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**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY OF DALLAS- VIDEOCONFERENCE
WEDNESDAY, AUGUST 18, 2021**

CITY SECRETARY
DALLAS, TEXAS

MEMBERS PRESENT AT BRIEFING: Nick Brooks, Acting Chair, Matt Shouse, regular member, Matthew Vermillion, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: Michael Schwartz, Chair

MEMBERS PRESENT AT HEARING: Nick Brooks, Acting Chair, Matt Shouse, regular member, Matthew Vermillion, regular member and Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: Michael Schwartz, Chair

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes, Asst. City Atty., Charles Trammell, Development Code, Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Engineering Division, Andreea Udrea, Assistant Director Interim, Carolina Yumet, Interim Assistant Director and Dr. Eric A. Johnson, Interim Director.

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Pamela Daniel, Senior Planner Anna Holmes, Asst. City Atty., Charles Trammell, Development Code, Secretary, Robyn Gerard, Public Information Officer, David Nevarez, Engineering Division, Andreea Udrea, Assistant Director Interim, Carolina Yumet, Interim Assistant Director and Dr. Eric A. Johnson, Interim Director.

10:07 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's August 18, 2021 docket.

BOARD OF ADJUSTMENT ACTION: August 18, 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, June 23, 2021 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: August 18, 2021

MOTION: Shouse

Approval of the Board of Adjustment Panel B, June 23, 2021 public hearing minutes.

SECONDED: Slade

AYES: 4 – Brooks, Slade, Shouse, Vermillion

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-090(JM)

BUILDING OFFICIAL'S REPORT: Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3016 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 3016 Greenville Avenue

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

UPDATE:

On January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request. No changes have been made.

REQUEST:

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use for the vacant commercial structure on the subject site.

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING AND LOADING

SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include *but not be limited* to the following:

1. A decline in the rental rates for the area which has affected the rental market.
2. An unusual increase in the vacancy rates for the area which has affected the rental market.
3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

BACKGROUND INFORMATION:

Zoning:

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1
- West: CD Nos. 9 with an MD Overlay District No. 1

Land Use:

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

Zoning/BDA History:

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more. Reinstating the delta credits would allow for the applicant to maintain a Certificate of Occupancy for a general merchandise or food store use [Uptown Dog] which is currently in question due to the period of vacancy discovered since the prior tenant.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3016 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of parking or loading:

- Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
- Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

In a modified delta overlay district, the city council may limit the number of percentages of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.

An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to **any portion** of the nonconforming parking or loading **not needed** to meet the new requirements **are lost**.

An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.

In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in the Community Retail District with an MD Overlay District No. 1a is expanded.

In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 1. A decline in the rental rates for the area which has affected the rental market.
 2. An unusual increase in the vacancy rates for the area which has affected the rental market.
 3. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

Timeline:

August 4, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

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

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

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

- September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).
- October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on November 18, 2020.
- October 26, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.
- October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.
- November 18, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the next public hearing to be held on January 20, 2021.
- November 23, 2020: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.
- January 20, 2021: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request until the August 18, 2021.

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

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

BOARD OF ADJUSTMENT ACTION: January 20, 2021

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

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

MOTION: Vermillion

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

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

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

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

MOTION#1: Brooks

I move that the Board of Adjustment, in Appeal No. BDA 190-090, on application of Thomas Shields, represented by Steve Dimitt, grant the request to carry forward delta credits as a special exception to the Modified Delta Overlay District No. 1 regulations in the Dallas Development Code, because our evaluation of the property and the testimony shows that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance including:

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

SECONDED: Schwartz

AYES: 3 - Schwartz, Brooks, Jones

NAYS: 2 – Vermillion, Shouse

MOTION FAILED: 3 – 2

MOTION#2: Vermillion

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

SECONDED: Jones

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION#3 (Motion to Reconsider): Brooks

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

SECONDED: Vermillion

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

MOTION#4: Brooks

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

SECONDED: Vermillion

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: October 21, 2020

APPEARING IN FAVOR:

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

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Shouse

I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until November 18, 2020.

SECONDED: Vermillion

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 18, 2021

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

APPEARING IN OPPOSITION: None.

MOTION: **Slade**

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

SECONDED: **Vermillion**

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-091(JM)

BUILDING OFFICIAL’S REPORT: Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3018 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 3018 Greenville Avenue

APPLICANT: Thomas Shields
Represented by Steven Dimitt

UPDATE:
On January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request. No changes have been made.

REQUEST:
A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the

use on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use for the vacant commercial structure on the subject site.

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include *but not be limited* to the following:

4. A decline in the rental rates for the area which has affected the rental market.
5. An unusual increase in the vacancy rates for the area which has affected the rental market.
6. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

BACKGROUND INFORMATION:

Zoning:

- Site: CD No. 11 with an MD Overlay District No. 1
- North: CD Nos. 9 and 11 with an MD Overlay District No. 1
- South: CD No. 11 with an MD Overlay District No. 1
- East: CD No. 11 with an MD Overlay District No. 1
- West: CD Nos. 9 with an MD Overlay District No. 1

Land Use:

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

Zoning/BDA History:

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more. Reinstating the delta credits would allow for the applicant to maintain a Certificate of Occupancy for a restaurant without drive-in service use [Window Seat] which is currently in question due to the period of vacancy discovered since the prior tenant.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3018 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of parking or loading:

- Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.
- Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

In a modified delta overlay district, the city council may limit the number of percentages of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.

An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to **any portion** of the nonconforming parking or loading **not needed** to meet the new requirements **are lost**.

An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.

In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in the Community Retail District with an MD Overlay District No. 1a is expanded.

In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 4. A decline in the rental rates for the area which has affected the rental market.
 5. An unusual increase in the vacancy rates for the area which has affected the rental market.
 6. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

Timeline:

August 4, 2020: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

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

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

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

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

September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).

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

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

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

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

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

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

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

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

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

BOARD OF ADJUSTMENT ACTION: January 20, 2021

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

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

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until August 18, 2021.

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

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

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

MOTION#1: Shouse

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

was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance including:

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

SECONDED: Jones

AYES: 3 - Schwartz, Shouse, Jones,

NAYS: 2 - Vermillion, Brooks

MOTION FAILED: 3 – 2

MOTION#2: Shouse

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

SECONDED: Brooks

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

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: October 21, 2020

APPEARING IN FAVOR:

Steven Dimitt 1501 N. Riverfront Blvd. #150 Dallas, TX
Rob Baldwin 3904 Elm St. Ste. B Dallas, TX
Kristen Boyd 6801 Lochwood Garland, TX

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Vermillion

I move that the Board of Adjustment in Appeal No. BDA 190-091, hold this matter under advisement until November 18, 2020.

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR:

Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION:

None.

MOTION: Slade

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

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA190-092(JM)

BUILDING OFFICIAL’S REPORT: Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3018 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which requires that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued in error. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 3018 Greenville Avenue

APPLICANT: Thomas Shields
Represented by Steven Dimitt

REQUEST:

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

UPDATE:

On January 20, 2021 and November 18, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request. No changes have been made.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

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

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

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

BACKGROUND INFORMATION:

Zoning:

Site: CD No. 11 with an MD Overlay District No. 1

North: CD Nos. 9 and 11 with an MD Overlay District No. 1
South: CD No. 11 with an MD Overlay District No. 1
East: CD No. 11 with an MD Overlay District No. 1
West: CD Nos. 9 with an MD Overlay District No. 1

Land Use:

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

Zoning/BDA History:

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

GENERAL FACTS/STAFF ANALYSIS:

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

Timeline:

- August 4, 2020: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- September 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- September 18, 2020 The Board Administrator emailed the applicant's representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board's docket materials and the following information:
- a copy of the application materials including the Building Official's report on the application.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- October 5, 2020: The applicant's representative requested a postponement to the November docket (**Attachment A**).
- October 29, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Sustainable

Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Senior Plans Examiner/Development Sing Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, the Assistant City Attorney to the Board.

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

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

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

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

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

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

BOARD OF ADJUSTMENT ACTION: January 20, 2021

APPEARING IN FAVOR:

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

APPEARING IN OPPOSITION:

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

MOTION: Vermillion

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

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

BOARD OF ADJUSTMENT ACTION: November 18, 2020

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

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

MOTION: Vermillion

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

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

BOARD OF ADJUSTMENT ACTION: August 18, 2021

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

APPEARING IN OPPOSITION: None.

MOTION: Slade

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

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

FILE NUMBER: BDA190-093(JM)

BUILDING OFFICIAL'S REPORT: Application of Thomas Shields, represented by Steven Dimitt for a special exception to the Modified Delta Overlay District No. 1 regulations at 3024 Greenville Avenue. This property is more fully described as Lot 11, Block 2168, and is zoned Conservation District No. 11 with Modified Delta Overlay District No.1, which states that the rights to nonconforming delta parking credits are lost if the use is vacant for 12 months or more. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay District No. 1 regulations.

LOCATION: 3024 Greenville Avenue

APPLICANT: Thomas Shields
Represented by Steven Dimitt

UPDATE:

On January 20, 2021, November 18, and October 21, 2020, the Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant's request. No changes have been made.

REQUEST:

A request for a special exception to the Modified Delta Overlay District No. 1 regulations to carry forward nonconforming parking spaces under the delta theory that were terminated since the use on the site was discontinued or remained vacant for 12 months or more is made in order for the applicant to obtain a Certificate of Occupancy for a retail use for the vacant commercial structure on the subject site.

STANDARD FOR SPECIAL EXCEPTION TO THE MODIFIED DELTA OVERLAY DISTRICT No. 1 REGULATIONS TO CARRY FORWARD NONCONFORMING PARKING AND LOADING SPACES UNDER THE DELTA THEORY WHEN A USE IS DISCONTINUED OR REMAINS VACANT FOR 12 MONTHS OR MORE:

The Modified Delta Overlay District No. 1 states that the right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include *but not be limited* to the following:

7. A decline in the rental rates for the area which has affected the rental market.
8. An unusual increase in the vacancy rates for the area which has affected the rental market.
9. Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties affecting the marketability of property.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff concluded that the applicant had demonstrated that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of the following extreme circumstances:

The applicant documented how extensive renovation or remodeling was necessary because the structure on the site was in poor condition. Construction was ongoing from December 2018 through approximately February 2020.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	CD No. 11 with an MD Overlay District No. 1
<u>North:</u>	CD Nos. 9 and 11 with an MD Overlay District No. 1
<u>South:</u>	CD No. 11 with an MD Overlay District No. 1
<u>East:</u>	CD No. 11 with an MD Overlay District No. 1
<u>West:</u>	CD Nos. 9 with an MD Overlay District No. 1

Land Use:

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

Zoning/BDA History:

While there have been no zoning/BDA cases within the area in the last five years, there are three other BDA cases at the subject site currently.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on carrying forward nonconforming parking spaces under the delta theory terminated because a part of the structure/use on the site was discontinued or remained vacant for 12 months or more. Reinstating the delta credits would allow for the applicant to obtain a Certificate of Occupancy for a proposed new tenant. The previous alcoholic beverage establishment use [San Francisco Rose] Certificate of Occupancy was revoked due to an extended period of vacancy.

The subject site is zoned Conservation District No. 11 with Modified Delta Overlay District No.1. According to DCAD, the property at 3024 Greenville Avenue is developed with a “retail strip” with over 12,210 square feet of floor area built in 1930.

The Dallas Development Code provides the following relating to nonconformity of parking or loading:

- Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional off-street parking and loading spaces are provided.

- Delta theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner: required parking or loading spaces for existing use minus the number of existing parking or loading spaces for existing use equals nonconforming rights as to parking or loading.
- Decreased requirements. When a use is converted to a new use having less parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.

In 1987, the City Council created “Modified Delta Overlay Districts” in those areas where it has determined that a continued operation of the delta theory is not justified because there is no longer a need to encourage redevelopment and adaptive reuse of existing structures, or a continued application of the delta theory will create traffic congestion and public safety problems and would not be in the public interest.

In a modified delta overlay district, the city council may limit the number of percentages of nonconforming parking or loading spaces that may be carried forward by a use under the delta theory. An ordinance establishing a modified delta overlay district may not increase the number of nonconforming parking or loading spaces that may be carried forward under the delta theory when a use is converted or expanded.

An ordinance establishing a modified delta overlay district must provide that when a use located in the district is converted to a new use having less parking or loading requirements, the rights to **any portion** of the nonconforming parking or loading **not needed** to meet the new requirements **are lost**.

An ordinance establishing a modified delta overlay district may provide that rights under the delta theory terminate when a use for which the delta theory has been applied is discontinued.

In 1987, the City Council established Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- That no nonconforming parking spaces may be carried forward by a use under the delta theory when a use in the Community Retail District with an MD Overlay District No. 1a is expanded.

In 1995, the City Council amended Modified Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) which stated among other things:

- The right to carry forward nonconforming parking and loading spaces under the delta theory terminates when a use is discontinued or remains vacant for 12 months or more. The board of adjustment may grant a special exception to this provision only if the owner can demonstrate that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more by proving the occurrence of an extreme circumstance, which shall include but not be limited to the following:
 7. A decline in the rental rates for the area which has affected the rental market.
 8. An unusual increase in the vacancy rates for the area which has affected the rental market.

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

Timeline:

- August 4, 2020: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- September 18, 2020: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- September 18, 2020 The Board Administrator emailed the applicant’s representative the public hearing date and panel that will consider the application; the September 30, 2020 deadline to submit additional evidence for staff to factor into their analysis; and the October 9, 2020 deadline to submit additional evidence to be incorporated into the board’s docket materials and the following information:
- a copy of the application materials including the Building Official’s report on the application.
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- September 30, 2020: The applicant submitted additional information to staff beyond what was submitted with the original application (**Attachment A**).
- October 2, 2020: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. The review team members in attendance included the Sustainable Development and Construction: Assistant Director, Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Building Inspection Senior Plans Examiner/Development Sign Code Specialist, Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- October 21, 2020: The Board of Adjustment Panel B conducted a public hearing on this application and delayed action per the applicant’s request until the next public hearing to be held on November 18, 2020.
- October 26, 2020: The Board Administrator wrote the applicant a letter of the board’s action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board’s docket materials.

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

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

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

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

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

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

BOARD OF ADJUSTMENT ACTION: January 20, 2021

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

APPEARING NEUTRAL: Jeffrey Karetnick 5739 Marquita Ave. Dallas, TX
April Segovia 5739 Marquita Ave. Dallas, TX

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

MOTION: Vermillion

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

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: November 18, 2020

APPEARING IN FAVOR:

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

APPEARING IN OPPOSITION:

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

MOTION: Jones

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

SECONDED: Vermillion

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: October 21, 2020

APPEARING IN FAVOR:

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

APPEARING IN OPPOSITION:

Roger Albright 1701 N. Collins Blvd. #1100
Richardson, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX.

MOTION: Shouse

I move that the Board of Adjustment in Appeal No. BDA 190-093, hold this matter under advisement until November 18, 2020.

SECONDED: Vermillion

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR:

Steven Dimitt 1201 N. Riverfront Blvd. #150 Dallas, TX.

APPEARING IN OPPOSITION:

None.

MOTION: Slade

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

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0 -

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-066(PD)

BUILDING OFFICIAL’S REPORT: Application of Josh LeComte for a special exception to the visibility obstruction regulations at 1525 Pecos Street. This property is more fully described as Lot 1, in Block 511, and is zoned Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District which requires a 45-foot visibility triangle at street intersections and a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct a multifamily structure in the required visibility triangles at the street intersections and drive approaches, which will require special exceptions to the visibility obstruction regulations.

LOCATION: 1525 Pecos Street

APPLICANT: Josh LeComte

REQUESTS:

A request for special exceptions to the visual obstruction regulations is made to construct a multifamily structure in a required 45-foot visibility triangle at street intersections of Pecos Street and San Jacinto Street and a 20-foot visibility triangle at drive approaches into the property from San Jacinto Street. The request site is currently developed with a surface parking lot.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION:

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

The Sustainable Development and Construction Department Senior Engineer has no objections to the proposed requests to encroach into the required 45-foot visibility triangle at the street intersections of Pecos Street and San Jacinto Street or the encroachment into the required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street since the encroachments are consistent with similar conditions in other parts of the City. (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

Site: Subarea 7 within Planned Development District No. 298
North: Subarea 1C within Planned Development District No. 298
South: Subarea 6 within Planned Development District No. 298
East: Subarea 7 within Planned Development District No. 298 & SUP No. 2352
West: Subarea 7 within Planned Development District No. 298

Land Use:

The subject site is developed with a surface parking lot while surrounding properties are developed with multifamily uses to the north, single family uses to the south, and a childcare facility use to the east. The properties to the west are developed with a surface parking lot and part of the overall request.

Zoning/BDA History:

There have been four related board and zoning cases recorded in the vicinity of the subject site within the last five years.

1. **BDA201-071:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3612 San Jacinto Street. (****related case****)
2. **BDA201-072:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3616 San Jacinto Street. (****related case****)
3. **BDA201-073:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3620 San Jacinto Street. (****related case****)
4. **Z178-133:** On March 28, 2018, the City Council approved an application for Subarea 1C on property zoned Subarea 1 and Subarea 7 within Planned Development District No. 298, the Bryan Area Special

Purpose District.

GENERAL FACTS/STAFF ANALYSIS:

The requests for special exceptions to the visual obstruction regulations focus on constructing a multifamily structure consisting of eight dwelling units. The property is located at the corner of San Jacinto Street and Pecos Street and developed with a surface parking lot. The proposed structure would obstruct one 45-foot visibility triangle at the intersection of the two streets and one 20-foot visibility triangle into the property (driveway) from San Jacinto Street.

The property is located in Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District, with visual obstruction regulations reverting back to the Dallas Development Code. The code requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection shall be maintained. Additionally, the code requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of two adjacent street curb lines (or, if there is no street curb, what would be the normal street curb line) and points on the street curb line 45 feet from the intersection shall be maintained.

Visibility triangles are further defined in Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

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

A site plan submitted with the request indicates portions of the proposed multifamily development encroach 15 feet into the required 45-foot visibility triangle, providing 30 feet of unobstructed area at the intersection of Pecos Street and San Jacinto Street. Additionally, the plan depicts an encroachment of one-and-a-half feet into the required 20-foot visibility triangle at a drive approach into the site from San Jacinto Street, providing 18-and-a-half feet of unobstructed area for visibility.

The Sustainable Development Department Senior Engineer has no objections to the proposed request to encroach into the required 45-foot visibility triangle at the street intersections of Pecos Street and San Jacinto Street. Additionally the Senior Engineer has no objections to the proposed request to encroach into the required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street (**Attachment A**) since the request is consistent with similar conditions in other parts of the City.

The applicant has the burden of proof in establishing how granting the encroachments into portions of the 45-foot visibility triangle at the street intersections of Pecos Street and San Jacinto Street and the 20-foot visibility triangle at the drive approaches on properties will or will not constitute a traffic hazard.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan will limit the structures to be located and maintained into the one required 45-foot visibility triangle at the street intersections of Pecos Street and San Jacinto Street and into the one required 20-foot visibility triangle at the drive approach into the site from San Jacinto Street, as shown on the proposed plan.

Timeline:

- May 13, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- July 7, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 8, 2021: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application.
 - an attachment that provided the public hearing date and panel that will consider the application; the July 27, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the August 6, 2021 deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Chief Planner, Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- July 30, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "no objections to the request" (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Josh LeComte 5740 Prospect Ave. Dallas, TX

APPEARING IN OPPOSITION: None

MOTION: **Vermillion**

I move that the Board of Adjustment, in Appeal No. BDA 201-066, on application of Josh Lecomte, **grant** the special exceptions to the visibility obstruction regulations contained in the Dallas Development Code subject to the following conditions:

Compliance with the revised site plan is required.

SECONDED: **Slade**

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0

MOTION PASSED: 4-0 (unanimously)

FILE NUMBER: BDA201-071(PD)

BUILDING OFFICIAL'S REPORT: Application of Josh LeComte for a special exception to the visibility obstruction regulations at 3612 San Jacinto Street. This property is more fully described as Lot 4, in City Block 511, and is zoned Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District which requires a 20-foot visibility triangle at driveway approaches. The applicant proposes to construct a multifamily structure in a required visibility triangle at the drive approach, which will require special exception to the visibility obstruction regulations.

LOCATION: 3612 San Jacinto Street

APPLICANT: Josh LeComte

REQUESTS:

A request for a special exception to the visual obstruction regulations is made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street. The request site is currently developed with a surface parking lot.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (visual obstruction regulations):

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

The Sustainable Development and Construction Department Senior Engineer has no objections to the proposed requests to encroach into the required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street since the encroachments are consistent with similar conditions in other parts of the City (**Attachment A**).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Subarea 7 within Planned Development District No. 298
<u>North:</u>	Subarea 1C within Planned Development District No. 298
<u>South:</u>	Subarea 6 within Planned Development District No. 298
<u>East:</u>	Subarea 7 within Planned Development District No. 298
<u>West:</u>	Subarea 7 within Planned Development District No. 298

Land Use:

The subject site is developed with a surface parking lot while surrounding properties are developed with multifamily uses to the north and single family uses to the south. Properties to the east and west are developed with a surface parking lot and part of the overall request.

Zoning/BDA History:

There have been four related board and zoning cases recorded in the vicinity of the subject site within the last five years.

5. **BDA201-066:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 45-foot visibility triangle at street intersections and a 20-foot visibility triangle at the driveway approaches into the property located at 1525 Pecos Street. **(**related case**)**
6. **BDA201-072:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3616 San Jacinto Street. **(**related case**)**
7. **BDA201-073:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3620 San Jacinto Street. **(**related case**)**
8. **Z178-133:** On March 28, 2018, the City Council approved an application for Subarea 1C on property zoned Subarea 1 and Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the visual obstruction regulations focus on constructing a multifamily structure consisting of eight dwelling units. The property is located midblock along San Jacinto Street and developed with a surface parking lot. The proposed structure would obstruct one 20-foot visibility triangle at one drive approach providing an 18.5-foot visibility triangle with an encroachment of 1.5-feet into the required at the drive approach into the property from San Jacinto Street.

The property is located in Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District, with visual obstruction regulations reverting back to the Dallas Development Code. The code requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection shall be maintained.

Visibility triangles are further defined in Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

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

A site plan submitted with the request indicates portions of the proposed multifamily development encroach one-and-a-half feet into one required 20-foot visibility triangle, providing 18-and-a-half feet of unobstructed area for visibility at the drive approach into the site from San Jacinto Street.

The Sustainable Development Department Senior Engineer has no objections to the proposed request to encroach into the required 20-foot visibility triangle at the drive approach into the site from San Jacinto Street (**Attachment A**) since the request is consistent with similar conditions in other parts of the City.

The applicant has the burden of proof in establishing how granting the encroachment into a portion of the 20-foot visibility triangle at the drive approach on properties will or will not constitute a traffic hazard.

Granting the request with a condition imposed that the applicant complies with the submitted site plan will limit the structures to be located and maintained in the one required 20-foot visibility triangle at the drive approach into the site from San Jacinto Street, as shown on the proposed plan.

Timeline:

- May 13, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- July 7, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 8, 2021: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application.
 - an attachment that provided the public hearing date and panel that will consider the application; the July 27, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the August 6, 2021 deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Chief Planner, Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- July 30, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "no objections to the request" (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Josh LeComte 5740 Prospect Ave. Dallas, TX

APPEARING IN OPPOSITION:

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. 201-071, on application of Josh LeComte, **grant** the request for a special exception to the visibility obstruction regulations contained in the Dallas Development Code subject to the following conditions:

Compliance with the submitted site plan is required.

SECONDED: Slade

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-072(PD)

BUILDING OFFICIAL’S REPORT: Application of Josh LeComte for a special exception to the visibility obstruction regulations at 3616 San Jacinto Street. This property is more fully described as Lot 3, in City Block 511, and is zoned Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District which requires a 20-foot visibility triangle at drive approaches. The applicant proposes to construct a multifamily structure in a required visibility triangle at the drive approaches, which will require a special exception to the visibility obstruction regulations.

LOCATION: 3616 San Jacinto Street

APPLICANT: Josh LeComte

REQUESTS:

A request for a special exception to the visual obstruction regulations is made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street. The request site is currently developed with a surface parking lot.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (visual obstruction regulations):

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

The Sustainable Development and Construction Department Senior Engineer has no objections to the proposed requests to encroach into the required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street since the encroachments are consistent with similar conditions in other parts of the City.(Attachment A).

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	Subarea 7 within Planned Development District No. 298
<u>North:</u>	Subarea 1C within Planned Development District No. 298
<u>South:</u>	Subarea 6 within Planned Development District No. 298
<u>East:</u>	Subarea 7 within Planned Development District No. 298
<u>West:</u>	Subarea 7 within Planned Development District No. 298

Land Use:

The subject site is developed with a surface parking lot while surrounding properties are developed with multifamily uses to the north and single family uses to the south. Properties to the east and west are developed with a surface parking lot and part of the overall request.

Zoning/BDA History:

There have been four related board and zoning cases recorded in the vicinity of the subject site within the last five years.

- 9. BDA201-066:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 45-foot visibility triangle at street intersections and a 20-foot visibility triangle at the driveway approaches into the property located at 1525 Pecos Street. **(**related case**)**
- 10. BDA201-071:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3612 San Jacinto Street. **(**related case**)**
- 11. BDA201-073:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3620 San Jacinto Street. **(**related case**)**
- 12. Z178-133:** On March 28, 2018, the City Council approved an application for Subarea 1C on property zoned Subarea 1 and Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District

GENERAL FACTS/STAFF ANALYSIS:

The request for a special exception to the visual obstruction regulations focus on constructing a multifamily structure consisting of eight dwelling units. The property is located midblock along San Jacinto Street and developed with a surface parking lot. The proposed structure would obstruct one 20-foot visibility triangle at one drive approach providing an 18.5-foot visibility triangle with an encroachment of 1.5-feet into the required at the drive approach into the property from San Jacinto Street.

The property is located in Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District, with visual obstruction regulations reverting back to the Dallas Development Code. The code requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection shall be maintained.

Visibility triangles are further defined in Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

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

A site plan submitted with the request indicates portions of the proposed multifamily development encroach one-and-a-half feet into one required 20-foot visibility triangle, providing 18-and-a-half feet of unobstructed area for visibility at the drive approach into the site from San Jacinto Street.

The Sustainable Development Department Senior Engineer has no objections to the proposed request to encroach into the required 20-foot visibility triangle at the drive approach into the site from San Jacinto Street (**Attachment A**) since the request is consistent with similar conditions in other parts of the City.

The applicant has the burden of proof in establishing how granting the encroachment into a portion of the 20-foot visibility triangle at the drive approaches on properties will or will not constitute a traffic hazard.

Granting the request with a condition imposed that the applicant complies with the submitted site plan will limit the structures to be located and maintained in the one required 20-foot visibility triangle at the drive approach into the site from San Jacinto Street, as shown on the proposed plan.

Timeline:

- May 13, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- July 7, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 8, 2021: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application.
 - an attachment that provided the public hearing date and panel that will consider the application; the July 27, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the August 6, 2021 deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Chief Planner, Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- July 30, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "no objections to the request" (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Josh LeComte 5740 Prospect Ave. Dallas, TX

APPEARING IN OPPOSITION:

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. 201-072, on application of Josh LeComte, **grant** the request for a special exception to the visibility obstruction regulations contained in the Dallas Development Code subject to the following conditions:

Compliance with the submitted site plan is required.

SECONDED: Slade

AYES: 4 - Shouse, Slade, Vermillion, Brooks

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

FILE NUMBER: BDA201-073(PD)

BUILDING OFFICIAL’S REPORT: Application of Josh LeComte for a special exception to the visibility obstruction regulations at 3620 San Jacinto Street. This property is more fully described as Lot 2, in City Block 511, and is zoned Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District which requires a 20-foot visibility triangle at drive approaches. The applicant proposes to construct a multifamily structure in a required visibility triangle at the drive approach, which will require a special exception to the visibility obstruction regulations.

LOCATION: 3620 San Jacinto Street

APPLICANT: Josh LeComte

REQUESTS:

A request for a special exception to the visual obstruction regulations is made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street. The request site is currently developed with a surface parking lot.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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

STAFF RECOMMENDATION (visual obstruction regulations):

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

The Sustainable Development and Construction Department Senior Engineer has no objections to the proposed requests to encroach into the required 20-foot visibility triangle at the drive approach into the property from San Jacinto Street since the encroachments are consistent with similar conditions in other parts of the City.(Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: Subarea 7 within Planned Development District No. 298
North: Subarea 1C within Planned Development District No. 298
South: Subarea 6 within Planned Development District No. 298
East: Subarea 7 within Planned Development District No. 298
West: Subarea 7 within Planned Development District No. 298

Land Use:

The subject site is developed with a surface parking lot while surrounding properties are developed with multifamily uses to the north and single family uses to the south. Properties to the east and west are developed with a surface parking lot and part of the overall request.

Zoning/BDA History:

There have been four related board and zoning cases recorded in the vicinity of the subject site within the last five years.

- 13. BDA201-066:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 45-foot visibility triangle at street intersections and a 20-foot visibility triangle at the driveway approaches into the property located at 1525 Pecos Street. **(**related case**)**
- 14. BDA201-071:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3612 San Jacinto Street. **(**related case**)**
- 15. BDA201-072:** On August 18, 2021, the board will hear a request for a special exception to the visual obstruction regulations, made to construct a multifamily structure in a required 20-foot visibility triangle at the drive approach into the property located at 3616 San Jacinto Street. **(**related case**)**
- 16. Z178-133:** On March 28, 2018, the City Council approved an application for Subarea 1C on property zoned Subarea 1 and Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

The request for a special exception to the visual obstruction regulations focus on constructing a multifamily structure consisting of eight dwelling units. The property is located midblock along San Jacinto Street and developed with a surface parking lot. The proposed structure would obstruct one 20-foot visibility triangle at one drive approach providing an 18.5-foot visibility triangle with an encroachment of 1.5-feet into the required at the drive approach into the property from San Jacinto Street.

The property is located in Subarea 7 within Planned Development District No. 298, the Bryan Area Special Purpose District, with visual obstruction regulations reverting back to the Dallas Development Code. The code requires the portion of a lot with a triangular area formed by connecting the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection shall be maintained.

Visibility triangles are further defined in Section 51A-4.602(d) of the Dallas Development Code which states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

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

A site plan submitted with the request indicates portions of the proposed multifamily development encroach one-and-a-half feet into one required 20-foot visibility triangle, providing 18-and-a-half feet of unobstructed area for visibility at the drive approach into the site from San Jacinto Street.

The Sustainable Development Department Senior Engineer has no objections to the proposed request to encroach into the required 20-foot visibility triangle at the drive approach into the site from San Jacinto Street (**Attachment A**) since the request is consistent with similar conditions in other parts of the City.

The applicant has the burden of proof in establishing how granting the encroachment into a portion of the 20-foot visibility triangle at the drive approaches on properties will or will not constitute a traffic hazard.

Granting the request with a condition imposed that the applicant complies with the submitted site plan will limit the structures to be located and maintained in the one required 20-foot visibility triangle at the drive approach into the site from San Jacinto Street, as shown on the proposed plan.

Timeline:

- May 13, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.
- July 7, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 8, 2021: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application.
 - an attachment that provided the public hearing date and panel that will consider the application; the July 27, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the August 6, 2021 deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Chief Planner, Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- July 30, 2021: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "no objection to the request" (**Attachment A**).

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Josh LeComte 5740 Prospect Ave. Dallas, TX

APPEARING IN OPPOSITION:

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. 201-073, on application of Josh LeComte, **grant** the request for a special exception to the visibility obstruction regulations contained in the Dallas Development Code subject to the following conditions:

Compliance with the submitted site plan is required.

SECONDED: Slade

AYES: 4 - Shouse, Slade, Vermillion, Brooks

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

FILE NUMBER: BDA201-061(PD)

BUILDING OFFICIAL’S REPORT: Application of Sean Parson represented by Santos Martinez of La Sierra Planning Group for a variance to the front yard setback regulations at 2009 Oates Drive. This property is more fully described as Tract 3, in City Block 7404, and is zoned an MF-2(A) Multifamily District, which requires a front yard setback of 25 feet. The applicant proposes to construct a shared access development consisting of 14 single-family dwelling units and provide a 20-foot front yard setback, which will require a five-foot variance to the front yard setback regulations.

LOCATION: 2009 Oates Drive

APPLICANT: Sean Parsons
represented by Santos Martinez

REQUEST:

A request for a variance to the front yard setback regulations of five feet is made to construct a shared access development consisting of 14 single family dwelling units with a total square footage of 1,969 square feet per dwelling and a maximum height of 29 feet, part of which is to be located 20 feet from the front property line along the site (Oates Drive) or five feet into this 25-foot front yard setback on a site that is currently undeveloped.

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:

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the July 29th staff review team meeting that the applicant had not substantiated how the variance is necessary to permit the development of the subject site. The property is slightly irregular with a clip along the northeastern portion of the site and flat. However, the subject site also provides an additional .12 acres or 5,227 square feet of area as the property is longer and wider than adjacent properties. Therefore, it is staff's opinion that the applicant maintains the ability to develop the lot in a manner commensurate with developments of other parcels of land within an MF-2(A) Multifamily District zoning.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MF-2(A) (Multifamily District)
<u>North:</u>	R-7.5(A) (Single Family District)
<u>East:</u>	MF-2(A) (Multifamily District)
<u>South:</u>	R-7.5(A) (Single Family District)
<u>West:</u>	R-7.5(A) (Single Family District)

Land Use:

The subject site is undeveloped. The properties to the north, south, west, and east are developed with single family uses.

Zoning/BDA History:

There have been two recent board or zoning cases recorded in the vicinity of the subject site.

1. **BDA201-062:** On August 18, 2021, the Board will hear a request for a variance to the front yard setback regulations of five feet is made to construct a shared access development consisting of 14 single family dwelling units with a total square footage of 1,969 square feet per dwelling and a maximum height of 29 feet, part of which is to be located 20 feet from the front property line along the site (Oates Drive) or five feet into this 25-foot front yard setback on a site that is currently undeveloped at 2015 Oates Drive. ****related site****
2. **BDA201-020:** On April 21, 2021, the Board denied without prejudice an application for a variance to the front yard setback regulations to provide a 15-foot front yard setback, which required a 10-foot variance from the required front yard setback of 25 feet at 2009 Oates Drive. ****subject site****
3. **BDA201-021:** On April 21, 2021 the Board denied without prejudice an application for a variance to the front yard setback regulations to provide a 15-foot front yard setback,

which required a 10-foot variance from the required front yard setback of 25 feet at 2015 Oates Drive. ****related site****

GENERAL FACTS /STAFF ANALYSIS:

The request for a five-foot variance to the front yard setback requirement of 25 feet focuses on constructing a shared access development consisting of 14 single-family dwelling units with a total of 1,969 square feet per dwelling unit and a maximum height of 29 feet, part of which is to be located 20 feet from the front property line (along Oates Drive) or five feet into this 25-foot front yard setback.

The site is currently undeveloped and zoned an MF-2(A) Multifamily District that requires a minimum 25 foot front yard setback. The subject site is located along the northwestern portion of Oates Drive, north of Skyview Drive. The subject site is immediately adjacent to an R-7.5(A) Single Family District to the west. The R-7.5(A) District requires a 25 foot front yard setback while an MF-2(A) Multifamily District requires a 15 foot setback. However, the Dallas Development Code requires that if a blockface is divided by two or more zoning districts, the front yard for the entire blockface must comply with the requirements of the district with the greatest and most restrictive front yard regulations.

The submitted site plan indicates the properties for 2009 Oates Drive (subject site) and 2015 Oates Drive (BDA201-062) are combined to construct a shared access development consisting of 14 dwelling units. The site plan indicates two of the proposed 14 dwelling units are located 20 feet from the Oates Drive front yard property line or five feet into the required 25-foot front yard setback.

The subject site is flat in the opinion of staff, slightly irregular in shape (approximately 244.03 feet x 80.7 feet x 224.97 feet x 63.06 feet x 39.77 feet for a total square footage of 20,037 square feet, combined).

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 as an MF-2(A) Multifamily 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 MF-2(A) 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 the plan—

which in this case is a structure that would be located 20 feet from the site's Oates Drive front property line or five feet into this 25-foot front yard setback.

Timeline:

May 13, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents that have been included as part of this case report.

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

July 8, 2021: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the July 27, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the August 6, 2021 deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

July 26, 2021: The applicant submitted evidence in the form of a letter and two plans (**Attachments A, B, & C**).

July 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Chief Planner, Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Santos Martinez P.O. Box 1275 Angel Fire, NM

APPEARING IN OPPOSITION: None.

MOTION: **Slade**

I move that the Board of Adjustment, in Appeal No. BDA 201-061, on application of Santos Martinez, **grant** the five-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical

character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Shouse

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-062(PD)

BUILDING OFFICIAL'S REPORT: Application of Sean Parson represented by Santos Martinez of La Sierra Planning Group for a variance to the front yard setback regulations at 2015 Oates Dr. This property is more fully described as Tract 4, Block 7404, and is zoned an MF-2(A) Multifamily District, which requires a front yard setback of 25 feet. The applicant proposes to construct a shared access development consisting of 14 single-family dwelling units and provide a 20-foot front yard setback, which will require a five-foot variance to the front yard setback regulations.

LOCATION: 2015 Oates Drive

APPLICANT: Sean Parsons
represented by Santos Martinez

REQUEST:

A request for a variance to the front yard setback regulations of five feet is made to construct a shared access development consisting of 14 single family dwelling units with a total square footage of 1,969 square feet per dwelling and a maximum height of 29 feet, part of which is to be located 20 feet from the front property line along the site (Oates Drive) or five feet into this 25-foot front yard setback on a site that is currently undeveloped.

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:

Denial

Rationale:

- Staff concluded from the information submitted by the applicant at the time of the July 29th staff review team meeting that the applicant had not substantiated how the variance is necessary to permit the development for the subject site. The property is slightly irregular and flat. However, the subject site is consistent with adjacent properties to the east. Therefore, it is staff's opinion that the applicant maintains the ability to develop the lot in a manner commensurate with developments of other parcels of land within an MF-2(A) Multifamily District zoning.

BACKGROUND INFORMATION:

Zoning:

Site: MF-2(A) (Multifamily District)
North: R-7.5(A) (Single Family District)
East: MF-2(A) (Multifamily District)
South: R-7.5(A) (Single Family District)
West: R-7.5(A) (Single Family District)

Land Use:

The subject site is currently developed with a one-story single family dwelling. The properties to the north, south, west, and east are developed with single family uses.

Zoning/BDA History:

There have been three recent board or zoning cases recorded in the vicinity of the subject site.

4. **BDA201-061:** On August 18, 2021, the Board will hear a request for a variance to the front yard setback regulations of five feet is made to construct a shared access development consisting of 14 single family dwelling units with a total square footage of 1,969 square feet per dwelling and a maximum height of 29 feet, part of which is to be located 20 feet from the front property line along the site (Oates Drive) or five feet into this 25-foot front yard setback on a site that is currently undeveloped at 2009 Oates Drive. ****related site****
5. **BDA201-020:** On April 21, 2021, the Board denied without prejudice an application for a variance to the front yard setback regulations to provide a 15-foot front yard setback, which required a 10-foot variance from the required front yard setback of 25 feet at 2009 Oates Drive. ****related site****

6. **BDA201-021:** On April 21, 2021 the Board denied without prejudice an application for a variance to the front yard setback regulations to provide a 15-foot front yard setback, which required a 10-foot variance from the required front yard setback of 25 feet at 2015 Oates Drive. ****subject site****

GENERAL FACTS /STAFF ANALYSIS:

The request for a five-foot variance to the front yard setback requirement of 25 feet focuses on constructing a shared access development consisting of 14 single-family dwelling units with a total of 1,969 square feet per dwelling unit and a maximum height of 29 feet, part of which is to be located 20 feet from the front property line (along Oates Drive) or five feet into this 25-foot front yard setback.

The site is currently developed with a single family dwelling and zoned an MF-2(A) Multifamily District that requires a minimum 25 foot front yard setback. The subject site is located along the northwestern portion of Oates Drive, north of Skyview Drive. The subject site is immediately adjacent to an R-7.5(A) Single Family District to the east. The R-7.5(A) District requires a 25 foot front yard setback while an MF-2(A) Multifamily District requires a 15 foot setback. However, the Dallas Development Code requires that if a blockface is divided by two or more zoning districts, the front yard for the entire blockface must comply with the requirements of the district with the greatest and most restrictive front yard regulations.

The submitted site plan indicates the properties for 2015 Oates Drive (subject site) and 2009 Oates Drive (BDA201-061) are combined to develop eight multifamily structures consisting of 14 dwelling units. The site plan indicates two of the proposed 14 dwelling units are located 20 feet from the Oates Drive front yard property line or five feet into the required 25-foot front yard setback.

The subject site is flat and in the opinion of staff, slightly irregular in shape (approximately 78 feet x 189.5 feet x 75.00 feet x 201.73 feet for a total square footage of 14,810.4 square feet, combined).

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 an MF-2(A) Multifamily 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 MF-2(A) 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 is a structure that would be located 20 feet from the site’s Oates Drive front property line or five feet into this 25-foot front yard setback.

Timeline:

- May 13, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- July 7, 2021: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.
- July 8, 2021: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
 - an attachment that provided the public hearing date and panel that will consider the application; the July 27, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the August 6, 2021 deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- July 26, 2021: The applicant submitted evidence in the form of a letter and two plans (**Attachments A, B, & C**).
- July 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the August public hearing. The review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Building Inspection Chief Planner, Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- No departmental review comment sheets were submitted in conjunction with this application.

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING IN FAVOR: Santos Martinez P.O. Box 1275 Angel Fire, NM

APPEARING IN OPPOSITION:

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-062, on application of Santos Martinez, **grant** the five-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

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

Compliance with the submitted site plan is required.

SECONDED: Vermillion

AYES: 4 - Shouse, Slade, Vermillion, Brooks

NAYS: 0

MOTION PASSED: 4 – 0 (unanimously)

FILE NUMBER: BDA201-023(JM)

BUILDING OFFICIAL'S REPORT: Application of Dallas City Council Resolution 20-1935 to require compliance of a non-conforming use at 3606 Greenville Avenue Suite A. 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 A

APPLICANT: Dallas City Council by Resolution 20-1935
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 (OT Tavern) 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. The property owners successfully argued for reinstatement of nonconforming rights on January 18, 2005.

Most recently, a CO was issued on August 28, 2008 for an alcoholic beverage establishment DBA OT Tavern with remarks indicating the BDA action taken in 2005 to reinstate the nonconforming use rights and furthermore adding, “NO INCREASE IN FLOOR AREA, SAME

PARKING, 7/26/06-nonconforming 300 sf dance floor area, CORRECTION TO TENANT NAME 1/23/07. LICENSE PE, MB, LB, 02/20/2008. SEE REVISED(CORRECTED) PATIO PLAN DATED 9-1-10 CENTRAL FILES FOR MORE INFO. KM. OCUPANT [sic] LOAD OF dining=188/ PATIO= 67, UPDATE 4/27/17 sw.” 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 (the subject site) 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 (the lot immediately north of the subject site) 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. BDA201-030, 3606 Greenville Avenue, Suite B (the lot immediately north of the subject site) On May 19, 2021, the Board of Adjustment Panel B denied an application of Dallas City Council Resolution 21-0263 to require compliance of a non-conforming alcoholic beverage establishment use, without prejudice.

TIMELINE:

December 18, 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.

February 11, 2021: The Board of Adjustment Secretary randomly assigned this case to the Board of Adjustment Panel B.

February 12, 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 (G P Sports NSL Inc. % Shaun Merchant) a certified 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. 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 March 5th to submit any information that would be incorporated into the board’s docket.

February 25, 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.

- March 2, 2021 The representative for the tenant/operator requested the case be held under advisement until April 21, 2021 (minimum of 45 days from motion for continuance provided as **Attachment A**).
- March 8, 2021 The representative for city council submitted a letter to the board (**Attachment C**).
- March 20, 2021 The Panel B hearing was cancelled due to a lack of quorum.
- March 12, 2021 The representative for the tenant/operator submitted a letter to the board (**Attachment D**).
- April 9, 2021 The representative for city council revised their letter to the board (**Attachment C**).
- April 21, 2021 The Board of Adjustment Panel B conducted a public hearing on this application and delayed action until June 23, 2021.
- April 23, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.
- June 11, 2021 The representative for the tenant/operator submitted additional evidence to the board (**Attachment E**).
- June 23, 2021 The Board of Adjustment Panel B conducted a public hearing on this application and delayed action until August 18, 2021.
- June 25, 2021: The Board Administrator wrote the applicant a letter of the board's action; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the board's docket materials.
- August 9, 2021 The representative for city council submitted additional evidence to the board (**Attachment F**).

BOARD OF ADJUSTMENT ACTION: June 23, 2021

APPEARING FOR PUBLIC TESTIMONY:

Jenna Steinbaugh 580 McCommas Blvd
Dallas, TX

Alida Borg 5813 Penrose Ave. Dallas, TX
Martha Carlson 5506 Matalee Ave. Dallas,
TX
Jennifer Bailey 4828 Hollow Ridge Dallas, TX
Darren Dattalo 5911 Goliad Dallas, TX
Nicole Hoffman 5725 Martel Ave. #B Dallas,
TX
Dennis Lemons 5819 Penrose Ave. Dallas,
TX
Betsie Bolger 571 Marquita Ave. Dallas, TX
Bob Helterbran 5732 Penrose Ave. Dallas,
TX
Bruce Richardson 5607 Richmond Ave.
Dallas, TX

APPEARING IN FAVOR:

Naomi Green 1500 Marilla St. 7DN Dallas,
TX
Joe Phy 3428 Hamilton Ave. Ft. Worth, TX.
Hope Covington 320 E. Jefferson Dallas, TX

APPEARING IN OPPOSITION:

Craig Sheils 1701 N. Collins Blvd. #1100 Dallas, TX
Kimberly Quirk 1701 N. Collins Blvd. #1100 Dallas, TX
Luke Jana 3606 Greenville Ste A Dallas TX
Shaun Merchant 3606 Greenville Ste A Dallas TX

MOTION: Slade

I move that the Board of Adjustment, in Appeal No. BDA 201-023, hold this matter under advisement until August 18, 2021.

SECONDED: Williams

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

NAYS: 0-

MOTION PASSED: 5 –0(unanimously)

BOARD OF ADJUSTMENT ACTION: April 21, 2021

APPEARING IN FAVOR:

Naomi Green 1500 Marilla St. 7DN Dallas, TX
Kimberly Quirk 1701 N. Collins Blvd. #1100
Richardson, TX
Craig Sheils 1701 N. Collins Blvd. #1100 Richardson,
TX
Jacob Broom 5703 Anita St. Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX
Bob Helterbran 5732 Penrose Ave. Dallas, TX
Joe Phy 3428 Hamilton Ave. Dallas, TX
Darren Dattalo 5911 Goliad Dallas, TX

APPEARING IN OPPOSITION:

None.

MOTION: Vermillion

I move that the Board of Adjustment, in Appeal No. BDA 201-023, hold this matter under advisement until June 23, 2021.

SECONDED: Johnson

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

NAYS: 0-

MOTION PASSED: 5 -0(unanimously)

BOARD OF ADJUSTMENT ACTION: August 18, 2021

APPEARING FOR PUBLIC TESTIMONY: Martha Carlson 5506 Matalee Ave. Dallas, TX
Darren Dattalo 5911 Goliad Dallas, TX
Bob Helterbran 5732 Penrose Ave. Dallas, TX
Bruce Richardson 5607 Richmond Ave. Dallas, TX

APPEARING IN FAVOR: Naomi Green 1500 Marilla St. 7DN Dallas, TX

APPEARING IN OPPOSITION: Craig Sheils 1701 N. Collins Blvd. #1100 Dallas, TX
Kimberly Quirk 1701 N. Collins Blvd. #1100 Dallas, TX

MOTION: Brooks

I move that the Board of Adjustment in Appeal No. BDA 201-023, **deny** the applicant's request for expedited compliance **without** prejudice, based on the terms of the agreement entered into by the applicant and the property owner that continued operation of this nonconforming use will not have an adverse effect on nearby properties.

SECONDED: Shouse
AYES: 4 - Shouse, Slade, Brooks, Vermillion
NAYS: 0-
MOTION PASSED: 4 -0(unanimously)

MOTION: Shouse

I move to adjourn the Panel B hearing.

SECONDED: Vermillion
AYES: 4 - Shouse, Slade, Vermillion, Brooks
NAYS: 0 -
MOTION PASSED (unanimously): 4 - 0

The meeting was adjourned at 2:35 P.M. on August 18, 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.