

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, September 18, 2018**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, Chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist

MEMBERS PRESENT AT HEARING: Peter Schulte, Chair, Elizabeth Nelson, regular member, John Jones, regular member, Jay Narey, regular member Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No One

STAFF PRESENT AT HEARING: Kris Sweckard, Director, David Cossum, Development Services Administrator, Neva Dean, Asst. Director, Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, Elaine Hill, Board Secretary

**11:00 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 18, 2018** docket.

\*\*\*\*\*

**1:12 P.M.**

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

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel A, August 21 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: September 18, 2018**

MOTION: None

The minutes were approved without a formal vote.

\*\*\*\*\*

**FILE NUMBER:** BDA178-092(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Courtney Gray, represented by Mike Kierbow, for a special exception for the handicapped to the rear yard setback regulations at 5722 Velasco Avenue. This property is more fully described as Lot 6, Block 8/1888, and is zoned CD 12, which requires a rear yard setback of 5 feet. The applicant proposes to construct and/or maintain a structure and provide a 2 foot 8 inch rear yard setback, which will require a 2 foot 4 inch special exception for the handicapped to the rear yard setback regulations.

**LOCATION:** 5722 Velasco Avenue

**APPLICANT:** Courtney Gray  
Represented by Mike Kierbow

**REQUEST:**

A request for a special exception for the handicapped to the rear yard setback regulations of 2’ 4” is made to complete and maintain a detached two-story garage/accessory structure, which is located 2’ 8” from the rear property line or 2’ 4” into the 5’ rear yard setback on a site developed with a single family home/use.

**STANDARD FOR A SPECIAL EXCEPTION FOR THE HANDICAPPED:** Section 51A-1.107.(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term “handicapped person,” means a person with a “handicap,” as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception for the handicapped since the basis for this type of appeal is when the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 13 (Conservation District)  
North: CD 13 (Conservation District)  
South: CD 13 (Conservation District)

East: CD 13 (Conservation District)  
West: CD 13 (Conservation District)

**Land Use:**

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

**Zoning/BDA History:**

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:**

- The request for a special exception for the handicapped to the rear yard setback regulations of 2' 4" focuses on completing and maintaining a detached two-story garage/accessory structure with an approximately 625 square foot building footprint, which is located 2' 8" from the site's rear property line or 2' 4" into the 5' rear yard setback on a site that is developed with a single family home/use.
- The property is zoned CD 12 which requires a minimum 5' rear yard setback for accessory structures over 15'. (An elevation of the accessory structure on the subject site represents that it is over 15' in height).
- The submitted site plan denotes that the detached "existing garage" structure is located 2' 8" from the site's rear property line or 2' 4" into the required 5' rear yard setback.
- Section 51A-1.107(b)(1) states that the Board of Adjustment shall grant a special exception to any regulation in this chapter, if, after a public hearing, the board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person," means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended.
- A copy of the "handicap" definition from this act was provided to the Board Administrator by the City Attorney's Office. Section 3602 of this act states the following:
  - “(h) “Handicap” means, with respect to a person -
    1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
    2. a record of having such an impairment, or
    3. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).”
- Unlike most requests where the board is considering a structure that encroaches into a setback via a variance (where property hardship must be demonstrated), the board is to consider this special exception for the handicapped request solely on whether they conclude that the special exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.

- The applicant has the burden of proof in establishing the following:
  - The special exception (which in this case is requested to maintain a detached accessory structure in the rear yard setback) is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling; and
  - there is a person with a “handicap” (as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended) who resides and/or will reside on the site.
- If the Board were to grant the request, and impose conditions that compliance with the submitted site plan is required, and that the special exception expires when a handicapped person no longer resides on the property, the structure would be required to be completed and maintained in the location shown on the submitted site plan for as long as the applicant or any other handicapped person resides on the site.

**Timeline:**

May 23, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 29, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 29, 2018: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<sup>th</sup> 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;
- A copy of the “handicap” definition from the Federal Fair Housing Amendments Act of 1988; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

September 7, 2018: The applicant’s representative submitted additional documentation to staff (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: September 18, 2018**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Sibley**

I move to **grant** the Board of Adjustment application **BDA178-092** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence that the applications satisfy all the requirements of the Dallas Development Code and is consistent with the general purpose and intent of the Code, as applicable, to wit. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Narey**

**AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley**

**NAYS: 0**

**MOTION PASSED: 5 – 0 (unanimously)**

\*\*\*\*\*

**FILE NUMBER: BDA178-095(OA)**

**BUILDING OFFICIAL’S REPORT:** Application of Steven Wood for a special exception to the fence standards regulations at 4070 Cedarbrush Drive. This property is more fully described as Lot 7, Block C/6404, and is zoned R-16(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct and/or maintain a 7 foot 6 inch high fence in a required front yard, which will require a 3 foot 6 inch special exception to the fence standards regulations.

**LOCATION: 4070 Cedarbrush Drive**

**APPLICANT: Steven Wood**

**REQUEST:**

A request for a special exception to the fence standards regulations related to height of 3’ 6” is made to maintain a 7’ 6” high stucco columns and a 6’ 7” wrought iron fence with a wrought iron swing gate in the required front yard on a site developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-16(A) (Single family district 16,000 square feet)  
North: R-16(A) (Single family district 16,000 square feet)  
South: R-16(A) (Single family district 16,000 square feet)  
East: R-16(A) (Single family district 16,000 square feet)  
West: R-16(A) (Single family district 16,000 square feet)

**Land Use:**

*The subject site is 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 for a special exception to the fence height of 3’ 6” focuses on maintaining a 7’ 6” high stucco columns and a 6’ 7” wrought iron fence with a wrought iron swing gate in the required front yard on a site developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4’ above grade when located in the required front yard.
- The property is located in an R-16(A) zoning district. The site has a 40’ required front yard caused by a platted building line along Cedarbrush Drive.
- The applicant had submitted a site plan and elevation that shows the proposal in the front yard setback reaching a maximum height of 7’ 6”.
- The following additional information was gleaned from the submitted site plan/elevation:
  - The proposal is represented as being approximately 28’ in length parallel to Cedarbrush and approximately 8’ perpendicular to Cedarbrush Drive on the west side in this front yard setback.

- The proposal is represented as being located approximately 32’ from the front property line. (The distance between the fence and the pavement line is approximately 43’).
- The Sustainable Development and Construction Department Senior Planner conducted a field visit of the site and surrounding area and noted no other fences that appeared to be above 4’ in height and located in a front yard setback.
- As of September 7<sup>th</sup>, no letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the proposal that would reach 7’ 6” in height) will not adversely affect neighboring property.
- Granting this special exception of 3’ 6” with a condition imposed that the applicant complies with the submitted site plan/elevation would require the proposal exceeding 4’ in height to be maintained in the location and of the heights and materials as shown on this document.

**Timeline:**

May 30, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

August 14, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

August 14, 2018: The Sustainable Development and Construction Department Senior Planner emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the August 29<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: September 18, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schulte**

I move that the Board of Adjustment in Appeal No. BDA 178-095 hold this matter under advisement until October 16, 2018.

SECONDED: **Nelson**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*

FILE NUMBER: BDA178-093(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Opulent Homes LLC, represented by Chris Ramsey, for a variance to the side yard setback regulations at 9874 Mixon Drive. This property is more fully described as Lot 5, Block 7/6178, and is zoned R-7.5(A), which requires a 5 foot side yard setback. The applicant proposes to construct and/or maintain a structure and provide a 4 foot 1 inch side yard setback, which will require an 11 inch variance to the side yard setback regulations.

LOCATION: 9874 Mixon Drive

APPLICANT: Opulent Homes LLC,  
Represented by Chris Ramsey

**REQUESTS:**

A request for a variance to the side yard setback regulations of 11” is made to maintain a two-story single family home structure 4’ 1” from the side property line (the south side property line) or 11” into the 5’ side yard setback on a site that is being developed with a single family home.

**STANDARD FOR A VARIANCE:**

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



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

**STAFF RECOMMENDATION (front yard, side yard, and floor area variances):**

Denial

Rationale:

- Staff concluded that the applicant had not substantiated how 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 it cannot be developed in a manner commensurate with the development upon other parcels of land with the same R-7.5 (A) zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: R-7.5(A) (Single family district 7,500 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

**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 (side yard variance):**

- This request focuses on maintaining a structure 4' 11" from the side property line (the south side property line) or 11" into the 5' side yard setback.
- Structures on lots zoned R-7.5(A) are required to provide a minimum side yard setback of 5'.

- A site plan has been submitted denoting a two-story single family home structure located 4' 1" from the side property line (the south side property line) or 11" into this 5' side yard setback.
- It appears from the submitted site plan that approximately 1 percent of the unfinished 4050 square foot structure footprint is located 11" in the site's southern 5' side yard setback.
- DCAD records indicate "no main improvements" for the property at 9874 Mixon Drive.
- The subject site is rectangular in shape, flat, and according to the application, is 0.25 acres (or approximately 10,900 square feet) in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-7.5(A) zoning classification.
- If the Board were to grant this side yard setback variance request and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document which is a structure 4' 1" from the side property line (the south side property line) or 11" into the 5' side yard setback.

**Timeline:**

- May 16, 2018: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 14, 2018: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- August 16, 2018: The Sustainable Development and Construction Department 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 August 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;

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

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: September 18, 2018**

APPEARING IN FAVOR: Chris Ramsey, 9874 Mixon Dr., Dallas, TX  
 Brian Kelly, 9874 Mixon Dr., Dallas, TX

APPEARING IN OPPOSITION: Grant & Leslie Garnett, 9870 Mixon Dr., Dallas, TX

**MOTION: Schulte**

I move that the Board of Adjustment, in Appeal No. BDA 178-093, on application of Opulent Homes, LLC represented by Chris Ramsey, **deny** the variance to the side yard setback regulations requested by this applicant **with** prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Sibley**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER: BDA178-097(SL)**

**BUILDING OFFICIAL’S REPORT:** Application of Joe Pastora, represented by Brad Williams, for a variance to the off-street parking regulations at 5001 W. Lovers Lane. This property is more fully described as Lots 39,40,41,& 42, Block A/5006, and is zoned CR, which requires that the owner of off-street parking must provide screening to separate the parking area from a contiguous residential use or vacant lot if either is in

an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use. The applicant proposes to construct and/or maintain a structure and not provide the required screening, which will require a variance to the off-street parking regulations.

**LOCATION:** 5001 W. Lovers Lane

**APPLICANT:** Joe Pastora  
Represented by Brad Williams of Winstead PC

**REQUEST:**

A request for a variance to the off-street parking regulations, more specifically the screening provisions for off-street parking, is made to lease and maintain a particular use that requires a greater number of off-street parking spaces than the original use on the subject site that is in part developed with a general merchandise or food store use/structure, and in part developed with a vacant nonresidential use/structure, and not provided required screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

**STANDARD FOR A VARIANCE:**

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

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

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Staff concluded from the information submitted by the applicant's representative at the time of the September 4, 2018 staff review team meeting that the applicant had not substantiated how the physical features of the flat, rectangular in shape (approximately 105 'x 138'), 0.332 acres (or approximately 14,500 square foot) site

preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.

- Staff concluded from the information submitted by the applicant's representative at the time of the September 4, 2018 staff review team meeting that any hardship in this case is self-created in that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a particular use for the vacant nonresidential use/structure on the subject site that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the vacant nonresidential use/structure with no screening required or variance to the off-street parking regulations related to required screening.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: CR (Community retail)  
North: R-7.5(A) (Single family residential 7,500-square feet)  
South: CR (Community retail)  
East: CR (Community retail)  
West: CR (Community retail)

### **Land Use:**

The subject site is developed in part with a general merchandise or food store use/structure, and in part with a vacant nonresidential use/structure. The area to the north is developed with a single family residential; the areas to the east, south, and west are developed with retail uses.

### **Zoning/BDA History:**

1. BDA156-091, Property at 5017 W. Lovers Lane (several lots east of the subject site)

On October 18, 2016, the Board of Adjustment Panel A granted a variance to the screening regulations for off-street parking and imposed the submitted site plan as a condition.

The case report stated that the request was made to lease and maintain a general merchandise or food store less than 3,500 square foot use on the subject site that is developed with a vacant nonresidential structure, and with no screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use).

## **GENERAL FACTS/STAFF ANALYSIS:**

- This request for a variance to the off-street parking regulations focuses on leasing and maintaining a particular use that requires a greater number of off-street parking spaces than the original use on the subject site that is developed in part with a general merchandise or food store use/structure, and in part with a vacant nonresidential use/structure is developed with a vacant nonresidential structure, and not providing required screening between the required off-street parking on the site for this proposed use and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- The Dallas Development Code states the following related to the screening of off-street parking:
  - (1) The owner of off-street parking must provide screening to separate the parking area from:
    - (A) a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use; or
    - (B) a contiguous single family or duplex use or a vacant lot if any of these are in an R, R(A), D, D(A), TH, TH(A), or CH district and the parking area serves a multifamily use.
  - (2) If an alley separates a parking area from another use, the use is considered contiguous to the parking area. If a street separates a parking area from another use, the use is not considered contiguous to the parking area.
- The Dallas Development Code states that the screening for off-street parking required under Subsection (f)(1) must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence that is not less than six feet in height. The wall or fence may not have more than ten square inches of open area for each square foot of surface area and may not contain any openings or gates for vehicular access. The owner of off-street parking must maintain the screening in compliance with these standards.
- The applicant submitted a site plan representing the location of a 6' tall wood fence on the north side of the property between the off-street parking on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- Building Inspection has interpreted that the screening as represented on the submitted site plan is noncompliant with required screening on this site because of an opening within the 6' wood fence between the off-street parking on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.
- Building Inspection has stated that the required screening that the applicant seeks variance for is prompted by the applicant's proposal/choice to obtain a certificate of occupancy (CO) for a new use that requires a greater number of off-street parking spaces than the original use, and that the City could issue a new CO to the applicant for the same use that had occupied the vacant nonresidential use/structure with no screening required or variance to the off-street parking regulations related to screening required.

- According to DCAD records, the “improvements” for property addressed at 5001 W. Lovers Lane is a 5,215 square foot “retail strip” constructed in 1948.
- The subject site is flat, rectangular in shape (approximately 105 'x 138'), and 0.332 acres (or approximately 14,500 square foot) in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking 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 CR 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 CR zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the applicant would be able to lease the vacant nonresidential structure on the site with a particular use that requires a greater number of off-street parking spaces than the original use without required screening between the required off-street parking for this proposed use on the site and the property to the north across an alley zoned R-7.5(A) and single family residential in use.

**Timeline:**

- Undated: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 14, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 14, 2018: The Board Administrator emailed the applicant’s representative 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 August 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 4, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Sustainable Development and Construction Director, the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Authorized Hearing/Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

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

September 7, 2018: The applicant's representative submitted additional documentation to staff (see Attachment A). Note that this information was not factored into the staff recommendation since it was submitted after the September 4, 2018 staff review team meeting.

**BOARD OF ADJUSTMENT ACTION: September 18, 2018**

APPEARING IN FAVOR: Tommy Mann, 500 Winstead Bldg., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Schulte**

I move that the Board of Adjustment, in Appeal No. **BDA 178-097**, on application of Joe Pastora represented by Brad Williams, **grant** the variance to the off-street parking regulations to not provide the required screening as 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: Sibley**

AYES: 5 – Schulte, Nelson, Jones, Narey, Sibley

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*



**MOTION: Sibley**

I move to adjourn this meeting.

**SECONDED: Narey**

**2:13 P. M.:** Board Meeting adjourned for **September 18, 2018.**

\_\_\_\_\_  
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.