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**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
MONDAY, MAY 17, 2021**

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, regular member, Judy Pollock, regular member, Robert Agnich, regular member, and Roger Sashington, regular member

MEMBERS ABSENT FROM BRIEFING: Moises Medina, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, regular member, Judy Pollock, regular member, Robert Agnich, regular member, and Roger Sashington, regular member

MEMBERS ABSENT FROM HEARING: Moises Medina, regular member

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

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

11:16 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **April 19, 2021 docket.**

BOARD OF ADJUSTMENT ACTION: May 17, 2021

1:00 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C, April 19, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: May 17, 2021

MOTION: Agnich

Approval of the Board of Adjustment Panel C, April 19, 2021 public hearing minutes.

SECONDED: Pollock

AYES: 4 – Hounsel, Pollock, Agnich, Sashington

NAYS: 0
MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-043(OA)

BUILDING OFFICIAL’S REPORT: Application of Nicole Hill for a special exception to the landscaping regulations, and for a variance to the side yard setback regulations at 2034 Canada Drive. This property is more fully described as Lot 1, Block 3/7130, and is zoned an R-5(A) Single Family District, which requires mandatory landscaping and requires a side yard setback of 10 feet. The applicant proposes to construct a nonresidential structure (church) and provide an alternate landscape plan, which will require a special exception to the landscape regulations, and to construct a nonresidential structure (church) and provide a five-foot side yard setback, which will require a five-foot variance to the side yard setback regulations.

LOCATION: 2034 Canada Drive

APPLICANT: Nicole Hill

REQUESTS:

The following requests have been made on a site that is developed with a church structure:

1. a request for a variance to the side yard setback regulations of five feet is made to maintain a nonresidential structure, a church with a staircase, located five feet from the site’s southern side; and
2. a request for a special exception to the landscape regulations is made to maintain the aforementioned church structure (i.e. increased nonpermeable coverage of the lot) and to not fully meet the landscape regulations. The applicant seeks to reduce the residential buffer zones (RBZ), the street buffer zone (SBZ), and to provide an alternative irrigation method for plant maintenance.

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:

- 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;
- 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
- 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.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property.
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

- the extent to which there is residential adjacency.
- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

STAFF RECOMMENDATION (variance):

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-5(A) Single Family Zoning District with a church use considering its restrictive area due to being smaller in lot size than all other four similar lots with church uses. This lot is restricted by being 7,245 square feet when the other four lots have an average of 12,322.25 square feet. The restrictive lot area makes the subject property incapable of being developed in a manner commensurate with the development upon other parcels of land with the same zoning that have a church use.

Staff concluded that the applicant has shown by submitting a document indicating among other things that the total structure size of the proposed church on the subject site at approximately 1,740 square feet is commensurate to four other churches in the same R-5(A) Zoning District that have an average structure size of approximately 1,788 square feet.

STAFF RECOMMENDATION (special exception to the landscape regulations):

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The chief arborist recommends approval of the proposed alternate landscape plan because strict compliance to Article X requirements will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring properties.

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS (variance):

This request focuses on maintaining a nonresidential structure, a church with a staircase, located five feet from the site's southern side. Since the church structure is located on a lot that it is zoned an R-5(A) District the nonresidential use requires a minimum side yard setback of 10 feet.

A site plan has been submitted denoting a church and staircase located as close as five feet one inch from the site's southern side.

DCAD records indicate there are no improvements for property located at 2034 Canada Drive.

The subject site is rectangular in shape, flat, and according to the application, contains 7,245 square feet in area.

The applicant, as part of the application, provided a document indicating among other things, that the proposed structures on the subject site are commensurate to four other lots with churches located in the same R-5(A) District.

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-5(A) District classification.

- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-5(A) District classification.

At the time of this report a revised site plan is required to address the location of a church with a staircase, located five feet from the site's southern side.

If the board were to grant this variance request and impose the proposed revised site plan as a condition, the structures in the side yard setback would be limited to what is shown on this document which are a church and staircase located five feet from the site's southern side.

GENERAL FACTS/STAFF ANALYSIS (landscape regulations):

A request for a special exception to the landscape regulations is made to maintain a nonresidential structure with a church use, increasing the nonpermeable coverage of the lot, which triggers landscape requirements per Article X. The applicant seeks to provide an alternate landscape plan that does not fully meet the landscape regulations. The applicant seeks to reduce the residential buffer zones (RBZ), the street buffer zone (SBZ), and requests to provide an alternative irrigation method for plant maintenance.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period. In this case, the existing church structure was recently erected on the lot. This new construction triggers compliance with landscape regulations.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (**Attachment A**).

The chief arborist's memo states the following with regard to "request":

The applicant is seeking a special exception to the landscaping requirements of Article X. The request includes an exception for the mandatory requirements of Section 51A-10.125(b) being a residential buffer zone (RBZ) reduction on the east and south boundaries, and a street buffer zone (SBZ) reduction to the north. In addition, the applicant requests an alternative irrigation method for plant maintenance.

The chief arborist's memo states the following with regard to "provision":

The applicant has provided a landscape plan for the entire property, as required in Article X. The plan provides for all landscape design option requirements (51A-10.126) for the property. The plan meets all site tree requirements and plant groups required for the RBZ and SBZ on three sides, but the proposed plan has insufficient space for required landscaping within the south RBZ.

The chief arborist's memo states the following with regard to "deficiencies":

The site design does not conform to minimum Article X requirements for the residential buffer zone on two boundaries, east and south. The ordinance requires a minimum of a five-foot-wide landscape area between the parking surface or structure and the property line while maintaining an average width of 10 feet for the whole boundary line. On the south, the building is spaced in close proximity to the boundary and with a stair structure within the required buffer. This restricts the placement of trees that would be planted too close to the structure.

Due to limitations of space, the applicant has placed the parking to the east and north property lines. Otherwise, the rest of the eastern and northern buffer zones would exceed the average residential and street buffer zones required by ordinance.

Article X requires an automatic irrigation system for new construction (51A-10.106). The applicant has requested an alternative provision of manual watering and use of soaker hoses from a verifiable water supply as would be applied by code for renovations and additions. I have no objections to this provision.

The chief arborist's revised memo states the following with regard to the "recommendation":

The chief arborist recommends approval of the proposed alternate landscape plan because strict compliance to Article X requirements will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring properties.

At the time of this report a revised alternate landscape plan is required to address the location of the bushes by the parking spaces.

If the board were to grant this request and impose the proposed alternate landscape plan as a condition to the request, the site would be provided an exception from the required landscape provisions as shown on the plan. This is also subject to review by the arborist.

Timeline:

- March 23, 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 Board of Adjustment Panel C.
- April 8, 2021: The Board of Adjustment Senior Planner emailed the applicant the following information:
- 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 June public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Sustainable Development and Construction Department Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorney to the Board.
- April 29, 2021: The City of Dallas Chief Arborist submitted a memo regarding this request (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: May 17, 2021

APPEARING IN FAVOR: Nicole Hill 7557 Rambler Rd. #430 Dallas, TX
Reginald Hall 3218 Manzanilla Ln. Heartland, TX

APPEARING IN OPPOSITION: None.

MOTION#1: Sashington

I move that the Board of Adjustment, in Appeal No. BDA 201-043, on application of Nicole Hill, **grant** the five-foot variance to the side yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the revised site plan is required.

SECONDED: Hounsel

AYES: 4 - Hounsel, Pollock, Agnich, Sashington

NAYS: 0 –

MOTION PASSED: 4-0 (unanimously)

MOTION#2: Sashington

I move that the Board of Adjustment, in Appeal No. BDA 201-043, on application of Nicole Hill, **grant** the request of this applicant for a special exception to the landscape requirements contained in Article X of the Dallas Development Code, as amended, because our evaluation of the property, the testimony presented to us, and the facts that we have determined show that (1) strict compliance with the requirements of this article will unreasonably burden the use of the property; (2) the special exception will not adversely affect neighboring property, and (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

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

Compliance with the revised alternate landscape plan is required.

SECONDED: Hounsel

AYES: 4 - Hounsel, Pollock, Agnich, Sashington

NAYS: 0 –

MOTION PASSED: 4-0 (unanimously)

FILE NUMBER: BDA201-036(OA)

BUILDING OFFICIAL’S REPORT: Application of Dallas City Council Resolution 21-0265 to require compliance of a non-conforming use at 1405 Martin Luther King, Jr. Boulevard. This property is more fully described as part of Lot 2 and all of Lots 3 and 4, Block 2/1137, and is zoned an FWMU-3 Form Walkable Mixed-Use Subdistrict within Planned Development District No. 595 with an SH Shopfront Overlay, which limits the legal uses in a zoning district. The applicant proposes to request that the Board establish a compliance date for a non-conforming liquor store use.

LOCATION: 1405 Martin Luther King, Jr. Boulevard

APPLICANT: Dallas City Council by Resolution 21-0265

REQUEST:

A request is made for the Board of Adjustment to establish a compliance date for a non-conforming liquor store use (Big D Cut Rate Beer and Wine) 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 an FWMU-3 Form Walkable Mixed-Use Subdistrict within Planned Development District No. 595 with an SH Shopfront Overlay. On September 26, 2001, City Council passed Ordinance No. 24726 which added a requirement that liquor store uses must obtain a Specific Use Permit (SUP) in this zoning district. However, a Certificate of Occupancy (CO) was issued for a liquor store use, Big D Cut Rate, December 13, 1990—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 1990 and became nonconforming with the passing of Ordinance No. 24726 in 2001. This use is still in operation today.

BACKGROUND INFORMATION:

Zoning:

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

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

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

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

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

Land Use:

The subject site is developed with a multi-tenant commercial structure housing one nonconforming liquor store use and a vacant retail space (half of the structure is vacant). The areas to the north, south and east are developed with mixed uses; and the area to the west is developed with a public park.

Zoning/BDA History:

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

TIMELINE:

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

March 9, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel C.

February 12, 2021: The Board of Adjustment Senior Planner sent the record owner of the property (Madera Paan INC) and the tenant/operator of the use (Big D Town LLC) a letter (with a copy to Jill Haning and James Fariior) informing them that a Board of Adjustment case had been filed against the nonconforming liquor store use. The letter included following enclosures:

1. A copy of the Board of Adjustment application and related materials.
2. Dallas Development Code Section 51A-3.102 describing the Board of Adjustment.
3. Dallas Development Code Section 51A-2.102(90), which defines a nonconforming use.
4. Dallas Development Code Section 51A-4.704, provisions for nonconforming uses and structures.
5. Dallas Development Code Section 51A-4.703, Board of Adjustment hearing procedures.

6. City of Dallas Board of Adjustment Working Rules of Procedures.
7. The hearing procedures for Board of Adjustment amortization of a nonconforming use.

The letter also informed the owners and tenant/operator of the date, time, and location of the public hearing, and provided a deadline of May 7, 2021 to submit any information that would be incorporated into the board's docket.

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

May 6, 2021 The representative for the tenant/operator submitted a letter and documentary evidence to the board (minimum of 45 days from motion for continuance provided as **Attachment A**).

May 7, 2021 The representative for city council submitted a letter and documentary evidence to the board (**Attachment B**).

BOARD OF ADJUSTMENT ACTION: May 17, 2021

APPEARING IN FAVOR: Evan Farior 1500 Marilla St. Dallas, TX
 Bernardo Bueno 320 E. Jefferson Dallas, TX
 Margarita Ortez 11406 Fernald Ave. Dallas, TX
 Dr. Terry Flowers 1600 Pennsylvania Ave. Dallas, TX
 Jeremy Connally 1414 Belleview #1111 Dallas, TX
 Ferrell Fellows 1919 McKinney Ave. Dallas, TX
 Danielle Lindsey 5005 Galleria Rd. #3133 Dallas, TX
 Dennis Bryant 2818 MLK Jr. Blvd. Dallas, TX

APPEARING IN OPPOSITION: Rahim Noorani 8111 LBJ Fwy #480 Dallas, TX
 Tailim Song 8111 LBJ Fwy #480 Dallas, TX
 Chris Valentine 8111 LBJ Fwy #480 Dallas, TX
 Hank Lawson 12402 Park Ave. Dallas, TX

MOTION: Hounsel

I move that the Board of Adjustment in Appeal No. BDA 201-036, hold this case under advisement until **June 21, 2021**.

SECONDED: Sashington

AYES: 4 - Hounsel, Pollock, Agnich, Sashington

NAYS: 0 -

MOTION PASSED (unanimously): 4 – 0

MOTION: Agnich

I move to adjourn the Panel C hearing.

SECONDED: Pollock

AYES: 4 - Agnich, Hounsel, Pollock, Sashington

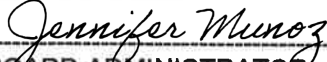
NAYS: 0 -

MOTION PASSED (unanimously): 4 - 0

The meeting was adjourned at **2:10 P.M. on May 17, 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.