

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, FEBRUARY 23, 2022**

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

MEMBERS ABSENT FROM HEARING: None

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

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

11:06 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 19, 2022 docket.**

BOARD OF ADJUSTMENT ACTION: February 23, 2022

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, January 19, 2022 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: February 23, 2022

MOTION: Cannon

Approval of the Board of Adjustment Panel B, January 19, 2022 public hearing minutes.

SECONDED: Shouse

AYES: 5 – Shouse, Karnowski, Gambow, Cannon, Resendiz

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-007(JM)

BUILDING OFFICIAL’S REPORT: Application of Alan Wasserman for special exceptions to the (1) single-family use regulations, (2) fence height regulations, and (3) visibility obstruction regulations at 9242 Hathaway Street. This property is more fully described as Part of Lots 26 and 27, Block 7/5597, and is zoned an R-1ac(A) Single Family District, which limits the (1) number of dwelling units to one per build site, (2) height of a fence in the front yard to four feet, and (3) requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct an additional dwelling unit (not for rent), an eight-foot-high fence in a required front yard, located within required visibility obstruction triangle(s), which will require special exceptions to the (1) single-family use regulations, (2) fence height regulations, and (3) visibility obstruction regulations.

LOCATION: 9242 Hathaway Street

APPLICANT: Alan Wasserman

REQUEST:

The site is currently being redeveloped with a single-family structure largely in compliance with the R-1ac(A) Single Family District regulations. The applicant would like to accommodate an additional dwelling unit as a guest house. The site is proposed to be surrounded by a wrought iron fence with brick columns and an iron sliding gate, all with a maximum of up to eight feet-in-height. Portions of the fence, gate, and columns are located within two 20-foot visibility triangles.

STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:

Section 51(A)-4.209(6)(E)(i) of the Dallas Development Code states that the board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the board, the item will not constitute a traffic hazard.

STAFF RECOMMENDATIONS:

Special exception for an additional dwelling unit:

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when *in the opinion of the board*, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

Special exception to the maximum fence height in a front yard:

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.

Special exception to obstruct 20-foot visibility triangles:

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when in the opinion of the board, the special exception will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Sustainable Development and Construction Senior Engineer reviewed the proposed obstructions for the fence and has no objection to the requests (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) Single Family District
North: R-1ac (A) Single Family District
South: R-1ac (A) Single Family District
East: R-1ac (A) Single Family District
West: R-1ac (A) Single Family District

Land Use:

The subject site and all surrounding properties are developed with single-family uses.

Zoning/BDA History:

There have been two related board or zoning cases in the vicinity within the last five years.

1. BDA201-047: On June 21, 2021, Panel C granted a special exception to the fence height regulations and a variance to the front yard requirements to construct and maintain an eight-foot six-inch-high fence in a required front yard and a single-family residential accessory structure with a 10-foot front yard setback at 5500 Chatham Hill Road. (west of the site)
2. BDA190-068: August 19, 2020, Panel B granted a special exception to install and maintain an additional electric meter at 5505 Chatham Hill Road. (northwest of the site)

GENERAL FACTS/STAFF ANALYSIS:

The site is currently being redeveloped with a single-family structure. The property is zoned an R-1ac(A) Single Family District. In this district, one dwelling unit is allowed per lot/build site. The applicant would like to accommodate an additional dwelling unit (not for rent) as a guest house. This request necessitates a special exception to the single-family use regulations.

According to the site plan provided, the single-family structure being erected will contain 4,895 square feet of floor area. The proposed ADU would be used as guest quarters and contain about 1,190 square feet of floor area, just under the maximum of 25 percent of the main structure. As shown on the site plan, the proposed ADU complies with the setbacks for the district, including a 40-foot front yard and 10-foot side and rear yards.

The applicant has the burden of proof in establishing that the special exception to the single-family use regulations will not adversely affect neighboring properties. In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

The applicant also proposed to surround the property with a wrought iron fence with brick columns and an iron sliding gate, all with a maximum of up to eight feet-in-height. The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. A special exception to the maximum fence height in a required front yard is needed to allow for the wrought iron fence, brick columns, and sliding wrought iron gate located as close as the front lot/property line along Hathaway Street.

Staff conducted a field visit of the site and surrounding area and did notice other fences within a 200-foot radius of the property that seemed taller than four feet-in-height or located in obvious front yards, one with recent case history noted in this report.

The applicant has the burden of proof in establishing that the special exception to the fence height regulation of up to four feet will not adversely affect neighboring properties.

The last request is due to the proposed obstruction of two visibility triangles according to Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys on properties zoned single family); and
- between two-and-a-half and eight-feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

According to the site plan submitted, small portions of the fence on either side of the sliding gate onto Hathaway Street will obstruct the 20-foot visibility triangles. The Sustainable Development Department Senior Engineer has no objections to the request (**Attachment A**).

The applicant has the burden of proof in establishing that the special exception to the visual obstruction regulations will not constitute a traffic hazard.

As of February 11, 2022, staff had received one letter in support of the requests being made and none in opposition.

If the board were to grant the special exceptions to the single-family use, fence height, and visual obstruction regulations, the building footprint of the ADU on the site would be limited to what is shown on the site plan. Furthermore, the fence and location of the visual obstructions would be held to the site and elevation plans. Finally, the Dallas Development Code states that the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations. The deed restriction process is completed through our City Attorney's Office if the special exception is approved. After meeting this obligation, the site will be eligible for a permit for the ADU. Ultimately, granting these special exception requests will not provide any relief to the Dallas Development Code regulations other than what is described in this report and decided upon by the board (i.e. development on the site must meet all other code requirements).

Timeline:

- November 22, 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.
- January 6, 2022: The Board of Adjustment Chief Planner randomly assigned this case to Board of Adjustment Panel A.
- January 10, 2022: 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 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;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearing. The review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

January 27, 2022: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked “no objection” (**Attachment A**).

February 2, 2022: The applicant submitted additional evidence for consideration (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: February 23, 2022

APPEARING IN FAVOR: None

APPEARING IN OPPOSITION: None

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-007, on application of Alan Wasserman, **grant** the request for a special exception to the single-family use regulations, the fence height requirements, and the visual obstruction regulations in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan and elevation is required and
The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Cannon, Resendiz

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-009(PD)

BUILDING OFFICIAL’S REPORT: Application of Elias Rodriguez represented by Juan P. Sanchez for a variance to the side yard setback regulations at 7019 Lovett Avenue. This property is more fully described as a part of Lot 72 in City Block 5823 and is zoned an R-7.5(A) Single Family District, which requires a side yard setback of five feet. The applicant proposes to construct and maintain the existing single-family dwelling and an addition and to construct and maintain an addition and to provide a three-foot side yard setback, which will require a two-foot variance to the side yard setback regulations.

LOCATION: 7019 Lovett Avenue

APPLICANT: Elias Rodriguez represented by Juan P. Sanchez

REQUESTS:

A request for a variance to the side yard setback regulations of two feet is made to construct and maintain this existing single-family dwelling and an addition along the rear of the structure within the subject site’s five-foot side yard setback on a site that is currently developed with a single-family dwelling and situated along an interior yard and the north line of Lovett Avenue.

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:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in this R-7.5(A) Single Family District considering its restrictive lot area of 7,824 square feet. The applicant submitted evidence with the submitted application materials (**Attachment A**) comparing lot size/area within the same zoning district. Per the comparative analysis, the average lot area is 11,839 square feet and the average floor area of structures being 1,438 square feet. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) Single Family District
North: R-7.5(A) Single Family District
South: R-7.5(A) Single Family District
East: R-7.5(A) Single Family District
West: R-7.5(A) Single Family District

Land Use:

The subject site and surrounding properties to the west, south, and east are developed with single-family dwelling units while the property to the north is developed with a rail line (Union Pacific Railroad).

Zoning/BDA History:

There have been no related board or zoning cases in the vicinity within the last five years.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing an addition and maintaining an existing portion of the existing residential dwelling unit within the subject site's five-foot side yard setback. The site is currently developed with a single-family dwelling unit and situated along an interior yard and the north line of Lovett Avenue. The portion of the structure that encroaches along the western façade of the existing residential dwelling exists within the confines of the one-story single-family structure. The existing encroachment is two feet into the required five-foot side yard setback and therefore provides a three-foot side yard setback. The existing single-family dwelling unit contains approximately 971 square feet of floor area while the proposed addition will contain approximately 667 square feet of floor area for a total floor area of 1,638 square feet.

Structures on lots zoned an R-7.5(A) Single Family District must have a minimum side yard setback of five feet. A site plan has been submitted denoting the portion of the existing single-family structure and the proposed addition to be located two feet from the side property line along the western facade. Additionally, the site plan depicts an approximately 192-square-foot detached structure that does not encroach into the five-foot required side yard setback.

An R-7.5(A) zoning district requires lots to have a minimum lot size of 7,500 square feet. The subject site is not irregular in shape and contains approximately 7,824 square feet in lot area which is slightly larger by 324 square feet than comparative lots to the district minimum. within the same zoning district. However, per the comparative analysis of six properties in **Attachment A**, the average lot area is 11,839 square feet and the average floor area of structures being 1,438 square feet. According to Dallas County Appraisal District, DCAD, the one-story structure was constructed in 1940 and consists of approximately 971 square feet of floor area. Since the structure was built more than 80 years ago and staff cannot say with certainty whether the structure was built in compliance with the zoning district regulations and permit records for the structure are unattainable, staff believes that bringing the existing structure into compliance with the addition is necessary.

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

- That granting the variance to the side yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) 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 February 11, 2022, no letters have been submitted in support of nor in opposition of the request.

If the board were to grant this side 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:

Dec. 09, 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. Additionally, the applicant submitted evidence (**Attachment A**) with the application.

Dec. 28, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

January 3, 2022: The Board of Adjustment Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the January 26th deadline to submit additional evidence for staff to factor into their analysis; and the February 11th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.

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

BOARD OF ADJUSTMENT ACTION: February 23, 2022

APPEARING IN FAVOR: None

APPEARING IN OPPOSITION: None

MOTION: **Karnowski**

I move that the Board of Adjustment, in Appeal No. BDA 212-009, on application of Elias Rodriguez represented by Juan Sanchez, **grant** the request for a variance to the side yard setback regulations in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: **Cannon**

AYES: 5 – Shouse, Karnowski, Gambow, Cannon, Resendiz

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA212-016(JM)

BUILDING OFFICIAL’S REPORT: Application of Clark Depue for a special exception to the parking regulations at 119 Pittsburg Street. This property is more fully described as Lots 17 and 18, Block 9/6839, and is zoned Subdistrict 1A within Planned Development District No. 621, which requires parking to be provided. The applicant proposes to maintain a nonresidential structure for an office use, and a personal service use, and provide 19 of the required 38 parking spaces, which will require a 19-space special exception (50 percent reduction) to the parking regulations.

LOCATION: 119 Pittsburg Street

APPLICANT: Clark Depue

REQUEST:

A request for a special exception to the off-street parking regulations of 19 spaces is made to operate a 2,646-square-foot office and an 8,604-square-foot personal service use (gym) and provide 19 off-street parking spaces (or 50 percent) of the 38 required off-street parking spaces for the proposed uses.

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

Sec.51P-621.110(D) Special exception. The board of adjustment may grant a special exception of **up to 50 percent** of the required off-street parking upon the findings and considerations listed in Section 51A-4.311. The board of adjustment may impose conditions on the special exception.

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

1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article *if the board finds*, after a public hearing, that *the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets*. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

2) In determining whether to grant a special exception, the board shall consider the following factors:

- (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
- (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) Impose restrictions on access to or from the subject property; or
 - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
- (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

STAFF RECOMMENDATION:

No staff recommendation is made on this request for a special exception to the parking demand since the basis for this type of appeal is whether the board finds the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

The applicant submitted a parking analysis with the application materials which shows the existing parking demand along with vacant suites assigned typical uses. Overall, the analysis identifies that

the combination of uses proposed for development requires 362 parking spaces netted from the parking requirement with time-of-day factors table. The request for the special exception of 53 spaces (15 percent) of the remaining 362 parking spaces will require that only 309 spaces are provided on-site.

To assist the board in its decision-making, the Transportation Development Services Senior Engineer reviewed the area of request and information provided by the applicant. A comment sheet (**Attachment A**) submitted in review of the request states, "Recommends no objection."

- The special exception of 19 spaces shall automatically and immediately terminate if and when an office use and a personal service use is changed or discontinued.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Subdistrict 1A within PD No. 621
<u>East:</u>	Subdistrict 1A within PD No. 621
<u>South:</u>	Subdistrict 1A within PD No. 621
<u>West:</u>	Subdistrict 1A within PD No. 621
<u>North:</u>	Subdistrict 1A within PD No. 621

Land Use:

Surrounding uses include a variety of office/showroom warehouse uses in all directions.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The subject site is developed with a free-standing one-story, office/showroom warehouse use consisting of 11,250 square feet constructed in 1949 per DCAD records. The purpose of this request for a special exception to the off-street parking regulations of 19 spaces is made to operate a 2,646-square-foot office and an 8,604-square-foot personal service use (gym) and provide 19 off-street parking spaces (or 50 percent) of the 38 required off-street parking spaces for the proposed uses.

The property is zoned Subdistrict 1A within Planned Development District No. 621 which requires the following off-street parking to be provided:

- one space for each 358 square feet of floor area for an office use.
- One space per 225 square feet of floor area for a personal service use.

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

The parking demand generated by the office and personal service uses on the site does not warrant the number of off-street parking spaces required, and

The special exception of 19 spaces (or a 50-percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

The applicant submitted a breakdown of the operations proposed with the application materials (**Attachment A**). In this document, the applicant asserts the facility offers small group fitness classes of about seven members at a time. The hours of operation for the proposed uses are primarily from 5:00 am to 7:00 am, noon, and 4:30 pm to 8:30 pm on weekdays and 9:00 am to 11:30 am on Saturdays, before the normal business hours of the adjacent businesses.

This document also states the expected parking demand based on the operations goes from five to 10 spaces up to 20 spaces at the peak.

The Transportation Development Services Senior Engineer has no objection to the request (**Attachment B**).

If the board were to grant this request a condition may be imposed that the special exception of 19 spaces shall automatically and immediately terminate if and when the office and personal service uses are changed or discontinued.

Timeline:

- Dec. 12, 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. Evidence was included with the application materials, labeled **Attachment A**.
- January 6, 2022: The Board of Adjustment Chief Planner randomly assigned this case to Board of Adjustment Panel A.
- January 10, 2022: 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 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;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearing. The review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

January 27, 2022: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "no objection" (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: February 23, 2022

APPEARING IN FAVOR: Clark Depue 119 Pittsburgh St. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Karnowski

I move that the Board of Adjustment, in Appeal No. BDA 212-009, on application of Clark Depue **grant** the request for a variance to the parking regulations in the Dallas Development Code, subject to the following condition:

The special exception of 19 spaces shall automatically and immediately terminate if and when an office use and a personal service use is changed or discontinued.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Cannon, Resendiz

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Gambow

I move to adjourn the Panel B hearing.

SECONDED: Cannon

AYES: 5 – Shouse, Karnowski, Gambow, Cannon, Resendiz

NAYS: 0 -

MOTION PASSED: 5 - 0 (unanimously)

The meeting was adjourned at **1:09 P.M. on February 23, 2022**



CHAIRPERSON signed 4-22-22



BOARD ADMINISTRATOR



BOARD SECRETARY

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