

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, MAY 19, 2021**

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

MEMBERS ABSENT FROM BRIEFING: Matthew Vermillion, regular member

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

MEMBERS ABSENT FROM HEARING: Matthew Vermillion, regular member

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

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

11:02 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **May 19, 2021 docket.**

BOARD OF ADJUSTMENT ACTION: May 19, 2021

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 B, April 21, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: May 19, 2021

MOTION: Williams

Approval of the Board of Adjustment Panel B, April 21, 2021 public hearing minutes.

SECONDED: Shouse

AYES: 4 – Schwartz, Slade, Shouse, Williams

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-038(OA)

BUILDING OFFICIAL’S REPORT: Application of Jonathan Vinson for a variance to the front yard setback regulations at 3604 Overbrook Drive. This property is more fully described as Part of Lot 3, Block 4/2022, and is zoned Conservation District No. 17, which requires a front yard setback of 145 feet. The applicant proposes to construct and maintain a single-family residential structure and provide no front yard setback (zero-foot) along Edgewater Street, which will require a 145-foot variance to the front yard setback regulations.

LOCATION: 3604 Overbrook Drive

APPLICANT: Jonathan Vinson

REQUEST:

A request for a variance to the front yard setback regulations of up to 145-feet is made to enlarge and maintain a residential single family structure from 4,439 square feet to 7,330 square feet and to maintain accessory structures including a swimming pool and steps leading to the pool, to be located within one of the site’s two required front yard setbacks (on Edgewater) or 145 feet into this 145-foot front yard setback on a site that is developed with a single family home.

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 the CD-17 District by its restrictive area due to having two front yards, being sloped, and having a creek that reduces a portion of the development area so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning district.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

1. BDA201-034, Property at 3612 Overbrook Drive (the adjacent property to the west)

On April 21, 2021, the Board of Adjustment Panel B held over the requests for special exception to the front yard setback regulations for tree preservation, and a variance to the off-street parking regulations to allow the applicant to change the requests.

GENERAL FACTS/STAFF ANALYSIS:

This request for a variance to the front yard setback regulations of up to 145-feet is made to enlarge and maintain a residential single family structure from 4,439 square feet to 7,330 square feet and to maintain accessory structures including a swimming pool and steps leading to the pool, to be located within one of the site’s two required front yard setbacks (on Edgewater) or 145 feet into this 145-foot front yard setback on a site that is developed with a single family home.

The property is located in Conservation District No. 17 requires a front yard setback for corner lots to be the average of the closest two front yards on the same blockface. For this property, the average of the closest two front yards on the same blockface is 145 feet.

The subject site is sloped, has a creek that dissects the property in two, and according to the applicant’s representative, is .55 acres (23,958 square feet) in area. The Conservation District No. 17 minimum lot size is 7,500 square feet in area.

The applicant has provided a document stating among other things, that the subject site is unique in that it contains a natural creek/floodway with steep slopes and many trees. Additionally, the natural creek/floodway and slope prevent the site from being developed within those areas. The document indicates that the creek/floodway and steep grade adjacent to the creek/floodway prevent the property from being developed in a manner commensurate with other properties within the same zoning district of CD No. 17.

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. 17 District zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in

developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same Conservation District No. 17 District zoning classification.

If the board were to grant the variance request and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document– which in this case a 7,330 square foot single family structure and to maintain accessory structures including a swimming pool and steps leading to the pool, to be located within one of the site’s two required front yard setbacks (on Edgewater) or 145 feet into this 145-foot front yard setback.

Timeline:

- March 10, 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.
- April 7, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.
- April 8, 2021: The Board of Adjustment Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
 - an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- April 26, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).
- April 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included the

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

May 7, 2021: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Jonathan Vinson 2323 Ross Ave. #600 Dallas, TX
Donald McNamara 3604 Overbrook Dr. Dallas, TX
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Larry Good 3601 Overbrook Dr. Dallas, TX
Cy Mills 4331 Glenwood Ave. Dallas, TX
Fred Albrecht 3606 Edgewater St. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-038, on application of Jonathan Vinson, **grant** the request for a variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

SECONDED: Williams
AYES: 4 - Schwartz, Shouse, Slade, Williams
NAYS: 0
MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-045(OA)

BUILDING OFFICIAL’S REPORT: Application of Tim Mallad for a variance the side yard setback regulations a1 4959 Nashwood Lane. This property is more fully described as Lot 14, Block H/6394, and is zoned an R-16(A) Single Family District, which requires a side yard setback of 10 feet. The applicant proposes to construct a single family residential accessory structure and provide a three-foot side yard setback, which will require a seven-foot variance to the side yard setback regulations.

LOCATION: 4959 Nashwood Lane

APPLICANT: Tim Mallad

REQUESTS:

A variance to the side yard setback regulations is made to construct and maintain an approximately 1,425-square-foot three-car garage with a porch, located three feet from the northern side property line or seven feet into the 10-foot side yard setback on a site that is developed with a single family home.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the R-16(A) District considering its restrictive lot area according to the submitted site plan. The plan shows the site has a restrictive area due to a rear easement and a creek that reduces the developable area of the lot from 23,451 to approximately 21,200 square feet after subtracting the easement and creek so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-16(A) zoning district.

- The applicant submitted a document (**Attachment A**) indicating, among other things, that the proposed structure on the subject site is commensurate to five other lots located in the same R-16 (A) District.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	R-16(A) (Single family district)
<u>North:</u>	R-16.5(A) (Single family district)
<u>South:</u>	R-16(A) (Single family district)
<u>East:</u>	R-16(A) (Single family district)
<u>West:</u>	R-16(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 related board or zoning cases within the vicinity of the subject site within the last five years.

GENERAL FACTS /STAFF ANALYSIS:

The purpose of this request for a variance to the side yard setback regulations of seven feet focuses on constructing and maintaining an approximately 1,425 square feet three-car garage with a porch, located three feet from the northern side property line or seven feet into the 10-foot side yard setback on a site that is developed with a single family home.

According to DCAD records, the “main improvements” for the property addressed at 4959 Nashwood Lane, include a single family structure built in 1956 with 4,258 square feet of area. DCAD shows a 648-square-foot attached garage for this property.

The subject site is sloped, slightly irregular (approximately 100 feet x 234 feet), and according to the submitted application, is 0.5 acres (or 23,451 square feet) in area. The site is zoned an R-16(A) Single Family District where lots are typically 16,000 square feet in area. However, the subject site has a restrictive area due to a rear easement and a creek that reduces the developable area of the lot from 23,451 to approximately 21,200 square feet, after subtracting the easement and creek, so that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-16(A) zoning district.

The applicant submitted a document with this application, indicating among other things that the proposed addition to the subject site is a 1,425-square-foot garage plus the

existing 4,258-square-foot structure. The average of five other properties in the same zoning is approximately 5,345 square feet excluding the garages.

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-16(A) Single Family District zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) Single Family District zoning classification.

If the board were to grant the variance request and impose the submitted site plan as a condition, the structure in the side yard setbacks would be limited to what is shown on this document– which in this case is a three-car garage with a porch structure that would be located three feet from the northern side property line or seven feet into the 10-foot side yard setback.

Timeline:

- March 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.
- April 7, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.
- April 8, 2021: The Board of Adjustment Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;

- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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

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

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Tim Mallad 4959 Nashwood Ln. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-045, application of Tim Mallad, **grant** the variance to the side yard setback regulations contained in the Dallas Development Code, subject to the following conditions:

Compliance with submitted site plan is required.

SECONDED: Williams

AYES: 4 - Schwartz, Shouse, Williams, Slade

NAYS: 0

MOTION PASSED: 4-0 (unanimously)

FILE NUMBER: BDA201-042(OA)

BUILDING OFFICIAL’S REPORT: Application of Rob Baldwin for a special exception to the fence height regulations at 5535 Park Lane. This property is more fully described as Lot 8, Block B/5592, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct an eight-foot seven-inch-high fence in a required front yard, which will require a four-foot seven-inch special exception to the fence regulations.

LOCATION: 5535 Park Lane

APPLICANT: Rob Baldwin

REQUESTS:

A request for a special exception to the fence height regulations four-foot seven-inch special exception to the fence regulations is made to construct and maintain an eight-foot seven-inch-high brick fence with an iron gate in the required front yard on a site developed with a single-family home.

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: R-1ac (A) (Single family district)
- North: R-1ac (A) (Single family district)
- East: R-1ac (A) (Single family district)
- South: R-1ac (A) (Single family district)
- West: R-1ac (A) (Single family district)

Land Use:

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

Zoning/BDA History:

1. BDA190-112, Property at 5518 Winston Court (Property located Northwest of the subject site)

On November 16, 2020, the Board of Adjustment Panel A denied a requests for special exceptions to the fence standards regulations without prejudice.

The case report stated the request was made to construct and maintain for special exceptions to the fence standards regulations related to an 11-foot 10-inch-high fence in a required front yard related to spaical exception to the fence panels having less than 50 percent open surface area located less than five feet from the front lot line.

GENERAL FACTS/STAFF ANALYSIS:

The purpose of this request for a special exception to the fence height standards focuses on constructing and maintaining an eight-foot seven-inch-high brick fence with an iron gate in the required front yard on a site developed with a single-family home.

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.

The subject site is zoned an R-1ac(A) Single Family District where a 40-foot front yard setback is required.

The proposed fence is to be located in this required front yard. The following additional information was gleaned from the submitted site plan:

- The proposed fence is approximately 44 feet in length parallel to Park Lane and runs between six and 15 feet perpendicular to the front property line of this street.
- The distance between the proposed fence and the pavement line is between 20 to 33 feet.

Staff conducted a field visit of the site and surrounding area (approximately 400 feet north, south, east, and west of the subject site) and noticed other fences that appear to be above four feet-in-height and located in a front yard setback.

As of May 7, 2021, no letters have been received in opposition or support of this request.

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

Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding four feet in the front yard setback to be constructed in the location and heights as shown on these documents.

Timeline:

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

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

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

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the April 27th deadline to submit additional evidence for staff to factor into their analysis; and the May 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR: Rob Baldwin 3904 Elm St. #B Dallas, TX.
Darcy Bonner 5535 Park Lane Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-017, on application of Rob Baldwin **grant** the request for special exceptions to the side yard setback regulations in the Dallas Development Code, subject to the following conditions:

Compliance with submitted site plan.

SECONDED: Williams

AYES: 4 - Schwartz, Shouse, Slade, Williams

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-030(JM)

BUILDING OFFICIAL’S REPORT: Application of Dallas City Council Resolution 21-0263 to require compliance of a non-conforming use at 3606 Greenville Avenue Suite B. This property is more fully described as Lots 1A and 2A, 1/2888, and is zoned a CR Community Retail District, which limits the legal uses in a zoning district. The applicant proposes to request that the board establish a compliance date for a non-conforming alcoholic beverage establishment use.

LOCATION: 3606 Greenville Avenue Suite B

**APPLICANT: Dallas City Council by Resolution 21-0263
Represented by Zinzi Bonilla and Naomi Green**

REQUEST:

A request is made for the Board of Adjustment to establish a compliance date for a nonconforming alcoholic beverage establishment use (Bar 3606) on the subject site.

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

- (a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the

property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

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

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

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

(ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

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

(D) Determination of amortization period.

(i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.

(ii) The following factors must be considered by the board in determining a reasonable amortization period:

(aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.

(bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.

(cc) Any return on investment since inception of the use, including net income and depreciation.

(dd) The anticipated annual recovery of investment, including net income and depreciation.

(E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.

(F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

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

After a period of vacancy, the site lost nonconforming rights to operate an alcoholic beverage establishment without compliance to the SUP requirement. It was also noted that the site had been split into two suites. The property owners successfully argued for reinstatement of nonconforming rights at both suites on January 18, 2005.

Most recently, a CO was issued on April 24, 2018 for an alcoholic beverage establishment DBA 3606 with remarks indicating the BDA action taken in 2005 to reinstate the nonconforming use rights and furthermore adding, “upheld for alcoholic beverage establishment. Single-owner, multi-use packed parking agreement providing 48 spaces for this use. /EXISTING FACILITY WITH 299 PERSON OCC'Y LOAD. 4-11-18 TABC MB, LB PE..” This use is still in operation today.

BACKGROUND INFORMATION:

Zoning:

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

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

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

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

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

Land Use:

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

Zoning/BDA History:

1. BDA 045-133, 3606 Greenville Avenue, Suite A On January 18, 2005, the Board of Adjustment Panel A approved a special exception reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses.

2. BDA 045-136, 3606 Greenville Avenue, Suite B On January 18, 2005, the Board of Adjustment Panel A approved a special exception reinstating nonconforming use rights for “alcoholic beverage establishment” and “dance hall” uses.

3. BDA201-023, 3606 Greenville Avenue, Suite A On April 21, 2021, the Board of Adjustment Panel B held this case under advisement to June 23, 2021.

TIMELINE:

- February 4, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 5, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.
- March 8, 2021: The Board of Adjustment Chief Planner/Board Administrator sent the record owner of the property (Uptown Ventures LLC & Hillcrest Towers LLC) and the tenant/operator of the use (SNNR Ventures, LLC) a letter (with a copy to Jill Haning, Zinzi Bonilla, and Naomi Green) informing them that a Board of Adjustment case had been filed against the nonconforming alcoholic beverage establishment use. A revised letter was sent on March 8, 2021 providing the application for Suite B. The letter included following enclosures:
1. A copy of the Board of Adjustment application and related materials.
 2. Dallas Development Code Section 51A-3.102 describing the

Board of Adjustment.

3. Dallas Development Code Section 51A-2.102(90), which defines a nonconforming use.
4. Dallas Development Code Section 51A-4.704, provisions for nonconforming uses and structures.
5. Dallas Development Code Section 51A-4.703, Board of Adjustment hearing procedures.
6. City of Dallas Board of Adjustment Working Rules of Procedures.
7. The hearing procedures for Board of Adjustment amortization of a nonconforming use.

The letter also informed the owners and tenant/operator of the date, time, and location of the public hearing, and provided a deadline of May 7th (later corrected to May 10th) to submit any information that would be incorporated into the board's docket.

April 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

May 7, 2021 The tenant/operator provided evidence (**Attachment A**).

May 10, 2021 The applicant [attorneys on behalf of the City of Dallas] provided evidence (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: May 19, 2021

APPEARING IN FAVOR:

Naomi Green 1500 Marilla St. 7DN Dallas, TX
Darren Dattalo 5911 Goliad Dallas, TX
Hope Covington 320 E. Jefferson Dallas, TX
Martha Carlson 5506 Matalee Ave. Dallas, TX

APPEARING IN OPPOSITION:

Bruce Bagelman 3102 Oaklawn #777 Dallas, TX
Deborah Deitsch-Perez 3102 Oaklawn #777 Dallas, TX
Rajen Melwani 3338 Whitney Dr. Dallas, TX
Kiara Escobar 5455 Belmont Ave. Dallas, TX
Jovana Hernandez 1515 Rio Grande Dr. #1703 Plano, TX
Vanessa Chavez 5111 Parry Ave. Dallas, TX
Yazmeen Barba 4218 Salem St Grand Prairie, TX
Fernando Morin 4522 Bethany Dr. Garland, TX
Binh Vo 9550 Forest Ln. #511 Dallas, TX
Luke Jana 3606 Greenville Ave. Ste. A Dallas, TX
Cody Killingsworth 106 Broken Arrow Waxahachie, TX
Shoncy Raspberry 1900 McKinney #1605 Dallas, TX

MOTION: Slade

I move that the Board of Adjustment in Appeal No. BDA 201-030, **deny** the applicant's request for expedited compliance **without** prejudice because based on the evidence and testimony presented at the public hearing, we find that continued operation of this nonconforming use will not have an adverse effect on nearby properties.

SECONDED: Williams

AYES: 4 - Shouse, Slade, Williams, Schwartz

NAYS: 0-

MOTION PASSED: 4 -(unanimously)

MOTION: Slade

I move to adjourn the Panel B hearing.

SECONDED: Williams

AYES: 4 - Shouse, Slade, Williams, Schwartz

NAYS: 0 -

MOTION PASSED (unanimously): 4 - 0

The meeting was adjourned at 3:56 P.M. on May 19, 2021.



CHAIRPERSON



BOARD ADMINISTRATOR



BOARD SECRETARY

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