

BUILDING OFFICIAL’S REPORT: Application of Khiem Phan represented by William Davis to appeal the decision of the administrative official at 2051 W. Northwest Highway. This property is more fully described as Tract 0.2, Block B/6489, and is zoned an IR Industrial Research District, which requires that the building official shall not issue a certificate of occupancy if the building official determines that the use would be operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the issuance of a certificate of occupancy.

LOCATION: 2051 W. Northwest Highway

APPLICANT: Khiem Phan represented by William Davis

REQUEST:

A request is made to appeal the decision of the administrative official, more specifically, the Building Official’s authorized representative, the Assistant Building Official in Development Services, to deny an application for a Certificate of Occupancy for a restaurant and/or commercial amusement (inside) use determined to be a gambling place, which does not comply with other regulations.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

STAFF RECOMMENDATION:

Staff does not make a recommendation on appeals of the decisions of administrative officials.

BACKGROUND INFORMATION:

Zoning:

Site: IR Industrial Research District
North: IR Industrial Research District
East: IR Industrial Research District
South: IM Industrial Manufacturing District
West: IR Industrial Research District

Land Use:

The subject site is developed with a mix of commercial uses within multiple suites. Surrounding land uses include restaurants to the west and southwest; offices to the west and south; office/showroom warehouse to the north; and, a smoke shop and other retail uses to the east.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

September 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.

- October 12, 2021: The Board of Adjustment Chief Planner randomly assigned this case to Board of Adjustment Panel A.
- October 19, 2021: The Board of Adjustment Chief 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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;
 - the appeal of a decision of an administrative official procedure outline; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.
- November 5, 2021: The applicant's attorney submitted additional evidence for consideration (**Attachment A**).
- November 5, 2021: The City's attorney submitted additional evidence for consideration (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: November 17, 2021

APPEARING FOR PUBLIC TESTIMONY: Thomas Dupree 5132 Bellerive Dr.
Dallas, TX
Matthew Bach 15746 Covewood Dallas, TX

APPEARING IN FAVOR: Will Davis 18601 LBJ Freeway, Suite 525
Mesquite, TX
Joe Vongkaysone 2051 W. Northwest Hwy
Dallas, TX

APPEARING IN OPPOSITION: Gary Powell 150 Marilla St. Dallas, TX
Megan Wimer 320 E. Jefferson Blvd. Dallas,
TX

MOTION: Shouse

Having fully reviewed the decision of the administrative official of the City of Dallas in Appeal No. BDA 201-109, on application of Khiem Phan, represented by William Davis, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the administrative official and **grant** the relief requested by this applicant.

SECONDED: Cannon

AYES: 2 – Shouse, Cannon

NAYS: 2 - Karnowski, Gambow

MOTION FAILED: 2-2

MOTION: Gambow

I move to adjourn the Panel B hearing.

SECONDED: Shouse

AYES: 4 – Shouse, Karnowski, Gambow, Cannon

NAYS: 0 -

MOTION PASSED: 4 - 0 (unanimously)

The meeting was adjourned at **3:11 P.M. on November 17, 2021.**

Cheryl Gambow

CHAIRPERSON

Jennifer Munoz

BOARD ADMINISTRATOR

[Signature]

BOARD SECRETARY

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

From: [Jackson, Latonia](#)
To: [Rogers, Shombray](#)
Cc: [SEC B&C](#)
Subject: RE: January Submissions: Attendance, Annual Report, Minutes
Date: Monday, January 24, 2022 6:41:43 PM
Attachments: [January Attendance "22.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[11-16-21 \(A\).pdf](#)
[11-17-21\(B\).pdf](#)

Hello Shombray,

. Please see below in response to your email.

Attendance – For boards that meet monthly, we ask to please provide at least 13 months of attendance.

(the attendance is listed from December 2020 to January 2022)

Minutes - What date did the chair sign the minutes?

(Chair Neumann: 1/18/22; Vice Chair Gambow 1/19/22)

Other Attachment – Not sure if this was meant to be attachments of minutes for one of the panels, but it has a BOA related letters?

(So sorry for the confusion with Panel B. I mistakenly sent letters and not the minutes. I've attached the correct information)

Please let me know if anything further is needed.

Thank you so much.



LaTonia Y. Jackson
Board Secretary
City of Dallas | DallasCityNews.net
Department of Planning and Urban Design
Board of Adjustment
Dallas City Hall
1500 Marilla St. 5BN
O: (214) 670-4545
latonia.jackson@dallascityhall.com



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