

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
TUESDAY, OCTOBER 20, 2020**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, Chair, Taylor Adams, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Jay Narey, regular member

MEMBERS ABSENT FROM BRIEFING: None.

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

MEMBERS PRESENT AT HEARING: Cheri Gambow, Chair, Taylor Adams, regular member Sarah Lamb, regular member, Lawrence Halcomb, regular member, Jay Narey, regular member.

MEMBERS ABSENT FROM HEARING: None.

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

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 20, 2020** docket.

1:01 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 A, September 22, 2020 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: October 20, 2020

MOTION: Lamb

Approval of the Board of Adjustment Panel A, September 22, 2020 public hearing minutes.

SECONDED: Halcomb

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MISCELLANEOUS ITEM NO. 2

Approval of the Board of Adjustment 2021 Public Hearing Calendar

BOARD OF ADJUSTMENT ACTION: October 20, 2020

MOTION: Lamb

Approval of the Board of Adjustment 2021 Public Hearing Calendar

SECONDED: Narey

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-094(OA)

BUILDING OFFICIAL’S REPORT: Application of Matthew Miller for a variance to the front yard setback regulations at 5218 Vickery Boulevard. This property is more fully described as Lot 10, Block 4/1952, and is zoned Conservation District No.15, which requires a front yard setback of 27 feet. The applicant proposes to construct and maintain a single-family residential structure and provide a 17-foot front yard setback, which will require a 10-foot variance to the front yard setback regulations.

LOCATION: 5218 Vickery Boulevard

APPLICANT: Matthew Miller

REQUEST:

A request for variance to the front yard setback regulations of 10 feet is made to remove, construct and maintain two brick buttresses at each side of the front porch steps which will be located approximately 17 feet from the front property line or 10 feet into the 27-foot front yard setback.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in Conservation District No. 15 by its restrictive area and having a slope that reduces a portion of the developable area so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning district. Therefore, staff concluded that the request is not contrary to public interest and that it was not a self-created hardship.

The applicant submitted a document (Attachment A) indicating, among other things, that the proposed structure on the subject site is commensurate to eight other lots located within the same subdivision and in the same Conservation District No. 15.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

The request for a variance to the front yard setback regulations of 10 feet focuses on removing, constructing, and maintaining two brick buttresses next to the front porch steps which will be located approximately 17 feet from the front property line or 10 feet into the 27-foot front yard setback.

The site is zoned Conservation District No. 15 which states that the minimum front yard setback is the average of the front yard setback of the contributing main buildings on the block face as listed in Exhibit C of the CD ordinance.

The submitted site plan indicates two four-foot 2-inch brick buttresses at each side of the front porch steps which will be located 17 feet from the front property line.

According to DCAD records, the “main improvement” for the property addressed at 5218 Vickery Boulevard is a structure built in 1924 with 4,240 square feet of living/total area, and “additional improvements” including a 462 square-foot detached garage and a 110 square-foot porte-cochere.

The site is flat, rectangular in shape and 8,500 square feet in area. The site is zoned CD No. 15, where lots are typically 8,500 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 Conservation District No. 15 zoning classification.
 - If the board were to grant the variance, it would not be 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 Conservation District No. 15 zoning classification.

If the board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document which in this case two brick buttresses at each side of the front porch steps which will be located approximately 17 feet from the front property line or 10 feet into the 27-foot front yard setback

Granting the front yard variance request will not provide any relief to architectural requirements of CD No. 15.

Timeline:

August 19, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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

September 18, 2020 The Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

September 30: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application and at the October public hearing (**Attachment A**).

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

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

BOARD OF ADJUSTMENT ACTION: October 20, 2020

APPEARING IN FAVOR: Matt Miller 5218 Vickery Blvd. Dallas, TX.
Steve Vanderkieft 5221 Shadow Glen Dr. Grapevine, TX.

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

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-094, on application of Matthew Miller, **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: Adams

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

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

FILE NUMBER: BDA190-096(OA)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin for a special exception to the side yard setback regulations for tree preservation at 6828 Avalon Avenue. This property is more fully described as Tract 15, Block 2805, and is zoned an R-10(A) Single Family District, which requires side yard setback of six feet. The applicant proposes to construct and maintain a residential accessory structure and provide a one-foot four-inch side yard setback, which will require a four-foot eight-inch special exception to the side yard setback regulations.

LOCATION: 6828 Avalon Avenue

APPLICANT: Rob Baldwin, Baldwin and Associates

REQUEST:

A request for a special exception to the minimum side yard requirements to preserve existing trees including a pecan tree with a caliper of 25.31 inches and a cedar tree with a caliper of 17.83 inches is made to construct an approximately 675-square-foot second floor atop of an existing detached garage structure which will be located one foot four-inches from the east side property line or four-feet eight-inches into the six-foot east side yard setback on a property currently developed with a single family home.

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

Section 51(A)-4.402(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

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

STAFF RECOMMENDATION (Tree Preservation):

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

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

BACKGROUND INFORMATION:

Zoning:

- Site: R-10(A) Single Family District
- North: R-10(A) Single Family District
- East: R-10(A) Single Family District
- South: R-10(A) Single Family District
- West: R-10(A) Single Family District

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS /STAFF ANALYSIS:

This request for a special exception to the minimum side yard requirements to preserve two existing trees including a pecan tree with a caliper of 25.31 inches and a cedar tree with a caliper of 17.83 inches. The applicant proposes to construct an approximately 675-square-foot second floor atop of an existing detached garage structure, which will be located one-foot four-inches from the east side property line or four-feet eight-inches into the six-foot east side yard setback.

The property is located in an R-10(A) Single Family District which requires a minimum side yard setback of six feet.

The submitted site plan indicates an approximately 675-square-foot second floor atop of an existing detached garage structure which will be located one-foot four-inches from the east side

property line or four-feet eight-inches into the six-foot side yard setback. The site plan also indicates a pecan tree with a caliper of 25.31 inches and a cedar tree with a caliper of 17.83 inches in addition to six other trees within the site. Note that the existing accessory structure complied with section 51A-402(b)(3) since the applicant was not required to provide a side yard setback for a structure accessory to a residential use because the structure did not exceed 15 feet-in-height; and it was located in the rear 30 percent of the lot. However, of the new proposal, the accessory structure no longer complies with this section of the code.

The applicant submitted a letter from a certified arborist indicating that the trees are worthy of preservation.

The chief arborist has determined that the trees designated on the building site plan for the property are worthy of preservation and agrees with the independent arborist's assessments of the trees.

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

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

If the board were to grant the special exception request and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document – which in this case is an accessory structure that is located one foot four-inches from the east side property line or four-feet eight-inches into the six-foot east side yard setback.

Timeline:

August 21, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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

September 18, 2020 The Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:

- a copy of the application materials including the Building Official's report on the application.

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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 5, 2020: The City of Dallas Chief Arborist submitted an assessment regarding the preservation of the trees on the subject site.

BOARD OF ADJUSTMENT ACTION: October 20, 2020

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B, Dallas, TX

APPEARING IN OPPOSITION: John Gard 6827 Lorna Ln. Dallas, TX

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-096, on application Rob Baldwin of Baldwin Associates, **grant** the request of this applicant for a four-foot eight-inch special exception to the side yard setback regulations to preserve an existing tree, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that this special exception is compatible with the character of the surrounding neighborhood, the value of surrounding properties will not be adversely affected, and the tree is worthy of preservation.

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

Compliance with the submitted site plan is required.

SECONDED: Halcomb

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-098(OA)

BUILDING OFFICIAL'S REPORT: Application of Santos Martinez, La Sierra Planning Group, for a special exception to the Modified Delta Overlay District No. 1 regulations at 3609A Greenville Avenue. This property is more fully described as Lots 10-13, Block B/2909, and is zoned a CR Community Retail District with an MD Overlay District No. 1, which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay-1 regulation.

LOCATION: 3609A Greenville Avenue

APPLICANT: Santos Martinez, La Sierra Planning Group

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 according to Building Inspections 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:

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

- a) The property owner for 3609 Greenville has been attempting to secure a new certificate of occupancy for a tenant in suite A. The property owner secured and executed a lease with a potential tenant once in 2018 and once in 2019. The applicant provided copies of these agreements. In addition, the applicant provided a CO Certificate of Occupancy dated January 18 and an application for a CO dated January 2020 (Exhibit A).
- b) The above documents demonstrate that the property owner has made all required steps to occupy this space to satisfy the standard of retaining its delta credits. Applying for a new CO is the necessary step in occupying the tenant space with the City of Dallas.

BACKGROUND INFORMATION:

Zoning:

Site: Community Retail District with an MD Overlay District No. 1
North: Community Retail District with an MD Overlay District No. 1
South: Community Retail District with an MD Overlay District No. 1
East: Community Retail District with an MD Overlay District No. 1
West: Community Retail District with an MD Overlay District No. 1

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on carrying forward nonconforming parking spaces under the delta theory that according to Building Inspections 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.

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.

According to DCAD, the property at 3609A Greenville Avenue is developed as part of a with a 7,028 square feet shopping mall structure with an unknown square feet of floor area built in 1940.

Timeline:

August 24, 2020 The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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

September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:

- a copy of the application materials including the Building Official’s report on the application.
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 29, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

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

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

BOARD OF ADJUSTMENT ACTION: October 20, 2020

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

APPEARING IN OPPOSITION: None.

MOTION: Lamb

I move that the Board of Adjustment in Appeal No. BDA 190-098, **hold** this matter under advisement until **November 17, 2020**.

SECONDED: Narey

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA190-084

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin of Baldwin Associates for a special exception to the sign regulations at 5535 W. Lovers Lane. This property is more fully described as Lot 4, Block1/5012, and is zoned a CR Community Retail District, which prohibits non-monument signs within 250 feet of either private property in a non-business zoning district or a public park of more than one acre. The applicant proposes to construct a detached premises non-monument sign on a nonresidential premise within 250 feet of either private property in a non-business zoning district or a public park of more than one acre, which will require a special exception to the sign regulation.

LOCATION: 5535 W. Lovers Lane

APPLICANT: Rob Baldwin of Baldwin Associates

REQUEST: A request for a special exception to the sign regulations is made to place and maintain a non-monument sign within the 250-foot distance requirement from a residential property on a site developed with retail uses (two prospective tenants).

STANDARD FOR A SPECIAL EXCEPTION TO THE SIGN REGULATIONS FOR A NON-MONUMENT SIGN WITHIN 250 FEET OF PRIVATE PROPERTY IN A NON-BUSINESS ZONING DISTRICT:

Section 51A-7.304(b)(3) states that the Board of Adjustment may grant a special exception to allow a non-monument sign within 250 feet of private property in a non-business zoning district 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 sign regulations to allow a non-monument sign within 250 feet of private property in a non-business zoning district 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: CR (Community Retail District)
North: R-7.5(A) (Single Family Residential District)
South: CR (Community Retail District)
East: CR (Community Retail District)
West: CR (Community Retail District)

Land Use:

The site is being developed with retail uses. The areas to the north are developed with single family uses; the areas to the south, east and west are developed with retail uses.

Zoning/BDA History:

1. BDA190-063, Property located at 5535 W. Lovers Lane (subject property)
On June 23, 2020, the Board of Adjustment Panel A denied a request for a special exception to the sign regulations without prejudice.

The request was to place and maintain a non-monument sign within the 250-foot distance requirement from a residential property on a site developed with retail uses (two prospective tenants).
2. BDA190-006, Property located at 5555 W. Lovers Lane (property located east of the subject site)
On January 21, 2020, the Board of Adjustment Panel A granted your request for a special exception to the sign regulations, subject to compliance with the submitted plan.

The request was to place and maintain a non-monument sign within the 250-foot distance requirement from a residential property on a site developed with retail uses.

GENERAL FACTS/STAFF ANALYSIS:

The request focuses on placing and maintaining a non-monument sign within 250 feet from residential property on a site being developed with retail uses (two prospective tenants).

The Dallas Development Code states non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park of more than one acre.

The applicant has submitted a site plan and sign elevation. The site plan notes that the signboard of the proposed sign would be oriented to face east and west. The sign is not visible to the non-business zoning district immediately north of the subject site. The site location was moved to the east side of the lot. Previously, the sign was proposed to be on the west side of the lot.

The subject sign is located approximately 200 feet from the nearest residential lot located north of the subject site. The applicant is placing a new two-tenant sign on a steel pipe (pole) in order to advertise these new retail tenants.

In October of 2004, the sign regulations were amended in ways that added the provision the applicant is seeking an exception from – non-monument signs are not allowed within 250 feet of either private property in a non-business zoning district or a public park more than one acre.

The applicant submitted a revised site plan and elevation document stating, among other things, that the proposed two-tenant sign will be a 64-square-foot flag mount illuminated LED cabinet.

No changes were made to this application since the Board of Adjustment held this application on September 22, 2020.

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

- That allowing a non-monument sign within 250 feet of private property in a non-business zoning district when, in the opinion of the board, the special exception will not adversely affect neighboring property.

If the board were to grant this request and impose the submitted site plan as a condition to the request, the sign would be held to the location as shown on this plan

- a site plan that notes that the signboard of the proposed replacement sign would be oriented to face east and west, and not to the non-business zoning district immediately north of the subject site.

Staff does not recommend imposing any sign elevation as a condition to this request since granting this special exception would not provide any relief to the sign regulations of the Dallas Development Code (i.e. height, effective area, or setback requirements) other than allowing a non-monument sign within 250 feet of private property in a non-business zoning district.

TIMELINE:

- July 28, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- August 18, 2020: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- August 19, 2020: 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 September 2, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the September 11, 2020 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.”
- September 4, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September 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 Building Inspection Senior Plans Examiner/Development Sing Specialist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- No review comment sheets were submitted in conjunction with this application.
- September 22, 2020: The Board of Adjustment Panel A conducted a public hearing on this application and delayed action on this application per the applicant’s request until the next public hearing to be held on October 20, 2020
- September 28, 2020: The Board Administrator wrote the applicant a letter of the board’s action; 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.

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.

BOARD OF ADJUSTMENT ACTION: September 22, 2020

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B, Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: Lamb

I move that the Board of Adjustment in request No. BDA 190-084, **hold** this matter under advisement until **October 20, 2020**

SECONDED: Adams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: October 20, 2020

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. Ste. B Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: Lamb

I move that the Board of Adjustment, in Appeal No. BDA 190-084, on application of Rob Baldwin of Baldwin Associates, **grant** the request of this applicant to locate one non-monument sign within 250 feet of private property in a non-business zoning district as a special exception to the sign regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property.

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 and the sign may not exceed 26 feet in height.

SECONDED: Narey

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

2:08 P.M. Recess

2:17 P.M. Recess Resumed

3:05 P.M. Board Meeting adjourned for **October 20, 2020.**

Cheri Gumbow

CHAIRPERSON

Jennifer Munoz

BOARD ADMINISTRATOR

John A. [Signature]

BOARD SECRETARY

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