

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1 AUDITORIUM
MONDAY, NOVEMBER 16, 2015**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Ross Coulter, regular member, Joe Carreon, regular member, Peter Schulte, regular member and Marla Beikman, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Lam, Engineering, Donna Moorman, Chief Planner, Planner and Trena Law, Board Secretary, Eileen Wouens, Asst. City Attorney

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, David Lam, Engineering, Donna Moorman, Chief Planner, Planner and Trena Law, Board Secretary

11:35 p.m. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 16, 2015** docket.

1:06 P.M.

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

MISCELLANEOUS ITEM NO. 1

Approval of the Board of Adjustment Panel C October 19, 2015 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2015

MOTION: None

The minutes were approved without a formal vote.

FILE NUMBER: BDA 145-112(SL)

BUILDING OFFICIAL'S REPORT: Application of Angelos Kolobotos to restore a nonconforming use at 1724 Poplar Street. This property is more fully described as Lot 17, Block F/1606, and is zoned PD 595 (R-5(A)), which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming multifamily use, which will require a special exception to the nonconforming use regulations.

LOCATION: 1724 Poplar Street

APPLICANT: Angelos Kolobotos

November 16, 2015 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

A request for a special exception to restore/reinstate nonconforming use rights is made to obtain a Certificate of Occupancy (CO) for a "multifamily" use on the subject site even though this nonconforming use was discontinued for a period of six months or more.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas Development Code states that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can

show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

BACKGROUND INFORMATION:

Zoning:

Site: PD 595 (R-5(A)) (Planned Development, Single family)
North: PD 595 (R-5(A)) (Planned Development, Single family)
South: PD 595 (R-5(A)) (Planned Development, Single family)
East: PD 595 (R-5(A)) (Planned Development, Single family)
West: PD 595 (R-5(A)) (Planned Development, Single family)

Land Use:

The subject site is developed with a vacant multifamily structure. The areas to the north, east, south, and west are developed with what appears to be either residential uses or vacant lots.

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request is made to restore/reinstate nonconforming use rights for a “multifamily” use that has been discontinued for six months or more, and to obtain a Certificate of Occupancy (CO) for this use.
- The Dallas Development Code defines “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”.
- The nonconforming use regulations state it is the declared purpose of the nonconforming use section of the code 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.

- The nonconforming use regulations also state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.
- The subject site is zoned PD 595 (R-5(A)) – a zoning district that does not permit a “multifamily” use.
- A document has been included in the case file that states the “multifamily” use at 1724 Poplar Street is a nonconforming use.
- Building Inspection has stated that while a certificate of occupancy has not been included in this case file, the finding that the use was nonconforming on the subject site was established through permit records.
- Building Inspection has stated that these types of special exception requests originate from when an owner/officer related to the property applies for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers must submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- If the Board were to grant this request, the nonconforming “multifamily” use on the site would be subject to the possibility of an application that could be brought to the Board of Adjustment requesting that the board establish a compliance date as is the case with any other nonconforming use in the city.
- The applicant could achieve conforming use status for the “multifamily” use on the site with a change in zoning from the City Council.
- The owner could develop the site with any use that is permitted by right in the site’s existing PD 595 (R-5(A)) zoning classification.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “multifamily” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming “multifamily” use rights that were lost when the use was abandoned for a period of six months or more.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

Timeline:

September 14, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 14, 2015: The Board Administrator contacted the applicant and emailed 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 October 28th deadline to submit additional evidence for staff to factor into their analysis; and the November 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

November 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2015

APPEARING IN FAVOR: Angelos Kolobotos, 4818 Lemmon Ave., Dallas, TX

APPEARING IN OPPOSITION: Cyndy Luiz, 2800 N. Hampton, Dallas, TX

MOTION #1: Schulte

Motion was made to suspend the rules and accept the evidence that was being presented.

SECONDED: Coulter

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman,

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Schulte

I move that the Board of Adjustment, in request No. **BDA 145-112**, on application of Angelos Kolobotos, **grant** the request of this applicant for a special exception to the provision found in Section 51A-4.704(a)(2) of the Dallas Development Code providing that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, because the owner of the property has shown that there was a clear intent not to abandon the use.

SECONDED: No one

MOTION FAILED FOR LACK OF A SECOND

MOTION #3: Beikman

I move that the Board of Adjustment, in request No. **BDA 145-112**, on application of Angelos Kolobotos, **deny** the special exception requested by this applicant **with** prejudice because the nonconforming use was discontinued for six months or more and the owner has failed to show that there was not a clear intent to abandon the use.

SECONDED: Carreon

AYES: 4 – Richardson, Coulter, Carreon, Beikman

NAYS: 1 - Schulte

MOTION PASSED: 4 – 1

FILE NUMBER: BDA 145-118(SL)

BUILDING OFFICIAL’S REPORT: Application of Marc Verduin for variances to the front yard setback regulations and variances to the minimum sidewalk regulations at 1712 Commerce Street. This property is more fully described as Block 136/97-1/4, and is zoned PD 619 (Subdistricts A, B, & C), which requires a front yard setback of 10 feet from the street curb per the SP Secondary Pedestrian Precinct overlay in Section 51A-4.124(a)(8) and requires mandatory minimum sidewalks. The applicant proposes to construct and maintain a structure and provide 5 foot front yard setbacks from the street curb, which will require 5 foot variances to the front yard setback regulations, and to provide an alternate sidewalk plan, which will require variances to the minimum sidewalk regulations.

LOCATION: 1712 Commerce Street

APPLICANT: Marc Verduin

REQUESTS:

The following requests have been made on a site that is in part developed with two multi-story office structures that the applicant intends to convert to hotels, and in part developed with a surface parking lot that the applicant intends to develop with a ten-level parking garage for use by the hotels:

1. Requests for variances of up to 5' to the required minimum 10' foot setback measured from the street curb are made to construct and maintain the aforementioned ten-level parking garage to be located as close as 5' from the S. Ervay Street, Jackson Street, and Prather Street curb lines or as much 5' into these 10' required front yard setbacks;
2. Requests for variances to the minimum sidewalk regulations are made to construct and maintain the aforementioned ten-level parking garage and provide sidewalks along S. Ervay Street, Jackson Street, and Prather Street at a minimum 6' width when an average minimum sidewalk width of 15 feet and a minimum of width of 9' are required.

STANDARD FOR A VARIANCE:

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

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

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plans is required.

Rationale:

- The applicant had substantiated how the physical features of the flat, irregularly shaped, and approximately 40,500 square foot subject site preclude him from developing it in a manner commensurate with the development upon other parcels of land in districts with the same PD 619 zoning classification.

- The subject site/block is one of the smallest in PD 619 and is additionally encumbered by area taken to accommodate a turning lane at the intersection of Jackson Street and Ervay Street. The reduced block perimeter and lot size of the subject site creates a unique hardship in developing it in a manner commensurate with other lots in PD 619 most of which are larger in area and are regular in shape.
- Granting the variances with a condition that the applicant must comply with the submitted site plan would not be contrary to the public interest since the structures proposed to be located in the front yard setbacks and the areas of noncompliance to sidewalk regulations are minimal.

BACKGROUND INFORMATION:

Zoning:

Site: PD 619 (Subdistricts A, B, &C) (Planned Development District)
North: PD 619 (Subdistricts A, B, &C) (Planned Development District)
South: CA-1 (Central Area)
East: PD 619 (Subdistricts A, B, &C) (Planned Development District)
West: PD 619 (Subdistricts A, B, &C) (Planned Development District)

Land Use:

The subject site is in part developed with two multi-story office structures, and in part developed with a surface parking lot. The areas to the north, east, and west are developed with a mix of retail, office, and residential uses; and the area to the south is developed with a surface parking lot.

Zoning/BDA History:

1. BDA 145-063, Property located at 1712 Commerce Street (the subject site)

On August 25, 2015, the Board of Adjustment Panel C denied requests for variances to the front yard setback, minimum sidewalk regulations, and a special exception to the landscape regulations without prejudice.

The case report stated that the requests were made on a site developed with two existing office towers that the applicant intended to convert to hotels, and to develop the remaining part of the subject site developed with a surface parking lot with a ten-level parking garage for use by the hotels.

GENERAL FACTS/STAFF ANALYSIS (front yard variances):

- This request focuses on constructing and maintaining a ten-level parking garage on the subject site to be located as close as 5' from the S. Ervay Street, Jackson Street, and Prather Street curb lines or as much as 5' into these 10' required front yard setbacks. The proposed parking garage is to serve in part the hotel uses to be located in adjacent former office towers/structures.
- The subject site is located in PD 619 (Subdistricts A, B, and C) where yard regulations contained in CA-1(A) and where SP Secondary Pedestrian Precinct overlays apply.
- The Dallas Development Code states that lots located within a CA -1(A)-SP zoning district are required to provide a 10' setback measured from the street curb.
- Site plans (ground floor and parking garage levels) have been submitted that indicates a structure as close as 5' from the S. Ervay Street, Jackson Street, and/or Prather Street curb lines or as much 5' into these 10' required front yard setbacks.
- While the site plans indicates that a portion of the existing structures on the site do not comply with the required front yard setback, the applicant has stated that his application is only focused on the new parking garage structure and not to remedy any aspect of nonconforming structures on the subject site.
- According to DCAD records, the "improvements" at 1712 Commerce Street is an "office building" that is 190,271 square feet in area built in 1956 and at 1700 Commerce Street is office building that is 132,218 square feet in area built in 1926.
- The two existing structures on the block are contributing structures to the Downtown Dallas National Register of Historic Places, one of which is currently going through local designation process (1700 Commerce Street, constructed in 1926).
- The proposed development on the request site, a 10 story parking garage, is being developed to support the uses of the two existing structures on the block being rehabilitated.
- The subject site is flat, slightly irregular in shape, and is according to the application, 0.93 acres (or approximately 40,500 square feet) in area. The site is zoned PD 619 (Subdistricts A, B, and C). The site has four, 10' front yard setbacks which is typical of any lot that with four street frontages that is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances 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 variances are 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 PD 619 zoning classification.
 - The variances 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 PD 619 zoning classification.

- If the Board were to grant the variance requests and impose the submitted site plans as a condition, the structure in the front yard setbacks would be limited to what is shown on this document where portions of the parking garage structure would be located as close as 5' into the required 10' front yard setbacks.

GENERAL FACTS/STAFF ANALYSIS (sidewalk variances):

- This request focuses on constructing and maintaining a ten-level parking garage on the subject site and providing 5' wide sidewalks along S. Ervay Street, Jackson Street, and Prather Street when an average minimum sidewalk width of 15' and a minimum of width of 9' are required.
- The subject site is located in PD 619 (Subdistricts A, B, and C) where additional provisions applicable to CA-1(A) and where SP Secondary Pedestrian Precinct overlays apply.
- The Dallas Development Code states certain sidewalk regulations for properties within CA -1(A)-SP zoning district, specifically that a building with a floor area ratio of 15 to one or less must have an average sidewalk of 15 feet and a minimum sidewalk width of 9 feet that is unobstructed by any structure or planting.
- A site plan has been submitted that indicates sidewalks along S. Ervay Street, Jackson Street, and Prather Street some of which are at a minimum 5' width.
- While the site plan indicates that sidewalks around the existing structures on the site do not comply with the sidewalk regulations, the applicant has stated that his application is only focused on sidewalks around the new parking garage structure and not to remedy any aspect of nonconforming sidewalks around the existing structures on the subject site.
- According to DCAD records, the "improvements" at 1712 Commerce Street is an "office building" that is 190,271 square feet in area built in 1956 and at 1700 Commerce Street is office building that is 132,218 square feet in area built in 1926.
- The two existing structures on the block are contributing structures to the Downtown Dallas National Register of Historic Places, one of which is currently going through local designation process (1700 Commerce Street, constructed in 1926).
- The proposed development on the request site, a 10 story parking garage, is being developed to support the uses of the two existing structures on the block being rehabilitated.
- The subject site is flat, slightly irregular in shape, and is according to the application, 0.93 acres (or approximately 40,500 square feet) in area. The site is zoned PD 619 (Subdistricts A, B, and C). The site has four, 10' front yard setbacks which is typical of any lot that with four street frontages that is not zoned single family, duplex, or agricultural.
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the minimum sidewalk 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 variances are 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 PD 619 zoning classification.

- The variances 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 PD 619 zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan, the width of the sidewalks on the subject site would be limited to what is shown on this document where sidewalks along S. Ervay Street, Jackson Street, and Prather Street would have a minimum 5' width.

Timeline:

September 28, 2015: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

October 14, 2015: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

October 14, 2015: The Board Administrator 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 October 28th deadline to submit additional evidence for staff to factor into their analysis; and the November 6th 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 requests; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

October 29, 2015: The Sustainable Development and Construction Historic Preservation Senior Planner emailed the Board Administrator the following comment: "BDA 145-118, 1712 Commerce Street is adjacent to the Allen Building (H-146). No adverse effect to the historic overlay is expected from the proposed."

November 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the

Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: OCTOBER 19, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move to grant that the Board of Adjustment grant application **BDA 145-118** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted plans is required.

SECONDED: Beikman

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA 145-119(SL)

BUILDING OFFICIAL’S REPORT: Application of Danny Sipes for a special exception to the single family use regulations at 10545 Lennox Lane. This property is more fully described as Lot 3, Block F/5534, and is zoned R-1ac(A), which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit, which will require a special exception to the single family zoning use regulations.

LOCATION: 10545 Lennox Lane

APPLICANT: Danny Sipes

REQUEST:

A request for a special exception to the single family use development standard regulations is made to construct and maintain a 1 1/2-story guest house/additional “dwelling unit” structure on a site being developed with a 2-story main single family home/dwelling unit structure.

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

The board may grant a special exception to the single family use development standards regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

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

STAFF RECOMMENDATION:

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

BACKGROUND INFORMATION:

Zoning:

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

Land Use:

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

Zoning/BDA History:

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

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 1 1/2-story guest house/additional “dwelling unit” structure on a site being developed with a 2-story main single family home/dwelling unit structure.
- The site is zoned R-1ac (A) where the Dallas Development Code permits one dwelling unit per lot.
- The single family use regulations of the Dallas Development Code state that only one dwelling unit may be located on a lot, and that the board of adjustment may grant a special exception to this provision and authorize an additional dwelling unit on a lot when, in the opinion of the board, the special exception will not: 1) be contrary to the public interest; or 2) adversely affect neighboring properties.
- The Dallas Development Code defines “single family” use as “one dwelling unit located on a lot;” and a “dwelling unit” as “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- The submitted site plan denotes the locations of two building footprints, the larger of the two with approximately 16,000 square feet of floor area denoted as “main dwelling unit” and the smaller of the two with approximately 2,900 square feet of floor area denoted as “guest house”. The latter structure or “guest house” has been deemed by Building Inspection, given what is denoted on a submitted floor plans, as an additional dwelling unit.
- The site plan represents the sizes and locations of the two building footprints relative to the entire lot.
- The submitted floor plans of the “guest house”/additional dwelling unit shows spaces that Building Inspection staff has reviewed and deemed a “dwelling unit” - that is per Code definition: “one or more rooms to be a single housekeeping unit to accommodate one family and containing one or more kitchens, one or more bathrooms, and one or more bedrooms.”
- This request appears to center on the function of what is proposed to be inside the smaller structure on the site – the guest house structure. The applicant has written the following:
 1. the applicant is allowed by code to construct the guest quarters/pool cabana as long as it does not have any type of bathing facility, any means of cooking, or any room that could be used for sleeping or bedroom;
 2. the applicant would be allowed 2 of these 3 uses but because the owner would like to incorporate all three uses/functions in the new pool cabana/guest quarters, they seek this request for an additional dwelling unit; and
 3. The applicant is aware that if the Board denies their request, they would only be allowed to utilize 2 of the 3 uses in the cabana/guest house structure.
- DCAD records indicate “no main or additional improvements” for the property at 10545 Lennox Lane.
- The applicant has the burden of proof in establishing that the additional dwelling unit will not be used as rental accommodations (by providing deed restrictions, if approved) and will not adversely affect neighboring properties.
- If the Board were to approve this request, the Board may choose to impose a condition that the applicant comply with the site plan if they feel it is necessary to

ensure that the special exception will not adversely affect neighboring properties. But granting this special exception request will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all required code requirements).

- The Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

Timeline:

September 25, 2015: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 14, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

October 14, 2015: The Board Administrator 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 October 28th deadline to submit additional evidence for staff to factor into their analysis; and the November 6th 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.”

October 27, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

November 3, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: OCTOBER 19, 2015

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move to grant that the Board of Adjustment grant application **BDA 145-119** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The applicant must deed restrict the property to prevent the use of the additional dwelling unit as rental accommodations.

SECONDED: **Beikman**

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: **Richardson**

I move to adjourn this meeting.

SECONDED: **Schulte**

AYES: 5 – Richardson, Coulter, Carreon, Schulte, Beikman

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

1:51 P. M. - Board Meeting adjourned for **November 16, 2015.**

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.