

NOTICE FOR POSTING
MEETING OF
BOARD OF ADJUSTMENT, PANEL B
WEDNESDAY, NOVEMBER 17, 2021

BRIEFING: 11:00 a.m. via **Videoconference** and in **6ES**, Dallas City Hall, 1500 Marilla Street

HEARING: 1:00 p.m. via **Videoconference** and in **6ES**, Dallas City Hall, 1500 Marilla Street

* The Board of Adjustment hearing will be held by videoconference and in 6ES at City Hall. Individuals who wish to speak in accordance with the Board of Adjustment Rules of Procedure **by joining the meeting virtually**, must register online at <https://form.jotform.com/210536758715158> or contact the Planning and Urban Design Department at 214-670-4209 **by the close of business Tuesday, October 19, 2021. All virtual speakers will be required to show their video in order to address the board.** The public is encouraged to attend the meeting virtually, however, City Hall is available for those wishing to attend the meeting in person following all current pandemic-related public health protocols. Public Affairs and Outreach will also stream the public hearing on Spectrum Cable Channel 96 or 99; and bit.ly/cityofdallastv or YouTube.com/CityofDallasCityHall and the WebEx link: <https://bit.ly/BDA111721>

Purpose: To take action on the attached agenda, which contains the following:

1. Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

Handgun Prohibition Notice for Meetings of Governmental Entities

"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."



CITY OF DALLAS

BOARD OF ADJUSTMENT, PANEL B

WEDNESDAY, NOVEMBER 17, 2021

AGENDA

BRIEFING: 11:00 a.m. via **Videoconference and** in **6ES**, Dallas City Hall, 1500 Marilla Street

HEARING: 1:00 p.m. via **Videoconference and** in **6ES**, Dallas City Hall, 1500 Marilla Street

Andreea Udrea, PhD, AICP, Assistant Director (Interim)

Jennifer Muñoz, Chief Planner/Board Administrator

Pamela Daniel, Senior Planner

LaTonia Jackson, Board Secretary

PUBLIC TESTIMONY

Minutes

BDA201-109(JM) 2051 W. Northwest Hwy.
Application of William Davis to appeal the decision of the administrative official

MISCELLANEOUS ITEM

Approval of the October 20, 2021 Board of Adjustment Panel B Public Hearing Minutes	M1
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Approval of the 2022 Board of Adjustment Calendar	M2
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Approval of the 2022 Board of Adjustment Schedule	M3
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UNCONTESTED CASE(S)

BDA201-102(PD)	8000 Lake June Road REQUEST: Application of Dan Foster represented by Eddie Fisher for a special exception to the fence standards regulations	1
BDA201-103(PD)	8002 Lake June Road REQUEST: Application of Dan Foster represented by Eddie Fisher for a special exception to the fence standards regulations	2

REGULAR CASE(S)

BDA201-108(PD)	4511 McKinney Avenue REQUEST: Application of Majahual LP represented by Philip Kingston for a variance to the front yard setback regulations	3
BDA201-109(JM)	2051 W. Northwest Highway REQUEST: Application of Khiem Phan represented by William Davis to appeal the decision of the administrative official	4

HOLDOVER CASE(S)

BDA190-090(JM)	3016 Greenville Ave. REQUEST: Application of Thomas Shields, represented by Steven Dimitt, for a special exception to the Modified Delta Overlay District No. 1 regulations.	5
BDA190-091(JM)	3018 Greenville Ave. REQUEST: Application of Thomas Shields, represented by Steven Dimitt, for a special exception to the Modified Delta Overlay District No. 1 regulations.	6
BDA190-092(JM)	3018 Greenville Ave. REQUEST: Application of Thomas Shields represented by Steven Dimitt to appeal the decision of an administrative official.	7
BDA190-093(JM)	3024 Greenville Ave. REQUEST: Application of Thomas Shields, represented by Steven Dimitt, for a special exception to the Modified Delta Overlay District No. 1 regulations.	8

EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex Govt. Code §551.087]
7. deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementations of security personnel, critical infrastructure, or security devices. [Tex. Govt. Code §551.089]

FILE NUMBER: BDA201-102 (PD)

BUILDING OFFICIAL'S REPORT: Application of Dan Foster represented by Eddie Fisher for a special exception to the fence standards regulations at 8000 Lake June Road. This property is more fully described as Lot 1, in City Block C/6301, and is zoned Subarea 2 within Planned Development District No. 366, the Buckner Boulevard Special Purpose District, which reverts to the Dallas Development Code pertaining to fence materials and prohibits the use of certain materials. The applicant proposes to construct and maintain an eight-foot-high fence in a required side and rear yard utilizing prohibited materials (corrugated metal) which will require a special exception to the fence standards regulations regarding materials.

LOCATION: 8000 Lake June Road

APPLICANT: Dan Foster represented by Eddie Fisher

REQUEST:

The applicant is seeking to construct and maintain an eight-foot-high fence using prohibited steel metal sheet material (corrugated metal) on the fence and sliding gate on a property currently developed with an approximately 7,350-square-foot, concrete and wood-frame commercial structure constructed in 1945.

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: Subarea 2 within PDD No. 366

North: Subarea 2 within PDD No. 366

East: Subarea 2 within PDD No. 366

South: Subarea 2 within PDD No. 366
West: Subarea 2 within PDD No. 366

Land Use:

The subject site is currently developed with a commercial use. Surrounding properties to the north, east, south, and west are developed with commercial uses consisting of auto-related uses to the northwest and south, a vacant structure to the west, and retail and personal service uses to the northeast and east.

Zoning/BDA History: There have been two related board or zoning cases in the vicinity within the last five years.

1. **BDA201-103:** On November 17, 2021, the Panel B, Board of Adjustments will hear a request for a special exception to the fence regulations prohibited materials at 8002 Lake June Road. ****adjacent site****
2. **Z156-183:** On August 9, 2017, City Council approved a hearing to determine proper zoning on property zoned Planned Development District No. 366, with consideration given to appropriate zoning for the area including use, development standards, and other appropriate regulations in Planned Development District No. 366. The authorized hearing is to focus on urban design, land use, parking and streetscape, and ensure provisions that encourage future development by proposing amendments such as: 1) consolidation of subareas, 2) update landscape, sidewalk, accessory and land use regulations, and 3) the introduction of residential components including mixed use projects

GENERAL FACTS/STAFF ANALYSIS:

The property is currently developed with an approximately 7,350-square-foot, one-story concrete and wood frame commercial structure erected in 1945. The applicant proposes to construct and maintain an eight-foot-high fence made of steel metal sheet material along the side yard and rear yard of the property. Currently the site operates as a retail or personal service use, more specifically a pawn shop. The rear of the structure where the fence is proposed will contain outside storage of material for the main use.

Section 51A-4.602(9)(B) states that except as provided in this subsection, the following fence materials are prohibited:

- (A) Sheet metal;
- (B) Corrugated metal;
- (C) Fiberglass panels;
- (D) Plywood;
- (E) Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;

(F) Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and,

(G) Barbed wire and razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.

The following information is shown on the submitted site plan:

- The proposed fence consists of a steel sheet metal gate located along the side yard and rear yard setbacks.
- The proposed eight-foot-high fence extends 45 linear feet along the side yard setback then 25 linear feet along the rear yard which fronts along an unimproved alley.
- The fence is proposed to be constructed of steel sheet metal more commonly known as corrugated metal.

As of November 5, 2021, no letters have been submitted in support of the request and no letters have been submitted in opposition of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to materials located on Gardenview Drive will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to materials would require the proposal to be maintained in the locations, heights and materials as shown on the site plan and elevation.

Staff conducted a site visit of the subject site and surround area and noted several other fences constructed of prohibited materials S. Buckner Boulevard, Buckner Boulevard, and adjacent streets such as Pleasant Drive and Maddox Street, many of which do not have recorded BDA history.

Additionally, the representative provided supporting evidence with the application materials presented to staff which contain eight photographs of properties with prohibited fence materials within the vicinity of the subject property that have not been granted special exceptions to the fence standard regulations.

Timeline:

August 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.

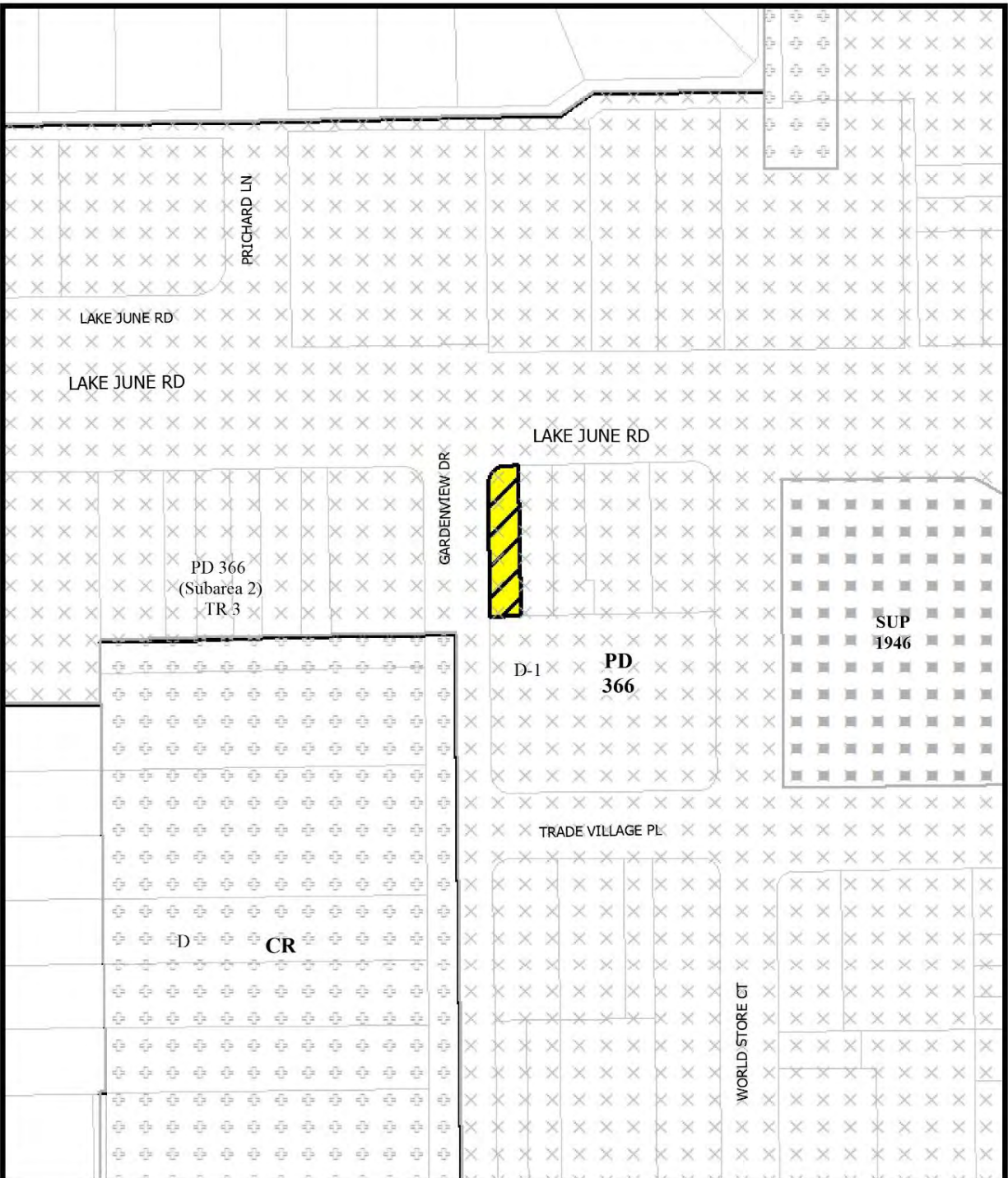
October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

October 15, 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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.

Oct. 29, 2021:

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 Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted with this request.

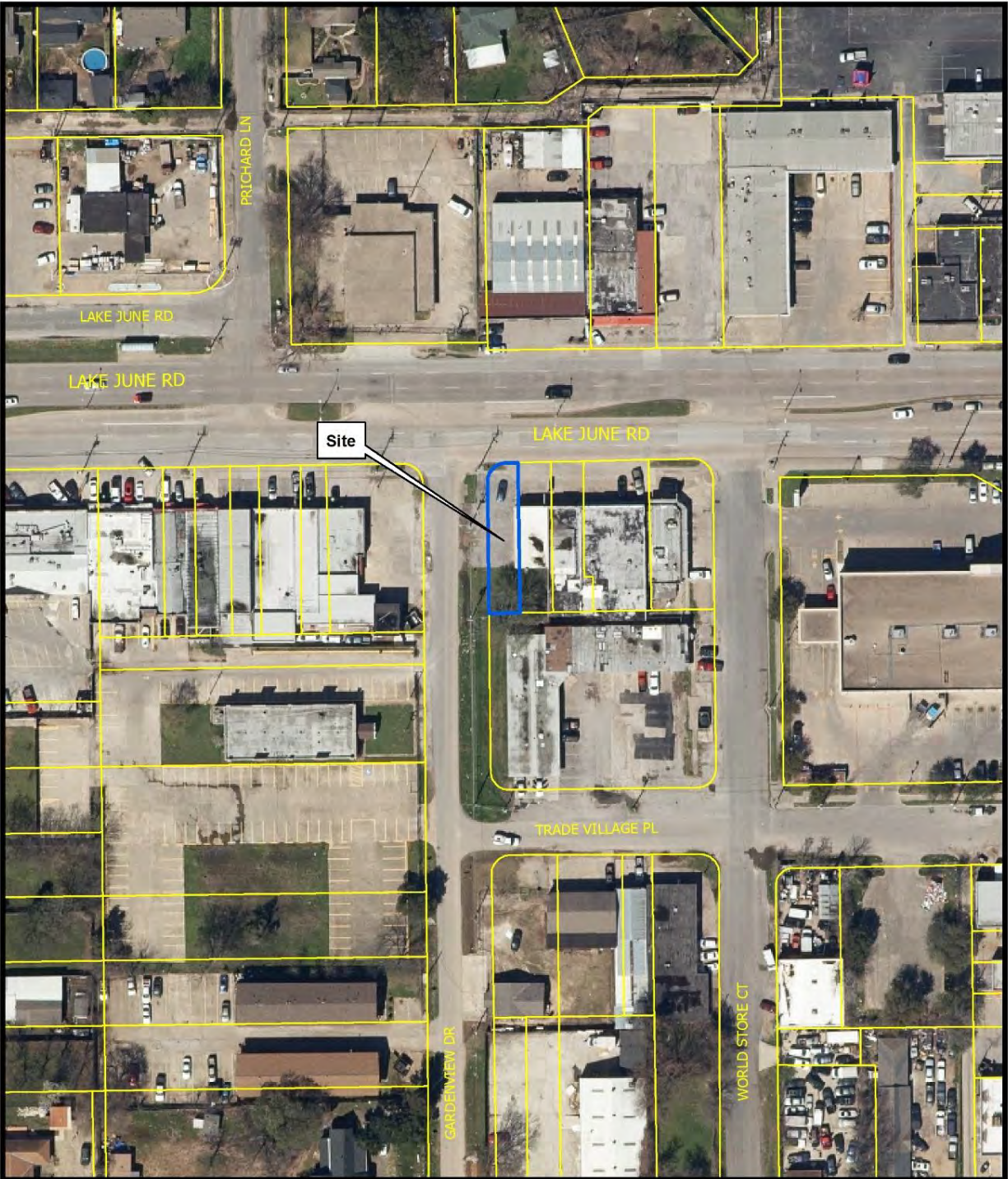


1:1,200

ZONING MAP

Case no: BDA201-102

Date: 10/27/2021

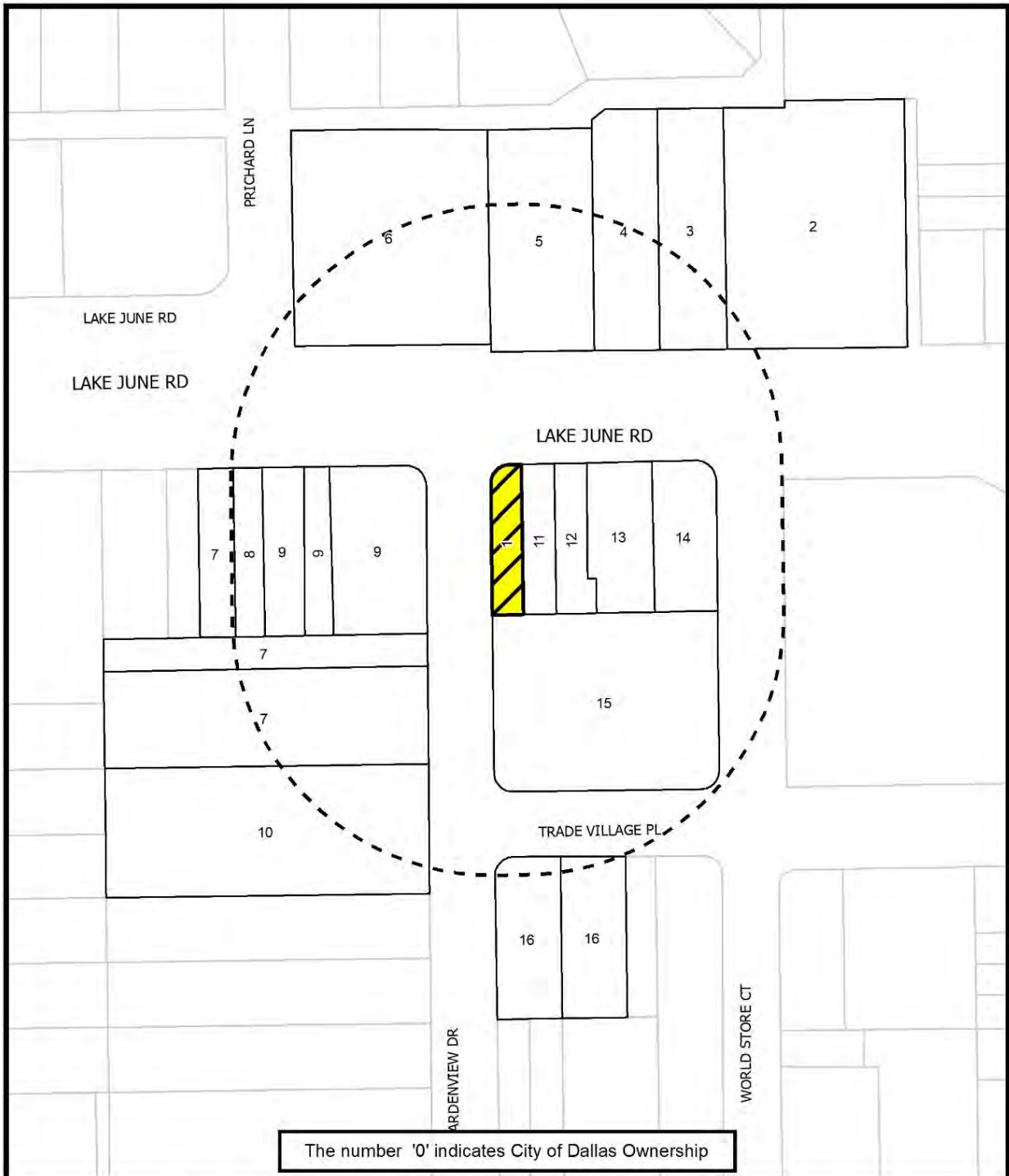


1:1,200

AERIAL MAP

Case no: BDA201-102

Date: 10/27/2021



1:1,200

NOTIFICATION

200' AREA OF NOTIFICATION
16 NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA201-102**
 Date: **10/27/2021**

10/26/2021

Notification List of Property Owners

BDA201-102

16 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	8000 LAKE JUNE RD	Taxpayer at
2	8017 LAKE JUNE RD	SHIDID FAMILY LIVING TRUST
3	8011 LAKE JUNE RD	RODRIQUEZ ROBERTO & ALMA
4	8007 LAKE JUNE RD	RODRIGUEZ ROBERTO &
5	8005 LAKE JUNE RD	L F MARTINEZ INC
6	8003 LAKE JUNE RD	CRISTO LA ROCA
7	7926 LAKE JUNE RD	ROSALES THELMA
8	7928 LAKE JUNE RD	GRACIANO ARTURO & ALMA
9	7930 LAKE JUNE RD	MARTINEZ RAUL & LETICIA
10	1223 GARDENVIEW DR	ROSALES MARTIN & THELMA
11	8002 LAKE JUNE RD	Taxpayer at
12	8010 LAKE JUNE RD	Taxpayer at
13	8012 LAKE JUNE RD	Taxpayer at
14	8014 LAKE JUNE RD	MONTOYA LUPE
15	1227 WORLD STORE PL	IBARRA MANUEL
16	8000 TRADE VILLAGE PL	MARTINEZSANDOVAL BLANCA ESTELA



City of Dallas

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 201-102

Data Relative to Subject Property:

Date: 9-13-21

Location address: 8000 Lake June Rd.

Zoning District: PD366 (SA2) TR3

Lot No.: 1 Block No.: C/6301 Acreage: .066 Census Tract: 93.01

Street Frontage (in Feet): 1) 25' 2) 116' 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Dan Foster

Applicant: Dan Foster Telephone: 469-767-1361

Mailing Address: 2900 Amherst Zip Code: 75225

E-mail Address: eboli2u@netscape.net

Represented by: Eddie Fisher Telephone: 972-979-8325

Mailing Address: 2900 Amherst Zip Code: 75225

E-mail Address: eboli2u@netscape.net

Affirm that an appeal has been made for a Variance _____, or Special Exception , of Prohibited Fence material (R-Panel fence)

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

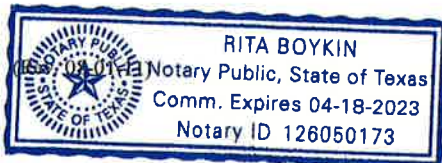
Affidavit

Before me the undersigned on this day personally appeared Dan Foster
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 27th day of August



R. Boykin
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that DAN FOSTER

did submit a request for a special exception to the fence standards regulations

at 8000 Lake June Road

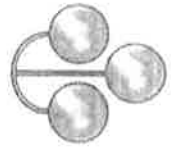
BDA201-102. Application of DAN FOSTER for a special exception to the fence standards regulations at 8000 LAKE JUNE RD. This property is more fully described as Lot 1, Block C/6301, and is zoned PD-366 (Subarea 2), which prohibits the use of certain materials for a fence. The applicant proposes to construct a fence using a prohibited material, which will require a special exception to the fence regulations.

Sincerely,


David Session, Building Official



UNCLE DAN'S PAWN



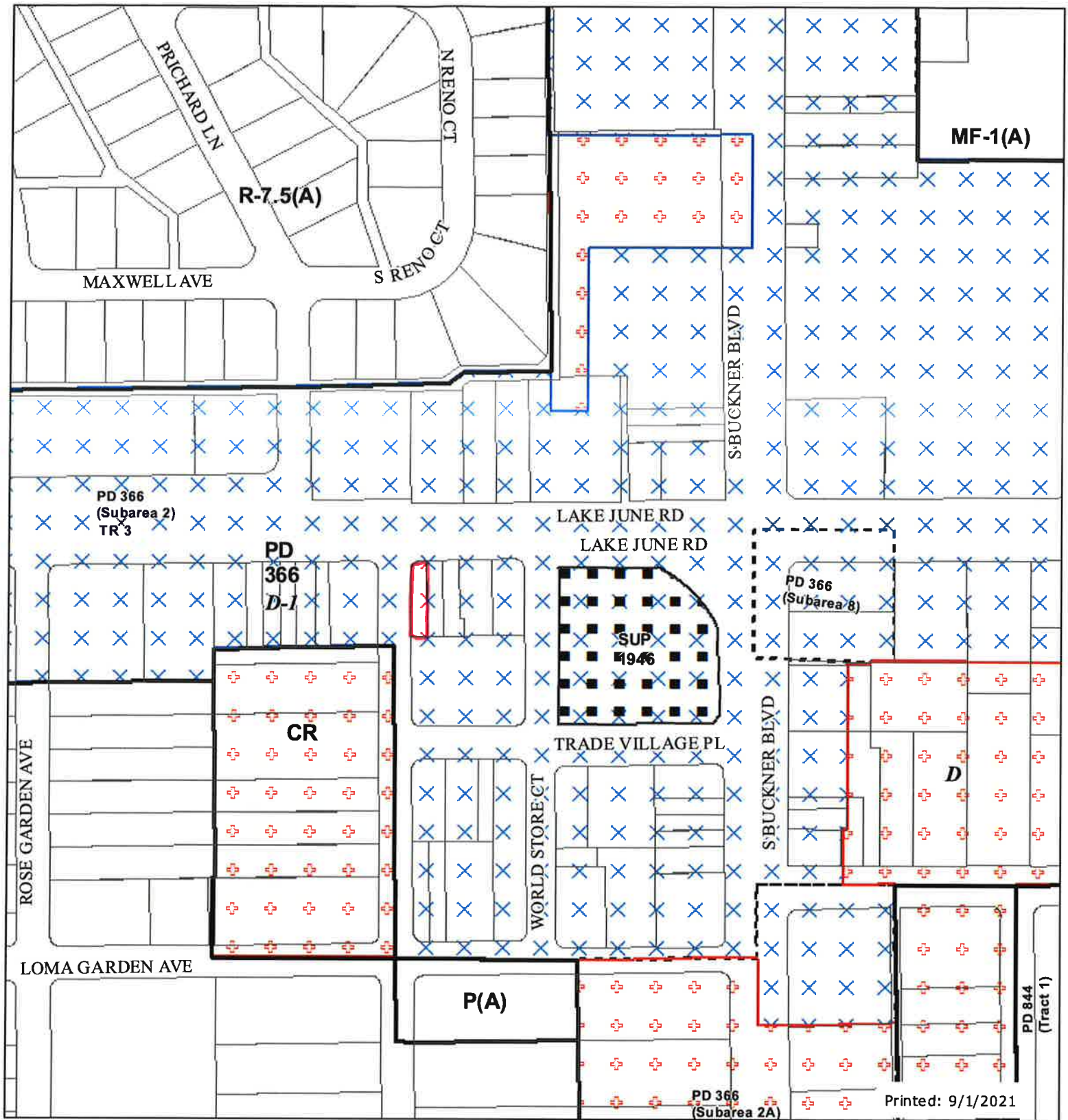
September 10, 2021

City Of Dallas
Board Of Adjustment
320 E. Jefferson Blvd
Dallas, Texas 75203

Dear Board Of Adjustment,

This letter is to justify the continue use and maintainence of a corrugated metal fence currently surrounding the backyard of our business. This fence is made of new metal, painted, and professionally installed as to not be unsightly to the surrounding area. Currently there are more than 6 businesses within a mile of our business that have similar metal fences (see attach images). We do not believe that our new metal fence will alter the quality of life within this business zoned community. We are very conscious that we business a pawnshop which houses guns, jewelry, and various goods which could be taken in a burglary. We believe that this fence will further protect the community, as well, not be a nuisance to the everyday movement of the surrounding residents.

CONTACT



Printed: 9/1/2021

Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mills Creek | Dallas Environmental Corridors | SP | NSO Overlay |
| Peak's Branch | SPSP Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay |
| | | Height Map Overlay | |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. (Texas Government Code § 2051.102)

Page

Acres

DALLA-KALFMAN, SAM CONNER (BLVD.)

ROAD

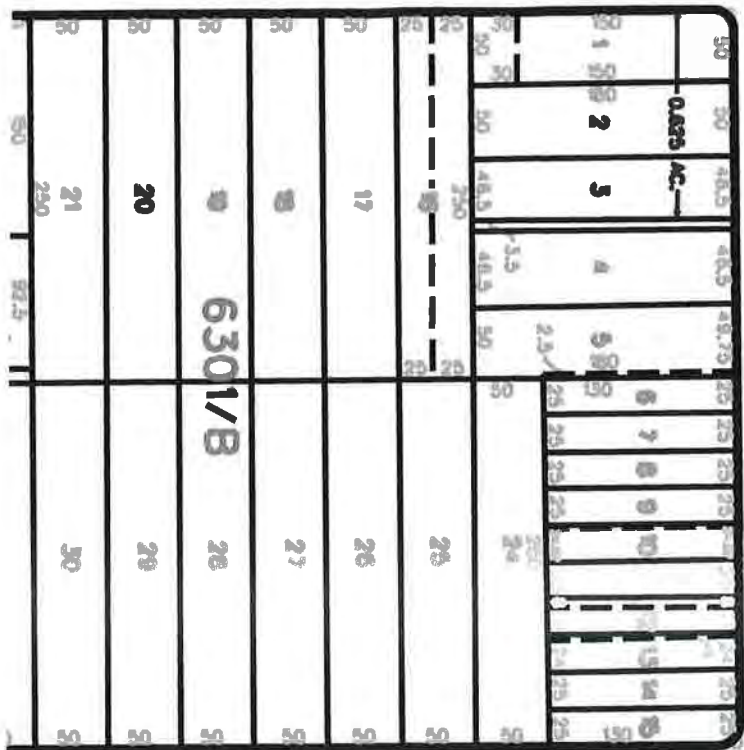
ROAD

BLVD.

R. Brulon Surv.
Abst. 79
Abst. 442

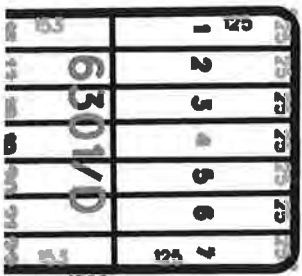
J. A. Leonard Surv.
Abst. 802

Abst. 442
W. B. Clom Surv.
Abst. 441



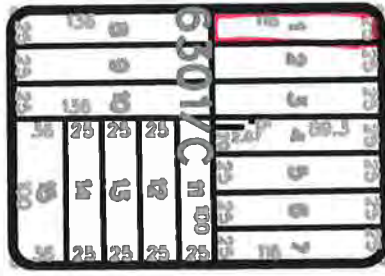
1200

AVE.



1200

WORLD STORE

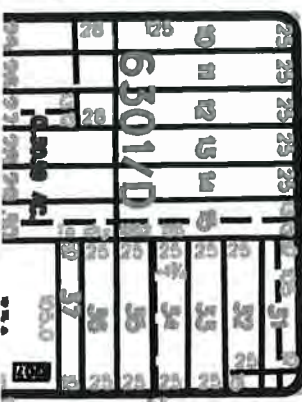


1200 COURT



TRADE-VILLAGE

PLACE



1200

BLVD.

6357

6329

6328

MACON AVE.



500. S. Buckner Blvd.



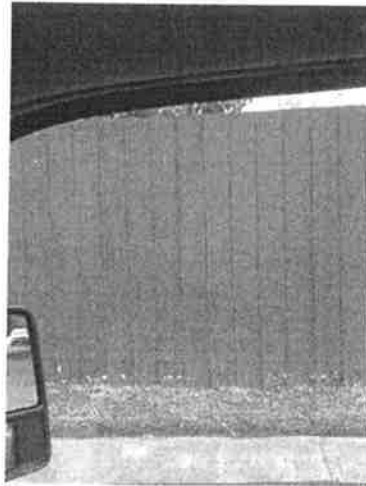
301 Pleasant Dr.



301 Pleasant Dr.



500. S. Buckner Blvd.



578 S. Buckner Blvd.



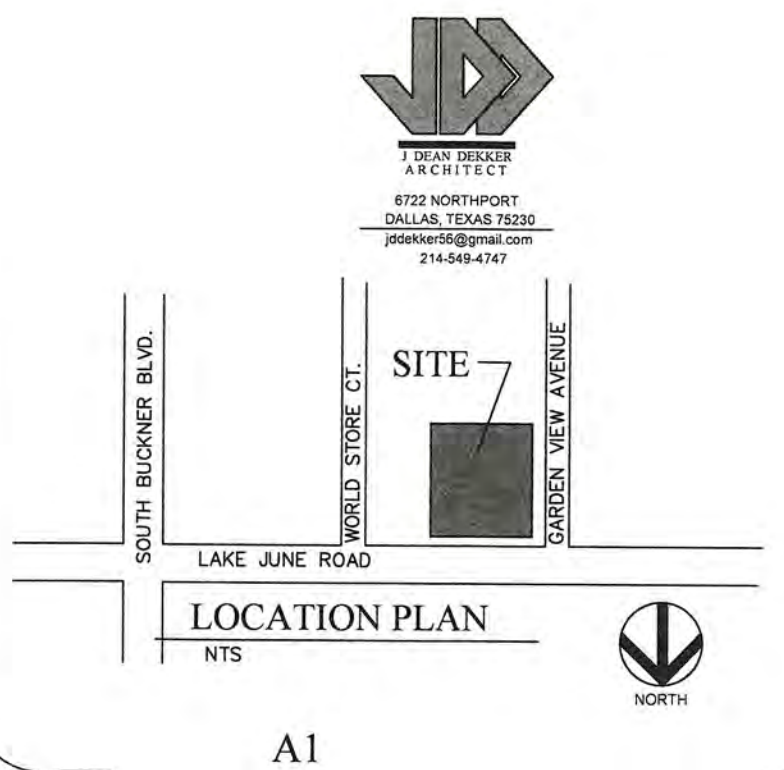
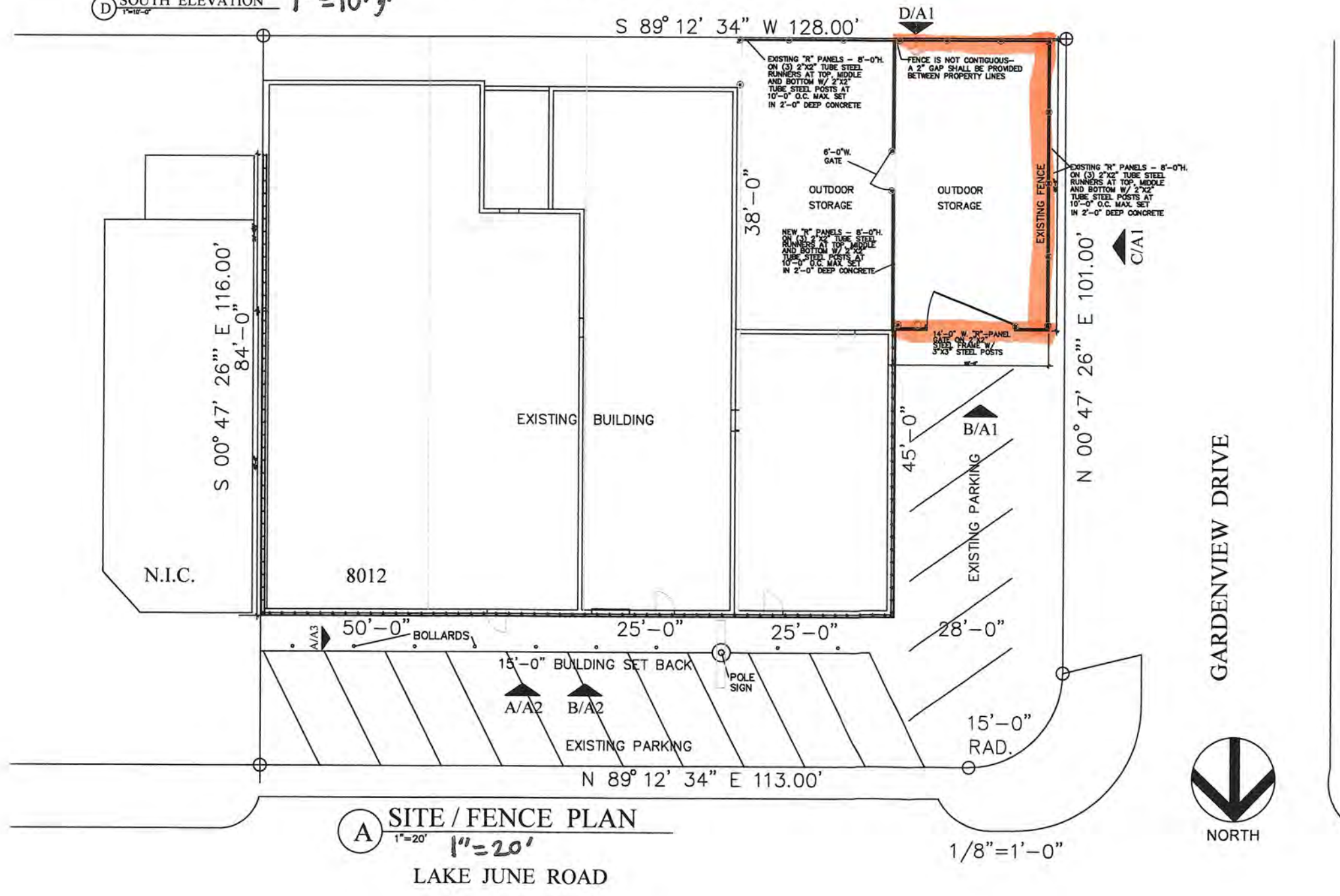
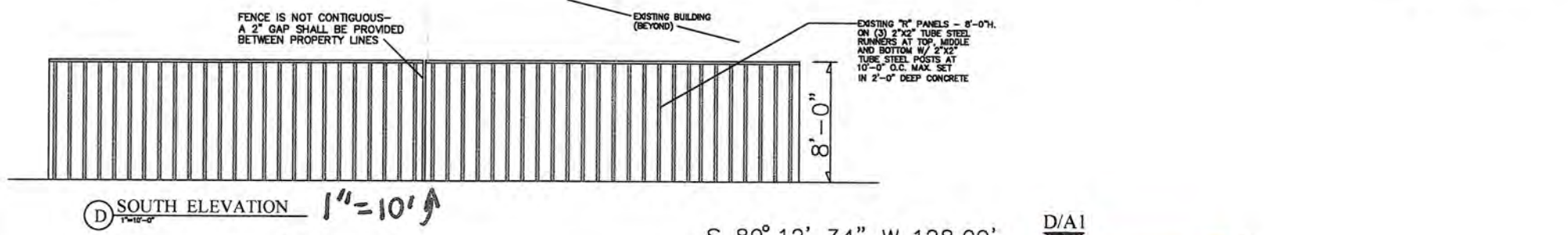
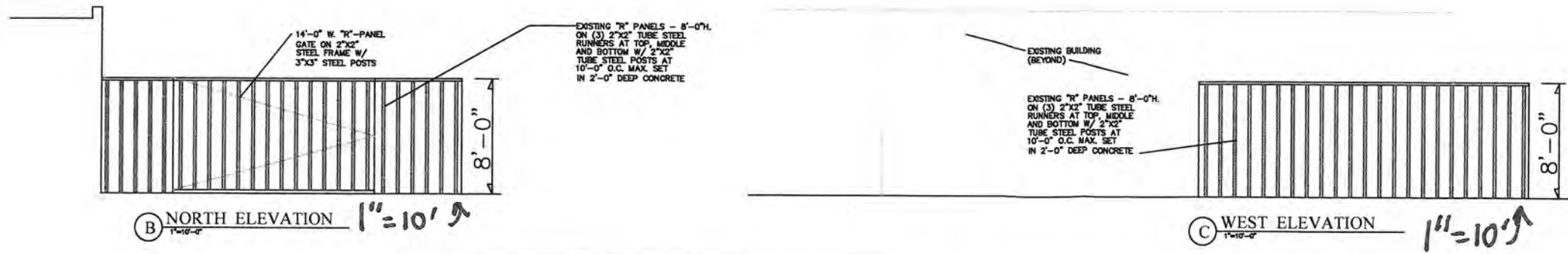
8122 Maddox St.



1339 S. Buckner Blvd.



1339 S. Buckner Blvd.



201-102

FILE NUMBER: BDA201-103 (PD)

BUILDING OFFICIAL'S REPORT: Application of Dan Foster represented by Eddie Fisher for a special exception to the fence standards regulations at 8002 Lake June Road. This property is more fully described as Lot 2, in City Block C/6301, and is zoned Subarea 2 within Planned Development District No. 366, the Buckner Boulevard Special Purpose District, which reverts to the Dallas Development Code pertaining to fence materials and prohibits the use of certain materials. The applicant proposes to construct and maintain an eight-foot-high fence in a required rear yard utilizing prohibited materials (corrugated metal) which will require a special exception to the fence standards regulations regarding materials.

LOCATION: 8002 Lake June Road

APPLICANT: Dan Foster represented by Eddie Fisher

REQUEST:

The applicant is seeking to install and maintain an eight-foot-high fence using prohibited steel metal sheet material (corrugated metal) on the fence and sliding gate on a property currently developed with an approximately 7,350-square-foot, concrete and wood-frame commercial structure constructed in 1945.

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: Subarea 2 within PDD No. 366

North: Subarea 2 within PDD No. 366

East: Subarea 2 within PDD No. 366

South: Subarea 2 within PDD No. 366
West: Subarea 2 within PDD No. 366

Land Use:

The subject site is currently developed with a commercial uses. Surrounding properties to the north, east, south, and west are developed with commercial uses consisting of auto-related uses to the northwest and south, a vacant structure to the west, and retail and personal service uses to the northeast and east.

Zoning/BDA History: There have been two related board or zoning cases in the vicinity within the last five years.

1. **BDA201-102:** On November 17, 2021, the Panel B, Board of Adjustments will hear a request for a special exception to the fence regulations prohibited materials at 8000 Lake June Road. ****adjacent site****
2. **Z156-183:** On August 9, 2017, City Council approved a hearing to determine proper zoning on property zoned Planned Development District No. 366, with consideration given to appropriate zoning for the area including use, development standards, and other appropriate regulations in Planned Development District No. 366. The authorized hearing is to focus on urban design, land use, parking and streetscape, and ensure provisions that encourage future development by proposing amendments such as: 1) consolidation of subareas, 2) update landscape, sidewalk, accessory and land use regulations, and 3) the introduction of residential components including mixed use projects

GENERAL FACTS/STAFF ANALYSIS:

The property is currently developed with an approximately 7,350-square-foot, one-story concrete and wood frame commercial structure erected in 1945. The applicant proposes to construct and maintain an eight-foot-high fence made of steel metal sheet material along the rear yard of the property. Currently the site operates as a retail or personal service use, more specifically a pawn shop. The rear of the structure where the fence is proposed will contain outside storage of material for the main use.

Section 51A-4.602(9)(B) states that except as provided in this subsection, the following fence materials are prohibited:

- (A) Sheet metal;
- (B) Corrugated metal;
- (C) Fiberglass panels;
- (D) Plywood;
- (E) Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;

(F) Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and,

(G) Barbed wire and razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.

The following information is shown on the submitted site plan:

- The proposed fence consists of a steel sheet metal gate located along the side yard and rear yard setbacks.
- The proposed eight-foot-high fence extends 25 linear feet along the rear yard which fronts along an unimproved alley.
- The fence is proposed to be constructed of steel sheet metal more commonly known as corrugated metal.

As of November 5, 2021, no letters have been submitted in support of the request and no letters have been submitted in opposition of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to materials located along the unimproved alley will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to materials would require the proposal to be maintained in the locations, heights and materials as shown on the site plan and elevation.

Staff conducted a site visit of the subject site and surround area and noted several other fences constructed of prohibited materials S. Buckner Boulevard, Buckner Boulevard, and adjacent streets such as Pleasant Drive and Maddox Street, many of which do not have recorded BDA history.

Additionally, the representative provided supporting evidence with the application materials presented to staff which contain eight photographs of properties with prohibited fence materials within the vicinity of the subject property that have not been granted special exceptions to the fence standard regulations.

Timeline:

August 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.

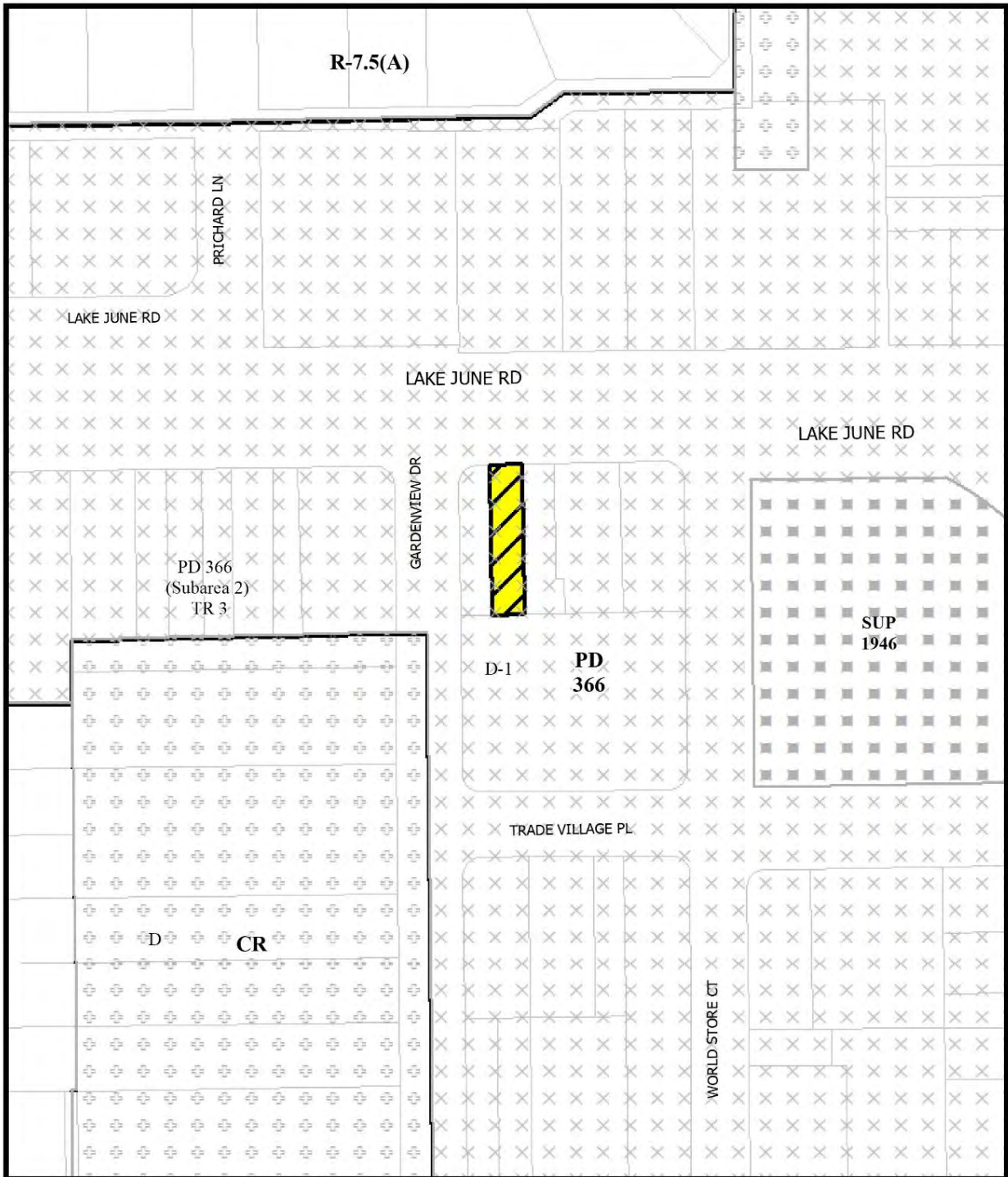
October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

October 15, 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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.

Oct. 29, 2021:

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 Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted with this request.



1:1,200

ZONING MAP

Case no: BDA201-103

Date: 10/27/2021

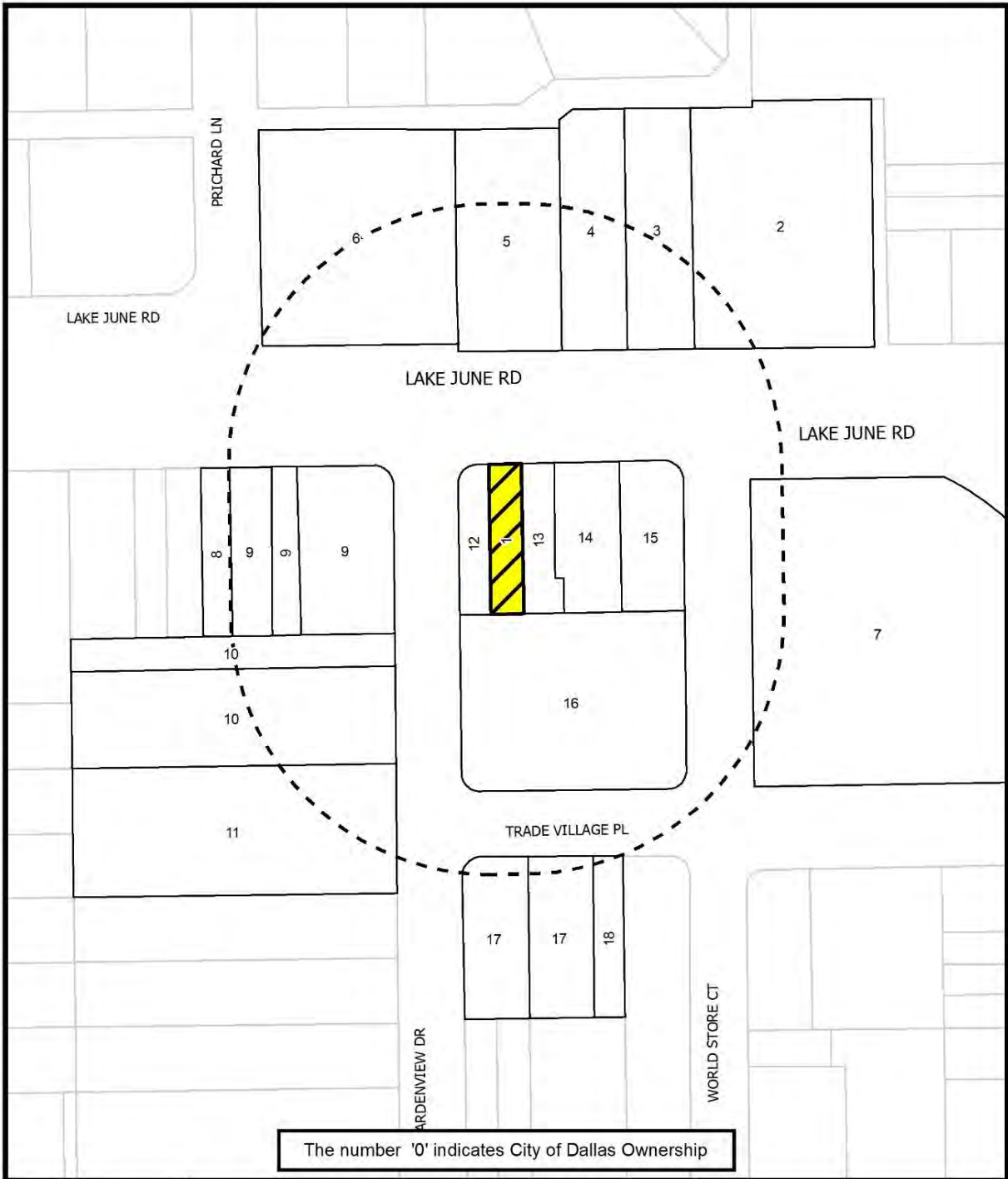


1:1,200

AERIAL MAP

Case no: BDA201-103

Date: 10/27/2021



The number '0' indicates City of Dallas Ownership



1:1,200

NOTIFICATION

200' AREA OF NOTIFICATION
18 NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA201-103**

Date: **10/27/2021**

10/26/2021

Notification List of Property Owners

BDA201-103

18 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	8002 LAKE JUNE RD	Taxpayer at
2	8017 LAKE JUNE RD	SHIDID FAMILY LIVING TRUST
3	8011 LAKE JUNE RD	RODRIQUEZ ROBERTO & ALMA
4	8007 LAKE JUNE RD	RODRIGUEZ ROBERTO &
5	8005 LAKE JUNE RD	L F MARTINEZ INC
6	8003 LAKE JUNE RD	CRISTO LA ROCA
7	1227 S BUCKNER BLVD	GOTTLIEB BUCKNER BLVD DRUGSTORE LLC
8	7928 LAKE JUNE RD	GRACIANO ARTURO & ALMA
9	7930 LAKE JUNE RD	MARTINEZ RAUL & LETICIA
10	1233 GARDENVIEW DR	ROSALES THELMA
11	1223 GARDENVIEW DR	ROSALES MARTIN & THELMA
12	8000 LAKE JUNE RD	Taxpayer at
13	8010 LAKE JUNE RD	Taxpayer at
14	8012 LAKE JUNE RD	Taxpayer at
15	8014 LAKE JUNE RD	MONTOYA LUPE
16	1227 WORLD STORE PL	IBARRA MANUEL
17	8000 TRADE VILLAGE PL	MARTINEZSANDOVAL BLANCA ESTELA
18	8010 TRADE VILLAGE PL	SARAZUA NICOMEDES



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 201-103

Data Relative to Subject Property:

Date: 9-13-21

Location address: 8002 Lake June Rd.

Zoning District: PD366 (SA 2) TR3

Lot No.: 2 Block No.: 46301 Acreage: .066 Census Tract: 93.01

Street Frontage (in Feet): 1) 25' 2) _____ 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Dan Foster

Applicant: Dan Foster Telephone: 469-767-1361

Mailing Address: 2900 Amherst Zip Code: 75225

E-mail Address: eboli2u@netscape.net

Represented by: Eddie Fisher Telephone: 972-979-8325

Mailing Address: 2900 Amherst Zip Code: 75225

E-mail Address: eboli2u@netscape.net

Affirm that an appeal has been made for a Variance _____, or Special Exception , of Prohibited Fence Material (R-PANEL fence)

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Dan Foster (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 27th day of August



R. Boykin
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that DAN FOSTER

did submit a request for a special exception to the fence standards regulations
at 8002 Lake June Road

BDA201-103. Application of DAN FOSTER for a special exception to the fence standards regulations at 8002 Lake June Rd. This property is more fully described as Lot 2, Block C/6301, and is zoned PD 366 (Subarea 2), which prohibits the use of certain materials for a fence. The applicant proposes to construct a fence using a prohibited material, which will require a special exception to the fence regulations.

Sincerely,


David Session, Building Official



UNCLE DAN'S PAWN



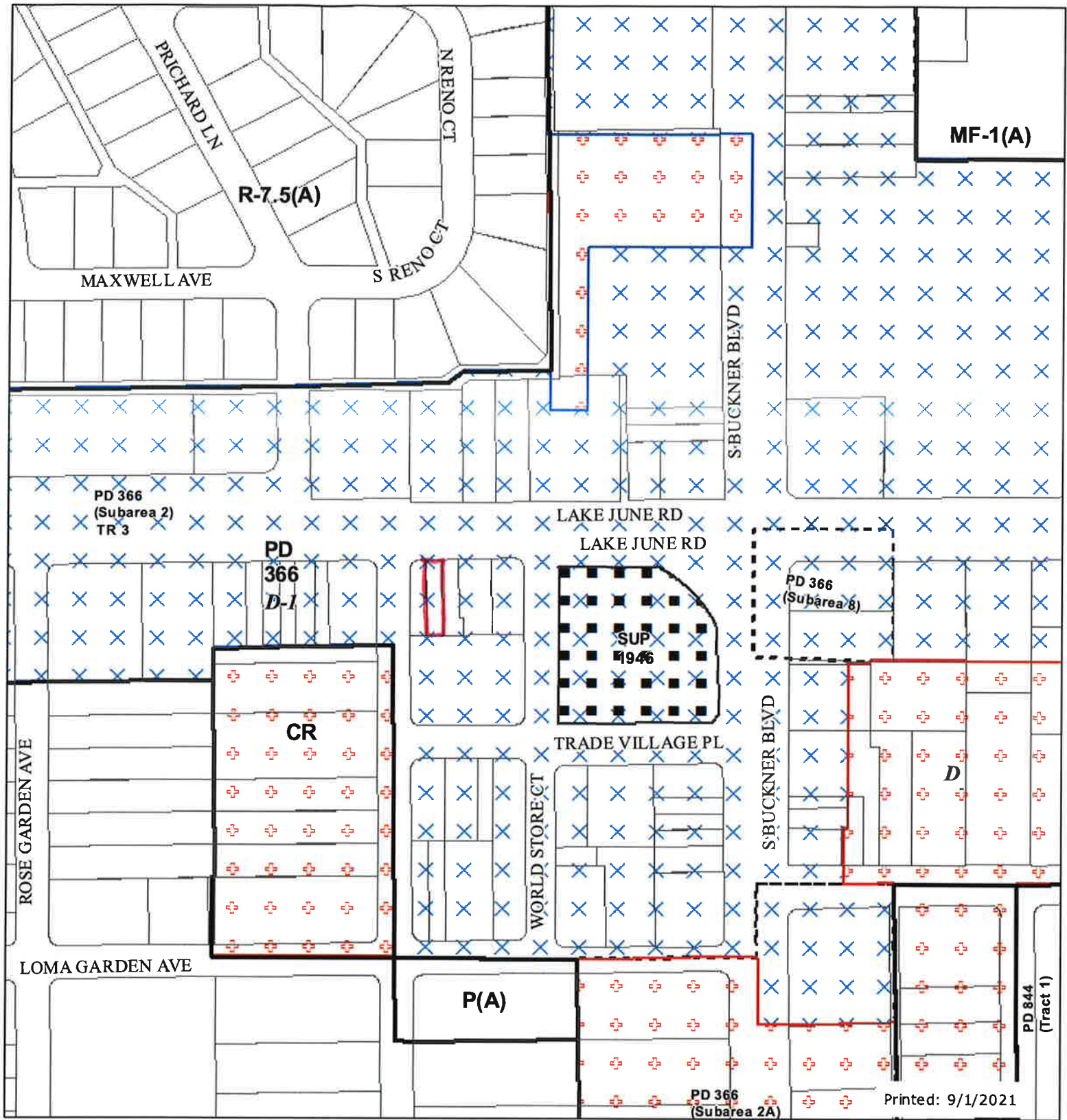
September 10, 2021

City Of Dallas
Board Of Adjustment
320 E. Jefferson Blvd
Dallas, Texas 75203

Dear Board Of Adjustment,

This letter is to justify the continue use and maintainence of a corrugated metal fence currently surrounding the backyard of our business. This fence is made of new metal, painted, and professionally installed as to not be unsightly to the surrounding area. Currently there are more than 6 businesses within a mile of our business that have similar metal fences (see attach images). We do not believe that our new metal fence will alter the quality of life within this business zoned community. We are very conscious that we business a pawnshop which houses guns, jewelry, and various goods which could be taken in a burglary. We believe that this fence will further protect the community, as well, not be a nuisance to the everyday movement of the surrounding residents.

CONTACT



Legend

- City Limits
- School
- Floodplain
- 100 Year Flood Zone
- Mill's Creek
- Peak's Branch
- X Protected by Levee
- Parks
- railroad
- Certified Parcels
- Base Zoning
- PD193 Oak Lawn
- Dallas Environmental Corridors
- SPSP Overlay
- Deed Restrictions
- SUP
- Dry Overlay D
- Dry Overlay D-1
- Dry Overlay CP
- Dry Overlay SP
- MD Overlay
- Historic Subdistricts
- Historic Overlay
- Height Map Overlay
- CD Subdistricts
- PD Subdistricts
- PDS Subdistricts
- NSO Subdistricts
- NSO Overlay
- Escarpment Overlay
- Parking Management Overlay
- Shop Front Overlay

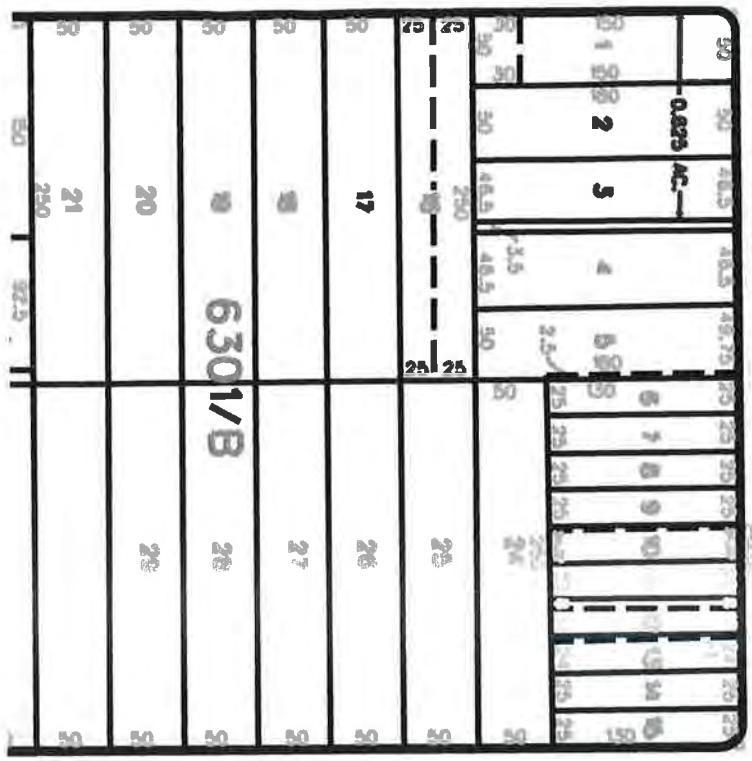
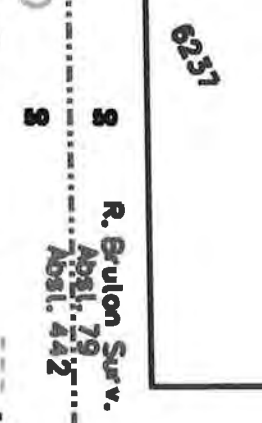
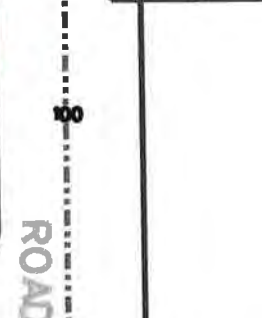
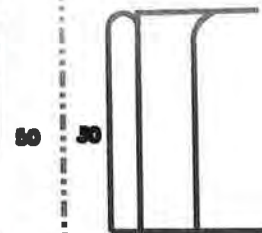
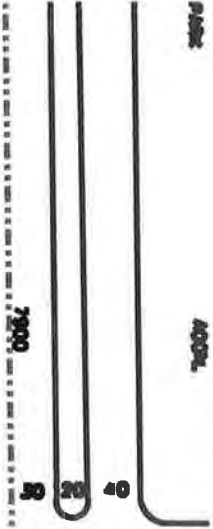
This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



PAGE

4004

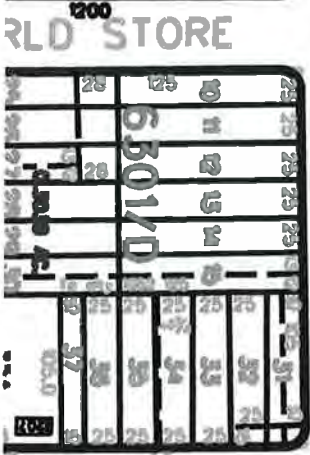
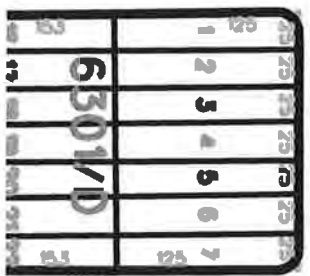
DALLA-KAUFMAN, SAM CORNER (BLVD.)



AVE.



COURT



TRADE-VILLAGE

PLACE

R. Brulon Surv.

Abst. 79

Abst. 442

Abst. 442
W. B. Elom Surv.
Abst. 441

J. A. Leonard Surv.

Abst. 802

MACON AVE.

6529

6529

6505



500. S. Buckner Blvd.



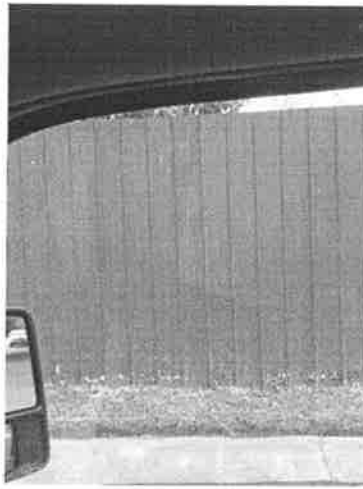
301 Pleasant Dr.



301 Pleasant Dr.



500. S. Buckner Blvd.



578 S. Buckner Blvd.



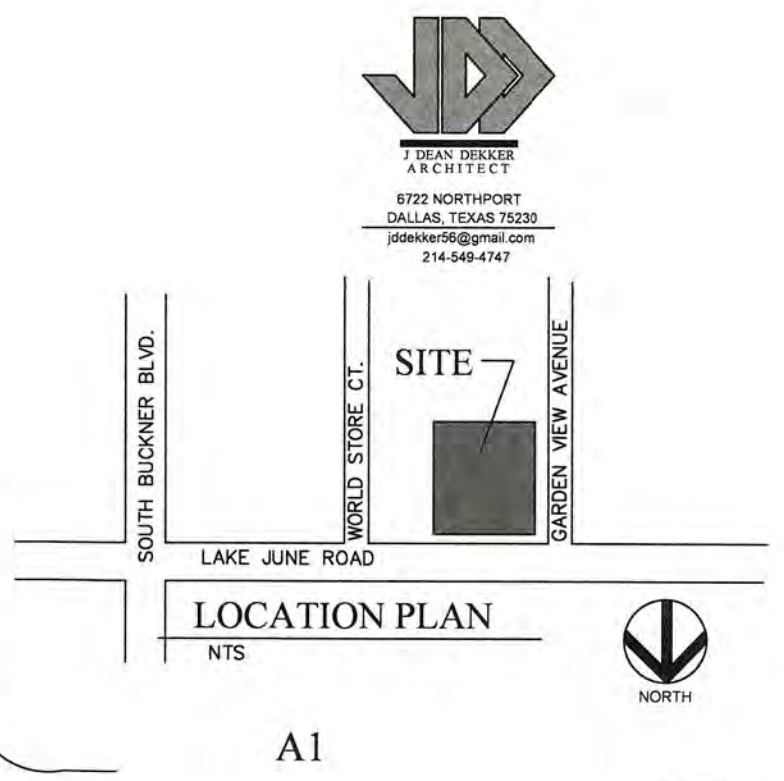
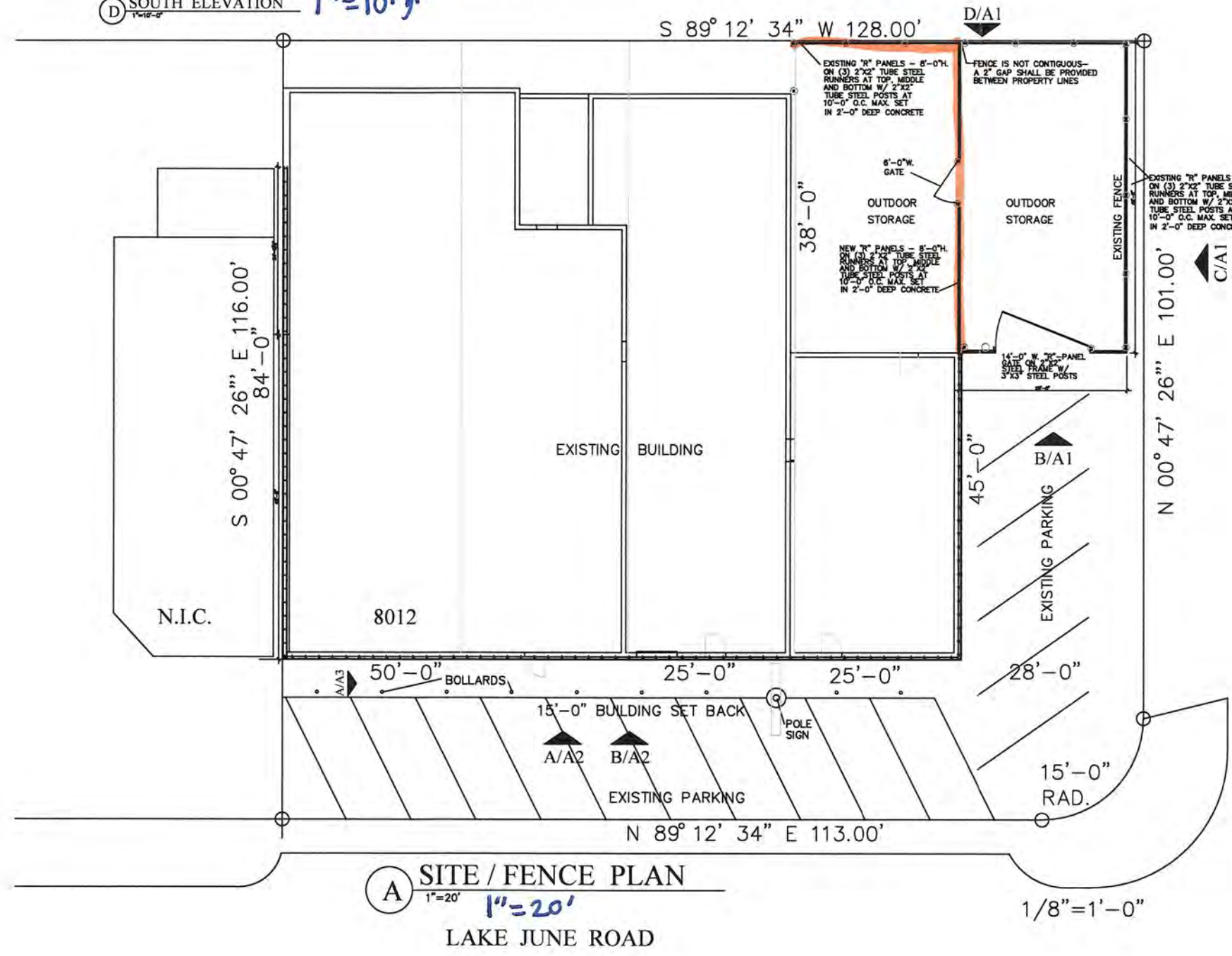
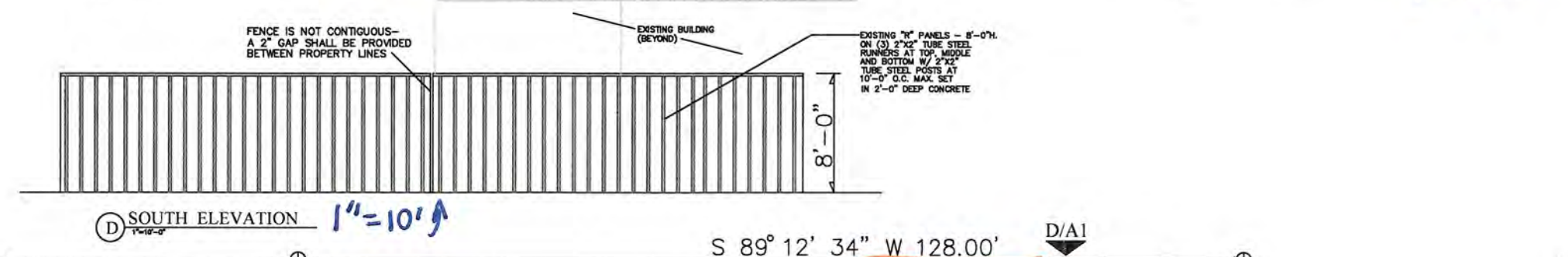
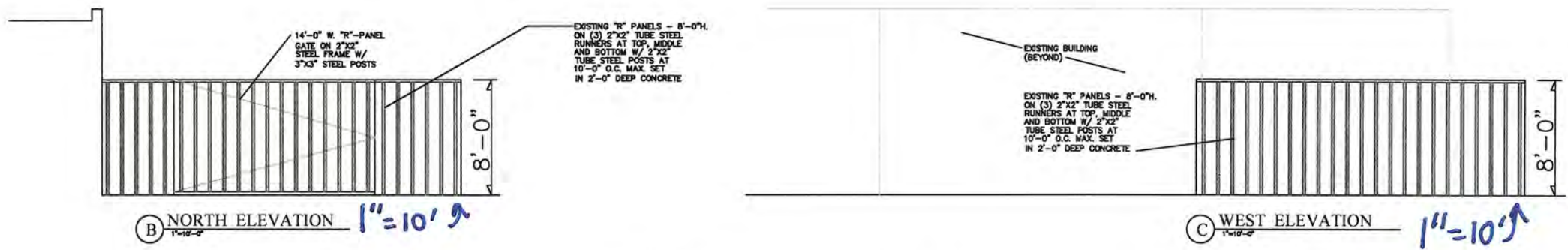
8122 Maddox St.



1339 S. Buckner Blvd.



1339 S. Buckner Blvd.



201-103

FILE NUMBER: BDA201-108(PD)

BUILDING OFFICIAL'S REPORT: Application of Majahual LP represented by Philip Kingston for a variance to the front yard setback regulations at 4511 McKinney Avenue. This property is more fully described as Lot 1A in City Block K/1535 and is zoned an LC Light Commercial Subdistrict in Planned Development District No. 193, the Oak Lawn Special Purpose District which requires a front yard setback of 10 feet. The applicant proposes to construct a commercial structure (outdoor patio) with no front yard setback (zero feet), which will require a 10-foot variance to the front yard setback regulations.

LOCATION: 4511 McKinney Avenue

APPLICANT: Majahual LP represented by Philip Kingston

REQUESTS:

A request for a variance to the front yard setback regulations of 10 feet is made to construct and maintain a commercial structure containing a restaurant without drive-through or drive-in use (outdoor patio) within the subject site's 10-foot front yard setback on a site that is currently developed and situated on a corner lot.

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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
 - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
 - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
 - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (e) the municipality consider the structure to be a nonconforming structure.

STAFF RECOMMENDATION:

Denial.

- Compliance with the submitted site plan is required.

Rationale:

- The applicant/representative failed to submit evidence to prove the site bears a hardship and cannot be developed in a manner commensurate with developments upon other parcels of land within the same LC Subdistrict. Further, with no evidence, staff could not conclude how the encroachment into the front yard for an optional outdoor patio is not a self-created hardship nor requested for financial gain solely and how it is not being requested to permit a person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same LC Subdistrict zoning.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	LC Light Commercial Subdistrict in PDD No. 193
<u>Northwest:</u>	LC Light Commercial Subdistrict in PDD No. 193
<u>North:</u>	LC Light Commercial Subdistrict in PDD No. 193
<u>East:</u>	LC Light Commercial Subdistrict in PDD No. 193

Southeast: LC Light Commercial Subdistrict in PDD No. 193
South: LC Light Commercial Subdistrict in PDD No. 193
Southwest: Planned Development Subdistrict No. 141 w/in PDD No. 193

Land Use:

The subject site is developed with a restaurant without drive-through or drive-in service use. Surrounding properties include an undeveloped tract to the northwest and restaurant without drive-through or drive-in service uses to the northwest, west, and southwest, multi-story parking garage use to the north, and showroom warehouse uses to the east, southeast and south.

Zoning/BDA History:

There has been one related board case in the vicinity within the last five years.

1. **BDA190-051:** On June 4, 2020, the Panel B, Board of Adjustments granted a special exception to the landscape regulations to construct and maintain a nonresidential structure and provide an alternative landscape plan.

GENERAL FACTS/STAFF ANALYSIS:

This request focuses on constructing and maintaining an outdoor patio commercial structure within the 10-foot front yard setback on a site that is currently developed and situated on a corner lot containing a restaurant without drive-through or drive-in use.

The subject site is developed with an approximately 8,022 square foot structure situated along two front yards (McKinney Avenue and Armstong Avenue) with approximately 85 off-street parking spaces along both fronts. An 85-square-foot outdoor patio currently exists on the site within the boundaries of the property and along the drive aisle coming into the site from McKinney Avenue. The site plan depicts extending the outdoor patio 797 square feet, beyond the side yard, with the roof overhanging into the McKinney Avenue right-of-way. As proposed, the patio would encompass about 980 square feet and be located outside the boundaries of the property; however, the Board of Adjustment does not have the purview to grant an encroachment into the right-of-way, for which a license must be obtained from the City.

Structures on lots zoned an LC Light Commercial Subdistrict must have a minimum front yard setback of 10 feet. A site plan has been submitted denoting the proposed outdoor patio structure will be located wholly into the front yard setback, into the pedestrian sidewalk and right-of-way, and into the vehicular right-of-way which is McKinney Avenue.

The subject site is not irregular in shape and is approximately 37,026 square feet in lot area. An LC Light Commercial Subdistrict requires lots to have a minimum lot size of 3,000 square feet.

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 LC Light Commercial Subdistrict 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 LC Light Commercial Subdistrict zoning classification.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of November 5, 2021, no letters have been submitted in support of the request nor in opposition of the request.

If the board were to grant this front yard setback variance request and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting this variance request will not provide any relief to the Dallas Development Code regulations.

Timeline:

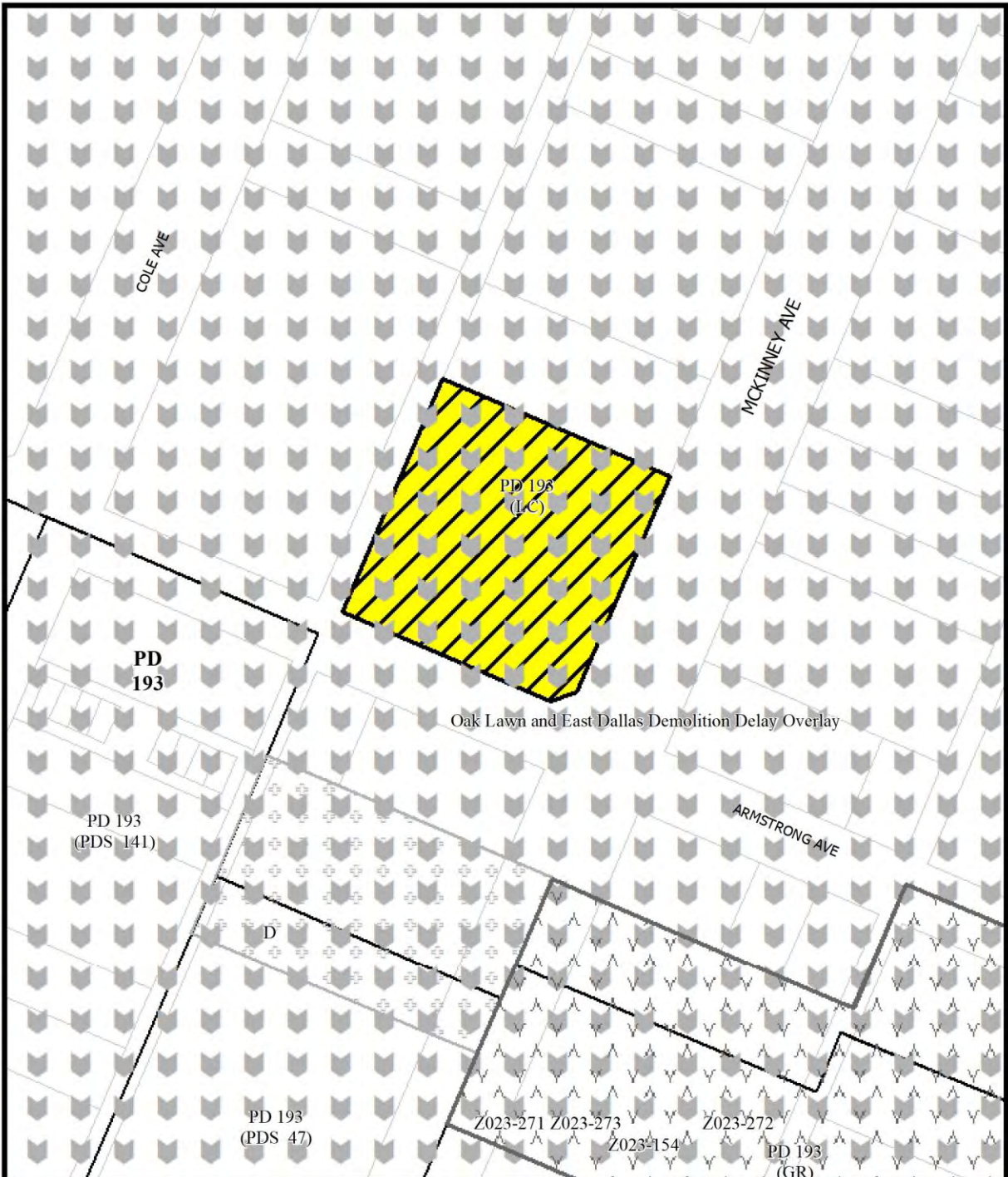
September 24, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel B.

October 15, 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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.

October 29, 2021: 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 Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.

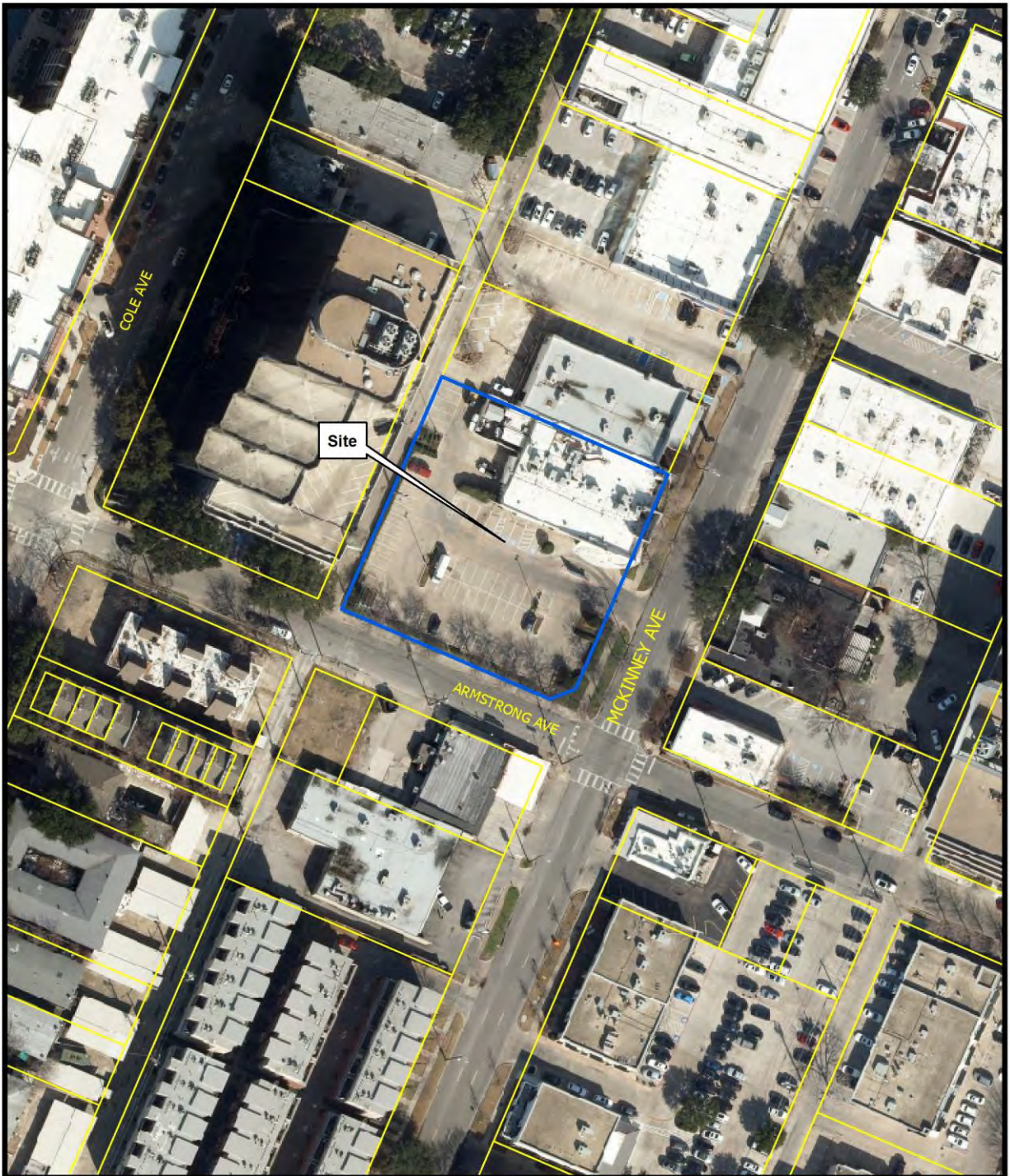


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ZONING MAP

Case no: BDA201-108

Date: 10/27/2021

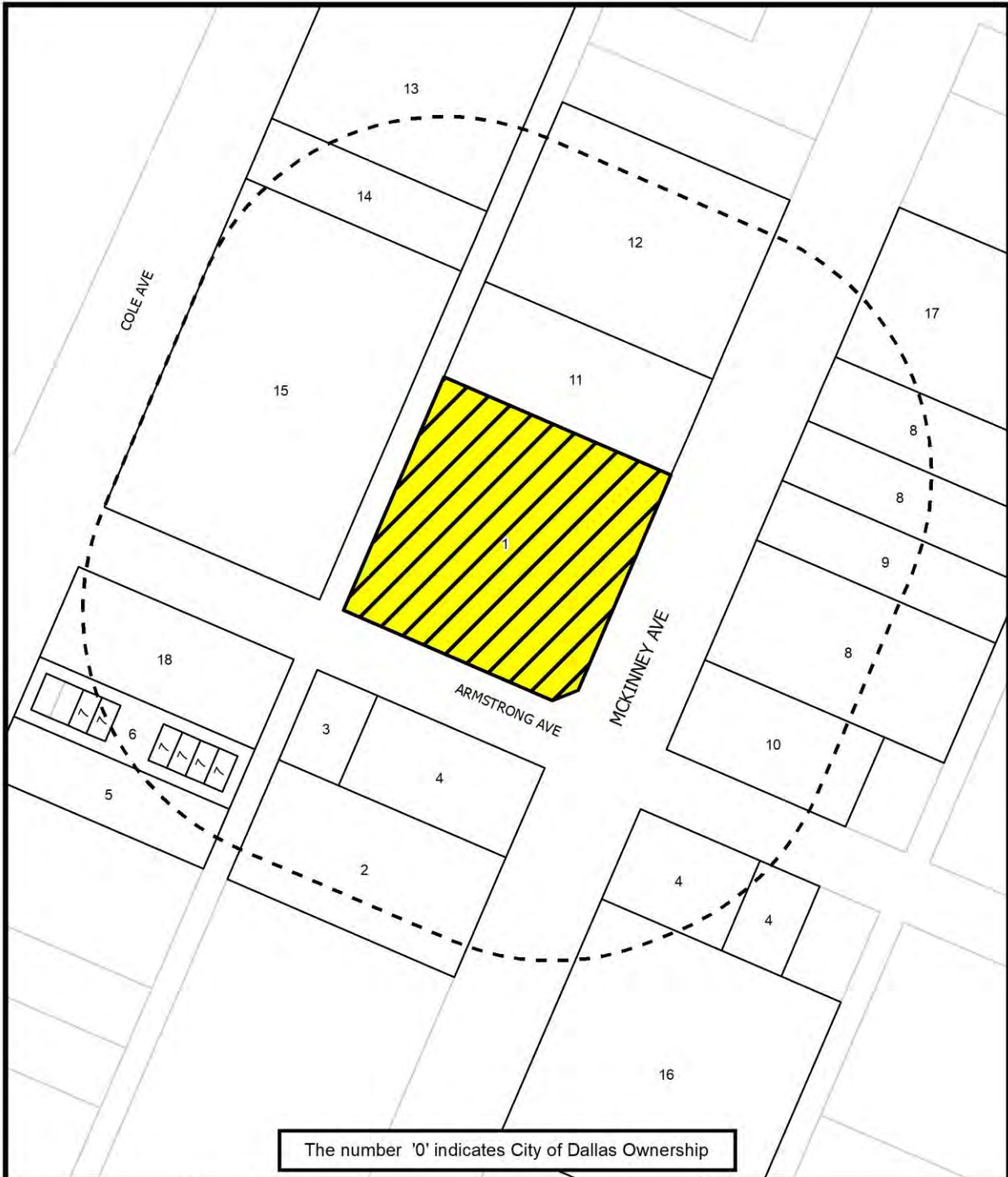


1:1,200

AERIAL MAP

Case no: BDA201-108

Date: 10/27/2021



1:1,200

NOTIFICATION

200' AREA OF NOTIFICATION
18 NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA201-108**
 Date: **10/27/2021**

10/27/2021

Notification List of Property Owners

BDA201-108

18 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	4511 MCKINNEY AVE	MAJAHUAL LP
2	4433 MCKINNEY AVE	KNOX PROMENADE IV LP
3	3111 ARMSTRONG AVE	KNOX PROMENADE PARK LLC
4	4447 MCKINNEY AVE	KNOX PROMENADE LLC
5	4432 COLE AVE	BROADSTONE COLE AVENUE LLC
6	4438 COLE AVE	BROADSTONE COLE AVE LLC
7	4438 COLE AVE	BROADSTONE COLE AVENUE LLC
8	4524 MCKINNEY AVE	KD KNOX STREET VILLAGE HOLDCO LLC
9	4516 MCKINNEY AVE	Taxpayer at
10	4502 MCKINNEY AVE	I S K INC
11	4519 MCKINNEY AVE	GILLILAND PROPERTIES II LTD
12	4525 MCKINNEY AVE	GILLILAND PPTIES III LTD
13	3121 KNOX ST	Taxpayer at
14	4524 COLE AVE	Taxpayer at
15	4514 COLE AVE	EOSII AT HIGHLAND PARK PLACE LLC
16	4438 MCKINNEY AVE	KNOX PROMENADE LLC
17	4528 MCKINNEY AVE	NABHOLTZ KMCK PARTNERS LP
18	3131 ARMSTRONG AVE	BROADSTONE COLE AVENUE LLC



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 201-108

Data Relative to Subject Property:

Date: ~~09/13/21~~ 9-24-21

Location address: 4511 McKinney Zoning District: McKenzie PD193 (LC)

Lot No.: 1A Block No.: K/1535 Acreage: 0.85 Census Tract: 7.02

Street Frontage (in Feet): 1) 180 2) 185 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): _____ Majahual LP _____

Applicant: _____ Majahual LP _____ Telephone: 214-642-1707

Mailing Address: 7106 Holly Square Ct, Tyler, TX Zip Code: 75703

E-mail Address: philip@kingstonfordallas.com 214-642-1707

Mailing Address: 5901 Palo Pinto, Dallas, TX Zip Code: 75206

E-mail Address: philip@kingstonfordallas.com

Affirm that an appeal has been made for a Variance X, or Special Exception , of _____ front yard setback _____

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: Applicant seeks to expand an uncovered patio for safer outdoor seating during the pandemic. The subject property is a corner lot burdened by two front yard setbacks and is zoned PD-193. The expansion of the patio would consume the entire McKinney-facing setback and a small piece of the City's right of way property. The city has a wide strip of extra right of way on McKinney that it does not plan to use. A private license is being applied for concurrently with this appeal. **Note to Applicant:** If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Philip Kingston (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 15th day of September, 2021

(Rev. 08-01-11) **HOLLIE M. MARBLE**
Notary Public
State of Colorado
Notary ID # 20144008022
My Commission Expires 02-19-2022

[Signature]
Notary Public in and for Dallas County, Texas
San Miguel
Colorado

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that Majahual LP
represented by Philip Kingston
did submit a request for a variance to the front yard setback regulations
at 4511 McKinney Avenue

BDA201-108. Application of Majahual LP represented by Philip Kingston for a variance to the front yard setback regulations at 4511 MCKINNEY AVE. This property is more fully described as Lot 1A, Block K/1535, and is zoned PD-193 (LC), which requires a front yard setback of 10 feet. The applicant proposes to construct and maintain a commercial structure (dining patio) and provide a 0 foot front yard setback, which will require a 10 foot variance to the front yard setback regulations.

Sincerely,


David Session, Building Official

ABST.

237
578

ADDITION

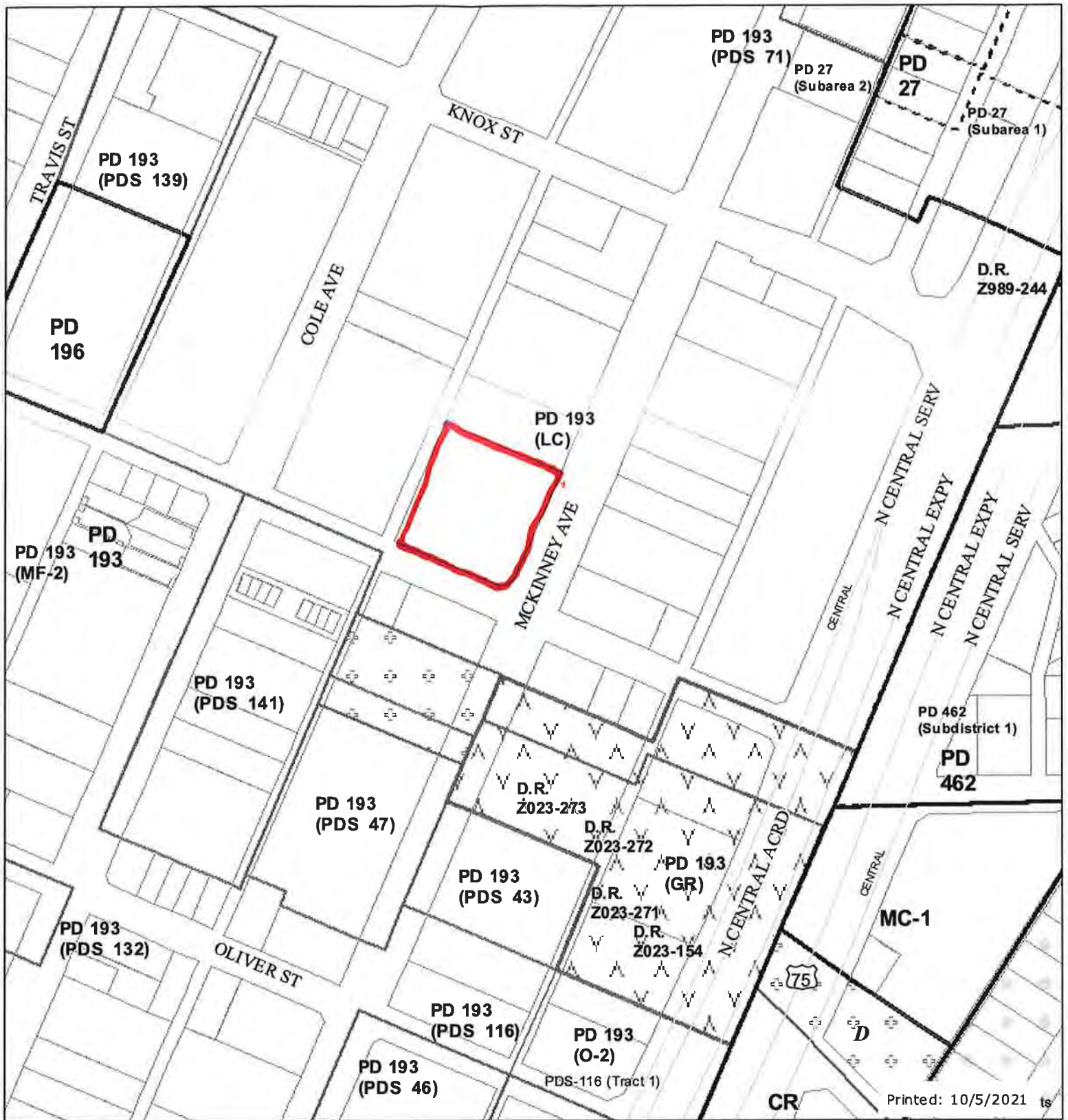
CITY OF DALLAS PLAT BOOKS
COCKRILL'S PARK AND ADD.

SCALE 100

FT. EQUALS 1 INCH

27 15 30



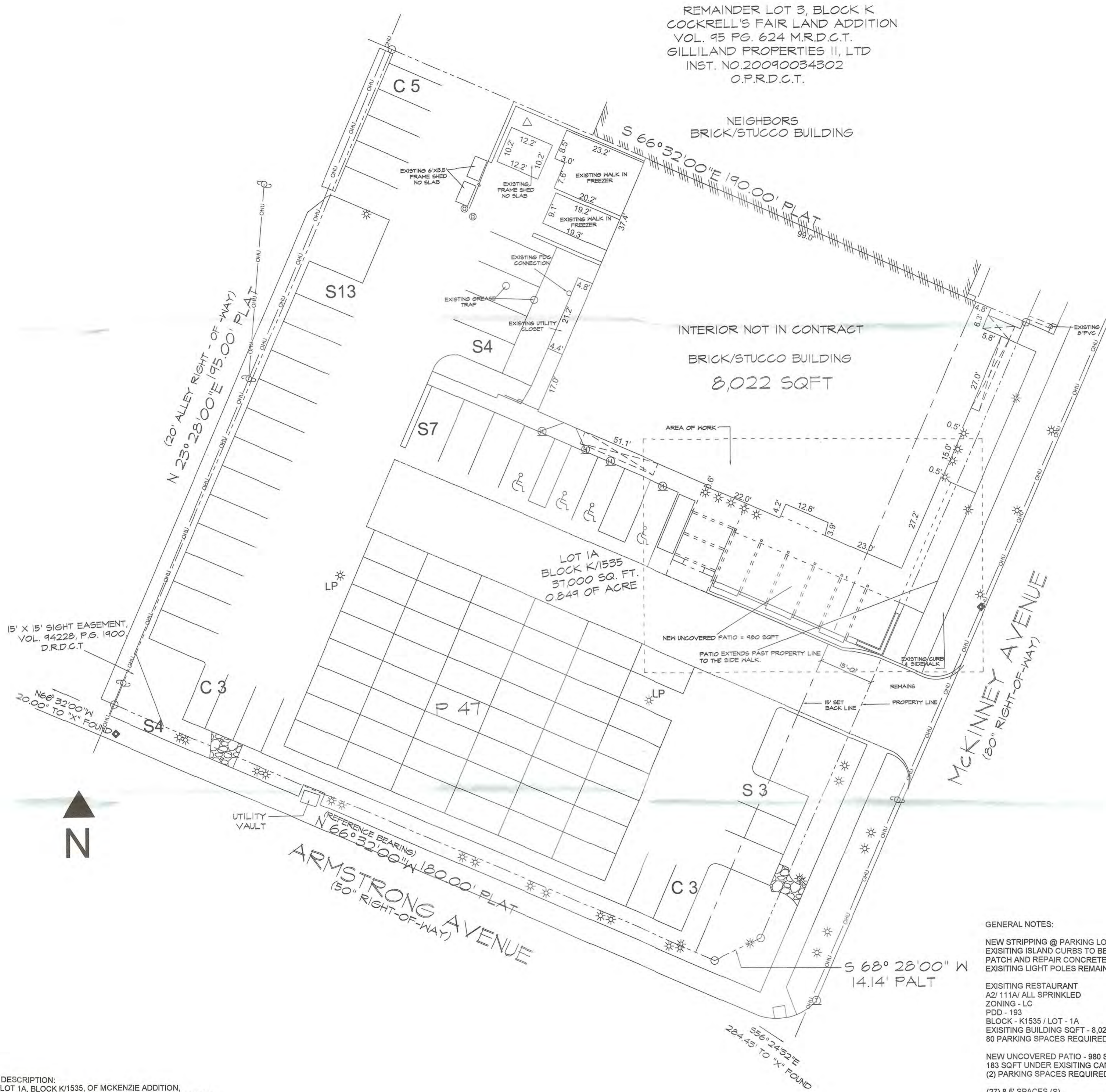


Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSD Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay |
| | | Height Map Overlay | |

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REMAINDER LOT 3, BLOCK K
 COCKRELL'S FAIR LAND ADDITION
 VOL. 95 PG. 624 M.R.D.C.T.
 GILLILAND PROPERTIES II, LTD
 INST. NO. 20090034302
 O.P.R.D.C.T.

NEIGHBORS
 BRICK/STUCCO BUILDING

INTERIOR NOT IN CONTRACT
 BRICK/STUCCO BUILDING
 8,022 SQFT

LOT 1A
 BLOCK K/1535
 37,000 SQ. FT.
 0.849 OF ACRE

GENERAL NOTES:
 NEW STRIPPING @ PARKING LOT
 EXISTING ISLAND CURBS TO BE REMOVED
 PATCH AND REPAIR CONCRETE AS REQUIRED
 EXISTING LIGHT POLES REMAIN
 EXISTING RESTAURANT
 A2/ 111A/ ALL SPRINKLED
 ZONING - LC
 PDD - 193
 BLOCK - K1535 / LOT - 1A
 EXISTING BUILDING SQFT - 8,022
 80 PARKING SPACES REQUIRED
 NEW UNCOVERED PATIO - 980 SQFT
 183 SQFT UNDER EXISTING CANOPY
 (2) PARKING SPACES REQUIRED
 (27) 8.5' SPACES (S)
 (11) 7.5' SPACES (C)
 (47) PACKED SPACES (P)
 (85) TOTAL SPACES PROVIDED

LEGAL DESCRIPTION:
 BEING LOT 1A, BLOCK K/1535, OF MCKENZIE ADDITION,
 AN ADDITION TO THE CITY OF DALLAS, DALLAS COUNTY, TEXAS,
 ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN
 VOLUME 94228, PAGE 1900, MAP RECORDS, DALLAS COUNTY, TEXAS

1 Site
 1/16" = 1'-0"

2123 - Monte's

DALLAS, TX

DESIGN CONSULTANT



1203 DRAGON STREET
 DALLAS, TX 75207
 TEL: 214-748-5944
 WWW.DUNCANMILLERDESIGN.COM

ISSUE:

09/27/2021 SITE PLAN FOR CITY REVIEW

REVISIONS:

No.	Description	Date

Date 09.22.2021

Project Number 2123

SITE PLAN

A116

BDA201-108_ATTACHMENT_A

From: philip@kingstonfordallas.com
To: [Daniel, Pamela](#)
Subject: Re: BDA201-108; 4511 McKinney Ave; V SYS
Date: Wednesday, November 3, 2021 7:09:27 PM
Attachments: [image013.png](#)
[image014.png](#)
[image015.png](#)
[image016.png](#)
[image017.png](#)
[image018.png](#)
[image019.png](#)
[image020.png](#)
[image021.png](#)
[image022.png](#)
[image023.png](#)
[image024.png](#)

External Email!

We're simply trying to expand outdoor seating for a more COVID-friendly environment and to enhance the activation of the pedestrian realm. The current building has no outdoor seating. Sidewalk cafes were adopted as the preferred policy of the city by council.

On 2021-11-03 17:49, Daniel, Pamela wrote:

Mr. Kingston,

Please find below the standard that must be considered for a variance appeal. The below standard also includes HB/1475.

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.

State Law/HB 1475 effective 9-1-21

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
- (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
- (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (e) the municipality consider the structure to be a nonconforming structure.

Should you require additional information, please feel free to contact me.

Thanks!



Pamela F. Riley Daniel
Senior Planner
City of Dallas | DallasCityNews.net
Planning and Urban Design
1500 Marilla St., 5BN
Dallas, TX 75201
O: (214) 671-5098
pamela.daniel@dallascityhall.com



How am I doing? Please contact my supervisor at jennifer.munoz@dallascityhall.com

****OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.****

From: philip@kingstonfordallas.com <philip@kingstonfordallas.com>

Sent: Wednesday, November 3, 2021 5:46 PM

To: Daniel, Pamela <pamela.daniel@dallascityhall.com>

Subject: Re: BDA201-108; 4511 McKinney Ave; V SYS

External Email!

My apologies. I missed your first email due to spam settings. What evidence are you seeking?

On 2021-11-03 17:29, Daniel, Pamela wrote:

Mr. Kingston,

Good evening! Unfortunately, if evidence is not submitted, staff's recommendation must be denial of the variance request as the standard will not have been met.

Lastly, as a follow-up to the below email provided on Friday, October 15, 2021, this email serves to reiterate the **1:00 p.m., November 5, 2021** deadline to submit additional information for review by staff recommendation for the above referenced requests. **There are no exceptions to the deadline.**

Should you have additional questions or concerns, please feel free to contact me at any contact method listed within my signature block below (email is preferred). Additionally, you may also contact Mr. Charles Trammel.

Thanks!



Pamela F. Riley Daniel
Senior Planner
City of Dallas | DallasCityNews.net
Planning and Urban Design
1500 Marilla St., 5BN
Dallas, TX 75201
O: (214) 671-5098
pamela.daniel@dallascityhall.com



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FILE NUMBER: BDA201-109(JM)

BUILDING OFFICIAL'S REPORT: Application of Khiem Phan represented by William Davis to appeal the decision of the administrative official at 2051 W. Northwest Highway. This property is more fully described as Tract 0.2, Block B/6489, and is zoned an IR Industrial Research District, which requires that the building official shall not issue a certificate of occupancy if the building official determines that the use would be operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the issuance of a certificate of occupancy.

LOCATION: 2051 W. Northwest Highway

APPLICANT: Khiem Phan represented by William Davis

REQUEST:

A request is made to appeal the decision of the administrative official, more specifically, the Building Official's authorized representative, the Assistant Building Official in Development Services, to deny an application for a Certificate of Occupancy for a restaurant and/or commercial amusement (inside) use determined to be a gambling place, which does not comply with other regulations.

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).

STAFF RECOMMENDATION:

Staff does not make a recommendation on appeals of the decisions of administrative officials.

BACKGROUND INFORMATION:

Zoning:

Site: IR Industrial Research District
North: IR Industrial Research District
East: IR Industrial Research District
South: IM Industrial Manufacturing District
West: IR Industrial Research District

Land Use:

The subject site is developed with a mix of commercial uses within multiple suites. Surrounding land uses include restaurants to the west and southwest; offices to the west and south; office/showroom warehouse to the north; and, a smoke shop and other retail uses to the east.

Zoning/BDA History:

There have 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 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:

- September 24, 2021: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 12, 2021: The Board of Adjustment Chief Planner randomly assigned this case to Board of Adjustment Panel B.
- October 19, 2021: The Board of Adjustment Chief 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 October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 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;

- the appeal of a decision of an administrative official procedure outline; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 29, 2021: 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 Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.

November 5, 2021: The applicant's attorney submitted additional evidence for consideration (**Attachment A**).

November 5, 2021: The City's attorney submitted additional evidence for consideration (**Attachment B**).



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 201-109

Data Relative to Subject Property:

Date: 09/24/21

Location address: 2051 W. Northwest Highway, Suite 10 Zoning District: IR

Tract No.: 0.2 Block No.: B/6489 Acreage: 2.50 Census Tract: 99.00

Street Frontage (in Feet): 1) 201' 2) 543' 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Greenway - 2051 NWH LP

Applicant: Khiem Phan Telephone: (972) 896-8927

Mailing Address: 1611 Park Garden Court, Cedar Hill, TX Zip Code: 75104

E-mail Address: khiemphan57@yahoo.com

Represented by: William Davis - Ted B. Lyon & Associates Telephone: (972) 279-6571

Mailing Address: 18601 LBJ Freeway, Suite 525, Dallas, TX Zip Code: 75150

E-mail Address: wdavis@tedlyon.com

Affirm that an appeal has been made for a Variance __, or Special Exception __, of Dallas Poker Club (hereinafter referred to as "Applicant") appeals the wrongful denial of an application for certificate of occupancy for commercial amusement of leased space at 2051 W. Northwest Highway, Suite 10.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: The City of Dallas Building Inspection Division wrongfully denied the application for a certificate of occupancy, stating that the Applicant's use of the space is in violation of Texas Penal Code 47.04, "Keeping a Gambling Place." The Building Inspection Division's understanding of the Applicant's business model and Texas Penal Code 47.04 are incorrect. Applicant further outlines why the Building Inspection Division's decision is incorrect in Exhibit I attached to Applicant's appeal.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Khiem Phan (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 27 day of September, 2021

[Signature]
Notary Public in and for Dallas County, Texas



**MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT**

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that KHIEM PHAN
represented by William Davis
did submit a request to appeal the decision of the administrative official
at 2051 W. Northwest Hwy. Suite 10

BDA201-109. Application of KHIEM PHAN represented by William Davis to appeal the decision of the administrative official at 2051 W NORTHWEST HWY. This property is more fully described as Tract 0.2, Block B/6489, and is zoned IR, which requires that the building official shall not issue a certificate of occupancy if the building official determines that the use would be operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the issuance of a certificate of occupancy.

Sincerely,


David Session, Building Official



AFFIDAVIT

Appeal number: BDA 201-109

I, Greenway-2051 NWH LP, Owner of the subject property
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 2051 W. Northwest Highway, Suite 10, Dallas, TX 75220
(Address of property as stated on application)

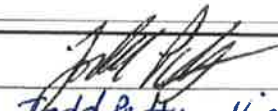
Authorize: Khiem Phan
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Appeal of denial of application for certificate of occupancy for commercial amusement.

Greenway-2051 NWH LP
a Texas limited partnership
By: Greenway-2051 GP LLC
a Texas limited liability company, its general partner
Print name of property owner or registered agent


Todd Petty, Vice President
Signature of property owner or registered agent

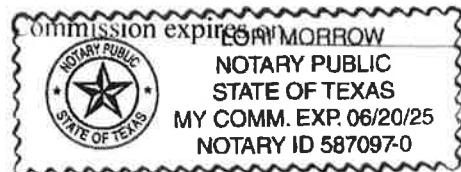
Date 9/24/21

Before me, the undersigned, on this day personally appeared Todd Petty

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 24th day of September, 2021

Yoni Tronow
Notary Public for Dallas County, Texas





Printed: 9/30/2021

Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | Railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSP Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay |
| | | Height Map Overlay | |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



Exhibit 1 to Appeal to Board of Adjustment

The Building Inspection Division for the City of Dallas wrongfully denied the certificate of occupancy for Dallas Poker Club, stating that the “use statement submitted with the application clearly indicates that the use will be operated in violation of Texas Penal Code Section 47.04, “Keeping a Gambling Place.” *See* Exhibit 3 – Denial Letter. The Building Inspection Division’s legal analysis is incorrect, and the Building Inspection Division misunderstands and misinterprets the language of Texas Penal Code Section 47.04 and the Applicant’s intended use of the space at 2051 West Northwest Highway, Suite 10.

Under Texas Penal Code Section 47.04, “(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.” Tex. Penal Code §47.04(a) (2017). However, under Section 47.04(b), it is an affirmative defense to prosecution under Section 47.04(a) when the following three requirements are met:

- (1) the gambling occurred in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all.

See Tex. Penal Code §47.04(b).

In the present case, as shown by the attached Exhibit 2, Dallas Poker Club’s intended use of the space at 2051 West Northwest Highway, Suite 10 meets all three of these requirements and would therefore not be operating in violation of Texas Penal Code Section 47.04(a). *See* Exhibit 2. First, Dallas Poker Club will be operating as a private establishment. Similar to a country club

which requires membership fees to enter the facilities or play golf, patrons are not allowed to enter Dallas Poker Club unless they are members of Dallas Poker Club. Any non-members will not be allowed on the premises. *Id.* Second, Dallas Poker Club receives no economic benefit for the games that occur on the premises. Dallas Poker Club's entire revenue is based on membership dues paid by members of Dallas Poker Club. *Id.* Additionally, participants in the games at Dallas Poker Club's only economic benefit will be their own personal winnings from the games in which they participate. *Id.* Finally, the only games played on the premises of Dallas Poker Club are poker games. Thus, "the risk of losing and the chances winning [are] the same for all participants." *Id.*

The Building Inspection Division's wrongful decision is further evidenced by the fact that, currently, there are at least three (3) other poker clubs operating in the City of Dallas. These poker clubs are:

(1) *Poker House Dallas* – 1676 Regal Row, Dallas, TX 75247

(2) *Texas Card House* – 11834 Harry Hines Blvd, Suite 135, Dallas, TX 75234

(3) *Shuffle 214* – 11411 E. Northwest Hwy, Suite 111, Dallas, TX 75218

The above-mentioned businesses are in full operation, showing that those businesses were approved for a certificate of occupancy by the Building Inspection Division and were not denied for violating Texas Penal Code Section 47.04. These businesses are correctly permitted to operate because they are not in violation of Texas Penal Code Section 47.04. Similarly, Dallas Poker Club's intended use of the space at 2051 West Northwest Highway, Suite 10 will not violate Texas Penal Code Section 47.04. Therefore, Applicant respectfully requests that the Board of Adjustment overturn the Building Inspection Division's wrongful denial and approve Dallas Poker Club for occupancy of the space at 2051 West Northwest Highway, Suite 10.

KBKM ENTERTAINMENT, LLC DBA DALLAS POKER CLUB

1611 PARK GARDEN CT CEDAR HILL, TX 75104 (972) 896-8927

February 24, 2021

KBKM ENTERTAINMENT, LLC was established in September 2020 and intends to open, operate, and manage a community social club known as "Dallas Poker Club" (DPC) at 2051 West Northwest Hwy, Suite 10 Dallas, TX 75220 The proposed use is defined as a "Commercial Amusement- inside" In The Dallas City code, Section 51A-4.210(b)(7)(v) which means "A facility wholly enclosed in a building that offers entertainment of games of skill to the general public for a fee".

According to Texas Law, Poker is only allowed if it meets the following requirements: - No Person received economic benefits other than personal winnings - Gambling must be in a private place Except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants KBKM ENTERTAINMENT, LLC DBA DALLAS POKER CLUB understand completely what the Texas Law is stating.

Dallas Poker Club is a members only, private social club. Membership options include both Individual and Corporate Memberships. All New Members must complete a Membership Application prior to being granted provisional membership. Membership at Dallas Poker Club is not guaranteed. The Dallas Poker Club Membership Committee meets and reviews provisional members and makes a recommendation to approve or deny permanent membership status. The Membership Committee and Dallas Poker Club Management can revoke a membership for violations of the Club Rules, Club Code of Conduct, non-payment of dues or fees, upon review of a criminal background check or other.

MUST BE 21 WITH A VALID I.D.

There is a monthly Membership Fee and also all Members must pay club access fee regardless of activity The hours of operations will be from 2:00 P.M. to 2:00 A.M. (Monday - Sunday)

This will be a "Smoke free" Facility. There will not be any alcohol sold on the premises. Beers will be permitted by the patron under the premise of "BYOB" with a managed limit of no more than a 6 packs or 72 oz allowed in a one 24 hrs period.

No food, pre package thru vending machines or otherwise will be sold on site. There will be no coin operated machines located on-site.

There will be no merchandise sold on-site, i.e. t-shirts, hats, etc.

DPC will be operated as a gun free zone and a weapons check will be conducted of all patrons entering the facility.



CITY OF DALLAS

September 8, 2021

Mr. Kheim Phan, President
 1611 Park Garden Court
 Cedar Hill, TX 75104

CERTIFIED MAIL NO. 7020 1290 0000 3631 0068

RE: Denial of the application for a certificate of occupancy for a commercial amusement (inside) dba Dallas Poker Club at 2051 West Northwest Highway, Suite 10

Dear Mr. Phan:

This letter is to inform you that the application for a certificate of occupancy for the above-referenced location is hereby denied. The attached land use statement submitted with the application clearly indicates that the use will be operated in violation of the Texas Penal Code Section 47.04, "Keeping a Gambling Place."

Pursuant to Paragraph (1), Section 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code, the building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations.

This decision is final unless appealed to the Board of Adjustment in accordance with Section 51A-4.703 of the Dallas Development Code before the 20th day after written notice of the above action.¹ If you have any questions, please contact me at 214-948-4501.

Sincerely,

Megan Wimer, AICP, CBO
 Assistant Building Official
 Building Inspection Division

cc: Dr. Eric Johnson, Chief of Economic Development and Neighborhood Services
 David Session, CBO, Interim Building Official
 Tammy L. Palomino, First Assistant City Attorney
 Major Devon Palk, Dallas Police Department
 Lieutenant Lisette Rivera, Dallas Police Department

¹ Section 51A-4.703(a)(2), "Board of Adjustment Hearing Procedures," of Chapter 51A of the Dallas Development Code.

BDA201-109_ATTACHMENT_A

Exhibit 1

KBKM ENTERTAINMENT, LLC DBA DALLAS POKER CLUB

1611 PARK GARDEN CT CEDAR HILL, TX 75104 (972) 896-8927

February 24, 2021

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DPC will be operated as a gun free zone and a weapons check will be conducted of all patrons entering the facility.

Exhibit 2

MORE FROM HOMEPAGE

Here's what Texas businesses and workers need to know about the new federal vaccination mandate

Frisco real estate agent Jenna Ryan sentenced to 60 days in jail for role in U.S. Capitol riot

Relief and anxiety as the U.S.-Mexico border reopens

OPINION

Dallas gets its first official poker room, with the blessing of the city council

The Texas Card House will actually have two rooms, with another in the Sam Moon shopping center on Harry Hines Blvd.



A poker player takes his ante from his stack of chips during a game of Texas Hold 'Em. (Julie Jacobson / The Associated Press)

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Get Personalized News Updates



By Robert Wilonsky

9:25 AM on Jan 25, 2019



Listen to this article now

07:48



Powered by Trinity Audio

Update at 9:30 p.m. Feb. 12, 2020: Thirteen months after it denied the [Texas Card House](#) the OK it needed to open across from what remains of Valley View Center, the Dallas City Council reshuffled the deck and voted to approve it after all.


That's because it had the support of the City Plan Commission -- and EF Properties, the large land owner on the Valley View side, which initially objected to the poker room when it went to council in January 2019. EF Properties said in a letter that it wasn't opposed to a specific use permit, as long as it comes with a two-year life span (for now).

"As the area known as 'Midtown' develops," said the missive, "a private card house might not fit with the future uses and may not be consistent with the PD and its intent." But for now, it's all good.

Ryan Crow, the Texas Card House's owner, said construction on the new venue will take three to four months.

 Sections

The Dallas Morning News

My Account 

center on Harry Hines Boulevard is nearly finished, he said. That didn't need council's approval, as an amusement venue is allowed there by right.

"But this was important to us," Crow said of the Valley View-adjacent location off Montfort Drive, **in the parking lot of the Target across from the former mall**. "Here, we wanted to get council approval to make sure we had their support."

He said they thought about abandoning the North Dallas location, but kept at it because "we're not trying to work in the shadows. We want this to be an up-and-up operation and wanted it to get the council's approval."

See what happens when you're **tight and aggressive**?



The location of the Texas Card House off LBJ Freeway and Montfort Drive in North Dallas (Dallas City Hall / Dallas City Council)



SPONSORED CONTENT

Preventing isolation, providing purpose: The Senior Source helps older adults in Dallas during...

BY  THE SENIOR SOURCE™

Original post on Jan. 25, 2019, at 9:25 a.m.: Dallas came *this close* to getting its first city-sanctioned poker room Wednesday. Right across the street from what's left of **my beloved Valley View Center**, too. But in the end, the City Council folded.

The same folks who banned a porn expo from the downtown convention center now won't let us have poker rooms either. And I don't mean the illegal underground poker rooms, both sketchy and budget-lux, that pop up in rundown warehouse districts or empty storefronts. **Or the poker houses Dwaine Caraway used to protect from the police.**

I'm talking about the brightly lit, secured, members-only poker rooms or social clubs or card houses or however they're branded all across Texas. The kind of places where you have to be a monthly member to play. Where the house doesn't take a cut of the pot. Where everything's aboveboard, at least according to owners who say they've jumped through every loophole in Texas' gambling laws that prohibit profiting off games of chance but just might allow **contests of skill** conducted in private places.

Dallas was once home to some of this country's most legendary underground rooms — Redman's Club and **the AmVets** top among them. An out-in-the-open card room was here, too, for a brief moment not long ago: CJ's Card Club at Walnut Hill and Marsh lanes, above our neighborhood's beloved A Step Up Lounge. Triple-threat Juli Black — real estate agent, poker pro and Preston Hollow East Homeowners Association president — said other than the climb, CJ's was a fine place: "Nice job on the finish-out, seemed to be professionally run and had some great action."

was that. [Similar clubs in Plano folded soon after.](#)

But apparently the rest of Texas is braver: [KHOU reported in July](#) that the state has more 30 poker rooms. The TV station noted — I sense with some small amount of pride — there are 19 rooms just in Houston, where do-what-you-want zoning doesn't require trips to City Hall for special permits.

More card rooms open despite legal conc...



The [Texas Card House](#), whose first outpost is in a suburban strip mall in Austin, had planned to open its Dallas entry next to the Target on Montfort Road — at the end of [that so-so shopping strip](#) with a Cash Store, H&R Block, Enterprise Rent-a-Car, a couple of salons and a taqueria. City staff recommended giving the card house a two-year specific use permit; back in December the City Plan Commission gave its unanimous OK.

Owner Ryan Crow and his land-use lawyer Suzanne Kedron showed up Wednesday to Dallas City Hall expecting an easy win. But when I found them in the Flag Room at day's end, they looked shell-shocked.

"I was not expecting that," Crow said as he stared straight ahead, wearing a blank expression. He was trying to figure out how to break the news to the landlord. He thought this was all a done-deal.

It could have been. Should have been. But there were complications. For starters: Of the six nearby landowners, only one objected to the poker room. But it was a big one — EF Properties, which just finished erasing what remained of the late Sangers at Valley View. The landowner filed an objection with the city: "I do not think a gambling establishment is consistent with the Midtown vision."

Midtown, in case you forgot, is what we're supposed to call Valley View now.

Because EF's sitting on more than 20 percent of the nearby land, three-quarters of the council — or 12 members — needed to approve the Texas Card House's application for a specific-use permit, since the shopping center isn't zoned for commercial amusement. But with the mayor out of town, only eight signed off, even after North Dallas council member Lee Kleinman insisted it was legal since the house isn't taking a rake.

Texas Card House - North Austin - Main R...

Three of the council members who voted against are in southern Dallas: Rickey Callahan, Carolyn King Arnold and Kevin Felder. They've all got illegal gambling houses in their districts. They all believed this was just more of that.

Felder was especially vehement in his protestations: "I have a problem with this," he said. "Very seriously. I think this is an end-run around the gambling law in the state of Texas. I have grave concerns about this because it would set precedent to go around state law."

Actually, state law appears to be unsettled on the subject.



Juli Black at a World Poker Tour event last year (Eric Butler / IMPDI)

On Jan. 26, 2018, state Rep. Geanie Morrison, R-Victoria, asked the Texas attorney general for his opinion on what was a very simple question: **"Are poker gambling enterprises that charge membership or other fees or receive other compensation from gamblers playing poker — but do not receive a 'rake' — permitted under Texas law?"**

To which the attorney general never provided an answer. That's because last summer, **Texas Card House's parent company sued a San Antonio poker room** over some alleged unfair competition violations. Paxton's office said the AG

Sections

The Dallas Morning News

My Account

Nevertheless, the Dallas deal went undone. City zoning officials say Texas Card House could apply for a waiver to resubmit or wait two years before giving it another go. Crow said Wednesday that they are about to open in Houston and aren't giving up on Dallas. Perhaps they will find a venue that already has the proper zoning and take their chances without City Hall's blessing.

But maybe not. Because when I asked Thursday, police didn't want to comment on the subject. For now they're getting vice back up and running, and promises have made promises to focus on prostitution diversion and back-room eight-liners that attract people who think it's fun to do bad things.

Where the card rooms fall on the crackdown list is hard to say. I asked the Dallas County district attorney's office, too, where they rank among John Creuzot's priorities and never got a response.



Juli Black, who has played in the World Series of Poker main event, wants to open a room in northwest Dallas. She has consulted with her council member, Jennifer Staubach Gates, and talked to DPD Chief U. Reneé Hall and higher-ups in vice.

"And they all said if I wanted to proceed, I could," Black said, "but I should have a very good attorney."

Poker's a game of skill. Turns out, it's opening a poker room that's the real gamble.



Robert Wilonsky, Special Contributor. Robert Wilonsky, former city columnist for The Dallas Morning News, is communications director for Heritage Auctions and a frequent contributor to these pages.

  @RobertWilonsky

Exhibit 3

CHAPTER 51A ZONING DISTRICT STANDARDS

DISTRICT	SETBACKS		Density	Height	Lot Coverage	Special Standards	PRIMARY Uses
	Front	Side/Rear					
A(A) Agricultural	50'	20'/50'	1 Dwelling Unit/3 Acres	24'	10%		Agricultural & single family
R-1ac(A) Single Family	40'	10'	1 Dwelling Unit/ 1 Acre	36'	40%		Single family
R-1/2ac(A) Single Family	40'	10'	1 Dwelling Unit/ 1/2 Acre	36'	40%		Single family
R-16(A) Single Family	35'	10'	1 Dwelling Unit/ 16,000 sq. ft.	30'	40%		Single family
R-13(A) Single Family	30'	8'	1 Dwelling Unit/ 13,000 sq. ft.	30	40%		Single family
R-10(A) Single Family	30'	6'	1 Dwelling Unit/ 10,000 sq. ft.	30'	45%		Single family
R-7.5(A) Single Family	25'	5'	1 Dwelling Unit/ 7,500 sq. ft.	30'	45%		Single family
R-5(A) Single Family	20'	5'	1 Dwelling Unit/ 5,000 sq. ft.	30'	45%		Single family
D(A) Duplex	25'	5'	1 Dwelling Unit/ 3,000 sq. ft.	36'	60%	Min. Lot: 6,000 sq. ft	Duplex & single family
TH-1(A) Townhouse	0'	0'	6 Dwelling Units/ Acre	36'	60%	Min. Lot: 2,000 sq. ft	Single family
TH-2(A) Townhouse	0'	0'	9 Dwelling Units/ Acre	36'	60%	Min. Lot: 2,000 sq. ft	Single family
TH-3(A) Townhouse	0'	0'	12 Dwelling Units/ Acre	36'	60%	Min. Lot: 2,000 sq. ft	Single family
CH Clustered Housing	0'	0'	18 Dwelling Units/ Acre	36'	60%	Proximity Slope	Multifamily, single family
MF-1(A) Multifamily	15'	15'	Min lot 3,000 sq. ft. 1,000 sq ft – E 1,400 sq. ft – 1 BR 1,800 sq ft – 2 BR +200 sq ft each add BR	36'	60%	Proximity Slope	Multifamily, duplex, single family
MF-2(A) Multifamily	15'	15'	Min lot 1,000 sq. ft. 800 sq ft – E 1,000 sq. ft – 1 BR 1,200 sq ft – 2 BR +150 sq ft each add BR	36'	60%	Proximity Slope	Multifamily, duplex, single family
MF-3(A) Multifamily	15'	10' Urban Form	Min lot 6,000 sq. ft. 450 sq ft – E 500 sq. ft – 1 BR 550 sq ft – 2 BR +50 sq ft each add BR	90'	60%	Proximity Slope U-form setback Tower spacing	Multifamily
MF-4(A) Multifamily	15'	10'	Min lot 6,000 sq. ft. 225 sq ft – E 275 sq. ft – 1 BR 325 sq ft – 2 BR +50 sq ft each add BR	240'	80%	Proximity Slope U-form setback Tower spacing	Multifamily
MH(A) Mobile Home	20'	10'	1 Dwelling Unit/ 4,000 sq. ft.	24'	20%		Manufactured homes
NO(A) Neighborhood Office	15'	20' adjacent to residential OTHER: No Min.	0.5 FAR	30' 2 stories	50%	Proximity Slope Visual Intrusion	Office
LO-1 Limited office – 1	15'	20' adjacent to residential OTHER: No Min.	1.0 FAR	70' 5 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office – limited retail & personal service uses
LO-2 Limited office – 1	15'	20' adjacent to residential OTHER: No Min.	1.5 FAR	95' 7 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office – limited retail & personal service uses
LO-3 Limited office – 1	15'	20' adjacent to residential OTHER: No Min.	1.75 FAR	115' 9 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, lodging – limited retail & personal service uses
MO-1 Mid-range office – 1	15'	20' adjacent to residential OTHER: No Min.	2.0 FAR	135' 10 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, lodging – limited retail & personal service uses
MO-2 Mid-range office – 1	15'	20' adjacent to residential	3.0 FAR	160' 12 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, lodging – limited retail & personal service uses

DISTRICT	SETBACKS		Density	Height	Lot Coverage	Special Standards	PRIMARY Uses
	Front	Side/Rear					
		OTHER: No Min.					
GO(A) General office	15'	20' adjacent to residential OTHER: No Min.	4.0 FAR	270' 20 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, lodging – limited retail & personal service uses
NS(A) Neighborhood service	15'	20' adjacent to residential OTHER: No Min.	0.5 FAR	30' 2 stories	40%		Retail & personal service, office
CR Community retail	15'	20' adjacent to residential OTHER: No Min.	0.75 FAR overall 0.5 office	54' 4 stories	60%	Proximity Slope Visual Intrusion	Retail & personal service, office
RR Regional retail	15'	20' adjacent to residential OTHER: No Min.	1.5 FAR overall 0.5 office	70' 5 stories	80%	Proximity Slope U-form setback Visual Intrusion	Retail & personal service, office
CS Commercial Service	15' 0' on minor	20' adjacent to residential OTHER: No Min.	0.75 FAR overall 0.5 office/ lodging/ retail combined	45' 3 stories	80%	Proximity Slope Visual Intrusion	Commercial & business service, supporting retail & personal service & office
LI Light Industrial	15'	30' adjacent to residential OTHER: No Min.	1.0 FAR overall 0.75 office/ retail 0.5 retail	70' 5 stories	80%	Proximity Slope Visual Intrusion	Industrial, wholesale distribution & storage, supporting office & retail
IR Industrial research	15'	30' adjacent to residential OTHER: No Min.	2.0 FAR overall 0.75 office/ retail 0.5 retail	200' 15 stories	80%	Proximity Slope Visual Intrusion	Industrial, wholesale distribution & storage, supporting office & retail
IM Industrial manufacturing	15' 0' on minor	30' adjacent to residential OTHER: No Min.	2.0 FAR overall 0.75 office/ retail 0.5 retail	110' 8 stories	80%	Proximity Slope Visual Intrusion	Industrial, wholesale distribution & storage, supporting office & retail
CA-1(A) Central area	0'	0'	20.0 FAR	Any legal height	100%		All but the heaviest industrial uses
CA-2(A) Central area	0'	0'	20.0 FAR	Any legal height	100%		All but the heaviest industrial uses
MU-1 Mixed use-1	15'	20' adjacent to residential OTHER: No Min.	0.8 FAR base 1.0 FAR maximum + bonus for residential	90' 7 stories 120' 9 stories with retail	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, retail & personal service, lodging, residential
MU-2 Mixed use-2	15'	20' adjacent to residential OTHER: No Min.	1.6 FAR base 2.0 FAR maximum + bonus for residential	135' 10 stories 180' 14 stories with retail	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, retail & personal service, lodging, residential
MU-3 Mixed use-3	15'	20' adjacent to residential OTHER: No Min.	3.2 FAR base 4.0 FAR maximum + bonus for residential	270' 20 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, retail & personal service, lodging, residential, trade center
MC-1 Multiple commercial-1	15' Urban form	20' adjacent to residential OTHER: No Min.	0.8 FAR base 1.0 maximum	70' 5 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, retail & personal service, lodging
MC-2 Multiple commercial-2	15' Urban form	20' adjacent to residential OTHER: No Min.	0.8 FAR base 1.0 maximum	90' 7 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, retail & personal service, lodging
MC-3 Multiple commercial-3	15' Urban form	20' adjacent to residential OTHER: No Min.	1.2 FAR base 1.5 maximum	115' 9 stories	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, retail & personal service, lodging
MC-4 Multiple commercial-4	15' Urban form	20' adjacent to residential OTHER: No Min.	1.6 FAR base 2.0 maximum	135'	80%	Proximity Slope U-form setback Tower spacing Visual Intrusion	Office, retail & personal service, lodging
UC-1 Urban Corridor-1	0' Urban form	0' adjacent to CA, MU or UC; 10' adjacent to R, TH, D or CH; 5' all others	10 DU/ acre 0.6 FAR base 2.0 maximum	30' – 55' w/parking bonus	80%	2 story min. 4 story max. Proximity Slope U-form setback	Office, retail & personal service, multi-family
UC-2 Urban Corridor-2			35 DU/acre 0.85 FAR base 3.6 maximum	40' – 80' w/parking bonus	80%	3 story min. 6 story max. Proximity Slope U-form setback	Office, retail & personal service, multi-family
UC-3 Urban Corridor-3			45 DU/acre 1.0 FAR base 4.5 maximum	55' – 100' w/parking bonus	80%	4 story min. 8 story max. Proximity Slope U-form setback	Office, retail & personal service, multi-family
P(A) Parking							Surface parking

Exhibit 4

Certificate of Occupancy

Address: 1676 REGAL ROW 75247

Issued: 07/13/2017

Owner: BADGER TAVERN LP
7017 JOHN CARPENTER FWY DALLAS

DBA: LA ZONA ROSA CABARET DBA POKER HOUSE OF DALLAS

Land Use: (7396) COMMERCIAL AMUSEMENT (INSIDE)

Occupied Portion:

C.O.#: 1612131019

Lot:	1	Block:	B/6375	Zoning:	MU-3	PDD:	SUP:		
Historic Dist:		Consrv Dist:		Pro Park:	107	Req Park:	107	Park Agrmt:	N
Dwlg Units:		Stories:	1	Occ Code:	A2	Lot Area:	34060	Total Area:	10694
Type Const:	VB	Sprinkler:	All	Occ Load:	419	Alcohol:	N	Dance Floor:	N

Remarks: ALL WORK SUBJECT TO FIELD INSPECTOR APPROVAL/ MAX OCC'Y-
MAIN ROOM= 322; VIP RM.=51 AND NEW PATIO=46 PERSONS/
PARKING: 107 REQUIRED; 16 ON-SITE, 91 PROVIDED VIA PARKING AGREEMENT
WITH 1680 REGAL ROW



David Session, Building Official

This certificate shall be displayed on the above premise at all times.

Exhibit 5



City of Dallas

Certificate of Occupancy

Address: 11834 HARRY HINES BLVD Ste:135, TEXAS Issued: 10/23/2020
 CARD HOUSE 75234

Owner: RYAN CROW
 11826 HARRY HINES BLVD.
 DALLAS, TEXAS 75234

DBA: TEXAS CARD HOUSE

Land Use: (7396) COMMERCIAL AMUSEMENT (INSIDE)

Occupied Portion:

C.O.#: 2003031040

Lot: 1	Block: A/6572	Zoning: IR,MU-2	PDD:	SUP:
Historic Dist:	Consv Dist:	Pro Park: 77	Req Park: 77	Park Agrmt: N
Dwlg Units:	Stories: 1	Occ Code: A2	Lot Area: 442326	Total Area: 7669
Type Const: VB	Sprinkler: All	Occ Load: 329	Alcohol: N	Dance Floor:N

Remarks: NO ALCOHOL TO BE STORED, SOLD OR SERVED ON-SITE UNTIL TABC LICENSE OBTAINED; NO COIN-OPERATED MACHINES ALLOWED ON SITE. ALL WORK SUBJECT TO FIELD INSPECTORS APPROVAL. TABS #20200012562

David Session, Building Official

This certificate shall be displayed on the above premise at all times.

Exhibit 6



City of Dallas

Certificate of Occupancy

Address: **11411 E NORTHWEST HWY Ste:111 75238** Issued: **06/22/2021**

Owner: **MATT MORGAN**
11411 E NORTHWEST HWY Ste:111
DALLAS, TX

DBA: **SHUFFLE#214**

Land Use: **(7396) COMMERCIAL AMUSEMENT (INSIDE)**

Occupied Portion:

C.O.#: **2105031098**

Lot:	1C	Block:	A/8043	Zoning:	RR	PDD:	SUP:
Historic Dist:		Consv Dist:		Pro Park:	61	Req Park:	61
Dwlg Units:		Stories:		Occ Code:	A3	Lot Area:	260707
Type Const:	IIA	Sprinkler:		Occ Load:		Alcohol:	N
							Park Agrmt: N
							Total Area: 6050
							Dance Floor:N

Remarks: UPDATED 06/09/2021
TOTAL OL TO BE POSTED = 563 OCCUPANTS
NO COIN-OPERATED MACHINES OR ELECTRONIC GAMES OF AMUSEMENT
ON-SITE; NO PREPARING, SERVING OR SELLING OF FOOD OR BEVERAGES
ON-SITE

David Session, Building Official

This certificate shall be displayed on the above premise at all times.

Exhibit 7

Maps of Poker Clubs in Dallas

Poker House Dallas



Texas Card House



Shuffle 214



Dallas Poker Club



Dallas Poker Club (expanded view)



Exhibit 8

**Email Thread Between Joe Vongkaysone (Dallas Poker Club)
and Megan Wimer (Assistant Building Official)**

From: joevhawks@yahoo.com <joevhawks@yahoo.com>
Sent: Monday, October 5, 2020 3:50 PM
To: Cadena, Laura <laura.cadena@dallascityhall.com>; Saucedo Aleman, Marco <marco.saucedo@dallascityhall.com>
Subject: DCH:Poker Club

External Email

Contact Form Information

Name: Joe Vongkaysone
Home or Office Address: 2900 Walnut Hill Ln
City: Dallas
State: TX
Zip: 75229
E-mail Address: joevhawks@yahoo.com
Phone: 6162100608
Subject: Poker Club

Comments: Hi there, I sent an email to the city of Dallas zoning to see if it's ok to put a poker club at 2900 Walnut Hill Ln Dallas, TX 75229. I haven't heard anything back and was wondering if you can help since we are located in your district. Our competitors Texas Card House has already started construction at their location which is minutes at 11834 Harry Hines Blvd Suite 135, Dallas, TX 75234. Please let me know what we need to do to get ours started ASAP thank you

From: Cadena, Laura <laura.cadena@dallascityhall.com>
Sent: Monday, October 5, 2020 3:52 PM
To: Sweckard, Kriston <Kris.Sweckard@dallascityhall.com>
Cc: Saucedo Aleman, Marco <marco.saucedo@dallascityhall.com>; Narvaez, Omar <omar.narvaez@dallascityhall.com>
Subject: RE: DCH:Poker Club

Hello Kris –

Can you please have someone contact the constituent and provide an response.

Can we also check on 11834 Harry Hines Blvd Suite 135, Dallas, TX 75234 to make certain that it has the proper permits and zoning.

Sincerely,
Laura

On Oct 5, 2020, at 5:58 PM, Wimer, Megan <megan.wimer@dallascityhall.com> wrote:

Hello, Mr. Vongkaysone. A poker house is classified as a commercial amusement (inside). The referenced address, 2900 Walnut Hill Lane, is zoned a CR Community Retail District, which allows the use. I am copying Alex and Patrick with the permit center so that they can walk you through the process.

Megan

<image006.png>

Megan Wimer, AICP, CBO
Assistant Building Official
City of Dallas | DallasCityNews.net
Sustainable Development and
Construction
320 E. Jefferson Boulevard, Room 115
Dallas, TX 75203
O: 214-948-4501
megan.wimer@dallascityhall.com

<image008.png>

<image010.png>

<image012.png>

****OPEN RECORDS NOTICE:** This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.**

From: JoeVHawks [<mailto:joevhawks@yahoo.com>]
Sent: Saturday, October 10, 2020 1:22 PM
To: Wimer, Megan <megan.wimer@dallascityhall.com>
Subject: Re: DCH:Poker Club

External Email

Hi Megan,

The landlord at the 2900 Walnut Hill Ln is asking for too much to lease it. We founded another location "2053 W Northwest Hwy Dallas, TX 75220", can you tell me if this is zoned a CR Community Retail District too?

This location is near by some of the Striper club, La bare club for women Hihhi

<image005.png>

Sent from my iPhone

On Oct 12, 2020, at 9:45 AM, Wimer, Megan <megan.wimer@dallascityhall.com> wrote:

Hi Joe. 2053 W. Northwest Highway is zoned IR Industrial Research but the use is allowed here, too. Hopefully you can get a better deal on this one.

<image001.png>

Megan Wimer, AICP, CBO
Assistant Building Official
City of Dallas | DallasCityNews.net
Sustainable Development and
Construction
320 E. Jefferson Boulevard, Room 115
Dallas, TX 75203
O: 214-948-4501
megan.wimer@dallascityhall.com

<image002.png>

<image003.png>

<image004.png>

****OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.****

From: JoeVHawks [<mailto:joevhawks@yahoo.com>]
Sent: Monday, October 12, 2020 9:52 AM
To: Wimer, Megan <megan.wimer@dallascityhall.com>
Subject: Re: DCH:Poker Club

External Email

Thanks again Megan! You're the best!!!

Sent from my iPhone

On Oct 12, 2020, at 9:58 AM, Wimer, Megan <megan.wimer@dallascityhall.com> wrote:

You're welcome! Good luck.

<image001.png>

Megan Wimer, AICP, CBO
Assistant Building Official
City of Dallas | DallasCityNews.net
Sustainable Development and
Construction
320 E. Jefferson Boulevard, Room 115
Dallas, TX 75203
O: 214-948-4501
megan.wimer@dallascityhall.com

<image002.png>

<image003.png>

<image004.png>

****OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.****

From: JoeVHawks [<mailto:joevhawks@yahoo.com>]
Sent: Monday, October 12, 2020 12:08 PM
To: Wimer, Megan <megan.wimer@dallascityhall.com>
Subject: Re: DCH:Poker Club

External Email

Sorry one more question. Will I need a Special Use Permits to open a poker club there?

Sent from my iPhone

On Oct 12, 2020, at 1:10 PM, Wimer, Megan <megan.wimer@dallascityhall.com> wrote:

No problem. And nope, no SUP required. The use is allowed by right. The parking required parking is one space per 100 square feet of floor area so make sure there is enough available to accommodate the use. –Megan

<[image009.png](#)>

Megan Wimer, AICP, CBO
Assistant Building Official
City of Dallas | DallasCityNews.net
Sustainable Development and
Construction
320 E. Jefferson Boulevard, Room 115
Dallas, TX 75203
O: 214-948-4501
megan.wimer@dallascityhall.com

<[image010.png](#)>

<[image011.png](#)>

<[image012.png](#)>

****OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.****

Exhibit 9



Dealer prepares to hand out cards. (Spectrum News 1)

POLITICS

Gambling in Texas: How poker rooms legally operate given 'gray areas'

BY STACY RICKARD | TEXAS
PUBLISHED 9:26 PM CT JUL. 20, 2021



DALLAS — Texas is one of the strictest states when it comes to gambling, and the legality of poker rooms is argued often. Dallas approved its first official poker room, [Texas Card House](#) back in 2019, which is still operating today with plans to expand.

What You Need To Know

- Texas Card House in Dallas, made official in 2009, has plans to expand
- District 12 Dallas City Councilmember [Cara Mendelsohn](#) is pushing for a change to the [city code](#), so future poker rooms can't open in a retail space without a [specific use permit](#)
- Mendelsohn's district spans three counties: Collin, Denton and Dallas
- Many people will say poker rooms that are "legal" are able to operate due to a "loophole" in [Chapter 47 of the Texas Penal Code](#)

But District 12 Dallas City Councilmember [Cara Mendelsohn](#) is pushing for a change to the [city code](#), so future poker rooms can't open in a retail space without a [specific use permit](#) or consideration of nearby residential zoning to prevent them from opening where they aren't wanted.



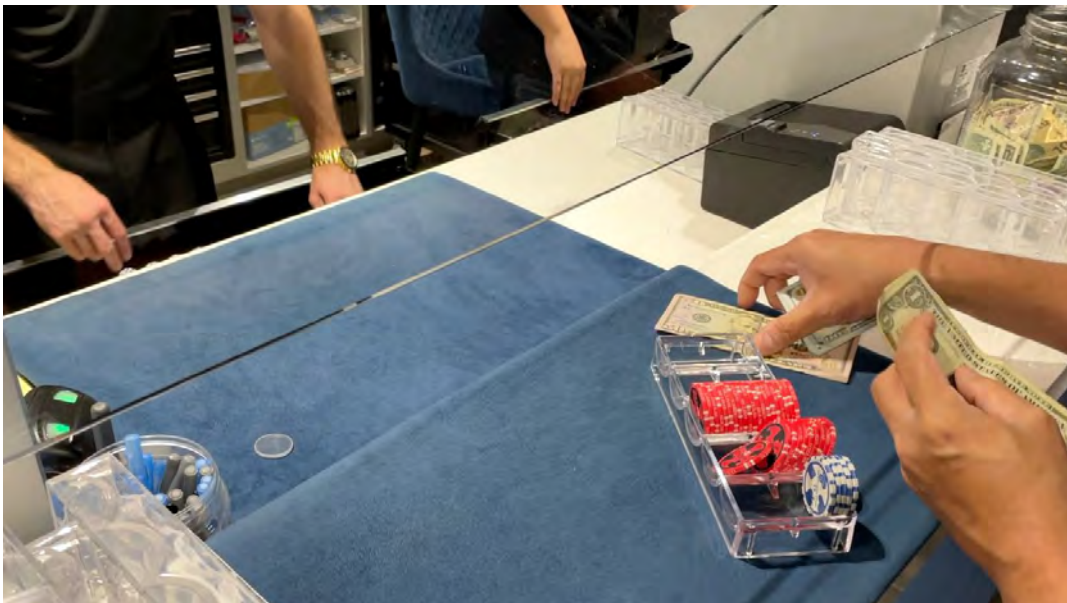
Texas Card House (TCH) in Dallas. (Spectrum News 1)

"Poker rooms are not going to be welcomed in communities where they back up the single family housing. For the city, I think we need to look at entertainment districts and ways that we could encourage people to be able to get together in a safe and legal way, not sure that this business model fits that definition though," Mendelsohn said. "Perhaps, there's a better place for [poker rooms], if it's even legal, which I think is in question."

The legality of poker rooms is up in the air, depending on who you talk to. Many people will say poker rooms that are "legal" are able to operate due to a "loophole" in [Chapter 47 of the Texas Penal Code](#).

"In Texas, most forms of gambling are illegal. But in the penal code, there's a way to run a private club that gives you a defense against prosecution for illegal gambling," said [Texas Card House](#) CEO Ryan Crow. "And ultimately there's three things you have to do. You have to play in a private setting, so we run as a private club. The second thing is you can't have an economic benefit from the gambling itself, so we don't take a rake. We do operate in a manner that we essentially charge by the hour to be within the facility. And the third thing is everyone has to have an equal chance of winning."

Crow said games such as blackjack, craps or roulette, where there's a house advantage, are illegal. The only games run at Texas Card House are ones where it's player versus player, and there's no house component to it.



TCH customer puts money forward. (Spectrum News 1)

underground. And when things get pushed underground, good things don't happen. And so we're trying to bring poker in the limelight. We're trying to take the stigma out of poker. It's safe, it's fun. And done in the right atmosphere, it can be for everyone. Players haven't had a lot of options when it comes to playing in legal places. You either have to drive to Louisiana, or you have to drive to Oklahoma or you got to fly out to Vegas. And so, we feel that one of the biggest things that we offer is a safe place to play poker. A game that you see on ESPN, you know, five nights a week."

Crow says there are many games operating underground in Dallas and around the state, but he says his poker rooms have actually caused the number to go down.

"In speaking with the authorities here in Dallas, it does sound like there's a little bit of a gambling issue, or illegal gambling issue in Dallas. I think a lot of it is around eight liners. But as far as poker rooms go, there are a number of them. I have not been to any of them myself, so I can't speak to the types of games that are being run, but I know that they are pretty prevalent. And when something goes wrong in those games, they're very unlikely to call the police or do something about it," Crow said. "Having a safe and legal place to play is important and we actually have seen in many of the cities that have these clubs, the underground scenes or the illegal games actually tend to go away over time. And we essentially put them out of business, for lack of a better term."

Mendelsohn says Texas law states gambling is illegal, no "gray areas" about it. She says poker rooms are unwelcome in District 12, and if anyone pursues gambling in Collin County, the District Attorney is "happy to prosecute them for illegal gambling."

"Gambling is illegal in Texas. So, if the poker operators want to make it legal, they need to get themselves to Austin and get them to pass a bill. But right now, when you look at Chapter 47, it seems pretty clear that it's illegal. They would argue that there's some gray space in there. And so probably, this is headed to a lawsuit. Whether that happens because of Collin County, or whether that happens because of somewhere else doesn't much matter," Mendelsohn said.

Mendelsohn's district spans three counties, Collin, Denton and Dallas. She says the City of Dallas did approve two SUPs in the past, but even at the time, there was "gray space." She said the city attorney is "revisiting" and "doing some additional research into the law."

"I'm not going into a poker room. That's not my interest. I'm not opposed to poker. My husband plays a monthly game and has for 20 years. His poker games are not gambling. His poker game is playing cards with friends, drinking a beer and having some M&M's. So it's sociability, but there's nobody winning money," Mendelsohn said. "And so literally the part that makes this illegal, from what I read, I'm not an attorney — is that somebody is making money in these establishments. Whether that's food sales, alcohol sales, renting a chair, a fee to walk in the door, somebody is making money off of poker. When we talk about a game in somebody's home — which I have no problem with — nobody's making money other than the players themselves, which is legal in Texas. It is actually one of the specific exemptions."

Mendelsohn also raised the point that while the penal code states it's a defense to prosecution if the "gambling occurred in a private place," anyone could become a member at a poker club, so it should be clarified as a cover charge.

"They talk about the whole notion of, 'Is it public or not public? Oh, people have to pay a membership when they come in.' But if anyone can become a member, that's public. That's just a cover charge," Mendelsohn said.



Empty table in TCH. (Spectrum News 1)

Crow says while its membership requirements are not stringent, TCH doesn't just let anyone in.

"We take their driver's license, we scan it, we get all their information on file. They have to pay to become a member. But yes, I mean we don't have a very stringent membership policy, but we do, if we have problems with players. We do run background checks on them and we exclude people all the time," Crow said. "So, yes we actually have a pretty healthy list of people who are banned and are not allowed to enter in our club. And so not everyone's just allowed in."

Crow says he's not against Mendelsohn's desire to require SUPs. He says he just wants the public to not be afraid of poker rooms, or have the wrong idea about the way they operate.

"It actually took us over two years to get this club open. It's very difficult to find a location, especially in a new city where there are no clubs. We just wrapped up going through the SUP process for the second of our locations here in Dallas and it's very challenging. However, it has its value. When we first tried to get our [initial] SUP, we were contested by someone who was essentially next to us. We brought them in, we showed them our club in Austin, and they subsequently essentially withdrew their opposition to it. We went to city council and we were able to get our SUP. And while it's very difficult, it can be challenging to get. I'm not really opposed to that, requiring those for clubs to make sure the clubs are doing the things they're supposed to do to contribute positively to the community," Crow said. "And so I don't think it's a bad thing for cities to have. I will say it's not easy and it definitely creates a barrier to entry into the market. However, you do know if you get an SUP that the area you're going into, that your neighbors know who you are, you're welcome, and they see you as a contributing member to the community and not a black eye."



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Exhibit 10



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 201-109

Data Relative to Subject Property:

Date: 09/24/21

Location address: 2051 W. Northwest Highway, Suite 10 Zoning District: IR

Tract No.: 0.2 Block No.: B/6489 Acreage: 2.50 Census Tract: 99.00

Street Frontage (in Feet): 1) 201' 2) 543' 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Greenway - 2051 NWH LP

Applicant: Khiem Phan Telephone: (972) 896-8927

Mailing Address: 1611 Park Garden Court, Cedar Hill, TX Zip Code: 75104

E-mail Address: khiemphan57@yahoo.com

Represented by: William Davis - Ted B. Lyon & Associates Telephone: (972) 279-6571

Mailing Address: 18601 LBJ Freeway, Suite 525, Dallas, TX Zip Code: 75150

E-mail Address: wdavis@tedlyon.com

Affirm that an appeal has been made for a Variance __, or Special Exception __, of Dallas Poker Club (hereinafter referred to as "Applicant") appeals the wrongful denial of an application for certificate of occupancy for commercial amusement of leased space at 2051 W. Northwest Highway, Suite 10.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

The City of Dallas Building Inspection Division wrongfully denied the application for a certificate of occupancy, stating that the Applicant's use of the space is in violation of Texas Penal Code 47.04, "Keeping a Gambling Place." The Building Inspection Division's understanding of the Applicant's business model and Texas Penal Code 47.04 are incorrect. Applicant further outlines why the Building Inspection Division's decision is incorrect in Exhibit I attached to Applicant's appeal.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Khiem Phan (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 27 day of September, 2021

[Signature]
Notary Public in and for Dallas County, Texas



MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that KHIEM PHAN
represented by William Davis
did submit a request to appeal the decision of the administrative official
at 2051 W. Northwest Hwy. Suite 10

BDA201-109. Application of KHIEM PHAN represented by William Davis to appeal the decision of the administrative official at 2051 W NORTHWEST HWY. This property is more fully described as Tract 0.2, Block B/6489, and is zoned IR, which requires that the building official shall shall not issue a certificate of occupancy if the building official determines that the use would be operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the issuance of a certificate of occupancy.

Sincerely,


David Session, Building Official



AFFIDAVIT

Appeal number: BDA 201-109

I, Greenway-2051 NWH LP, Owner of the subject property
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 2051 W. Northwest Highway, Suite 10, Dallas, TX 75220
(Address of property as stated on application)

Authorize: Khiem Phan
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Appeal of denial of application for certificate of occupancy for commercial amusement.

Greenway-2051 NWH LP
a Texas limited partnership
By: Greenway-2051 GP LLC
a Texas limited liability company, its general partner
Print name of property owner or registered agent

Todd Petty
Todd Petty, Vice President
Signature of property owner or registered agent

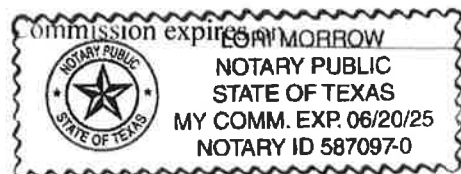
Date 9/24/21

Before me, the undersigned, on this day personally appeared Todd Petty

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 24th day of September, 2021

Yoni Tronow
Notary Public for Dallas County, Texas





6504

6501

(S.HY. 114)

6900

10500

4.872 AC

4.0086 ACS.

230' DRAIN & UTILITY ESMT.

507.34

13.83

30' DRAIN

6489/B

70° ES

373.67

239.25

1.4158 ACS.

0.998 AC.

273.66

10500

529.76

REPLAI FILED 7-8-93

7
1.2203 ACS.

Esmt.

LOMBARD

HIGHWAY

6488

600

LABST. 930
ELIMERRILL SUR. AT

2300 (CALIFO)

6488



Printed: 9/30/2021

Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | Railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSP Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay |
| | | Height Map Overlay | |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



Exhibit 1 to Appeal to Board of Adjustment

The Building Inspection Division for the City of Dallas wrongfully denied the certificate of occupancy for Dallas Poker Club, stating that the “use statement submitted with the application clearly indicates that the use will be operated in violation of Texas Penal Code Section 47.04, “Keeping a Gambling Place.” *See* Exhibit 3 – Denial Letter. The Building Inspection Division’s legal analysis is incorrect, and the Building Inspection Division misunderstands and misinterprets the language of Texas Penal Code Section 47.04 and the Applicant’s intended use of the space at 2051 West Northwest Highway, Suite 10.

Under Texas Penal Code Section 47.04, “(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.” Tex. Penal Code §47.04(a) (2017). However, under Section 47.04(b), it is an affirmative defense to prosecution under Section 47.04(a) when the following three requirements are met:

- (1) the gambling occurred in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all.

See Tex. Penal Code §47.04(b).

In the present case, as shown by the attached Exhibit 2, Dallas Poker Club’s intended use of the space at 2051 West Northwest Highway, Suite 10 meets all three of these requirements and would therefore not be operating in violation of Texas Penal Code Section 47.04(a). *See* Exhibit 2. First, Dallas Poker Club will be operating as a private establishment. Similar to a country club

which requires membership fees to enter the facilities or play golf, patrons are not allowed to enter Dallas Poker Club unless they are members of Dallas Poker Club. Any non-members will not be allowed on the premises. *Id.* Second, Dallas Poker Club receives no economic benefit for the games that occur on the premises. Dallas Poker Club's entire revenue is based on membership dues paid by members of Dallas Poker Club. *Id.* Additionally, participants in the games at Dallas Poker Club's only economic benefit will be their own personal winnings from the games in which they participate. *Id.* Finally, the only games played on the premises of Dallas Poker Club are poker games. Thus, "the risk of losing and the chances winning [are] the same for all participants." *Id.*

The Building Inspection Division's wrongful decision is further evidenced by the fact that, currently, there are at least three (3) other poker clubs operating in the City of Dallas. These poker clubs are:

(1) *Poker House Dallas* – 1676 Regal Row, Dallas, TX 75247

(2) *Texas Card House* – 11834 Harry Hines Blvd, Suite 135, Dallas, TX 75234

(3) *Shuffle 214* – 11411 E. Northwest Hwy, Suite 111, Dallas, TX 75218

The above-mentioned businesses are in full operation, showing that those businesses were approved for a certificate of occupancy by the Building Inspection Division and were not denied for violating Texas Penal Code Section 47.04. These businesses are correctly permitted to operate because they are not in violation of Texas Penal Code Section 47.04. Similarly, Dallas Poker Club's intended use of the space at 2051 West Northwest Highway, Suite 10 will not violate Texas Penal Code Section 47.04. Therefore, Applicant respectfully requests that the Board of Adjustment overturn the Building Inspection Division's wrongful denial and approve Dallas Poker Club for occupancy of the space at 2051 West Northwest Highway, Suite 10.

KBKM ENTERTAINMENT, LLC DBA DALLAS POKER CLUB

1611 PARK GARDEN CT CEDAR HILL, TX 75104 (972) 896-8927

February 24, 2021

KBKM ENTERTAINMENT, LLC was established in September 2020 and intends to open, operate, and manage a community social club known as "Dallas Poker Club" (DPC) at 2051 West Northwest Hwy, Suite 10 Dallas, TX 75220 The proposed use is defined as a "Commercial Amusement- inside" In The Dallas City code, Section 51A-4.210(b)(7)(v) which means "A facility wholly enclosed in a building that offers entertainment of games of skill to the general public for a fee".

According to Texas Law, Poker is only allowed if it meets the following requirements: - No Person received economic benefits other than personal winnings - Gambling must be in a private place Except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants KBKM ENTERTAINMENT, LLC DBA DALLAS POKER CLUB understand completely what the Texas Law is stating.

Dallas Poker Club is a members only, private social club. Membership options include both Individual and Corporate Memberships. All New Members must complete a Membership Application prior to being granted provisional membership. Membership at Dallas Poker Club is not guaranteed. The Dallas Poker Club Membership Committee meets and reviews provisional members and makes a recommendation to approve or deny permanent membership status. The Membership Committee and Dallas Poker Club Management can revoke a membership for violations of the Club Rules, Club Code of Conduct, non-payment of dues or fees, upon review of a criminal background check or other.

MUST BE 21 WITH A VALID I.D.

There is a monthly Membership Fee and also all Members must pay club access fee regardless of activity The hours of operations will be from 2:00 P.M. to 2:00 A.M. (Monday - Sunday)

This will be a "Smoke free" Facility. There will not be any alcohol sold on the premises. Beers will be permitted by the patron under the premise of "BYOB" with a managed limit of no more than a 6 packs or 72 oz allowed in a one 24 hrs period.

No food, pre package thru vending machines or otherwise will be sold on site. There will be no coin operated machines located on-site.

There will be no merchandise sold on-site, i.e. t-shirts, hats, etc.

DPC will be operated as a gun free zone and a weapons check will be conducted of all patrons entering the facility.



CITY OF DALLAS

September 8, 2021

Mr. Kheim Phan, President
 1611 Park Garden Court
 Cedar Hill, TX 75104

CERTIFIED MAIL NO. 7020 1290 0000 3631 0068

RE: Denial of the application for a certificate of occupancy for a commercial amusement (inside) dba Dallas Poker Club at 2051 West Northwest Highway, Suite 10

Dear Mr. Phan:

This letter is to inform you that the application for a certificate of occupancy for the above-referenced location is hereby denied. The attached land use statement submitted with the application clearly indicates that the use will be operated in violation of the Texas Penal Code Section 47.04, "Keeping a Gambling Place."

Pursuant to Paragraph (1), Section 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code, the building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations.

This decision is final unless appealed to the Board of Adjustment in accordance with Section 51A-4.703 of the Dallas Development Code before the 20th day after written notice of the above action.¹ If you have any questions, please contact me at 214-948-4501.

Sincerely,

Megan Wimer, AICP, CBO
 Assistant Building Official
 Building Inspection Division

cc: Dr. Eric Johnson, Chief of Economic Development and Neighborhood Services
 David Session, CBO, Interim Building Official
 Tammy L. Palomino, First Assistant City Attorney
 Major Devon Palk, Dallas Police Department
 Lieutenant Lisette Rivera, Dallas Police Department

¹ Section 51A-4.703(a)(2), "Board of Adjustment Hearing Procedures," of Chapter 51A of the Dallas Development Code.



November 5, 2021

Via Email: Jennifer.munoz@dallascityhall.com

Dallas Board of Adjustment
c/o Jennifer Muñoz
Administrator, Board of Adjustment
1500 Marilla St., 5BN
Dallas, Texas 75201

Re: BDA 201-109; Khiem Phan d/b/a Dallas Poker Club at 2051 West Northwest Highway, Suite 10 (“Applicant”); Appeal of Building Official’s Decision denying application for certificate of occupancy

Dear Board Members:

This letter and the attached materials are the City’s written response to the above-listed Board of Adjustment appeal by the Applicant, set for hearing on Wednesday, November 17, 2021, at 1:00 p.m. This is an appeal from the denial of a certificate of occupancy (“CO”). The City urges the Board of Adjustment to affirm the Building Official’s decision because the proposed use violates state law which prohibits keeping a gambling place.

I. BACKGROUND

A. Denial of application for a certificate of occupancy

The Applicant initially submitted a CO application dated February 24, 2021 (the “Application”). A copy of the CO Application is attached as **Exhibit 1**. A land use statement dated February 24, 2021, (copy attached as **Exhibit 2**) was submitted with the Application.

On September 8, 2021, Applicant’s CO application was denied by Assistant Building Official Megan Wimer (“Building Official”). A copy of the notice of denial is attached as **Exhibit 3**. The CO was denied in accordance with Section 306.5(1) of Chapter 52: Administrative Procedures for the Construction Codes of the City of Dallas, a copy of which is attached as **Exhibit 4**. That section states:

“The building official shall deny an application for a certificate of occupancy if the building official determines: 1) The certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations.”

The Building Official determined that the application and related materials showed that the property would be used in violation of the Texas Penal Code §47.04, “Keeping a Gambling Place.”

B. Statement provided by Applicant shows Applicant intended to operate a gambling place.

A land use statement dated February 24, 2021, submitted by Khiem Phan on behalf of Applicant, (**Exhibit 2**) stated Applicant “intends to open and operate ... a community social club known as Dallas Poker Club (DPC)”. The land use statement makes clear that the only significant activity taking place at the DPC facility will be poker. There will be no food or alcohol sold on site, and no other games or coin operated machines on site. Poker will be the only activity. Members will be required to pay “a monthly membership fee and also all members must pay a club access fee regardless of activity. The hours of operations will be from 2 p.m. to 2 a.m. (Monday-Sunday)”.

C. Poker games in a commercial establishment where there is any economic benefit are illegal in Texas.

Under Texas law, poker games or tournaments with bets and money changing hands in a commercial establishment where there is any economic benefit to any person or entity other than the personal winnings of the players are illegal – regardless of whether the activity occurs in a so-called “private” club and regardless of whether or not the “house” takes any portion of the betting pools or pots in each poker game (regardless of whether the house takes a rake from each pot). If the house, host, or location where the poker players play charges any door fee, chair fee, membership fee (whether a daily, weekly, hourly, or annual fee), or derives any economic benefit of any kind from hosting the poker games then the activity is illegal because it constitutes “keeping a gambling place,” made unlawful by Texas Penal Code §47.04. Applicant appears to believe that if they operate their business as a “private club” charging membership fees and the house does not take a cut of the pot (or take a rake), the poker business would be legal, but Applicant is mistaken. Applicant’s proposed use clearly violates state law, therefore the Assistant Building Official properly denied the CO.

II. DISCUSSION AND ARGUMENT

A. Texas law prohibits gambling or keeping a gambling place.

Chapter 47 of the Texas Penal Code declares gambling illegal in Texas. Texas Penal Code §47.04(a) (copy attached as **Exhibit 5**) provides that a person commits the offense of keeping a gambling place if he knowingly uses or permits another to use as a gambling place any real estate, building, room, or other property whatsoever under his control with an expectation that the property will be used as a gambling place. Texas Penal Code §47.02(a)(3) (copy attached as **Exhibit 6**) provides that a person commits the offense of gambling if he plays or bets for money or other thing of value at any game played with cards or any other gambling device. Under §47.04(b) of the Texas Penal Code, it is an affirmative defense to prosecution for keeping a gambling place if:

- (1) the gambling occurred in a private place;
- (2) no person received any economic benefit other than personal winnings; and

- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.
- (c) An offense under this section is a Class A misdemeanor. (*emphasis added*)

In order to benefit from the affirmative defense, the Applicant must prove all three elements of the defense listed above. The Applicant fails to prove the defense if any person receives “any economic benefit” from the gambling activity “other than personal winnings.” This defense was designed and intended to allow (or not criminalize) the conduct where a person in their private home or similar “private place” invites friends over to play poker and make bets, where the host does not charge any fees (no membership fees, no door fees, no chair fees, and no hourly fees) for hosting the event and “no person received any economic benefit other than personal winnings.” The affirmative defense was not designed or intended to allow a commercial business to operate a poker club or poker room and sell so-called memberships (so it can call itself a “private” club) or collect fees or charges of any kind that results in the operator gaining an “economic benefit” which defeats the affirmative defense. The Applicant’s proposed operations on the site are clearly illegal as the house obtains an “economic benefit” by collecting membership fees. Therefore, the certificate of occupancy was properly denied.

B. Applicant’s proposed use is a poker room, and it is not a private place under Texas gambling law.

The Applicant makes no attempt to minimize the gambling aspect of its business operation where poker is the centerpiece of its business, if not the exclusive use. Calling it a private club and requiring persons to pay a membership fee does not qualify the business as a “private place” under Chapter 47 of the Texas Penal Code. The definition of private place for purposes of the defense to keeping a gambling place is narrowly construed to exclude any place that the public has access to and instead applies only to friendly poker games among friends in someone’s private home. For the defense to apply, the poker game must both occur in a private place, and there can be no economic benefit to any person other than personal winnings. Applicant fails to meet either of these prongs, therefore the proposed use is in violation of state law and the certificate of occupancy was properly denied.

III. LEGAL AUTHORITY

A. Texas case law supports the Building Official’s decision because the requirement that “no person received any economic benefit” is construed broadly.

In *Gaudio v. State*, No. 05-91-01862-CR, 1994 WL 67733 (Tex. App.—Dallas, March 7, 1994, writ ref’d) (copy attached as **Exhibit 7**) the jury convicted the defendant of unlawfully keeping a gambling place. On appeal, the defendant argued that the affirmative defense to prosecution applied. The defendant rented an apartment where a group of friends gathered three nights a week to play poker. A dealer was hired to deal the cards and a waitress was hired to serve food and drinks during the games. The group agreed to cut from the betting pot from each hand to pay (or reimburse defendant) for the expenses defendant incurred in keeping the apartment to play

poker. (*Id.* at 1). The winner of each hand tipped the dealer, as the main source of the dealer's compensation. (*Id.* at 1).

At trial, the jury decided that elements (1) and (3) of the affirmative defense were established (i.e., the apartment was a "private place", and the risks of losing were the same for all participants) and on appeal the State agreed that the evidence supported the jury's findings on these two elements. (*Id.* at 2). The jury concluded that the defendant had failed to satisfy his burden to show the second element of his defense (i.e., that "no person received any economic benefit other than personal winnings").

On appeal, the Court noted that the dealer and the waitress had received an "economic benefit" as they were paid for their services to the poker players, which defeated the affirmative defense and was sufficient evidence to affirm the jury verdict and conviction. (*Id.* at 2). The Court also noted that even if the "economic benefit" element were viewed to mean that the host or sponsor of the "gambling place" can establish the defense as long as the host/sponsor does not receive "any economic benefit other than personal winnings" then the defendant had derived an "economic benefit" because the rent for the apartment, which defendant was legally obligated to pay, was paid or reimbursed by others, constituting an "economic benefit" and defeating the defense, so defendant's conviction was affirmed. (*Id.* at 3).

B. Texas Attorney General opinions support the Building Official's decision.

The Texas Attorney General has also provided some guidance on these issues. Texas Attorney General Opinion No. GA-0335 (2005) addresses the question whether it would be lawful for a bar/restaurant to host an on-premises poker tournament where: 1) participants pay a modest or nominal entry fee; and 2) the house intends to take no cut of the entry fee of each player and the entire prize pool generated by the number of players times each player's entry fee will be paid out to the winning players at the end of the night.

After analyzing relevant factors, the Opinion concludes: "...a bar or restaurant that hosts a Texas Hold-Em poker tournament would violate the prohibition against "keeping a gambling place." Texas Penal Code §47.04(a). This Opinion makes clear that even if the house takes no cut of the entry fee paid by each player and the entire prize pool is fully disbursed to the winning players that fact or structure does not protect the host from the offense of "keeping a gambling place."

The Applicant's land use statement (See **Exhibit 2**) makes it clear that Applicant intends to collect monthly membership fees and club access fees from club members. Applicant plans to collect charges or assessments from persons who come to Applicant's establishment to play poker. As a result of the collection of fees or charges of any kind, Applicant derives an "economic benefit" from the operations of the poker business, which defeats the affirmative defense and means that Applicant is "keeping a gambling place." Furthermore, any employees who are paid to work at Applicant's poker business derive an "economic benefit" from their employment, which means that Applicant cannot prove the affirmative defense.

Texas Attorney General Letter Opinion dated November 3, 1990 (LO-90-88) addresses whether a person located in Texas can call another state to play lottery games or other games of

chance which would be illegal in Texas and pay for the wagers or bets by using a credit card. The Opinion concludes that because the transactions would generate an economic benefit to a third party, the defense to prosecution would not apply.

As demonstrated by this Opinion, the defensive requirement that “no person received any economic benefit” is viewed very broadly, such that if any person (either the host of the game(s), or a third party, or even an employee) derives any “economic benefit” from the gambling operation “other than personal winnings” received by the players, the affirmative defense to a gambling offense fails. Texas law prohibiting gambling is written in such a way that gambling cannot be operated as a business without violating the law, because when poker games are operated as a business then some person(s) will receive an economic benefit other than personal winnings. A poker game played in the host’s home (i.e., a “private place”) where there are no fees charged by the host, and no employees are paid to work at the games (so there is no business or commercial aspect to the activity) then the affirmative defense might be available. The affirmative defense is not intended to allow a commercial poker room to operate.

Texas Attorney General Opinion No. DM-344 (1995) addresses whether two or more persons, each using a separate personal computer in a private place, play a card game with each other and bet on the outcome of the game would constitute illegal gambling. The Opinion further explores what might constitute “private place” for purposes of the defense to prosecution under Chapter 47 of the Penal Code. The Opinion states whether a place is private is determined by the scope of access by others, and even a place traditionally viewed as private, such as a residence, would not be a private place for the purpose of the defense if the public had access to gamble there.

IV. CONCLUSION

The Building Official correctly determined that Applicant’s proposed use (operating poker games and poker tournaments and collecting membership fees and access charges) would constitute illegal gambling, so the CO was properly denied. Not only would Applicant’s proposed business derive an economic benefit from the poker games, but the business also does not constitute a “private place” because a private club (as proposed by Applicant) is not synonymous with a “private place” under the Texas gambling laws. The board should reject Applicant’s appeal and affirm the Building Official’s correct decision.

Sincerely,

Gary R. Powell
Senior Assistant City Attorney

Charlotta S. Riley
Senior Assistant City Attorney

DATE: 01/12/2021

CO NO: (OFFICE USE ONLY)

CERTIFICATE OF OCCUPANCY APPLICATION



City of Dallas

NAME OF BUSINESS (DBA) Dallas Poker Club			STREET ADDRESS OF BUSINESS 2501 W Northwest Hwy			BLDG AND SUITE NUMBER 10		
PROPERTY OWNER Greenway 2051 NWH LP			ADDRESS 2808 Fairmount, STE:100			CITY Dallas		
STATE Tx	ZIP CODE 75201	PHONE NO 214.880.9009	E-MAIL ADDRESS lstein@greenwayinvestment.com					
MANAGER/OPERATOR OF USE OR BUSINESS Khiem Phan			ADDRESS 1611 Park Garden Ct			CITY Cedar Hill		
STATE TX	ZIP CODE 75104	PHONE NO 972.896.8927	E-MAIL ADDRESS khiemphan57@yahoo.com					
APPLICANT (if different from manager/operator) Kiesha Kay			ADDRESS 2201 Main St., STE:1280			CITY Dallas		
STATE Tx	ZIP CODE 75201	PHONE NO 214.790.1707	E-MAIL ADDRESS kiesha@masterplantexas.com					

DESCRIBE THE PROPOSED USE OF PROPERTY (attach additional sheets if necessary)

Commercial Amusement Inside. Prev CO#9201291125

What is the square footage of the tenant space or building? 4546 square feet

<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Is this a change in use of land, tenant space or building?	See CO Checklist for plan submittal requirements.
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Is the proposed use "personal services" (barber/beauty shop, shoe repair, tailor, instructional arts, laundry/dry cleaning pickup/dropoff, photo studio, handcrafted art work, etc.)?	Provide Personal Services Affidavit executed by business owner, see CO Checklist for additional requirements.
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Will potentially hazardous foods/open foods be sold and/or served?	Food Establishment Permit Application required (only available from City staff)
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Will alcohol be sold and/or served?	Provide completed Alcohol Measurement Certification Application Checklist and Alcohol Certification Affidavit Forms
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Will there be a dance floor?	Annual license fee charged to businesses operating a place where dancing is allowed (subject to approval from Dallas Police Vice Control, call 214-671-3230 for more information. Applications available from Special Collections at 1500 Marilla St, 2DS; M-F, 8 am to 5 pm, or call 214-670-3438.
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Is the proposed use a doctor's office, dentist office or other medical office or health care office?	Applicant must execute Ambulatory Health Care Facility form attesting to new or pre-existing conditions & facts pertaining to the health care model for any doctor's, dentist, or other medical offices (except hospitals, emergency rooms & care clinics).
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Will you display or offer for sale smoking paraphernalia commonly used, or commonly known to be used, for the inhalation of tobacco or illegal substances (except rolling papers, tobacco cigarettes or cigars)?	If 'YES' then a Specific Use Permit is required; or, if the use is nonconforming then applicant must provide verifiable proof that the that the display or sale or paraphernalia, etc. previously existed. Additionally, you must register under Chapter 12B of the Dallas City Code.

I HAVE CAREFULLY READ THE COMPLETED APPLICATION AND KNOW THE SAME IS TRUE AND CORRECT AND HEREBY AGREE THAT IF A PERMIT IS ISSUED ALL PROVISIONS OF THE CITY ORDINANCES AND STATE LAWS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT. I AM THE OWNER OF THE PROPERTY OR THE DULY AUTHORIZED AGENT. PERMISSION IS HEREBY GRANTED TO ENTER PREMISES AND MAKE ALL INSPECTIONS. I ALSO AFFIRM THAT THE EMAIL ADDRESS GIVEN ABOVE MAY BE USED FOR OFFICIAL COMMUNICATION CONCERNING THIS APPLICATION AND PERMIT.

APPLICANT'S SIGNATURE
KM Kay

FOR OFFICE USE ONLY

Change in Land Use? YES NO Change in Occupancy? YES NO Is Use Nonconforming? YES NO

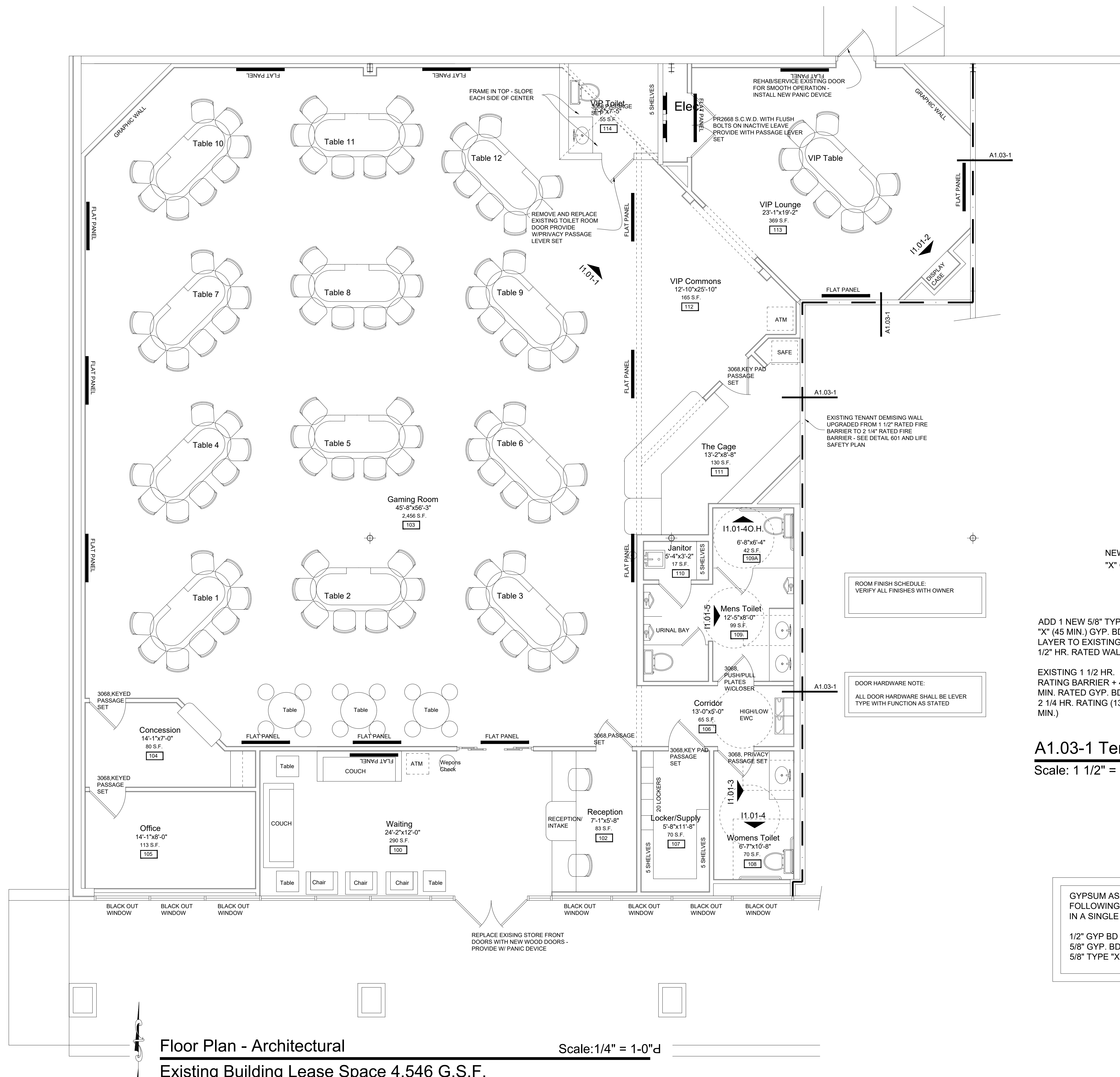
Previous CO Number: _____ Related Permit Number: _____ Related Project Number: _____

ZONING				BUILDING		MISCELLANEOUS	
LAND USE	BASE ZONING	PD	SUP	CONSTRUCTION TYPE	OCCUPANCY	ACTIVITY	OWN
LOT	BLOCK	REQUIRED PARKING	PROPOSED PARKING	SPRINKLER	OCCUPANT LOAD	FLOOD PLAIN	AIRPORT
LOT AREA	CONSERVATION DIST	PARKING AGREEMENT	DELTA CREDITS	STORIES	DWELLING UNITS	BDA	HISTORIC DISTRICT

ROUTE TO	REVIEWED	DATE	COMMENTS	FEE CALCULATIONS (\$)
PRESCREEN				CO APP FEE
ZONING				CE INSP FEE
BUILDING				HEALTH PERMIT APP FEE
CODE				OTHER FEES
OTHER: _____				TOTAL FEES
				\$

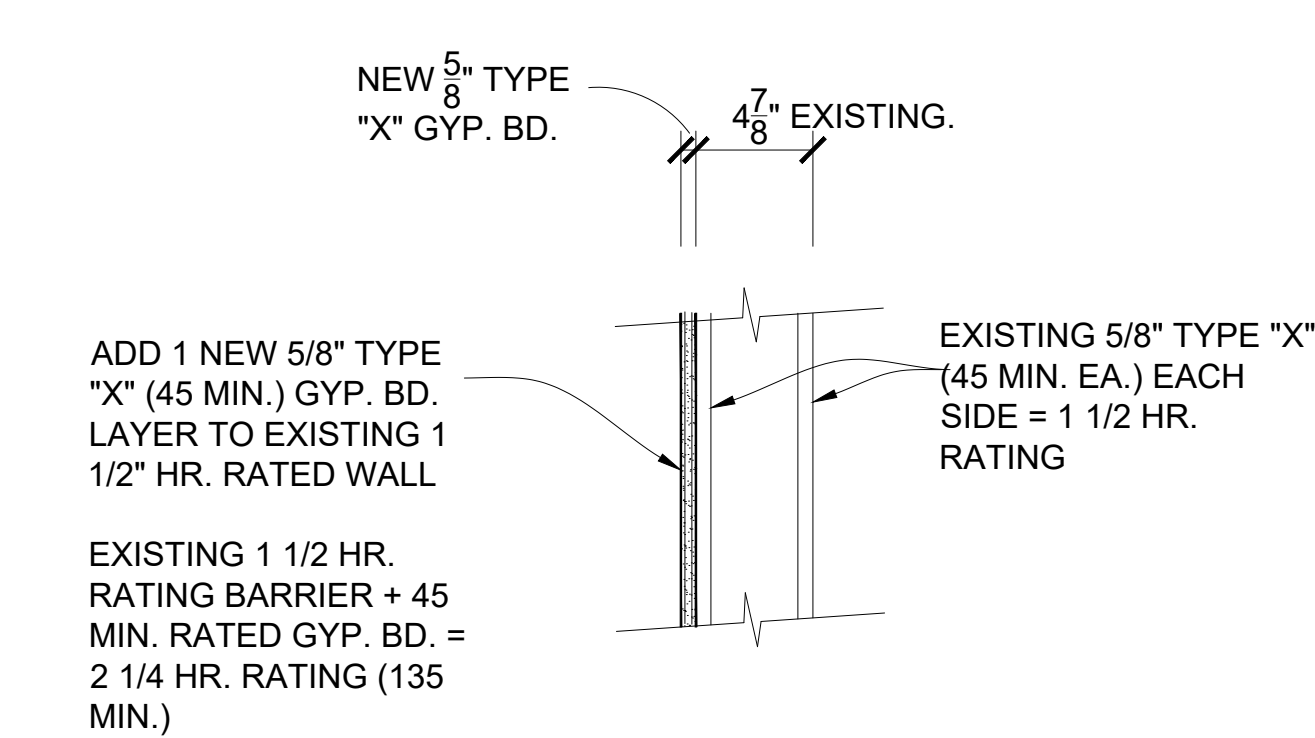
EXHIBIT

1



Floor Plan - Architectural
Existing Building Lease Space 4,546 G.S.F.

Scale: 1/4" = 1-0"d



A1.03-1 Tenant Demising Wall Detail
 Scale: 1 1/2" = 1-0"d

GYPSUM ASSOCIATION LIST AND IDENTIFIES THE FOLLOWING FIRE RATINGS TO GYPSUM BOARD SIZES IN A SINGLE LAYER:

- 1/2" GYP BD = 20 MIN. FIRE RATING
- 5/8" GYP. BD. = 30 MIN. FIRE RATING
- 5/8" TYPE "X" GYP. BD. = 45 MIN. RATING



Date of Issue for Review Only
 NOT for Regulatory Approval
 Permitting or Construction

Date of Issue for Regulatory,
 TAS and/or Permitting Approval
 FOR Construction

12/30/2020

CERTIFICATION AND SEAL
 I HEREBY CERTIFY THAT THIS PLAN AND SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF TEXAS AS SIGNIFIED BY MY HAND AND SEAL.

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Matthew 7:7
 Rom 1:16 1 Cor. 15:1-4 Rom 6:3-6

Phillip B. Townsend, R.A.
 Architect, Interior Design, Programmer,
 Planner, Building Code Consultant
 4613 Misty Valley West
 Wichita Falls, Texas 76310
 940-642-3590
 email: pi@wt.net

Owner/Developer:

A Lease Space Renovation
 for
 Dallas Poker Club
 KBKM Entertainment, L.L.C.
 2051 W. Northwest Hwy., Ste. 10
 Dallas, TX

Job No. ---
 Date: Dec. 2020
 Drawn By: PT

Sheet Title:
 Architectural
 Floor Plan
 Sheet No.
 A1.03

KBKM ENTERTAINMENT, LLC DBA DALLAS POKER CLUB

1611 PARK GARDEN CT CEDAR HILL, TX 75104 (972) 896-8927

February 24, 2021

KBKM ENTERTAINMENT, LLC was established in September 2020 and intends to open, operate, and manage a community social club known as "Dallas Poker Club" (DPC) at 2051 West Northwest Hwy, Suite 10 Dallas, TX 75220. The proposed use is defined as a "Commercial Amusement- inside" in The Dallas City code, Section 51A-4.210(b)(7)(v) which means "A facility wholly enclosed in a building that offers entertainment of games of skill to the general public for a fee".

According to Texas Law, Poker is only allowed if it meets the following requirements: - No Person received economic benefits other than personal winnings - Gambling must be in a private place Except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants KBKM ENTERTAINMENT, LLC DBA DALLAS POKER CLUB understand completely what the Texas Law is stating.

Dallas Poker Club is a members only, private social club. Membership options include both Individual and Corporate Memberships. All New Members must complete a Membership Application prior to being granted provisional membership. Membership at Dallas Poker Club is not guaranteed. The Dallas Poker Club Membership Committee meets and reviews provisional members and makes a recommendation to approve or deny permanent membership status. The Membership Committee and Dallas Poker Club Management can revoke a membership for violations of the Club Rules, Club Code of Conduct, non-payment of dues or fees, upon review of a criminal background check or other.

MUST BE 21 WITH A VALID I.D.

There is a monthly Membership Fee and also all Members must pay club access fee regardless of activity. The hours of operations will be from 2:00 P.M. to 2:00 A.M. (Monday - Sunday)

This will be a "Smoke free" Facility. There will not be any alcohol sold on the premises. Beers will be permitted by the patron under the premise of "BYOB" with a managed limit of no more than a 6 packs or 72 oz allowed in a one 24 hrs period.

No food, pre package thru vending machines or otherwise will be sold on site. There will be no coin operated machines located on-site.

There will be no merchandise sold on-site, i.e. t-shirts, hats, etc.

DPC will be operated as a gun free zone and a weapons check will be conducted of all patrons entering the facility.

EXHIBIT

2



CITY OF DALLAS

September 8, 2021

Mr. Kheim Phan, President
 1611 Park Garden Court
 Cedar Hill, TX 75104

CERTIFIED MAIL NO. 7020 1290 0000 3631 0068

RE: Denial of the application for a certificate of occupancy for a commercial amusement (inside) dba Dallas Poker Club at 2051 West Northwest Highway, Suite 10

Dear Mr. Phan:

This letter is to inform you that the application for a certificate of occupancy for the above-referenced location is hereby denied. The attached land use statement submitted with the application clearly indicates that the use will be operated in violation of the Texas Penal Code Section 47.04, "Keeping a Gambling Place."

Pursuant to Paragraph (1), Section 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code, the building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations.

This decision is final unless appealed to the Board of Adjustment in accordance with Section 51A-4.703 of the Dallas Development Code before the 20th day after written notice of the above action.¹ If you have any questions, please contact me at 214-948-4501.

Sincerely,

Megan Wimer, AICP, CBO
 Assistant Building Official
 Building Inspection Division

cc: Dr. Eric Johnson, Chief of Economic Development and Neighborhood Services
 David Session, CBO, Interim Building Official
 Tammy L. Palomino, First Assistant City Attorney
 Major Devon Palk, Dallas Police Department
 Lieutenant Lisette Rivera, Dallas Police Department

¹ Section 51A-4.703(a)(2), "Board of Adjustment Hearing Procedures," of Chapter 51A of the Dallas Development Code.

2. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that additional information, plans, diagrams, computations, specifications, or other data or supporting documents are necessary for issuance of the certificate of occupancy; or
3. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that corrections and a reinspection are necessary for issuance of the certificate of occupancy. (Ord. 26029; 26579)


306.4.3 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each for justifiable cause. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.5 Denial. The building official shall deny an application for a certificate of occupancy if the building official determines:

1. The certificate of occupancy requested does not comply with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
2. The information, plans, diagrams, computations, specifications, or other data or supporting documents submitted with the application clearly show that the use or occupancy will be operated in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
3. The application contains false, incomplete, or incorrect information and the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented; or
4. The applicant does not possess a required city, county, state, or federal license, permit, or registration to operate the use or occupancy. (Ord. 26579)

306.6 Issuance. Unless the application for the certificate of occupancy has expired under Section 306.4 or has been denied under Section 306.5, the building official shall issue a certificate of occupancy after a complete application has been filed, a true and correct copy of any required city, county, state, or federal license, permit, or registration to operate has been provided to the building official, and every necessary inspection has been made to determine compliance with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. (Ord. 26029; 26579)



 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated

Penal Code (Refs & Annos)

Title 10. Offenses Against Public Health, Safety, and Morals (Refs & Annos)

Chapter 47. Gambling (Refs & Annos)

V.T.C.A., Penal Code § 47.04

§ 47.04. Keeping a Gambling Place

Currentness

(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

(1) the gambling occurred in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a Class A misdemeanor.

Credits

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 667, ch. 251, § 1, eff. Aug. 29, 1977. Acts 1989, 71st Leg., ch. 1030, § 1, eff. Sept. 1, 1989. Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

Notes of Decisions (68)

V. T. C. A., Penal Code § 47.04, TX PENAL § 47.04

Current through the end of the 2021 Regular Session and Chapters 1 to 6 of the Second Called Session of the 87th

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated

Penal Code (Refs & Annos)

Title 10. Offenses Against Public Health, Safety, and Morals (Refs & Annos)

Chapter 47. Gambling (Refs & Annos)

V.T.C.A., Penal Code § 47.02

§ 47.02. Gambling

Effective: January 1, 2016

Currentness

(a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

(1) was permitted under Chapter 2001, Occupations Code;

1994 WL 67733

Only the Westlaw citation is currently available.

NOTICE: NOT DESIGNATED FOR PUBLICATION.
UNDER TX R RAP RULE 47.7, UNPUBLISHED
OPINIONS HAVE NO PRECEDENTIAL VALUE
BUT MAY BE CITED WITH THE NOTATION "(not
designated for publication)."

Court of Appeals of Texas, Dallas.

Richard Anthony GAUDIO, Appellant,
v.
The STATE of Texas, Appellee.

No. 05-91-01862-CR.

March 7, 1994.

On Appeal from the 204th Judicial District Court Dallas
County, Trial Court Cause No. F91-23691-Q.

Before LAGARDE, BURNETT and ROSENBERG, JJ.

LAGARDE, Justice.

OPINION

*1 A jury convicted appellant of unlawfully keeping a gambling place. The trial court set punishment at two year's confinement, probated for three years, and a \$1,000 fine. Appellant contends that the evidence is insufficient to support his conviction and that the trial court erred in denying his motion to suppress. We overrule appellant's points of error and affirm the trial court's judgment.

SUFFICIENCY OF THE EVIDENCE

At trial, appellant presented evidence on the statutory affirmative defense to unlawfully keeping a gambling

place. Appellant had to prove by a preponderance of the evidence that: (1) the gambling occurred in a private place; (2) no one received an economic benefit other than personal winnings; and (3) there was an equal chance of winning in poker. The jury found that appellant received an economic benefit, thereby finding that appellant failed to prove his affirmative defense.

Appellant argues that the jury's finding that he received an economic benefit is against the great weight and preponderance of the evidence. He asserts, therefore, that the evidence is insufficient to support his conviction. The State argues that the evidence supports the jury's finding on economic benefit.

A. Relevant Facts

A group of friends gathered at an apartment rented by appellant to play poker three nights a week. The group agreed to cut the betting pot from each hand to pay for the expenses connected with keeping the apartment to play poker. The group hired a dealer to deal the cards. They also hired a waitress who served food and drinks during the games. Police executed a search warrant at the apartment during a poker game and arrested appellant.

The evidence on economic benefit was not disputed. The dealer testified to the following facts: he dealt the cards at the poker games three nights a week; he cut money from the betting pots to pay the expenses of maintaining the apartment; he gave the money to appellant; the winner of each hand tipped him for his services; and he would play poker from time to time.

Defense witnesses testified to the following facts: appellant volunteered to lease the apartment in his name; cuts were taken from the poker pot to pay expenses; the expenses included the apartment's rent, the telephone, playing cards, poker chips, food, alcohol and cigarettes; everyone agreed to paying the expenses from the cuts from the betting pot; and once they covered expenses there were no more cuts to the betting pot.

B. Standard of Review

The Texas Constitution authorizes a court of appeals to review factual sufficiency questions on a defendant's affirmative defense. *Meraz v. State*, 785 S.W.2d 146,

154 (Tex. Crim. App. 1990). When a court of appeals is called upon to examine whether an appellant proved his affirmative defense, the correct standard of review is whether after considering all the evidence relevant to the issue at hand, the judgment is so against the great weight and preponderance of the evidence so as to be manifestly unjust. See [Meraz](#), 785 S.W.2d at 155.

*2 Appellant argues that the great weight and preponderance of the evidence shows that he proved his affirmative defense, thus the State failed in its burden to prove the elements of the offense beyond a reasonable doubt. However, at the foundation of every affirmative defense is the practical, if not technical, necessity of the defendant acknowledging that he committed the otherwise illegal conduct. [Meraz](#), 785 S.W.2d at 153. Therefore, proof of an affirmative defense does not necessarily mean there was insufficient evidence to support the conviction.

C. Applicable Law

The penal code defines the offense of unlawfully keeping a gambling place and the affirmative defense to the offense as follows:

(a) a person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents, or lets any such property with a view or expectation that it be so used.

(b) it is an affirmative defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(Emphasis added.) [TEX. PENAL CODE ANN. § 47.04](#) (Vernon 1989). The practice commentary following [section 47.04](#) states:

Unfortunately the statement of the defense is defective in this section, but hopefully the courts will interpret it according to the legislature's clear intent-as if it read:

(b) It is a defense to prosecution under this section that:

* * *

(2) no person gambling there received any economic benefit other than personal winnings.... (Emphasis added.) Seth S. Searcy III & James R. Patterson, Practice Commentary, [TEX. PENAL CODE ANN. § 47.04](#) (Vernon 1989).

The penal code defines benefit as anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested. [TEX. PENAL CODE ANN. § 1.07](#) (Vernon 1989).

The penal code does not define economic. When a statute does not define the language it uses, the courts should interpret the statute using the common usage of the word.

[Campos v. State](#), 623 S.W.2d 657, 658 (Tex. Crim. App. 1981); [TEX. GOV'T CODE ANN. § 311.011](#) (Vernon 1988). Economic means of or pertaining to the production, development, and management of material wealth or finances. THE AMERICAN HERITAGE DICTIONARY (1991).

D. Application of Law to Facts

The jury found that the apartment was a private place and that poker is a game with an equal chance of winning except for the advantage of skill or luck. [TEX. PENAL CODE ANN. § 47.04\(b\)\(1\)](#), and (3). The State and appellant agree that the evidence supports those jury findings. The testimony on economic benefit is undisputed.

*3 Based on the plain language of the statute no person can receive an economic benefit. If we apply the plain language of the statute, the jury's finding is not against the great weight and preponderance of the evidence. In this case the waitress and dealer received tips from the players. The receipt of money as tips is an economic benefit.

If we interpret the statute as the practice commentary

suggests, i.e., that *no person gambling there* received an economic benefit, the evidence still supports the jury's finding. The dealer received money as a tip for each hand he dealt. He played poker with the others from time to time. The dealer's tips were an economic benefit *to a person gambling there*. Therefore, someone who gambled at the apartment received an economic benefit other than personal winnings.

Even if we interpret section 47.04, as appellant argues, to mean only the defendant cannot receive an economic benefit, the jury's finding that appellant received an economic benefit is not against the great weight and preponderance of the evidence. Appellant did not dispute that he was the lessee on the lease for the apartment. The State and appellant introduced evidence that the players paid the rent from cuts of the betting pots.

As lessee, appellant was legally obligated to pay the rent on the apartment. Paying the rent from the money cut from the betting pots relieved appellant of this legal obligation. We conclude that paying rent that another is legally obligated to pay is an economic benefit to that person.

The jury's finding that appellant received an economic benefit is not against the great weight and preponderance of the evidence. We overrule appellant's first point of error.

MOTION TO SUPPRESS

Appellant contends that the trial court should have suppressed all evidence and testimony resulting from the search warrant in this case. Appellant argues that the affidavit supporting the warrant does not provide probable cause for the warrant. Appellant claims that the affidavit is inadequate because it does not state the basis of the informant's knowledge.

The State contends that the affidavit provides probable cause for the warrant, arguing that independent corroboration by the police overcame any defects in the affidavit. Alternatively, the State argues that the doctrine of curative admissibility cures any error. Finally, the State argues that the failure to suppress the evidence is harmless under rule 81(b)(2) of the rules of appellate procedure. TEX. R. APP. P. 81(b)(2).

A. Relevant Facts

Sergeant Nelson testified that a confidential informant told him that people were gambling on a regular basis at 4043 Harvest Hill Road in apartment ## 2164. Apartment # 2164 was the apartment rented by appellant where the group gathered to play poker. Nelson and other officers conducted surveillance to confirm the informant's information. For approximately one month the officers conducted surveillance of the apartment three nights a week.

*4 The affidavit filed by Nelson to get the search warrant contained the following statements:

1. Affiant talked with a confidential informant who is known to the affiant. The affiant first talked to the informant one month before and was told that the informant had found and had personal knowledge that appellant was keeping the apartment as a gambling place. The informant stated that appellant is conducting a gambling operation and is receiving a fee for his services.

2. The informant stated appellant operates a gambling place on Monday, Thursday, and Saturday nights, beginning at approximately 8:00 p.m. and continuing past midnight.

3. Based on the information supplied by the informant, affiant conducted surveillance. Affiant observed several persons, some of which are known gamblers, entering the apartment.



4. The affiant has personally verified the address and has observed persons known to affiant as gamblers enter the apartment. The people are allowed entrance after recognition by someone inside the apartment.



5. On two different occasions, Nelson has observed people sitting around a table inside the apartment. The confidential informant stated the poker table is located in the living room area.




6. The informant states that the betting pot on the table is cut by the dealer of the cards.


7. This informant is known to the affiant and has on previous occasions given information to affiant regarding the violations of gambling laws of the State of Texas and on each and every occasion this information has been confirmed and found to be true and correct. The informant has furnished information to the affiant within the past year which has led to the arrest of numerous persons for illegal gambling offenses.

B. Applicable Law


A search warrant must be based upon probable cause. U.S. CONST. amend. IV. Under the Fourth Amendment, an affidavit is sufficient to show probable cause if, from the totality of the circumstances reflected in the affidavit, it provided the magistrate with a substantial basis for concluding that probable cause existed.  *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). Probable cause sufficient to support a search warrant exists if the facts contained within the four corners of the affidavit and the reasonable inferences drawn therefrom justify the magistrate's conclusion that the object of the search is probably on the premises at the time of issuance.  *Cassias v. State*, 719 S.W.2d 585, 587-88 (Tex. Crim. App. 1986) (op. on reh'g).

In ascertaining whether a search warrant is based on probable cause, we interpret the affidavit in a common-sense, realistic manner. The magistrate is entitled to draw reasonable inferences from the facts contained in the affidavit. *Ellis v. State*, 722 S.W.2d 192, 196 (Tex. App.-Dallas 1986, no pet.). We give the magistrate's determination of probable cause great deference.  *Gates*, 462 U.S. at 236. Our review of the sufficiency of an affidavit is not a *de novo* review. As long as a magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing the Fourth Amendment is satisfied. See  *Johnson v. State*, 803 S.W.2d 272, 289 (Tex. Crim. App. 1990) *cert. denied*, 111 S. Ct. 2914 (1991).

*5 Although the informant's veracity and reliability are no longer separate and independent requirements for each case, they are still "highly relevant" considerations in the totality of the circumstances review.  *Gates*, 462 U.S. at 231. There must be some indicia of reliability of the tip.  *Knight v. State*, 814 S.W.2d 545, 547 (Tex. App.-Houston [1st Dist.] 1991, no pet.). The affiant's statement that the informant is reliable and has provided information in the past that led to convictions is sufficient to establish the informant's reliability.  *Carmichael v. State*, 607 S.W.2d 536, 538 (Tex. Crim. App. 1980).


If information from an unknown informant alone does not show probable cause, an informant's tip combined with independent police investigation may provide a substantial basis for the probable cause finding.  *Janecka v. State*, 739 S.W.2d 813, 825 (Tex. Crim.


App. 1987). Corroboration of the details of an informant's tip by independent police work is another relevant consideration in the totality of the circumstances analysis.

 *Lowery v. State*, 843 S.W.2d 136, 141 (Tex. App.-Dallas 1992, no pet.).

C. Application of Law to Facts

1. Informant's Tip

The magistrate had a substantial basis to determine the informant was reliable. The affiant stated that every time the informant gave him information he found it to be true and correct. He also said that in the past year the informant provided information that led to numerous arrests. See  *Carmichael*, 607 S.W.2d at 538.

However, the affidavit does not state the basis of the informant's knowledge. The affidavit does not provide any means of determining how the informant got his information. The affiant's statement that the informant had found and had personal knowledge that people were gambling in the apartment is conclusory. See  *Ware v. State*, 724 S.W.2d 38, 41 (Tex. Crim. App. 1986). From the affidavit, the magistrate could not determine the source of the informant's tip.

The informant's reliability and the basis of his knowledge are only relevant factors to determine if there is probable cause and are not determinative. *Gates*, 362 U.S. at 231. One of the factors can show the tip is reliable without the other factor. In *Gates*, the informant's basis of knowledge was sufficient to show the tip was reliable even though the informant's motives were suspect. See *Gates*, 362 U.S. at 235. However, we conclude that without some basis to determine the source of the informant's tip, the statement that the informant is reliable is insufficient to show that the tip was reliable. The informant's tip alone is insufficient to provide the magistrate with a substantial basis for determining probable cause existed.

2. Corroboration

Our conclusion that the informant's tip, standing alone, does not show probable cause does not end our review. If an informant's tip is insufficient, independent police investigation that corroborates the tip can be used to

supplement the tip. The *tip plus corroboration* can then provide a substantial basis for the magistrate's probable cause finding. Corroboration of an informant's tip must consist of more than just innocent activity. See [Lowery](#), 843 S.W.2d at 143.

*6 Based on the informant's tip, Nelson conducted surveillance of the apartment. During his surveillance he observed many people coming and going from the apartment on the nights the informant said gambling occurred. He stated that people were not admitted until they were identified by people inside the apartment. Nelson said that he could observe people sitting around a table in the apartment. Nelson also said that during his observations of the apartment he saw persons known to him as *gamblers* enter the apartment. We conclude that these observations sufficiently corroborate the informant's tip.

Combining Nelson's observations and the informant's tip, we conclude that there was a substantial basis for the magistrate's determination that there was probable cause to support the warrant. Based on the totality of the circumstances reflected in the affidavit, we conclude that the affidavit provided a substantial basis for the magistrate's determination. We overrule appellant's second point of error.

Because of our determination that the affidavit provided probable cause for the search warrant, we do not reach the State's alternative arguments under its second counterpoint.

CONCLUSION

We overrule appellant's first point of error because the evidence supported the jury's finding that appellant received an economic benefit. We overrule appellant's second point of error because under the totality of the circumstances test the affidavit provided probable cause for the warrant.

We affirm the trial court's judgment.

All Citations

Not Reported in S.W.2d, 1994 WL 67733

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 August 18 and 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. The zoning case is still pending and the applicant is seeking a new holdover.

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.

August 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.

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

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)

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

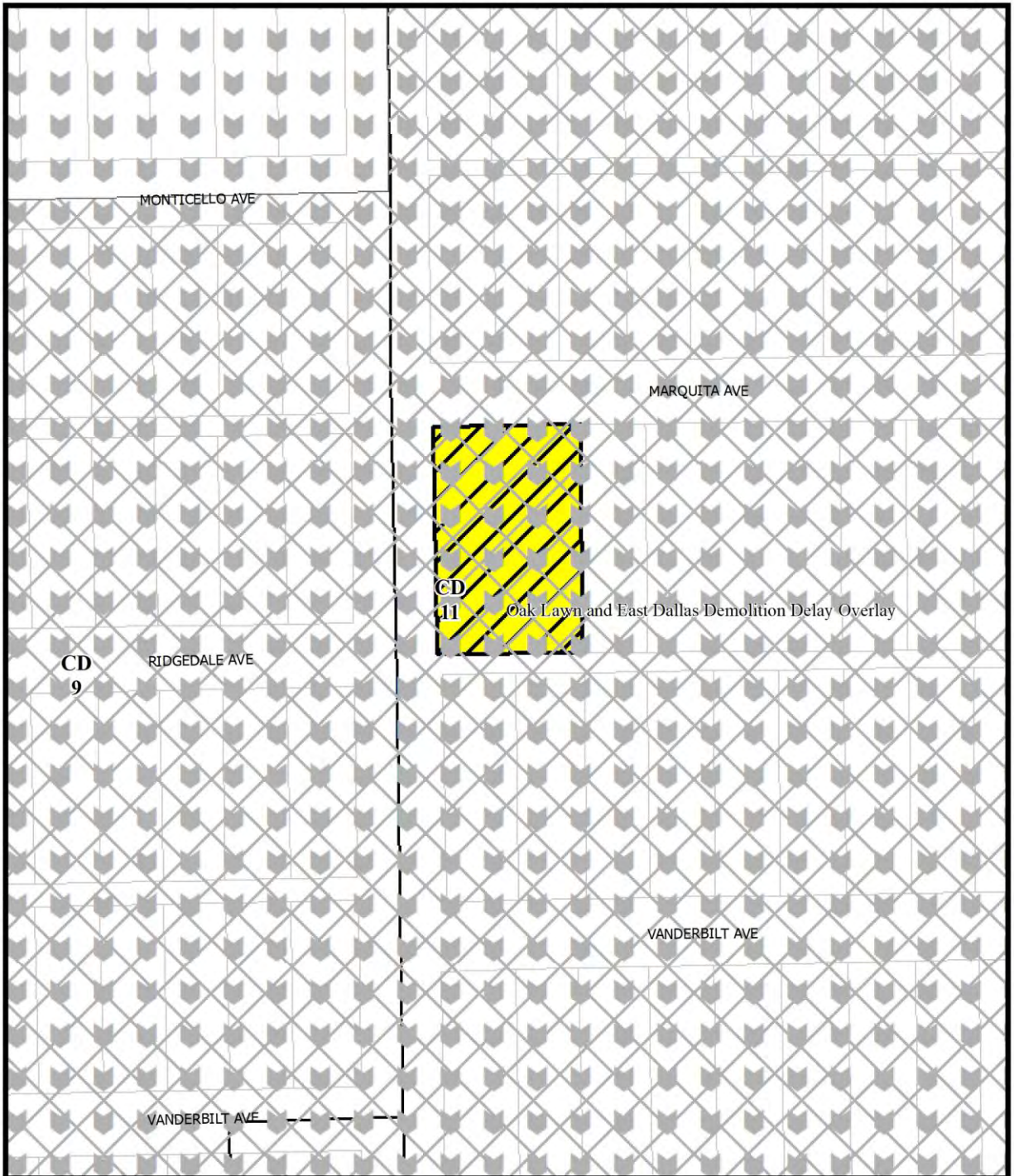
I move that the Board of Adjustment in Appeal No. BDA 190-090, hold this matter under advisement until November 18, 2020.

SECONDED: Vermillion

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

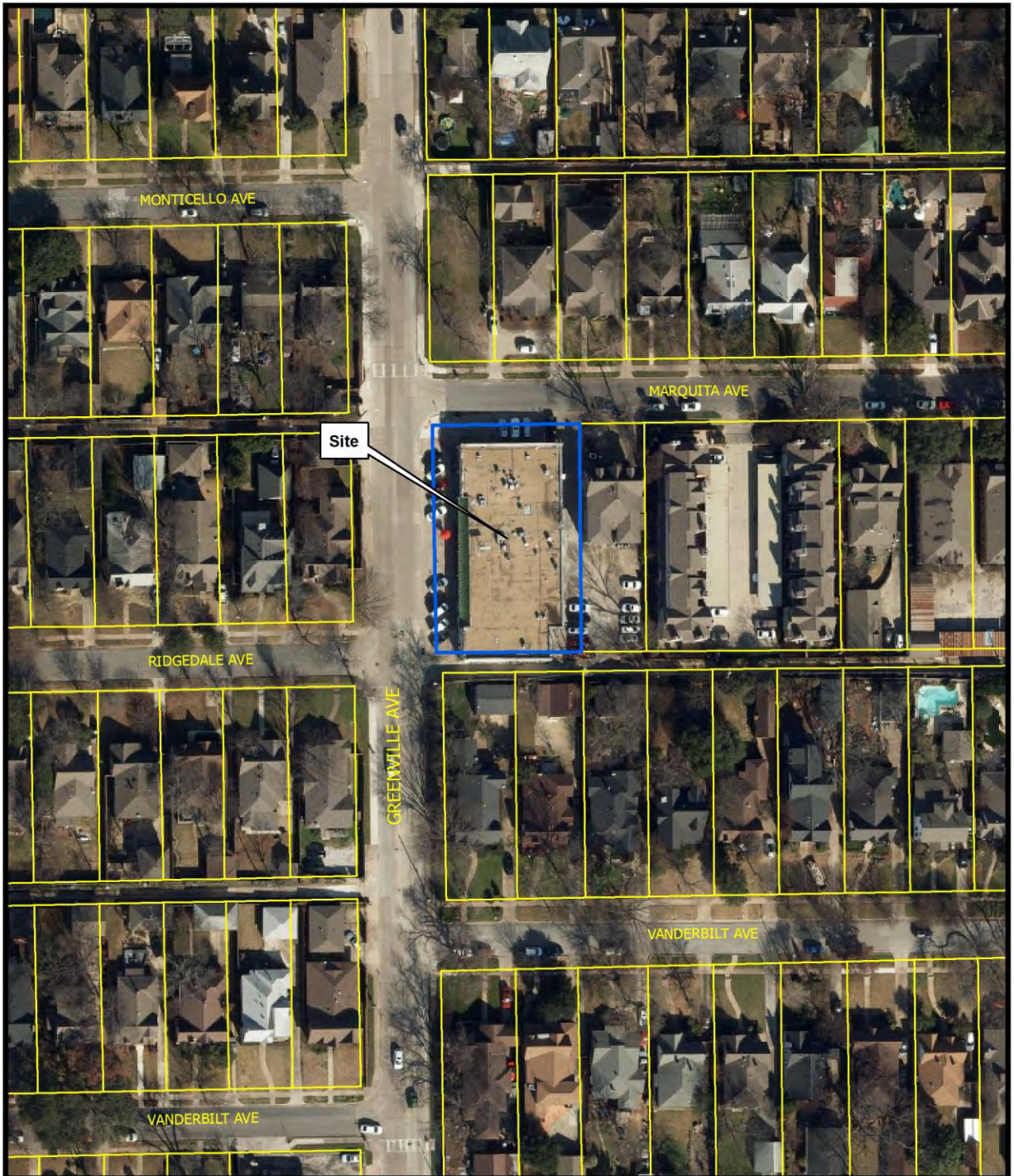


1:1,200

ZONING MAP

Case no: BDA190-090

Date: 10/1/2020

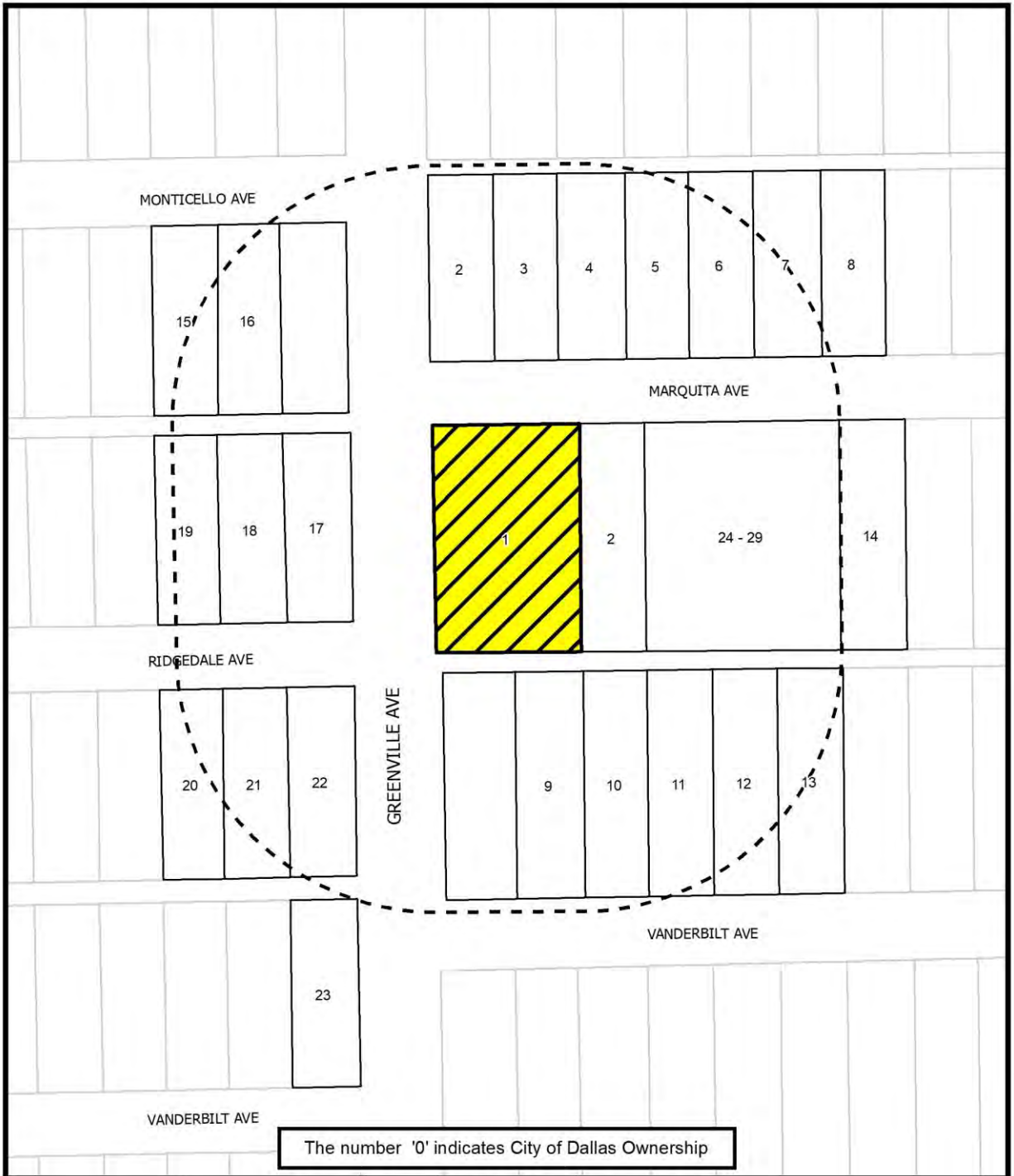


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AERIAL MAP

Case no: BDA190-090

Date: 10/1/2020




 1:1,200

NOTIFICATION

200' AREA OF NOTIFICATION
29 NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: BDA190-090
 Date: 10/1/2020

09/30/2020

Notification List of Property Owners

BDA190-090

29 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	3014 GREENVILLE AVE	SHIELDS LTD PS
2	5701 MARQUITA AVE	PASHA & SINA INC
3	5707 MARQUITA AVE	RENTZ BAILEY
4	5711 MARQUITA AVE	VAHDANI CHRISTOPHER &
5	5715 MARQUITA AVE	NUNNALLY HARVEY W III
6	5719 MARQUITA AVE	BOLGER DOROTHY E
7	5723 MARQUITA AVE	VELIS BILL D
8	5727 MARQUITA AVE	LAWSON CLIFFORD J & JANE G
9	5707 VANDERBILT AVE	OROZCO RICHARD & RUFINA
10	5711 VANDERBILT AVE	MOORE HARRY E & SAMMIE S
11	5715 VANDERBILT AVE	ANTHONY JOHN ROSS
12	5719 VANDERBILT AVE	MILLER EMILY
13	5723 VANDERBILT AVE	KALMBACH ERIC W
14	5726 MARQUITA AVE	O B A INC
15	5638 MONTICELLO AVE	BASU NEIL K
16	5642 MONTICELLO AVE	ASKEW ANTONINA M VENTURA
17	5647 RIDGEDALE AVE	BELL PHILIP
18	5643 RIDGEDALE AVE	KONKEL RICHARD ARTHUR
19	5639 RIDGEDALE AVE	BATTAGLIA SCOTT &
20	5640 RIDGEDALE AVE	BARNETT JAMES C
21	5642 RIDGEDALE AVE	PLATTS DOUGLAS &
22	5644 RIDGEDALE AVE	SCHUCK CORD BRITTON
23	5647 VANDERBILT AVE	SU STUART
24	5720 MARQUITA AVE	PATTON JEFF
25	5720 MARQUITA AVE	WILLINGHAM KIRK R
26	5720 MARQUITA AVE	BURKE GARY A

09/30/2020

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	5720 MARQUITA AVE	LOBO VINAY J
28	5720 MARQUITA AVE	BIRNBAUM MARC A &
29	5720 MARQUITA AVE	XOCHOTL LARA



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 190-090

Data Relative to Subject Property:

Date: 8/4/2020

Location address: 3016 Greenville Avenue, Dallas, TX 75206 Zoning District: CD-11

Lot No.: 11 Block No.: 2168 Acreage: 0.51 Census Tract: 0002.02

Street Frontage (in Feet): 1) 179.16 2) 124.00 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Shields Limited Partnership

Applicant: Thomas Shields Telephone: _____ 281-635-4250

Mailing Address: 418 E. Shore Drive, Kemah, TX Zip Code: 77565

E-mail Address: tom.shields@shields-lagniappe.com

Represented by: Steven Dimitt/Rob Baldwin Telephone: 214-559-2700

Mailing Address: 1201 N. Riverfront Blvd., Suite 150, Dallas, TX Zip Code: 75207

E-mail Address: sdimitt@pcrfirm.com / rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance __, or Special Exception X, of Section 5 of Ordinance 19726 regarding the termination of delta credits for parking and loading spaces that are terminated because a use is discontinued or vacant for 12 months.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: Owner can state an extereme circumstance that demonstrates that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more, including but not limited to, extensive renovations and remodeling of the property.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

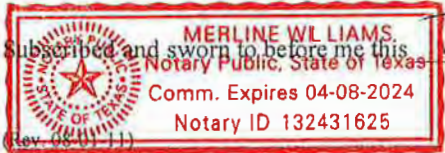
Affidavit

Before me the undersigned on this day personally appeared Thomas Shields

(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]
(Affiant/Applicant's signature)



Subscribed and sworn to before me this 3 day of August, 2020

[Signature]
Notary Public in and for Dallas County, Texas



CITY OF DALLAS

AFFIDAVIT

Appeal number: BDA 190-090

I, Shields Limited Partnership, Owner of the subject property
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 3016 Greenville Avenue, Dallas, Texas 75206
(Address of property as stated on application)

Authorize: Thomas Shields
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

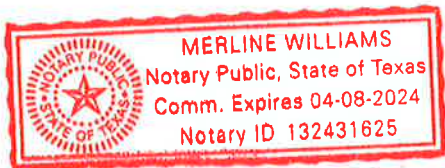
Special exception under Section 5 of Ordinance 19726 regarding the termination of delta credits for parking and loading spaces that are terminated because a use is discontinued or vacant for 12 months.

Shields Ltd. P.S./Thomas Shields Thomas Shields 8/3/2020
 Print name of property owner/agent Signature of property owner/agent Date

Before me, the undersigned, on this day personally appeared Thomas Shields

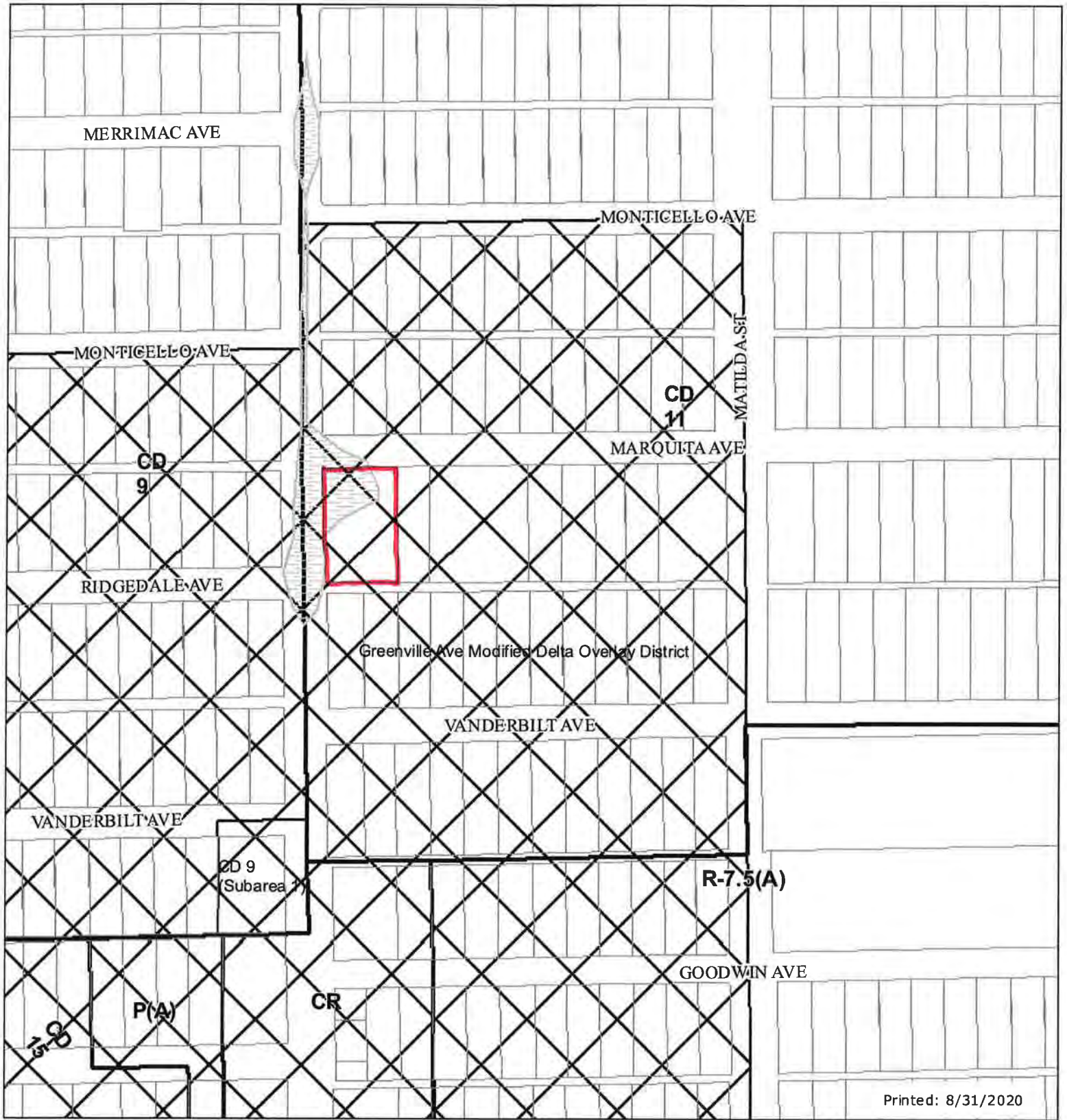
Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 3 day of August, 2020



Merline Williams
Notary Public for Dallas County, Texas

Commission expires on 04-08-2024



Printed: 8/31/2020

Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSD Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay |
| | | Height Map Overlay | |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





City of Dallas

Certificate of Occupancy

Address: 3016 GREENVILLE AVE 75206

Issued: 02/13/2020

Owner: BRIAN ODZER
3014 GREENVILLE AVE
DALLAS, TX 75206

DBA: UPTOWN DOG

Land Use: (5999) GEN MERCHANDISE OR FOOD STORE < 3500 SQ. FT.

Occupied Portion:

C.O.#: 2002061080

Lot:	11	Block:	2168	Zoning:	CD-11	PDD:	SUP:
Historic Dist:		Consv Dist:	M Streets F	Pro Park:	8	Req Park:	8
Dwlg Units:		Stories:		Occ Code:	M	Lot Area:	20620
Type Const:	UNK	Sprinkler:		Occ Load:		Alcohol:	N
						Dance Floor:	N
						Total Area:	1515

Remarks: SUBJECT TO FIELD INSPECTORS APPROVAL. RETAIL ONLY

Philip Sikes
Philip Sikes, Building Official

This certificate shall be displayed on the above premise at all times.



CITY OF DALLAS

July 14, 2020

CERTIFIED MAIL No. 7019 1640 0001 6327 1299

Brian Odzer

Uptown Dog Grooming, LLC
5135 Ridgedale Ave
Dallas, TX 75206

CERTIFIED MAIL No. 7019 1640 0001 6327 1305

Tom Shields

Shields Ltd. P.S.
418 E Shore Dr
Kemah, Texas 77565-2525

RE: Warning of revocation of Certificate of Occupancy No. 2002061080 for *general merchandise or food store 3,500 square feet or less* use at 3016 Greenville Avenue, Dallas, Texas 75206

Dear Mr. Odzer and Mr. Shields:

The above-referenced certificate of occupancy was approved based, in part, on compliance with off-street parking requirements which had been presumed to be met, in part, with eight delta credits. However, based upon the attached notice to vacate (Exhibit A), the use discontinued and the suite became vacant on or by September 30, 2017. Since the previous occupancy had been discontinued for more than 12 months by the time the above-referenced certificate of occupancy application was submitted on June 10, 2020, nine delta credits had been lost pursuant to Section 1 in Ordinance No. 22472 for the Modified Delta Overlay No. 1 (Exhibit B). Fortunately, this ordinance allows the owner to make an appeal to the Board of Adjustment for a special exception to the provision that terminates delta credits as described in the attached ordinance.

The above-referenced certificate of occupancy will be revoked unless one of the two following items are submitted by August 21, 2020:

1. An application to the Board of Adjustment for a special exception to reinstate the lost delta credits. Questions about the Board of Adjustments should be directed to Charles Trammell at 214-948-4618
2. A compliant plan to the building official to provide nine parking spaces with a remote parking agreement for the above-referenced certificate of occupancy. Questions about this process should be directed to Kim Haynie at 214-948-4625.



CITY OF DALLAS

Any determination made by the building official is final unless appealed before the 15th day after written notice of the action or determination is given in accordance with Section 306.15 of Chapter 52, "Administrative Procedures for the Construction Codes," and Section 51A-4.703 of the Dallas Development Code. Questions about the appeal process should be directed to the building official at 214-948-4625.

Sincerely,

A handwritten signature in cursive script that reads "Sarah May".

Sarah May
Chief Planner
Building Inspection
Sustainable Development and Construction Department

cc: Kris Sweckard, Director, Sustainable Development and Construction
Carl Simpson, Director, Code Compliance
David Session, CBO, Interim Building Official
Megan Wimer, CBO, Assistant Building Official
Tammy Palomino, Executive Assistant City Attorney
Casey Burgess, Executive Assistant City Attorney
Charles Trammell, Board of Adjustment Development Code Specialist
Kim Haynie, Development Project Coordinator

9/12/17

Dallas Beast Fitness
3016 Greenville Ave.
Dallas, TX 75203
Attn: Sandra Pittman, Lavell Roberson, and Jason Benjamin
Via email & USPS 1st class

Re: September Rent Default and Final Inspection Requirements

Dear Sandra, Lavell and Jason;

Notwithstanding your intent to vacate the premises at the end of the month, September rent is still due. Therefore, please see the notice of default below.

In addition, we need to arrange a time for a final inspection. Per Section 20 of the lease; you are required, among many other things; to deliver the premises in broom clean condition with all improvements located therein in good repair and condition, surrender all keys to the premises, and remove any unattached trade fixtures, furniture, and personal property placed in the premises.

Please advise as to the date and time you would like to meet for the final inspection.

Sincerely,

Tom Shields
Shields Ltd / Lagniappe LLC
(c) 281-635-4250

cc: Scott Covington (S.E. Covington & Co.)
Dylan Russell - Hoover Slovacek

2926 Maple & 3014 Greenville Managed by:
Lagniappe LLC
418 E. Shore Dr.
Clear Lake Shores, TX 77565
email: lagniappellc@earthlink.net

Building emergencies & maintenance requests:
(214)-261-5561

Property leasing/general inquiries:
SE Covington & Co
Suite 800
Houston, TX 77027
(713)-974-7600

NOTICE TO TENANT OF RENT DEFAULT

Date: September 12th, 2017

To: Dallas BEAST Fitness, LLC, Lavell Roberson, Sandra Pittman and Jason Benjamin

RE: Notice of Rent Default

Dear Lavell, Sandra and Jason;

This notice is in reference to the following described lease:

Shields Limited Partnership lease of 1,579 rentable square feet of retail space commonly known as 3016 Greenville Avenue Dallas, Texas 75206 to Dallas BEAST Fitness, LLC, Lavell Roberson, Sandra Pittman and Jason Benjamin (jointly and severally), as executed on June 25th, 2012.

We received your notice of intent to vacate the premises on 9/30/2017, however, per the terms of the lease September rent must still be paid. Therefore, as of September 12th, 2017 you are in **DEFAULT IN YOUR PAYMENT OF RENT**. The total amount due is **\$4,073.56** which includes a 5% late fee. Past due balances are also subjected to a 12% interest rate from the date due until paid. Please see the breakdown below:

Monthly Rent	\$3,289.58
CAM	\$590.00
sub-total	\$3,879.58
Late Fee (5%)	\$193.98
Total	\$4,073.56

If this breach of lease is not corrected within five (5) days of this notice, we will take further action to protect our rights. This notice is made under all applicable laws. All of our rights are reserved under this notice.

2926 Maple & 3014 Greenville Managed by:
Lagniappe LLC
418 E. Shore Dr.
Clear Lake Shores, TX 77565
email: lagniappellc@earthlink.net

Building emergencies & maintenance requests:
(214)-261-5561

Property leasing/general inquiries:
SE Covington & Co
Suite 800
Houston, TX 77027
(713)-974-7600

6-21-95

ORDINANCE NO. 22472

An ordinance amending Ordinance No. 19726, which established Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District); amending Section 5 of that ordinance; providing that the board of adjustment may not grant a special exception for required parking; providing an extension of the walking distance for remote parking; providing that more than 50 percent of required parking may consist of special parking; providing that the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, shall govern this district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council of the City of Dallas, in accordance with the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Ordinance No. 19726; and

WHEREAS, the city council finds that it is in the public interest to amend Modified Delta Overlay District No. 1 as specified in this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 5 of Ordinance No. 19726 is amended to read as follows:

"SECTION 5. 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~~state an extreme circumstance that demonstrates 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:

(a) A decline in the rental rates for the area which has affected the rental market.

(b) An unusual increase in the vacancy rates for the area which has affected the rental market.

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

SECTION 2. That a new Section 5A is added to Ordinance No. 19726 to read as follows:

"SECTION 5A. That the board of adjustment may not grant a special exception for required off-street parking in this district."

SECTION 3. That a new Section 5B is added to Ordinance No. 19726 to read as follows:

"SECTION 5B. That the walking distances contained in Paragraphs (1) and (2)(A) of Section 51A-4.324(d) of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, are extended to 600 and 900 feet, respectively, for remote parking in this district."

SECTION 4. That a new Section 5C is added to Ordinance No. 19726 to read as follows:

"SECTION 5C. That special parking, as defined in Section 51A-4.321 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, may account for more than 50 percent of the off-street parking required for any use."

SECTION 5. That a new Section 5D is added to Ordinance No. 19726 to read

22472

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as follows:

"SECTION 5D. That the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, govern this district."

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 7. That CHAPTERS 51 and 51A, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and Ordinance No. 19726 shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

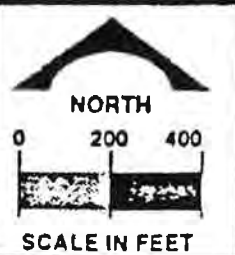
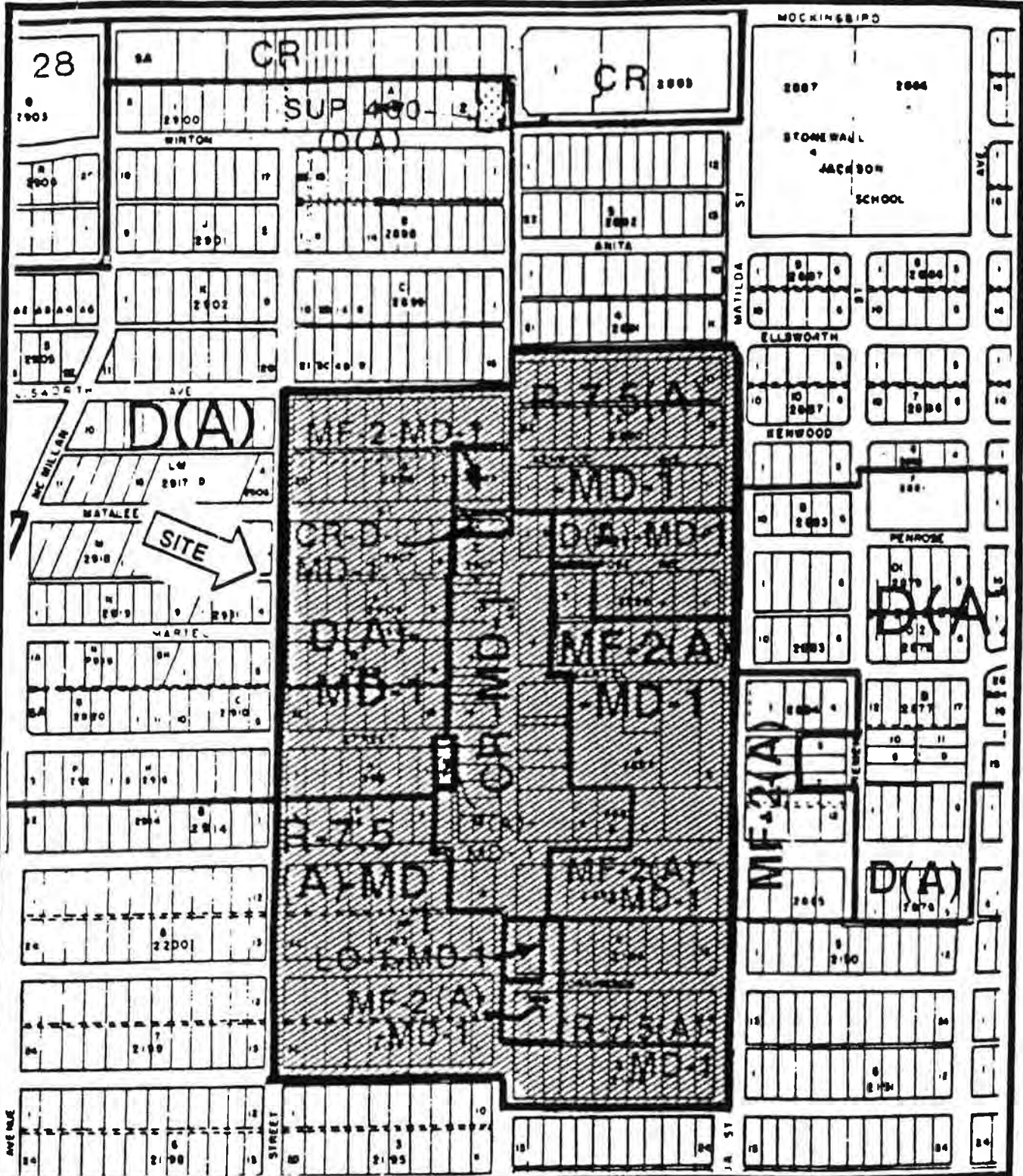
SAM A. LINDSAY, City Attorney

By 
Assistant City Attorney

JUN 28 1995

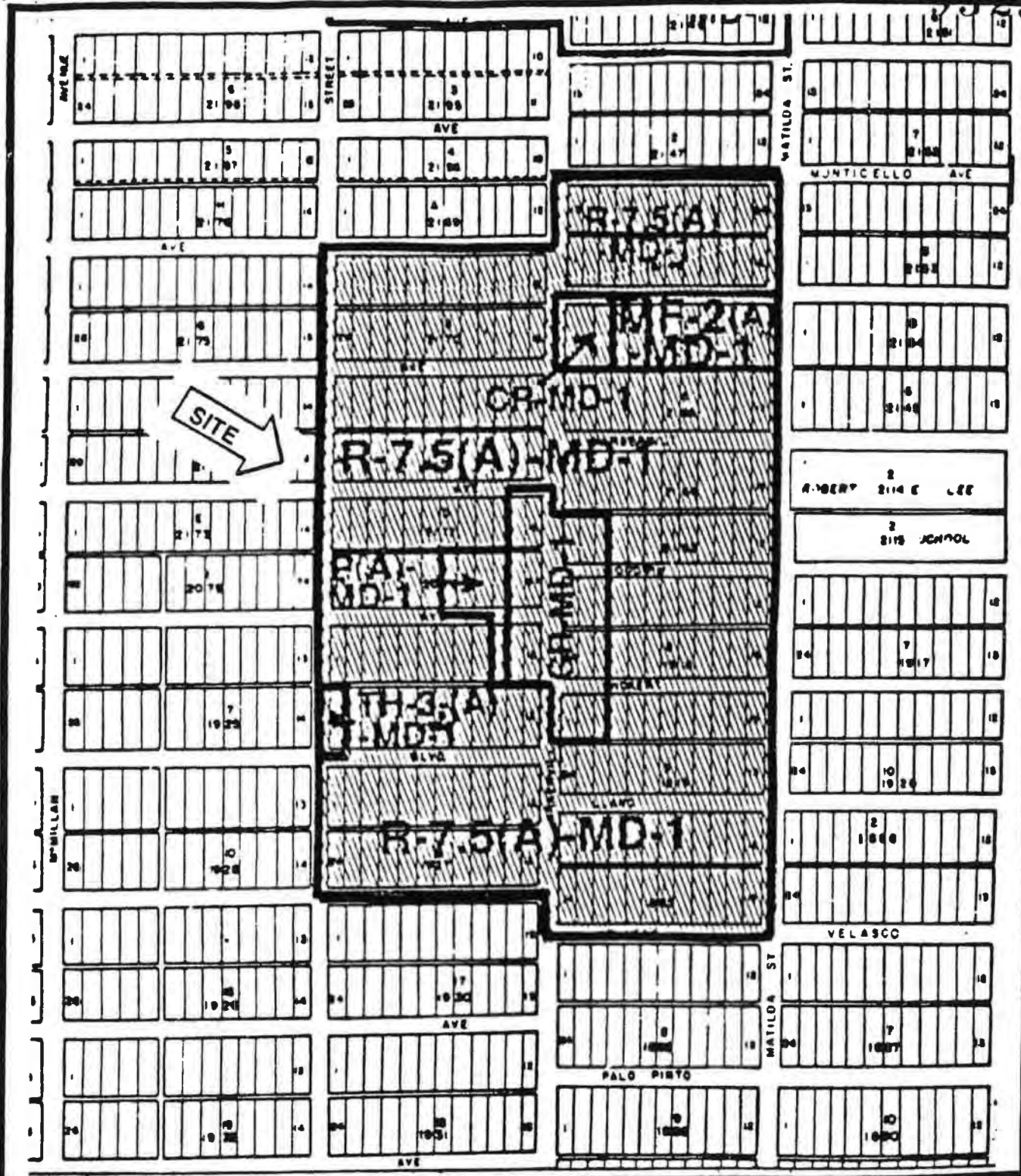
Passed _____

File No. Z945-206/6254-E



ZONING HISTORY
"AREA 1"

Map No. H-8, I-8
Case No. Z945-206/6254-E

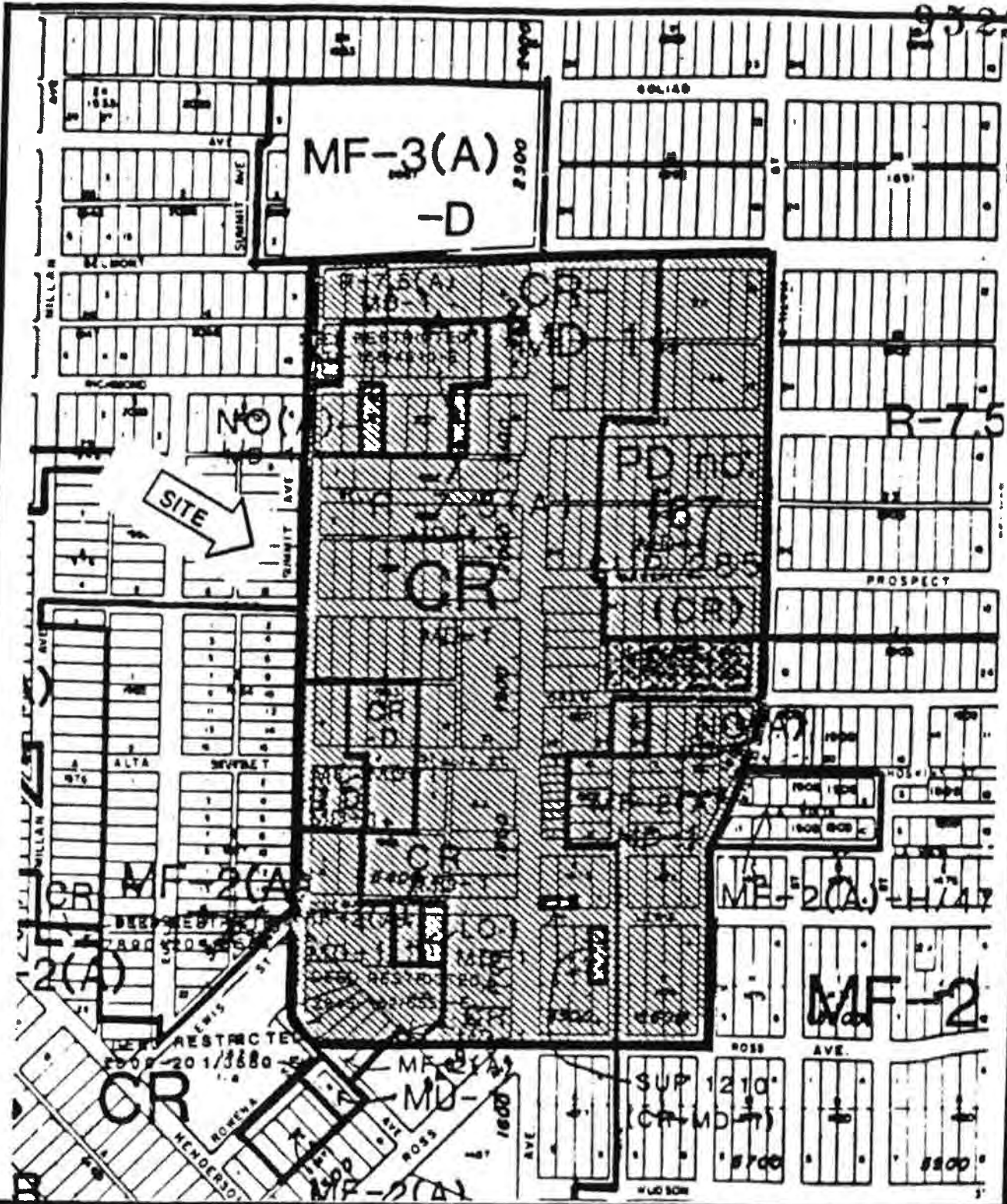


ZONING HISTORY

"AREA 2"

Map No. H-8, I-8
Case No. Z945-206/6254-E

252395



ZONING HISTORY
"AREA 3"

Map No. H-8, I-8

Case No. Z945-206/6254-E

3016 Greenville Avenue

Summary:

Below is a summary of the activities which demonstrate that the property owner, Shields Limited Partnership, did not intend to abandon the use even if the use was discontinued or remained vacant for 12 months or more. The 3016 Greenville Avenue space was continuously occupied by Dallas Beast Fitness from June 6, 2012 through September 30, 2017. Lease renewal negotiations began in May 2016; however, the tenant declined to sign a renewal, and became a month-to-month tenant as of November 1, 2016. They continued to occupy the space through September 30, 2017. The property owner has continuously worked to improve and renovate the building and this specific space since that time, which is evidenced in the timeline below:

1. Lease dated 6/20/12 to 8/14/16.
2. Email dated 5/16/16 to tenant with the amended lease.
3. Letter dated 11/1/16 notifying the tenant that they would now be considered month-to-month effective 11/1/16.
4. Email dated 9/1/17 from tenant notifying the landlord of intent to vacate the premises as of 9/30/17.
5. Proposal signed with +One Design/Construction on 12/5/2017 for building renovation.
6. Confirmation from Texas Dept. of Licensing and Regulation for ADA ramp portion of building renovation - 3/12/2018.
7. First drawings received from +One Design/Construction for building renovation - 3/29/18.
8. Construction permit for building renovation applied for on 4/26/18 (#1804261024).
9. Drawings for building renovation submitted to CD-11 on 7/10/18 for review (#CD18071003).

10. Construction permit for electrical work applied for and issued on 9/27/18 (#1809276015).
11. CD-11 review completed on 9/12/18. (#CD18071003)
12. Construction permit for building renovation issued by the City of Dallas on 10/8/18 (#1804261024).
13. Contract signed with Highland Builders, Inc. on 11/15/18.
14. Building demolition work commences in December 2018.
15. Construction was ongoing from December 2018 through approximately February 2020.
16. Submitted building permit for interior construction on January 23, 2019.
17. Submitted Conservation District Work Review Form to relocate electrical meter on April 2, 2019.
18. Submitted Conservation District Work Review Form for improvements to paving and sidewalk on June 5, 2019.
19. Submitted building permit for the installation of drive approach and city walk on June 5, 2019 with completion date of December 13, 2019.
20. Submitted building permit for interior remodel on October 25, 2019 with completion date of February 6, 2020.
21. Certificate of Occupancy issued for tenant Uptown Dog on February 6, 2020.

From: Kay, Kiesha <kiesha.kay@dallascityhall.com>
Sent: Tuesday, September 11, 2018 12:05 PM
To: Rob Baldwin <rob@baldwinplanning.com>
Subject: Re: 3014 Greenville

Rob,

Yes, this is correct.

Thank you,

Kiesha Kay

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From: Rob Baldwin <rob@baldwinplanning.com>
Sent: Tuesday, September 11, 2018 10:49:40 AM
To: Kay, Kiesha
Subject: 3014 Greenville

Good afternoon Kiesha

I am working with the owner of the property known as 3014 Greenville. We are processing building permits and a CA review to allow us to renovate this building. This building is in the Modified Delta District and we want to make sure that we do not lose our delta credits while we are going through the renovation process. Would you please confirm my understanding that if we have an active building permit in place and are regularly calling in our inspections, we will not lose our delta credits while we are under construction and while we are actively marketing the spaces for lease.

Thanks for your help.

Rob

Rob Baldwin
Baldwin Associates, LLC
(214) 729-7949
rob@baldwinplanning.com



CITY OF DALLAS

September 6, 2019

Michele Stoy
Baldwin Associates
3904 Elm Street, STE: B
Dallas, TX 75226

RE: Zoning Determination Request; 3014-3024 Greenville

Dear Ms. Stoy:

As detailed in your letter dated February 27, 2019 and attached, you have requested a written determination pertaining to the non-conforming rights, or "delta credits" for the property referenced above.

The above stated property is located within CD 11, the M Streets East Conservation District, and located within the MD-1 Overlay, Greenville Ave Modified Delta Overlay District (Tract 2). The MD-1 Overlay ordinance 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. Based on our research and the attached floor plan used to verify the floor area of each suite, information on the most recent certificate of occupancy and delta credits is provided for each address.

3014 Greenville Avenue - (5999) General merchandise, CO#1807251124, - 1,559 square feet - 8 delta credits.

3016 Greenville Avenue - (5999) General merchandise, CO#1207091020, - 1,707 square feet -9 delta credits.

3018 Greenville - (5999), General merchandise, CO#8111172414, - 1,526 square feet -8 delta credits.

3020 Greenville - (5811) Restaurant, CO#9702141024, - 3,913 square feet, 39 delta credits.

3024 Greenville - (5821) Alcohol Beverage Establishment, CO#1604221106, - 3,846 square, 9 spaces obtained via a parking agreement, 29 delta credits remaining.

Therefore, based on this research, the possible non-conforming parking rights afforded per Section 51A-4.704(b)(4)(A) of the Dallas Development code could be 93 delta credits.

The delta credits for this property need to be considered per tenant when located in the MD Overlay to verify if the deltas have been lost due to vacancy. Per the parking ordinance parking must be met for the entire site, but deltas may be allocated to a specific tenant due to an adjacent tenant losing their rights to delta credits.



CITY OF DALLAS

Please note that when a use is converted to a new use having lesser parking requirements, the rights to any portion of the nonconforming parking that is not needed to meet the new requirement are lost.

Also, per Sec.51A-4.704(b)(4)(A), 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 required off-street parking and loading spaces are provided.

This letter does not constitute a building permit or certificate of occupancy, nor does it imply that a building permit or certificate of occupancy will be approved without complying with all applicable rules and regulations. The City of Dallas does not provide letters certifying that a property or development complies with all applicable rules and regulations.

If you have any further questions, please contact me at 214-948-4501 or megan.wimer@dallascityhall.com.

Respectfully,

A handwritten signature in black ink that reads "megan wimer".

Megan Wimer, AICP, CBO
Assistant Building Official
Building Inspection Division

cc: Phil Sikes, CBO, Building Official

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 August 18 and 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. The zoning case is still pending and the applicant is seeking a new holdover.

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 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:
 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.

August 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.

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

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)

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

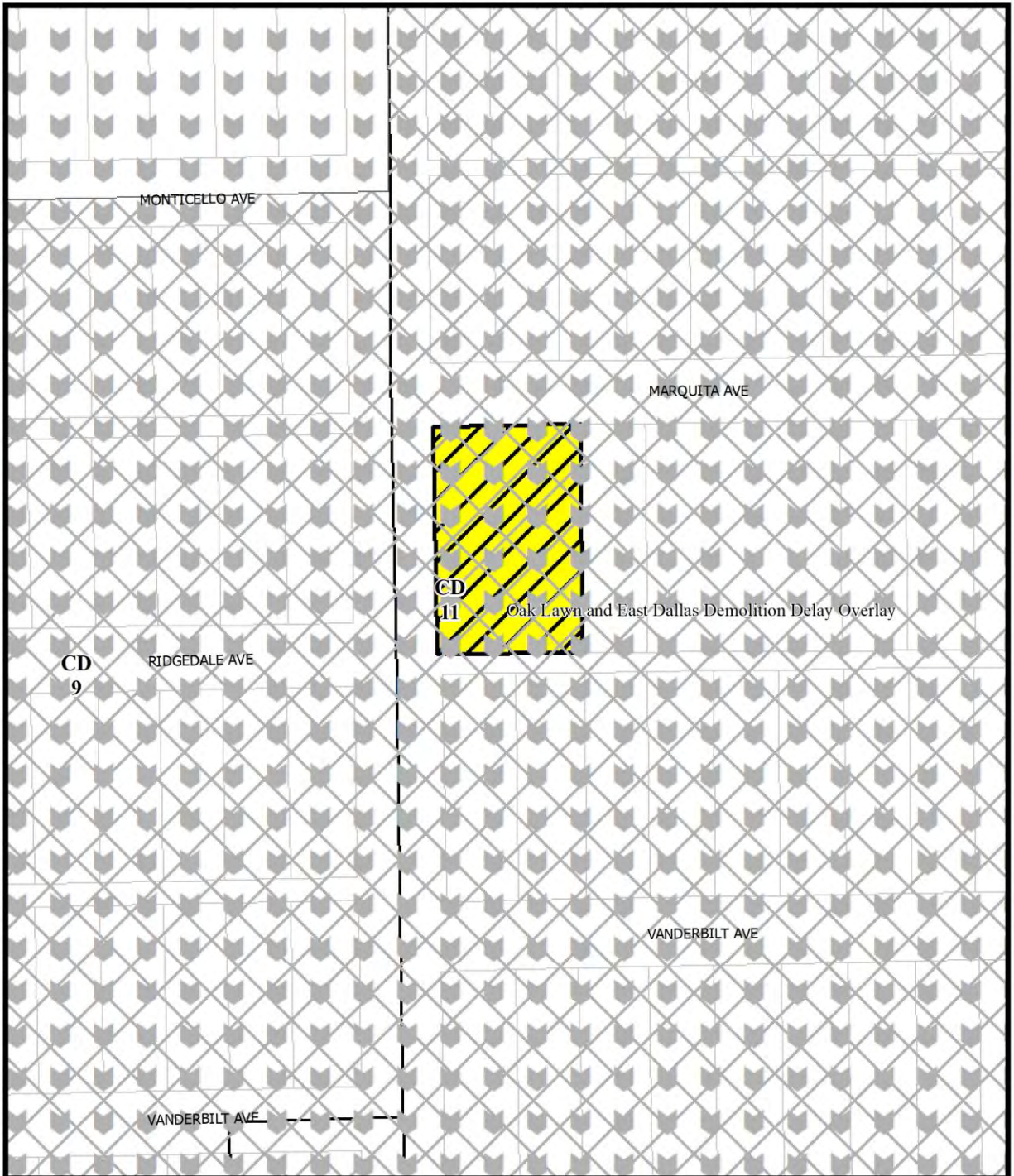
I move that the Board of Adjustment in Appeal No. BDA 190-091, **hold** this matter under advisement until **November 18, 2020**.

SECONDED: Williams

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

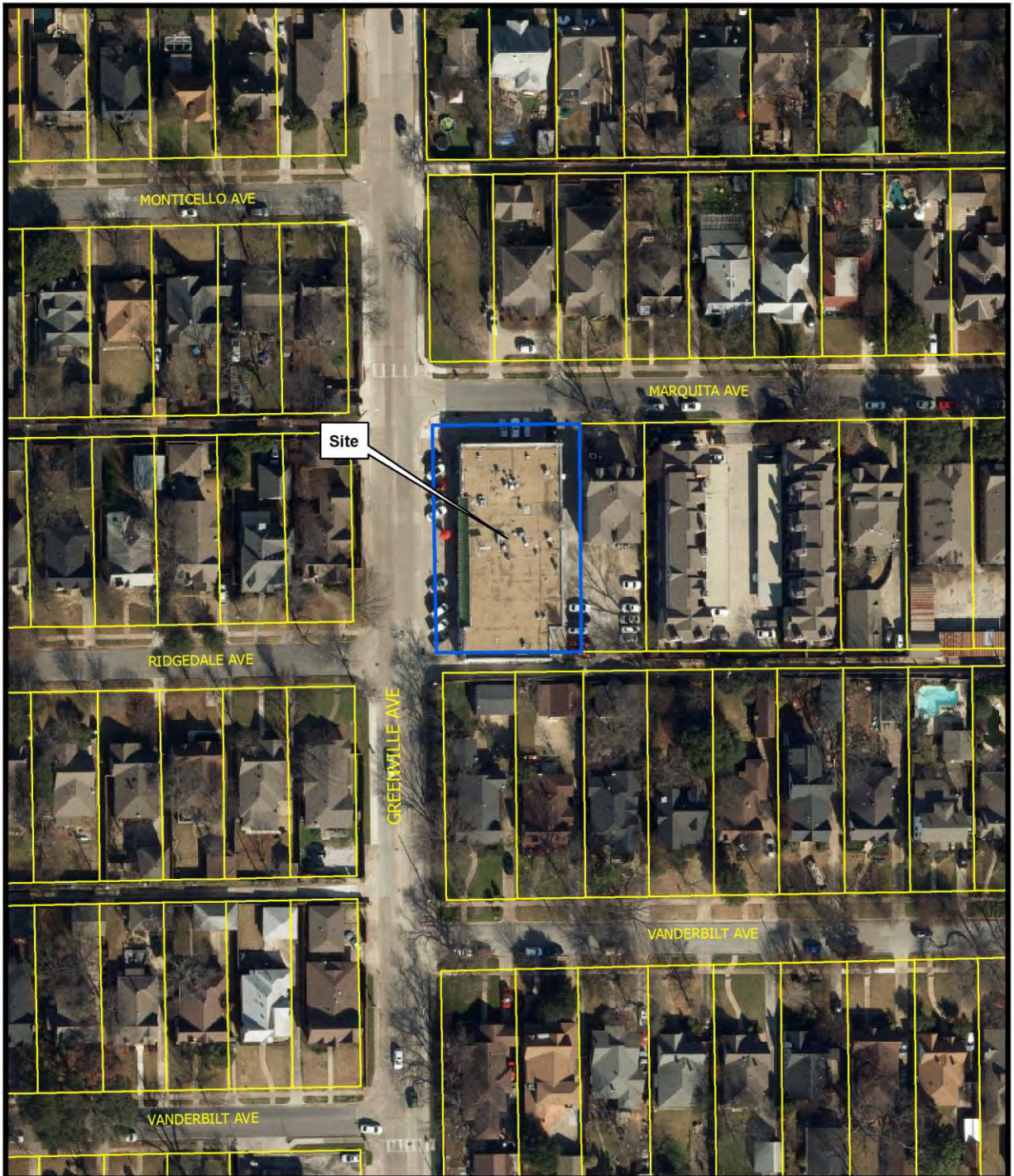


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ZONING MAP

Case no: BDA190-091

Date: 10/1/2020

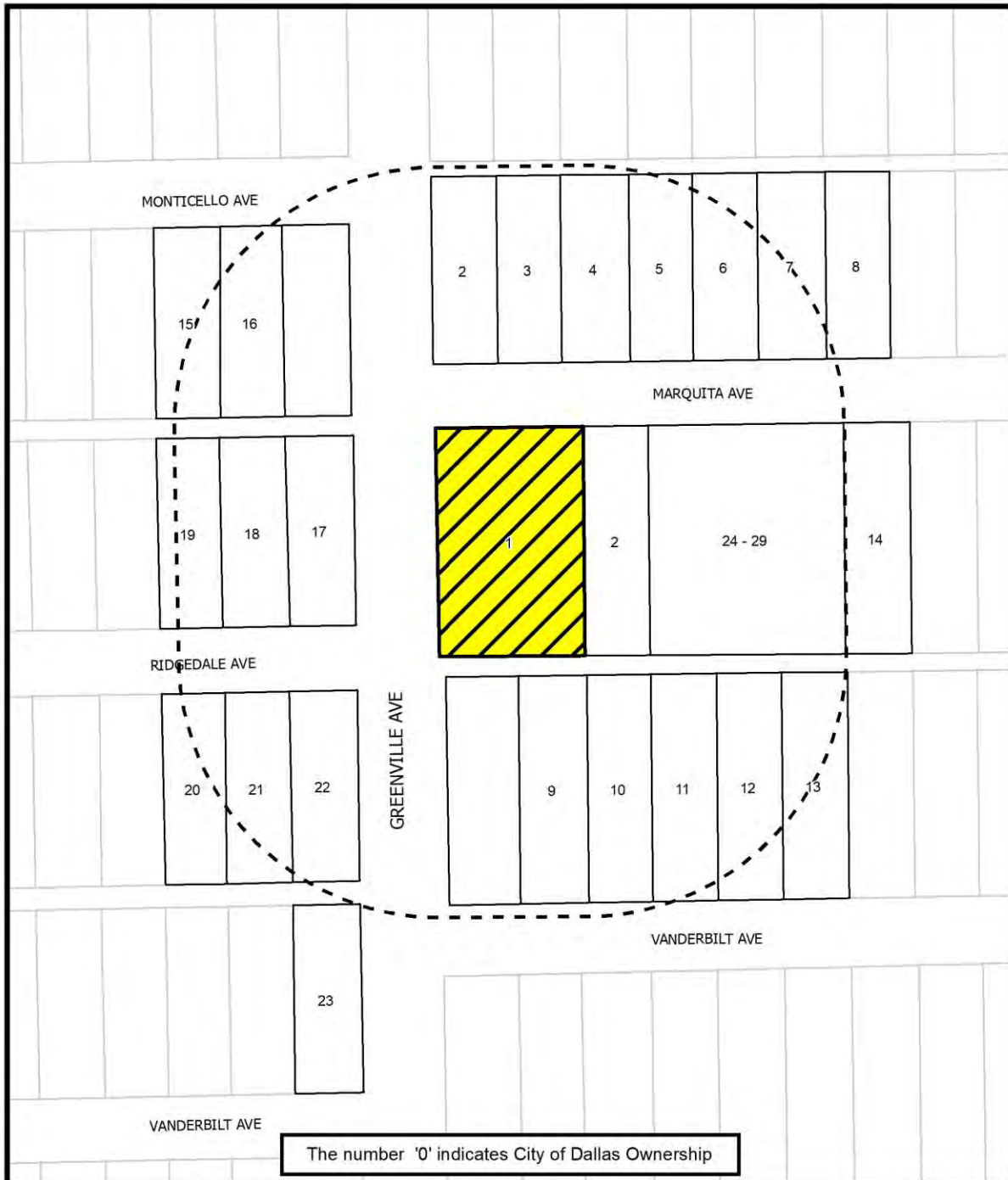


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AERIAL MAP

Case no: BDA190-091

Date: 10/1/2020



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NOTIFICATION

200'

AREA OF NOTIFICATION

29

NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA190-091**

Date: **10/1/2020**

09/30/2020

Notification List of Property Owners

BDA190-091

29 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	3014 GREENVILLE AVE	SHIELDS LTD PS
2	5701 MARQUITA AVE	PASHA & SINA INC
3	5707 MARQUITA AVE	RENTZ BAILEY
4	5711 MARQUITA AVE	VAHDANI CHRISTOPHER &
5	5715 MARQUITA AVE	NUNNALLY HARVEY W III
6	5719 MARQUITA AVE	BOLGER DOROTHY E
7	5723 MARQUITA AVE	VELIS BILL D
8	5727 MARQUITA AVE	LAWSON CLIFFORD J & JANE G
9	5707 VANDERBILT AVE	OROZCO RICHARD & RUFINA
10	5711 VANDERBILT AVE	MOORE HARRY E & SAMMIE S
11	5715 VANDERBILT AVE	ANTHONY JOHN ROSS
12	5719 VANDERBILT AVE	MILLER EMILY
13	5723 VANDERBILT AVE	KALMBACH ERIC W
14	5726 MARQUITA AVE	O B A INC
15	5638 MONTICELLO AVE	BASU NEIL K
16	5642 MONTICELLO AVE	ASKEW ANTONINA M VENTURA
17	5647 RIDGEDALE AVE	BELL PHILIP
18	5643 RIDGEDALE AVE	KONKEL RICHARD ARTHUR
19	5639 RIDGEDALE AVE	BATTAGLIA SCOTT &
20	5640 RIDGEDALE AVE	BARNETT JAMES C
21	5642 RIDGEDALE AVE	PLATTS DOUGLAS &
22	5644 RIDGEDALE AVE	SCHUCK CORD BRITTON
23	5647 VANDERBILT AVE	SU STUART
24	5720 MARQUITA AVE	PATTON JEFF
25	5720 MARQUITA AVE	WILLINGHAM KIRK R
26	5720 MARQUITA AVE	BURKE GARY A

09/30/2020

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	5720 MARQUITA AVE	LOBO VINAY J
28	5720 MARQUITA AVE	BIRNBAUM MARC A &
29	5720 MARQUITA AVE	XOCHOTL LARA



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 190-091

Data Relative to Subject Property:

Date: 8/4/2020

Location address: 3018 Greenville Avenue, Dallas, TX 75206 Zoning District: CD-11

Lot No.: 11 Block No.: 2168 Acreage: 0.51 Census Tract: 0002.02

Street Frontage (in Feet): 1) 179.16 2) 124.00 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Shields Limited Partnership

Applicant: Thomas Shields Telephone: 281-635-4250

Mailing Address: 418 E. Shore Drive, Kemah, TX Zip Code: 77565

E-mail Address: tom.shields@shields-lagniappe.com

Represented by: Steven Dimitt/Rob Baldwin Telephone: 214-559-2700

Mailing Address: 1201 N. Riverfront Blvd., Suite 150, Dallas, TX Zip Code: 75207

E-mail Address: sdimitt@pcrfirm.com / rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance __, or Special Exception X, of Section 5 of Ordinance 19726 regarding the termination of delta credits for parking and loading spaces that are terminated because a use is discontinued or vacant for 12 months.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: Owner can state an extereme circumstance that demonstrates that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more, including but not limited to, extensive renovations and remodeling of the property.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

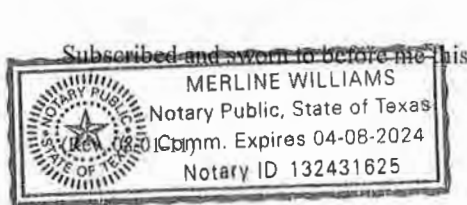
Affidavit

Before me the undersigned on this day personally appeared Thomas Shields

(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]
(Affiant/Applicant's signature)



3 day of August, 2020
[Signature]
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that THOMAS SHIELDS
represented by Steven Dimitt
did submit a request to restore lost delta credits
at 3018 Greenville Avenue

BDA190-091. Application of THOMAS SHIELDS represented by Steven Dimitt to restore delta parking credits at 3018 GREENVILLE AVE. This property is more fully described as Lot 11, Block 2168, and is zoned CD-11(MD-1), which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The board may grant a special exception to this provision only if the owner can demonstrate there was not an intent to abandon the use. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay-1 regulation.

Sincerely,


David Session, Building Official



AFFIDAVIT

Appeal number: BDA 190-091

I, Shields Limited Partnership, Owner of the subject property
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 3018 Greenville Avenue, Dallas, Texas 75206
(Address of property as stated on application)

Authorize: Thomas Shields
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

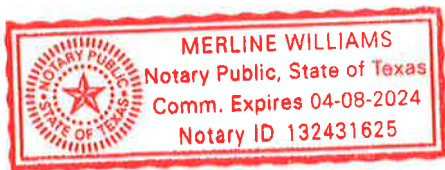
Special exception under Section 5 of Ordinance 19726 regarding the termination of delta credits for parking and loading spaces that are terminated because a use is discontinued or vacant for 12 months.

Shields Ltd. P.S./Thomas Shields Thomas Shields 8/3/2020
Print name of property owner/agent Signature of property owner/agent Date

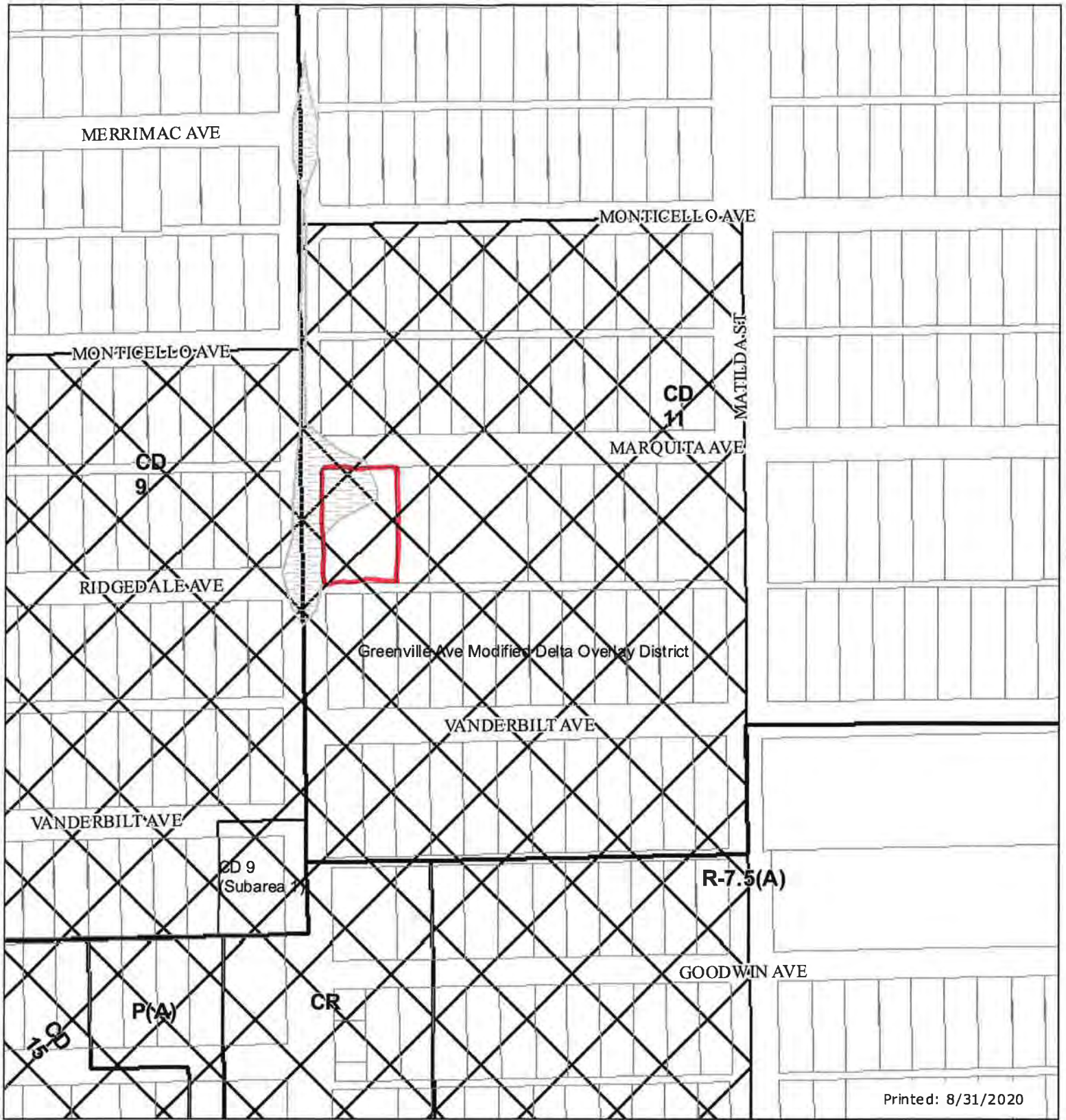
Before me, the undersigned, on this day personally appeared Thomas Shields

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 3 day of August, 2020



[Signature]
Notary Public for Dallas County, Texas
Commission expires on 04-08-2024



Printed: 8/31/2020

Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSP Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay |
| | | Height Map Overlay | 27-4 |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





City of Dallas

Certificate of Occupancy

Address: 3018 GREENVILLE AVE 75206

Issued: 03/03/2020

Owner: SHIELDS LTD. P.S.
3040 GREENVILLE AVE
DALLAS, TX 75206

DBA: WINDOW SEAT

Land Use: (5811) RESTAURANT WITHOUT DRIVE-IN SERVICE

Occupied Portion:

C.O.#: 1906071094

Lot:	11	Block:	2168	Zoning:	CD-11	PDD:	SUP:
Historic Dist:		Consrv Dist:	M Streets E	Pro Park:	109	Req Park:	109
Dwlg Units:		Stories:	1	Occ Code:	B	Lot Area:	20620
Type Const:	IIIB	Sprinkler:	None	Occ Load:		Alcohol:	N
						Dance Floor:	N
						Total Area:	1435

Remarks: ALL WORK SUBJECT TO FIELD INSPECTOR APPROVAL. PARKING IS FOR THE ENTIRE SITE. 2 DELTA CREDITS HAVE BEEN LOST. PARKING AGREEMENT EXCEEDED THE NUMBER OF PARKING REQUIRED BY TWO SPACES. 3018 GREENVILLE AVE ONLY RETAINS 6 DELTA CREDITS MOVING FORWARD. 10/11/19 KH NO EXTERIOR HAS BEEN APPROVED. KH

Philip Sikes
Philip Sikes, Building Official

This certificate shall be displayed on the above premise at all times.



CITY OF DALLAS

July 14, 2020

CERTIFIED MAIL No. 7019 1640 0001 6327 1312

Drew M. Martin

PO Box 470007

Fort Worth, Texas 76147

CERTIFIED MAIL No. 7019 1640 0001 6327 1305

Tom Shields

Shields Ltd. P.S.

418 E Shore Dr

Kemah, Texas 77565-2525

RE: Revocation of Certificate of Occupancy No. 1906071094 for a *Restaurant Without Drive-In or Drive-Through Service* use at 3018 Greenville Avenue, Dallas, Texas 75206

Dear Mr. Martin and Mr. Shields:

The above-referenced certificate of occupancy was approved based, in part, on compliance with off-street parking requirements which had been presumed to be met, in part, with eight delta credits. However, because the above application was to convert from a *general merchandise or food store 3,500 square feet or less* use to a *restaurant without drive-in or drive-through service* use, which has a greater parking requirement, rights to any nonconforming parking cannot be used to meet parking requirements pursuant to Section 3 of Ordinance No. 19726 for the Modified Delta Overlay No. 1 (Exhibit A).

The building official is required to revoke a certificate of occupancy if the building official determines that the use or occupancy authorized by the certificate of occupancy has been issued in error.¹ Therefore, the above-referenced certificate of occupancy is hereby revoked.

Further, based upon the attached noticed to vacate (Exhibit B), the use discontinued and the suite became vacant on or by November 30, 2017. Since the previous use had been discontinued for more than 12 months by the time the above-referenced certificate of occupancy application was submitted on June 7, 2019, eight delta credits for the previous occupancy had been lost pursuant to Section 1 of Ordinance No. 22472 for the Modified Delta Overlay No. 1 (Exhibit C). Fortunately, this ordinance allows the owner to make an appeal to the Board of Adjustment for a special exception to the provision that terminates delta credits as described in the attached ordinance.

¹ Section 306.13(1) of Chapter 52, "Administrative Procedures for the Construction Codes."



CITY OF DALLAS

Any determination made by the building official is final unless appealed before the 15th day after written notice of the action or determination is given in accordance with Section 306.15 of Chapter 52 and Section 51A-4.703 of the Dallas Development Code. Questions about the appeal process should be directed to the building official at 214-948-4625 and questions about the Board of Adjustments should be directed to Charles Trammell at 214-948-4618.

Sincerely,

A handwritten signature in cursive script that reads "Sarah May".

Sarah May
Chief Planner
Building Inspection
Sustainable Development and Construction Department

cc: Kris Sweckard, Director, Sustainable Development and Construction
Carl Simpson, Director, Code Compliance
David Session, CBO, Interim Building Official
Megan Wimer, CBO, Assistant Building Official
Tammy Palomino, Executive Assistant City Attorney
Casey Burgess, Executive Assistant City Attorney
Charles Trammell, Board of Adjustment Development Code Specialist
Kim Haynie, Development Project Coordinator

10/21/87

ORDINANCE NO. 19726

An ordinance amending CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; establishing Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) for the following described property, to wit:

Tract I is generally located south of Ellsworth Avenue, west of Matilda Street, north of Mercedes Avenue and east of Worcola Street.

Tract II is generally located south of Monticello Avenue, west of Matilda Street, north of Velasco Avenue and east of Worcola Street.

Tract III is generally located south of Belmont Avenue, west of Matilda Street, north of Ross Avenue and east of Summit Avenue;

providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the provisions of the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Article IV, "Zoning Regulations," of CHAPTER 51, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

1

CHECKED BY

JCX

19726

SECTION 1. That CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, is amended by establishing Modified Delta Overlay District No. 1 ("this district") on the following described Property, to-wit:

Tract I: Being all of City Block B/2906 bounded by Ellsworth Avenue, Greenville Avenue, Matalee Street and Worcola Street; all of City Blocks C/2907, E/2907 and A/2908 bounded by Matalee Street, Greenville Avenue, Martel Avenue and Worcola Street; all of City Block B/2909 bounded by Martel Avenue, Greenville Avenue, Longview Street and Worcola Street; all of City Blocks H/2912 and A/2913 bounded by Longview Street, Greenville Avenue, McCommas Boulevard and Worcola Street; all of City Block 1/2193 bounded by McCommas Boulevard, Greenville Avenue, Morningside Avenue and Worcola Street; all of City Block 2/2194 bounded by Morningside Avenue, Greenville Avenue, Mercedes Avenue, and Worcola Street; all of City Block 3/2890 bounded by Ellsworth Avenue, Matilda Street, Kenwood Avenue and Greenville Avenue; all of City Block 2/2889 bounded by Kenwood Avenue, Matilda Street, Penrose Avenue and Greenville Avenue; all of City Block 1/2888 bounded by Penrose Avenue, Matilda Street, Martel Street and Greenville Avenue; all of City Blocks A/2894 and 2895 bounded by Martel Avenue, Matilda Street, McCommas Boulevard and Greenville Avenue; all of City Blocks 2896 and 4/2149 bounded by McCommas Boulevard, Matilda Street, Morningside Avenue and Greenville Avenue; and all of City Block 3/2148 bounded by Morningside Avenue, Matilda Street, Mercedes Avenue and Greenville Avenue.

Tract II: Being all of City Block B/2170 bounded by Monticello Avenue, Greenville Avenue, Ridgedale Avenue and Worcola Street; all of City Block C/2171 bounded by Ridgedale Avenue, Greenville Avenue, Vanderbilt Avenue and Worcola Street; all of City Blocks D/2172 and 1/2076 bounded by Vanderbilt Avenue, Greenville Avenue, Goodwin Avenue and Worcola Street; all of City Block 8/1926 bounded by Goodwin Avenue, Greenville Avenue, Vickery Boulevard and Worcola Street; all of City Block 9/1927 bounded by Vickery Boulevard, Greenville Avenue, Miller Avenue and Worcola Street; all of City Block 1/2146 bounded by Monticello Avenue, Matilda Street, Marquita Avenue, and Greenville Avenue; all of City Blocks 1/2168 and 5/2166 bounded by Marquita Avenue, Matilda Street, Vanderbilt Avenue and Greenville Avenue; all of City Blocks 1/2164 and 1/2162 bounded by Vanderbilt Avenue, Matilda Street, Goodwin Street and Greenville Avenue; all of City Block 8/1918 bounded by Goodwin

19726

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Avenue, Matilda Street, Vickery Boulevard and Greenville Avenue; all of City Block 9/1919 bounded by Vickery Boulevard, Matilda Street, Llano Street and Greenville Avenue; and all of City Block 1/1885 bounded by Llano Street, Matilda Street, Velasco Avenue and Greenville Avenue.

Tract III:

Being all of City Block 8/2012 bounded by Belmont Avenue, Greenville Avenue, Richmond Avenue, and Summit Avenue; all of City Block 7/2071 and part of City Block 1982 bounded by Richmond Avenue, Greenville Avenue, Bell Avenue and Summit Avenue; part of City Block 1982 and all of City Block D/1982 bounded by Bell Avenue, Greenville Avenue, Sears Street and Summit Avenue; all of City Block C/1983 bounded by Sears Street, Greenville Avenue, Alta Street and Summit Avenue; all of City Block B/1988 bounded by Alta Street, Greenville Avenue, Lewis Street and Summit Avenue, part of City Block 1472 bounded by Lewis Street, Greenville Avenue, Ross Avenue and the westward prolongation of the centerline of Ross Avenue from Greenville Avenue to Summit Avenue, and Summit Avenue; all of City Block 17/1901 bounded by Belmont Avenue, Matilda Street, Richmond Street and Greenville Avenue; all of City Block 24/1904 bounded by Richmond Avenue, Matilda Street, Prospect Avenue and Greenville Avenue; all of City Block 1/1905 bounded by Prospect Avenue, Matilda Street, Oram Street and Greenville Avenue; all of City Block 1907 and part of City Block 1908 bounded by Oram Street, Matilda Street, LaVista Street and Greenville Avenue, all of City Blocks A/1473 and B/1474 bounded by LaVista Street, Matilda Street, Lewis Street and Greenville Avenue; and all of City Blocks F/1473 and G/1474 bounded by Lewis Street, Matilda Street, Ross Avenue and Greenville Avenue.

SECTION 2. That no nonconforming parking spaces may be carried forward by a use under the delta theory, as defined in Section 51-4.704 of CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, when a use located in this district is expanded.

SECTION 3. That when a use located in this district is converted to a new use having greater parking or loading requirements, the rights to any nonconforming parking or

loading under the delta theory may not be used to meet the new parking requirements.

SECTION 4. That when a use located in this district is converted to a new use having lesser parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.

SECTION 5. 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 state an extreme circumstance that demonstrates that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more.

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 7. That CHAPTER 51 of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

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SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

ANALES LIE MUNCY, City Attorney

BY *Agnes M. Alder Steiner*
Assistant City Attorney

Passed and correctly enrolled OCT 21 1987

Zoning File No. Z867-228/6254-E

5623I

HOOVER SLOVACEK LLP

A REGISTERED LIMITED LIABILITY PARTNERSHIP

JOSEPH O. SLOVACEK, P.C.
PARTNER

slovacek@hooverslovacek.com
www.hooverslovacek.com

ATTORNEYS AT LAW
GALLERIA TOWER II
5051 WESTHEIMER, SUITE 1200
HOUSTON, TEXAS 77056
(713) 977-8686
FAX (713) 977-5395

REPLY TO:
P.O. BOX 4547
HOUSTON, TEXAS 77210

October 3, 2017

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc.

Attn: Harry E. Demarco, its President and Registered Agent
3018 Greenville Avenue
Dallas, Texas 75206

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc. and any and all occupants
3018 Greenville Avenue
Dallas, Texas 75206

RE: Month-to-Month Tenancy related to a certain Lease Agreement dated April 28, 1992 (the "Lease"), by and between SHIELDS LIMITED PARTNERSHIP, as successor-in-interest to Bernard E. Shields, a Texas limited partnership (the "Landlord"), and H.D.'S, INC., a Texas corporation (the "Tenant"), covering certain premises as further described within the Lease and commonly known as 3018 Greenville Avenue, Dallas, Texas 75206 (the "Premises")

Dear H.D.'s, Inc. and Any and All Occupants of the Premises:

Please be advised that the undersigned attorney and law firm represent Landlord with respect to the above-referenced matter. Capitalized terms used, but not defined, herein shall have the same meaning as in the Lease. Effective immediately, all communications regarding the matters addressed herein should be directed to me.

As Tenant is aware, the Lease expired by its own terms and Tenant has been occupying the Premises on a month-to-month basis. The purpose of this letter is to notify Tenant that Landlord is exercising its right, under Texas law, to terminate Tenant's month-to-month tenancy and Tenant's right to occupy the Premises **effective November 30, 2017** (the "Termination Date"). Tenant is expected to fulfill all rental obligations for the months of both October and November 2017 as well as return the Premises to Landlord in a clean and rentable condition on or before the Termination Date. Tenant will be responsible for any and all damages done to the

Premises above and beyond normal wear and tear or as otherwise required under the Lease and Texas law.

Tenant and all occupants are hereby given written notice to vacate the Premises. Unless Tenant and all occupants have vacated the Premises **on or before November 30, 2017**, Landlord fully intends to file suit to evict any and all parties in possession of the Premises. In addition, the Landlord intends to file suit against Tenant and any other parties liable under the Lease, if any, for collection of all delinquent amounts, interest, late fees, attorneys' fees, and any other damages and amounts due under the Lease and in connection with the month-to-month tenancy.

Any delay or postponement of any of Landlord's actions shall not constitute a waiver. This letter should not be interpreted by Tenant as an election of remedies. Landlord reserves and preserves all rights and remedies available to it pursuant to the Lease and as otherwise granted by Texas law. Additionally, this letter shall not constitute a waiver of any other Tenant default that might exist at the present.

This letter is being sent to Tenant in accordance with the notice provisions of the Lease and the requirements of Texas law. No further communication will necessarily be sent to Tenant from Landlord or from this law firm prior to the time that suit is instituted in the event that Tenant and any and all occupants fail to vacate the Premises by the Termination Date indicated herein.

Sincerely yours,

HOOVER SLOVACEK LLP

Joseph O. Slovacek

JOS:AJB

bcc: client (via email)

6-21-95

ORDINANCE NO. 22472

An ordinance amending Ordinance No. 19726, which established Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District); amending Section 5 of that ordinance; providing that the board of adjustment may not grant a special exception for required parking; providing an extension of the walking distance for remote parking; providing that more than 50 percent of required parking may consist of special parking; providing that the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, shall govern this district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council of the City of Dallas, in accordance with the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Ordinance No. 19726; and

WHEREAS, the city council finds that it is in the public interest to amend Modified Delta Overlay District No. 1 as specified in this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 5 of Ordinance No. 19726 is amended to read as follows:

"SECTION 5. That the right to carry forward nonconforming parking and loading

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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~~[state an extreme circumstance that demonstrates]~~ 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:

(a) A decline in the rental rates for the area which has affected the rental market.

(b) An unusual increase in the vacancy rates for the area which has affected the rental market.

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

SECTION 2. That a new Section 5A is added to Ordinance No. 19726 to read as follows:

"SECTION 5A. That the board of adjustment may not grant a special exception for required off-street parking in this district."

SECTION 3. That a new Section 5B is added to Ordinance No. 19726 to read as follows:

"SECTION 5B. That the walking distances contained in Paragraphs (1) and (2)(A) of Section 51A-4.324(d) of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, are extended to 600 and 900 feet, respectively, for remote parking in this district."

SECTION 4. That a new Section 5C is added to Ordinance No. 19726 to read as follows:

"SECTION 5C. That special parking, as defined in Section 51A-4.321 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, may account for more than 50 percent of the off-street parking required for any use."

SECTION 5. That a new Section 5D is added to Ordinance No. 19726 to read

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as follows:

"SECTION 5D. That the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, govern this district."

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

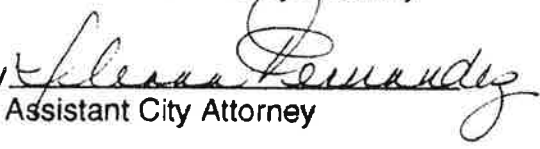
SECTION 7. That CHAPTERS 51 and 51A, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and Ordinance No. 19726 shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

SAM A. LINDSAY, City Attorney

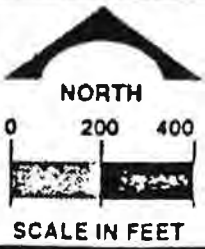
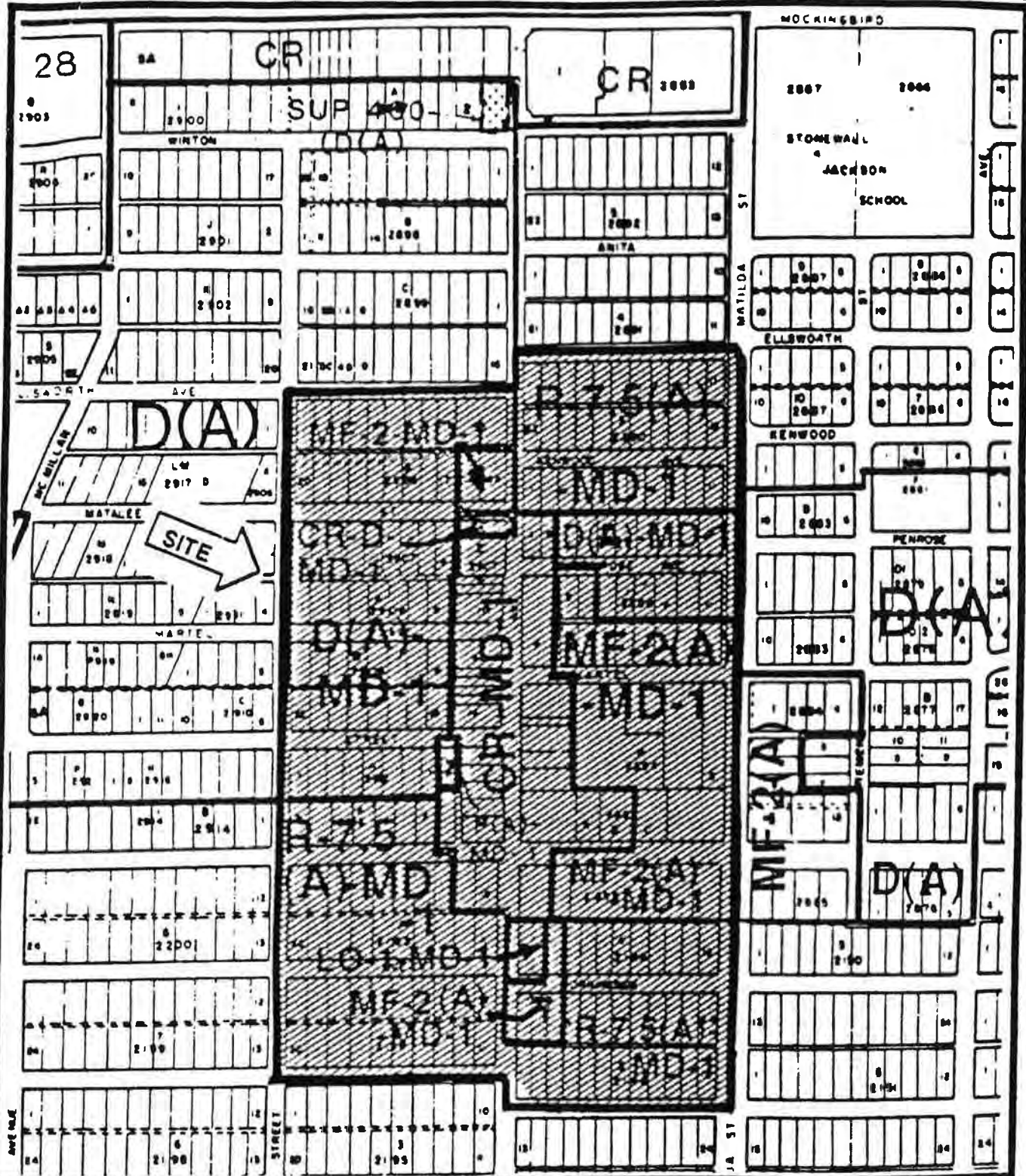
By 
Assistant City Attorney

JUN 28 1995

Passed _____

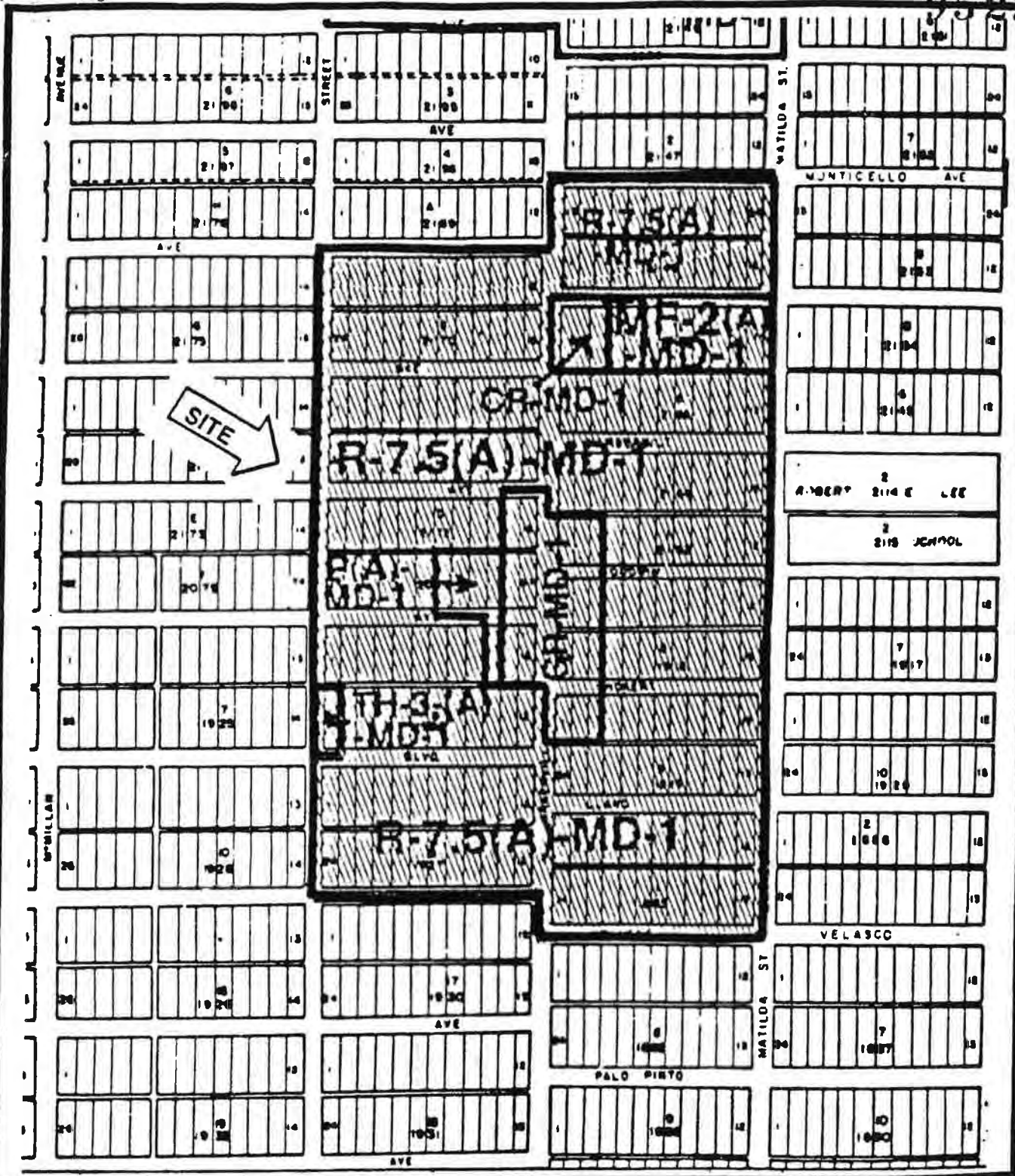
File No. Z945-206/6254-E

952395



ZONING HISTORY
"AREA 1"

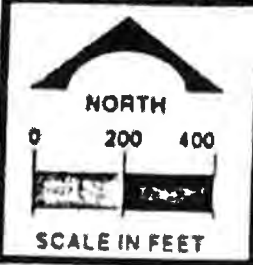
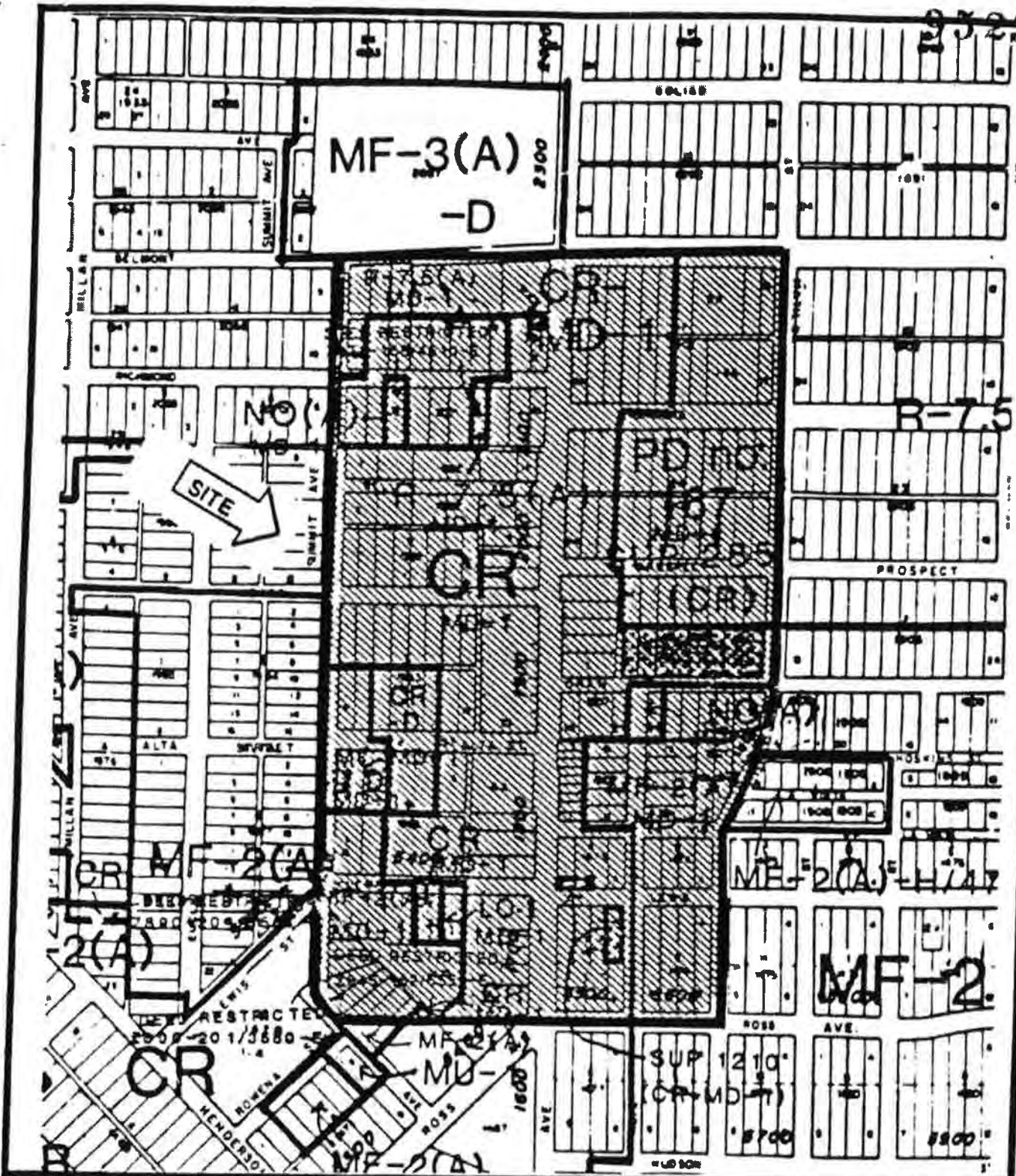
Map No. H-8, I-8
Case No. Z945-206/6254-E



ZONING HISTORY
"AREA 2"

Map No. H-8, I-8
Case No. Z945-206/6254-E

23295



ZONING HISTORY
"AREA 3"

Map No. H-8, I-8
Case No. Z945-206/6254-E

ATTACHMENT A
BDA190-091

3018 Greenville Avenue

Summary:

Below is a summary of the activities which demonstrate that the property owner, Shields Limited Partnership, did not intend to abandon the use even if the use was discontinued or remained vacant for 12 months or more. The 3018 Greenville Avenue space was continuously occupied by H.D. Men's Clothing from November 1981 to November 30, 2017. The lessees were Harry & Vicki Demarco. The lease expired on April 30, 1995 and the tenant continued to occupy the premises on a month-to-month basis and refused to negotiate a new lease. On October 30, 2017, the property owner exercised its right to terminate the month-to-month tenancy effective November 30, 2017, and a notice to vacate was sent to the tenant by the landlord's attorney. The tenant complied and vacated the space on or about November 30, 2017. The property owner has continuously worked to improve and renovate the building and this specific space since that time, which is evidenced in the timeline below:

1. Lease dated 5/1/1992 to 4/30/1995. The lease expired in 1995, and the tenant continued on a month-to-month basis until November 30th, 2017. We do not have any older documents as the business was operated by our father and managed by Bill Lindsley of J.W Lindsley Co., Inc., both now deceased.
2. Notice to vacate letter from landlord's attorney sent on 10/03/17.
3. Email sent to landlord on 11/24/17 by Vicki Demarco confirming they would be out by November 30th, 2017.
4. News article from the Lakewood Observer dated 11/15/2017 confirming "H.D.'s Clothing Company, a men's and women's boutique that occupied two of the spaces at the strip, is

moving after 37 years.” This demonstrates that this single tenant continuously occupied the space dating back to November 1981.

5. Proposal signed with +One Design/Construction on 12/5/2017 for building renovation.
6. Confirmation from Texas Dept. of Licensing and Regulation for ADA ramp portion of building renovation - 3/12/2018.
7. First drawings received from +One Design/Construction for building renovation - 3/29/18.
8. Construction permit for building renovation applied for on 4/26/18 (#1804261024).
9. Drawings for building renovation submitted to CD-11 on 7/10/18 for review (#CD18071003).
10. CD-11 review completed on 9/12/18. (#CD18071003)
11. Construction permit for building renovation issued by the City of Dallas on 10/8/18 (#1804261024).
12. Contract signed with Highland Builders, Inc. on 11/15/18.
13. Building demolition work commences in December 2018.
14. Construction was ongoing from December 2018 through March 3, 2020.
15. Entered into lease agreement with Dorky Lab LLC d/b/a Window Seat on February 12, 2019.
16. Submitted Conservation District Work Review Form to relocate electrical meter on April 2, 2019.
17. Submitted permit for interior finish out on June 7, 2019.
18. Submitted application for work on sewer relay on September 13, 2019.
19. Window Seat submits permit application for installation of signage on December 18, 2019.

20. Entered into First Amendment to Lease Agreement with Window Seat on January 18, 2020.
21. Submitted Conservation District Work Review Form for exterior signage on January 27, 2020.
22. Certificate of Occupancy obtained for Window Seat on March 3, 2020.

From: Kay, Kiesha <kiesha.kay@dallascityhall.com>
Sent: Tuesday, September 11, 2018 12:05 PM
To: Rob Baldwin <rob@baldwinplanning.com>
Subject: Re: 3014 Greenville

Rob,

Yes, this is correct.

Thank you,

Kiesha Kay

Get [Outlook for Android](#)

From: Rob Baldwin <rob@baldwinplanning.com>
Sent: Tuesday, September 11, 2018 10:49:40 AM
To: Kay, Kiesha
Subject: 3014 Greenville

Good afternoon Kiesha

I am working with the owner of the property known as 3014 Greenville. We are processing building permits and a CA review to allow us to renovate this building. This building is in the Modified Delta District and we want to make sure that we do not lose our delta credits while we are going through the renovation process. Would you please confirm my understanding that if we have an active building permit in place and are regularly calling in our inspections, we will not lose our delta credits while we are under construction and while we are actively marketing the spaces for lease.

Thanks for your help.

Rob

Rob Baldwin
Baldwin Associates, LLC
(214) 729-7949
rob@baldwinplanning.com



CITY OF DALLAS

September 6, 2019

Michele Stoy
Baldwin Associates
3904 Elm Street, STE: B
Dallas, TX 75226

RE: Zoning Determination Request; 3014-3024 Greenville

Dear Ms. Stoy:

As detailed in your letter dated February 27, 2019 and attached, you have requested a written determination pertaining to the non-conforming rights, or "delta credits" for the property referenced above.

The above stated property is located within CD 11, the M Streets East Conservation District, and located within the MD-1 Overlay, Greenville Ave Modified Delta Overlay District (Tract 2). The MD-1 Overlay ordinance 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. Based on our research and the attached floor plan used to verify the floor area of each suite, information on the most recent certificate of occupancy and delta credits is provided for each address.

3014 Greenville Avenue - (5999) General merchandise, CO#1807251124, - 1,559 square feet - 8 delta credits.

3016 Greenville Avenue - (5999) General merchandise, CO#1207091020, - 1,707 square feet -9 delta credits.

3018 Greenville - (5999), General merchandise, CO#8111172414, - 1,526 square feet -8 delta credits.

3020 Greenville - (5811) Restaurant, CO#9702141024, - 3,913 square feet, 39 delta credits.

3024 Greenville - (5821) Alcohol Beverage Establishment, CO#1604221106, - 3,846 square, 9 spaces obtained via a parking agreement, 29 delta credits remaining.

Therefore, based on this research, the possible non-conforming parking rights afforded per Section 51A-4.704(b)(4)(A) of the Dallas Development code could be 93 delta credits.

The delta credits for this property need to be considered per tenant when located in the MD Overlay to verify if the deltas have been lost due to vacancy. Per the parking ordinance parking must be met for the entire site, but deltas may be allocated to a specific tenant due to an adjacent tenant losing their rights to delta credits.



CITY OF DALLAS

Please note that when a use is converted to a new use having lesser parking requirements, the rights to any portion of the nonconforming parking that is not needed to meet the new requirement are lost.

Also, per Sec.51A-4.704(b)(4)(A), 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 required off-street parking and loading spaces are provided.

This letter does not constitute a building permit or certificate of occupancy, nor does it imply that a building permit or certificate of occupancy will be approved without complying with all applicable rules and regulations. The City of Dallas does not provide letters certifying that a property or development complies with all applicable rules and regulations.

If you have any further questions, please contact me at 214-948-4501 or megan.wimer@dallascityhall.com.

Respectfully,

A handwritten signature in black ink that reads "megan wimer".

Megan Wimer, AICP, CBO
Assistant Building Official
Building Inspection Division

cc: Phil Sikes, CBO, Building Official

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 August 18 and 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. The zoning case is still pending and the applicant is seeking a new holdover.

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.

August 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.

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

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)

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**

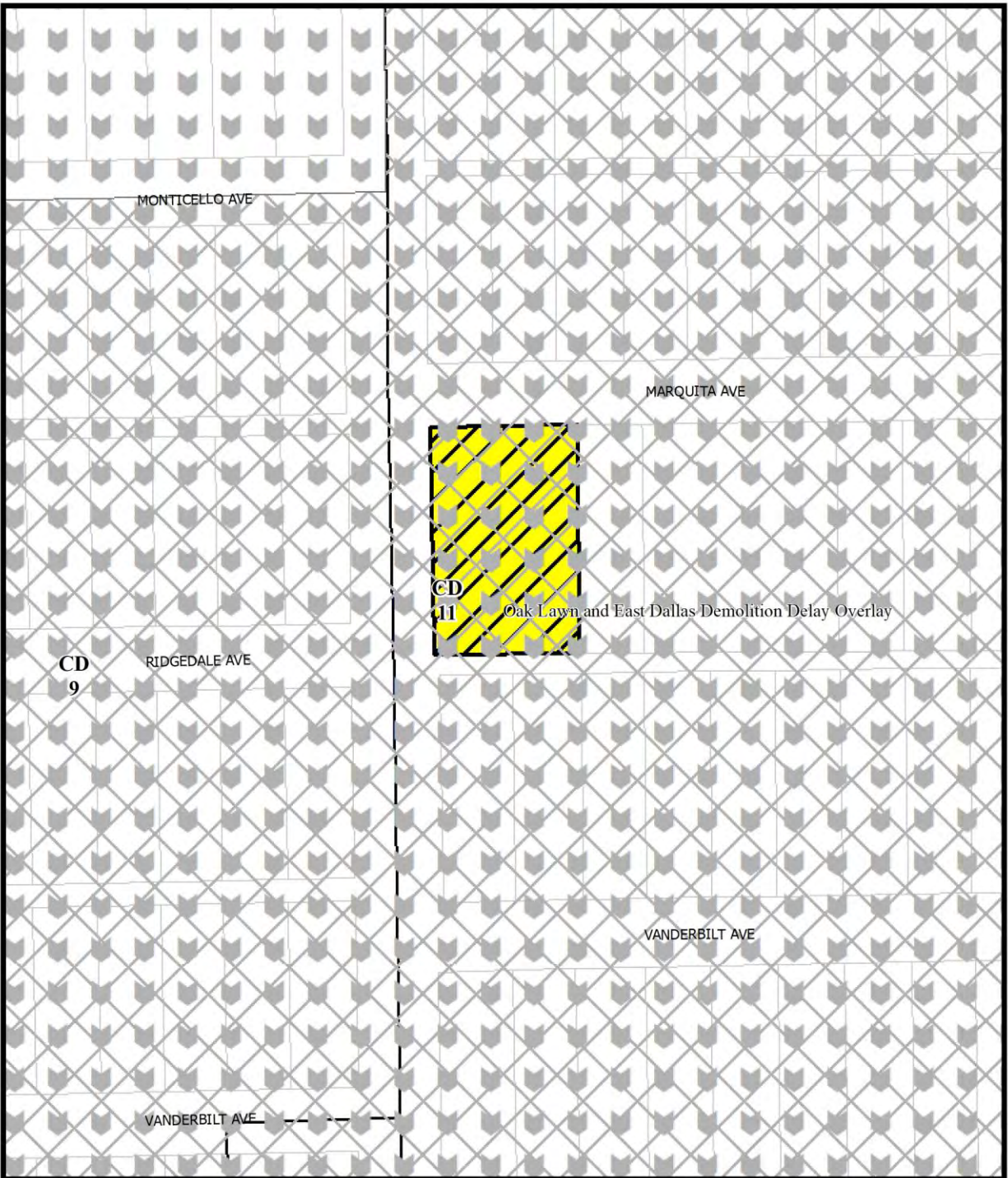
I move that the Board of Adjustment in Appeal No. BDA 190-092, hold this matter under advisement until **January 20, 2021**.

SECONDED: **Jones**

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

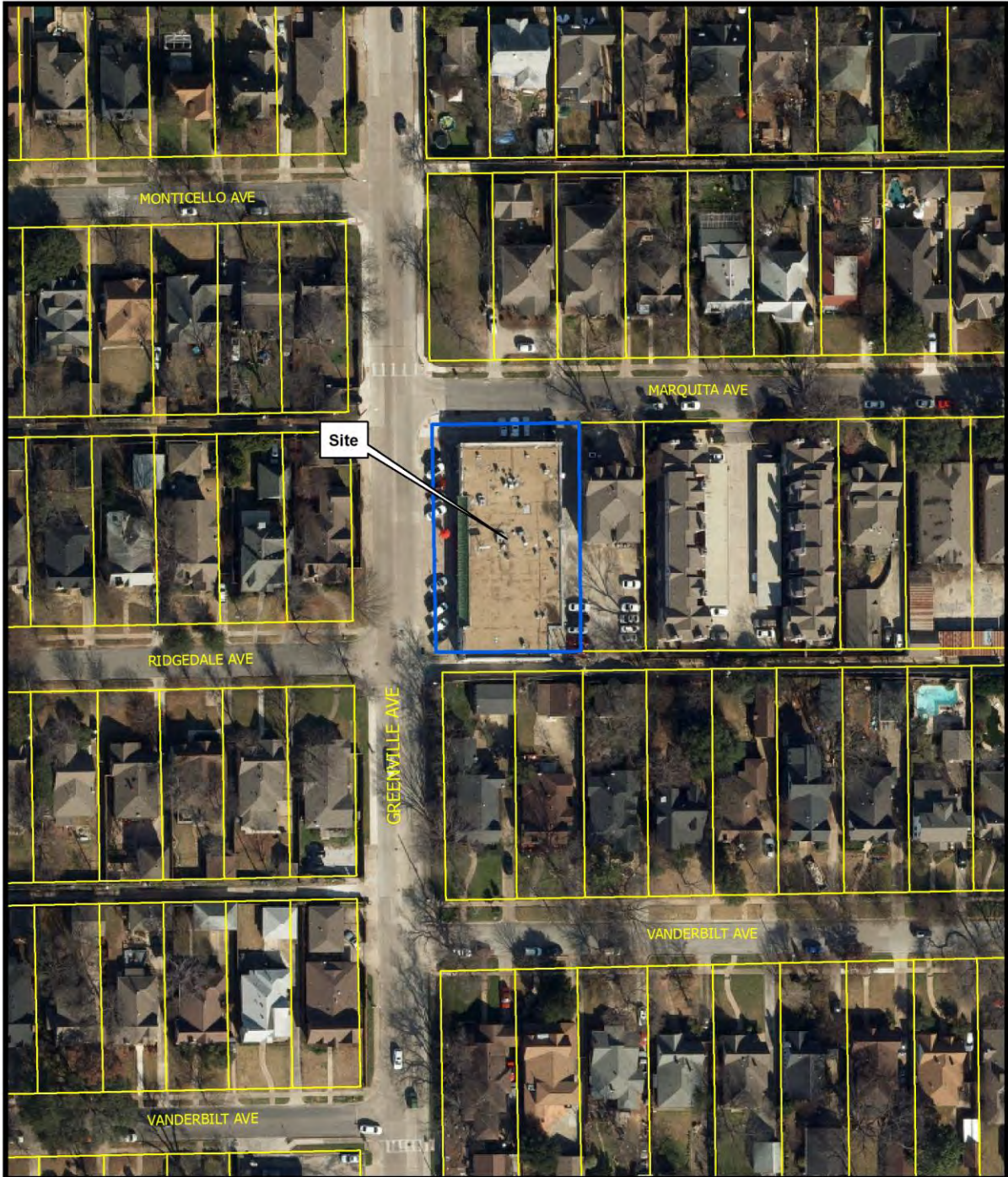


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ZONING MAP

Case no: BDA190-092

Date: 11/4/2020

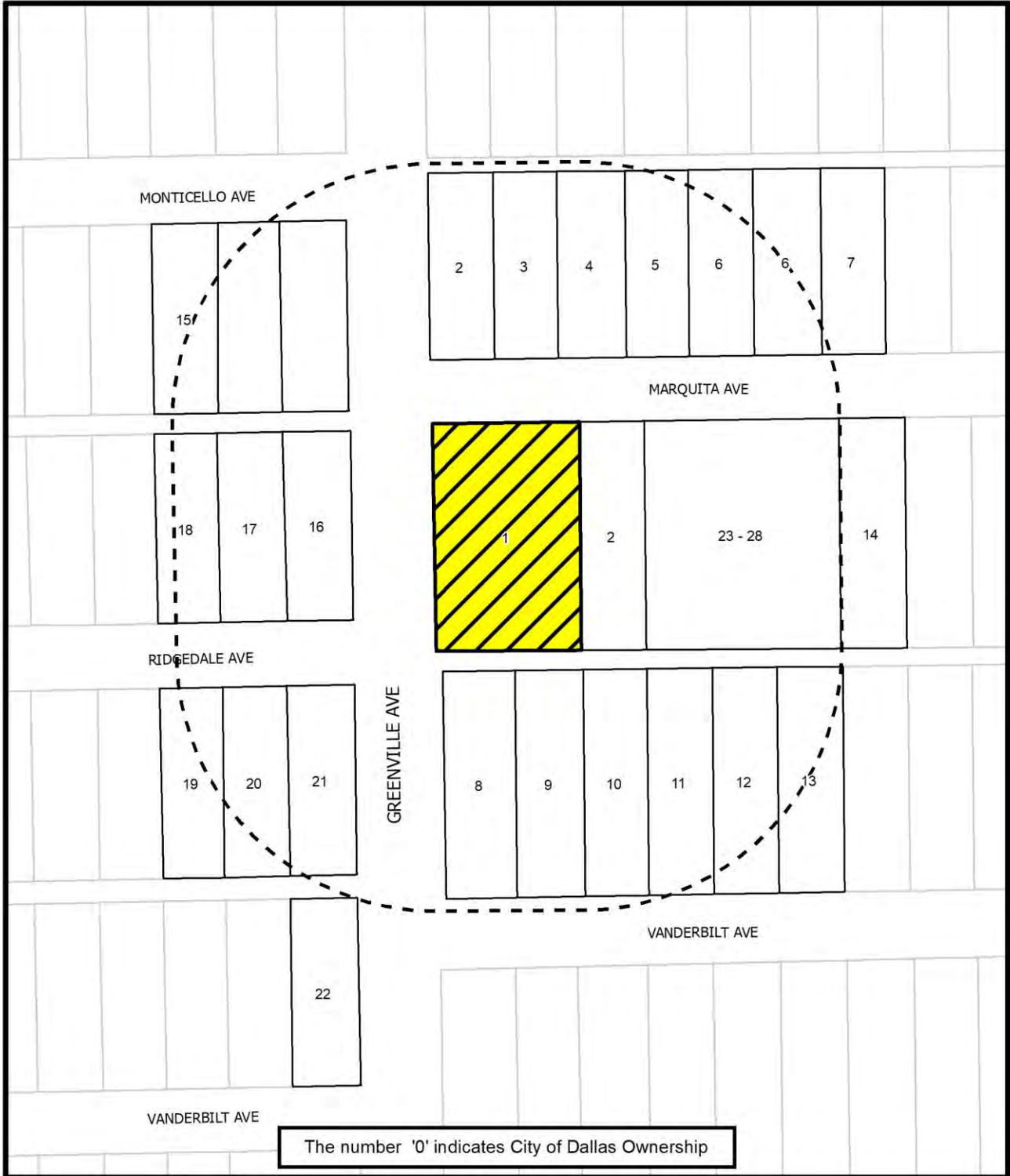


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AERIAL MAP

Case no: BDA190-092

Date: 11/4/2020



1:1,200

NOTIFICATION

200' AREA OF NOTIFICATION
28 NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA190-092**
 Date: **11/4/2020**

11/04/2020

Notification List of Property Owners

BDA190-092

28 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	3014 GREENVILLE AVE	SHIELDS LTD PS
2	5701 MARQUITA AVE	PASHA & SINA INC
3	5707 MARQUITA AVE	RENTZ BAILEY
4	5711 MARQUITA AVE	VAHDANI CHRISTOPHER &
5	5715 MARQUITA AVE	NUNNALLY HARVEY W III
6	5719 MARQUITA AVE	BOLGER DOROTHY E
7	5727 MARQUITA AVE	LAWSON CLIFFORD J & JANE G
8	5703 VANDERBILT AVE	WIENECKE AMY K
9	5707 VANDERBILT AVE	OROZCO RICHARD & RUFINA
10	5711 VANDERBILT AVE	MOORE HARRY E & SAMMIE S
11	5715 VANDERBILT AVE	ANTHONY JOHN ROSS
12	5719 VANDERBILT AVE	MILLER EMILY
13	5723 VANDERBILT AVE	KALMBACH ERIC W
14	5726 MARQUITA AVE	O B A INC
15	5638 MONTICELLO AVE	BASU NEIL K
16	5647 RIDGEDALE AVE	BELL PHILIP
17	5643 RIDGEDALE AVE	KONKEL RICHARD ARTHUR
18	5639 RIDGEDALE AVE	BATTAGLIA SCOTT &
19	5640 RIDGEDALE AVE	BARNETT JAMES C
20	5642 RIDGEDALE AVE	PLATTS DOUGLAS &
21	5644 RIDGEDALE AVE	SCHUCK CORD BRITTON
22	5647 VANDERBILT AVE	SU STUART
23	5720 MARQUITA AVE	PATTON JEFF
24	5720 MARQUITA AVE	TATE CHRISTINE M
25	5720 MARQUITA AVE	WILLINGHAM KIRK R
26	5720 MARQUITA AVE	BURKE GARY A
27	5720 MARQUITA AVE	BIRNBAUM MARC A &
28	5720 MARQUITA AVE	XOCHOTL LARA



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 190-092

Data Relative to Subject Property:

Date: 8/4/2020

Location address: 3018 Greenville Avenue, Dallas, TX 75206 Zoning District: CD-11

Lot No.: 11 Block No.: 2168 Acreage: 0.51 Census Tract: 0002.02

Street Frontage (in Feet): 1) 179.16 2) 124.00 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Shields Ltd. P.S.

Applicant: Thomas Shields Telephone: 281-635-4250

Mailing Address: 418 E. Shore Drive, Kemah, TX Zip Code: 77565

E-mail Address: tom.shields@shields-lagniappe.com

Represented by: Steven Dimitt/Rob Baldwin Telephone: 214-559-2700

Mailing Address: 1201 N. Riverfront Blvd., Suite 150, Dallas, TX Zip Code: 75207

E-mail Address: sdimitt@pcrfirm.com / rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance __, or Special Exception __, of Appeal building official's revocation of certificate of occupancy.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: Certificate of occupancy was not issued in error.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

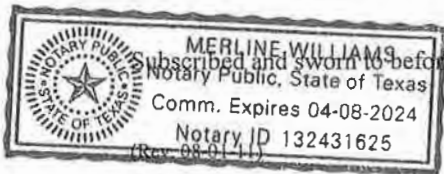
Affidavit

Before me the undersigned on this day personally appeared Thomas Shields (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: Thomas Shields (Affiant/Applicant's signature)

Subscribed and sworn to before me this 3 day of August, 2020



[Signature] Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that THOMAS SHIELDS
represented by Steven Dimitt
did submit a request to appeal the decision of an administrative official
at 3018 Greenville Avenue

BDA190-092. Application of THOMAS SHIELDS represented by Steven Dimitt to appeal the decision of an administrative official at 3018 GREENVILLE AVE. This property is more fully described as Lot 11, Block 2168, and is zoned CD-11 (MD-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.

Sincerely,


David Session, Building Official



CITY OF DALLAS

AFFIDAVIT

Appeal number: BDA 190-092

I, Shields Limited Partnership, Owner of the subject property
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 3018 Greenville Avenue, Dallas, Texas 75206
(Address of property as stated on application)

Authorize: Thomas Shields
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

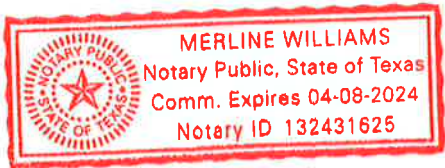
Appeal building official's revocation of certificate of occupancy.

Shields Ltd. P.S./Thomas Shields Thomas Shields 8/3/2020
Print name of property owner/agent Signature of property owner/agent Date

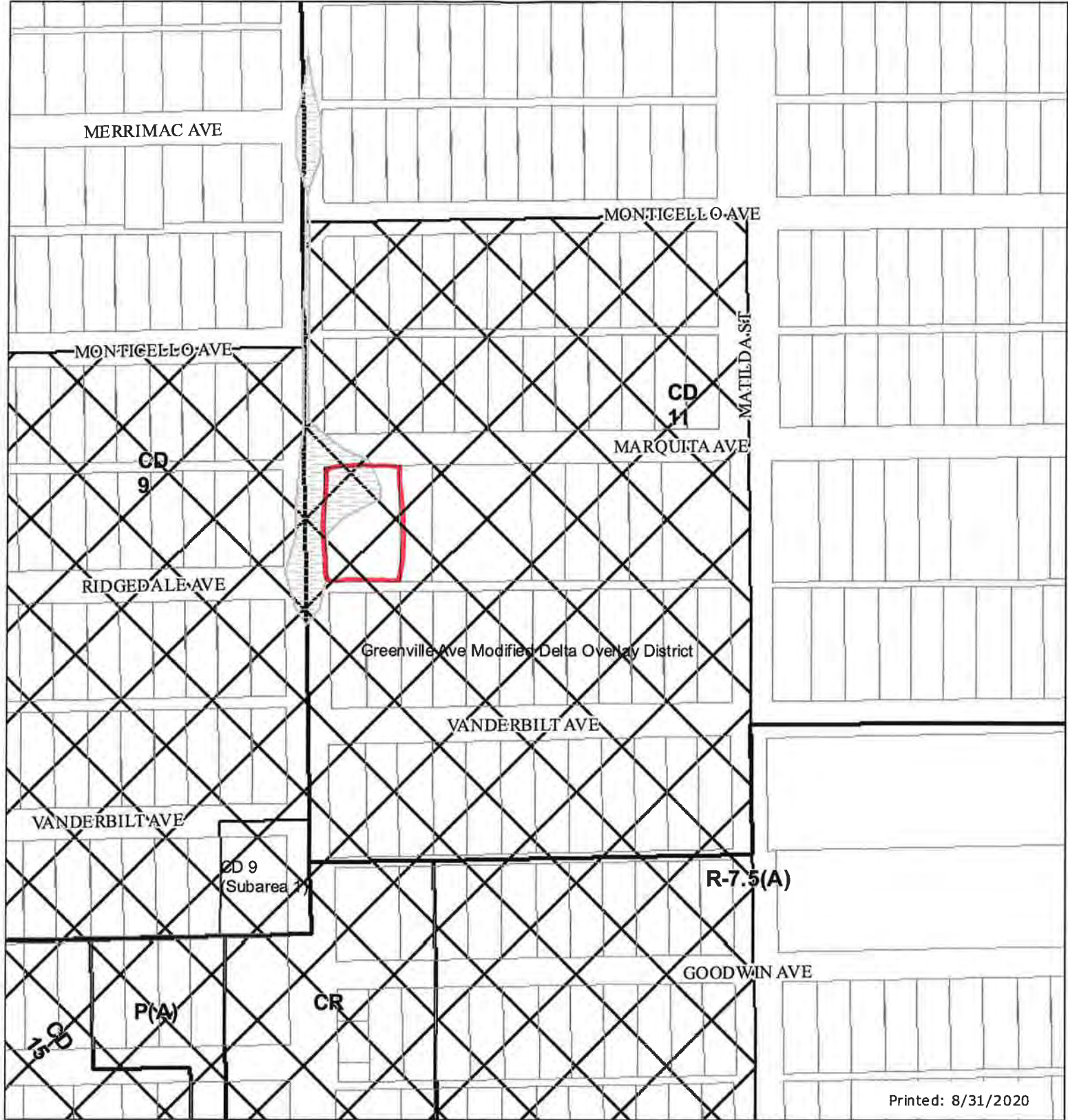
Before me, the undersigned, on this day personally appeared Thomas Shields

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 3 day of August, 2020



Merline Williams
Notary Public for Dallas County, Texas
Commission expires on 04-08-2024



Printed: 8/31/2020

Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSD Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay 30-4 |
| | | Height Map Overlay | |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





CITY OF DALLAS

July 14, 2020

CERTIFIED MAIL No. 7019 1640 0001 6327 1312

Drew M. Martin
PO Box 470007
Fort Worth, Texas 76147

CERTIFIED MAIL No. 7019 1640 0001 6327 1305

Tom Shields
Shields Ltd. P.S.
418 E Shore Dr
Kemah, Texas 77565-2525

RE: Revocation of Certificate of Occupancy No. 1906071094 for a *Restaurant Without Drive-In or Drive-Through Service* use at 3018 Greenville Avenue, Dallas, Texas 75206

Dear Mr. Martin and Mr. Shields:

The above-referenced certificate of occupancy was approved based, in part, on compliance with off-street parking requirements which had been presumed to be met, in part, with eight delta credits. However, because the above application was to convert from a *general merchandise or food store 3,500 square feet or less* use to a *restaurant without drive-in or drive-through service* use, which has a greater parking requirement, rights to any nonconforming parking cannot be used to meet parking requirements pursuant to Section 3 of Ordinance No. 19726 for the Modified Delta Overlay No. 1 (Exhibit A).

The building official is required to revoke a certificate of occupancy if the building official determines that the use or occupancy authorized by the certificate of occupancy has been issued in error.¹ Therefore, the above-referenced certificate of occupancy is hereby revoked.

Further, based upon the attached noticed to vacate (Exhibit B), the use discontinued and the suite became vacant on or by November 30, 2017. Since the previous use had been discontinued for more than 12 months by the time the above-referenced certificate of occupancy application was submitted on June 7, 2019, eight delta credits for the previous occupancy had been lost pursuant to Section 1 of Ordinance No. 22472 for the Modified Delta Overlay No. 1 (Exhibit C). Fortunately, this ordinance allows the owner to make an appeal to the Board of Adjustment for a special exception to the provision that terminates delta credits as described in the attached ordinance.

¹ Section 306.13(1) of Chapter 52, "Administrative Procedures for the Construction Codes."



CITY OF DALLAS

Any determination made by the building official is final unless appealed before the 15th day after written notice of the action or determination is given in accordance with Section 306.15 of Chapter 52 and Section 51A-4.703 of the Dallas Development Code. Questions about the appeal process should be directed to the building official at 214-948-4625 and questions about the Board of Adjustments should be directed to Charles Trammell at 214-948-4618.

Sincerely,

A handwritten signature in cursive script that reads "Sarah May".

Sarah May
Chief Planner
Building Inspection
Sustainable Development and Construction Department

cc: Kris Sweckard, Director, Sustainable Development and Construction
Carl Simpson, Director, Code Compliance
David Session, CBO, Interim Building Official
Megan Wimer, CBO, Assistant Building Official
Tammy Palomino, Executive Assistant City Attorney
Casey Burgess, Executive Assistant City Attorney
Charles Trammell, Board of Adjustment Development Code Specialist
Kim Haynie, Development Project Coordinator



City of Dallas

Certificate of Occupancy

Address: 3018 GREENVILLE AVE 75206

Issued: 03/03/2020

Owner: SHIELDS LTD. P.S.
3040 GREENVILLE AVE
DALLAS, TX 75206

DBA: WINDOW SEAT

Land Use: (5811) RESTAURANT WITHOUT DRIVE-IN SERVICE

Occupied Portion:

C.O.#: 1906071094

Lot:	11	Block:	2168	Zoning:	CD-11	PDD:	SUP:
Historic Dist:		Consrv Dist:	M Streets E	Pro Park:	109	Req Park:	109
Dwlg Units:		Stories:	1	Occ Code:	B	Lot Area:	20620
Type Const:	IIIB	Sprinkler:	None	Occ Load:		Alcohol:	N
							Dance Floor:N
							Total Area: 1435

Remarks: ALL WORK SUBJECT TO FIELD INSPECTOR APPROVAL. PARKING IS FOR THE ENTIRE SITE. 2 DELTA CREDITS HAVE BEEN LOST. PARKING AGREEMENT EXCEED THE NUMBER OF PARKING REQUIRED BY TWO SPACES. 3018 GREENVILLE AVE ONLY RETAINS 6 DELTA CREDITS MOVING FORWARD.10/11/19 KH NO EXTERIOR HAS BEEN APPROVED.KH

Philip Sikes
Philip Sikes, Building Official

This certificate shall be displayed on the above premise at all times.

10/21/87

ORDINANCE NO. 19726

An ordinance amending CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; establishing Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) for the following described property, to wit:

Tract I is generally located south of Ellsworth Avenue, west of Matilda Street, north of Mercedes Avenue and east of Worcola Street.

Tract II is generally located south of Monticello Avenue, west of Matilda Street, north of Velasco Avenue and east of Worcola Street.

Tract III is generally located south of Belmont Avenue, west of Matilda Street, north of Ross Avenue and east of Summit Avenue;

providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the provisions of the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Article IV, "Zoning Regulations," of CHAPTER 51, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

1

CHECKED BY

JCX

19726

SECTION 1. That CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, is amended by establishing Modified Delta Overlay District No. 1 ("this district") on the following described Property, to-wit:

Tract I: Being all of City Block B/2906 bounded by Ellsworth Avenue, Greenville Avenue, Matalee Street and Worcola Street; all of City Blocks C/2907, E/2907 and A/2908 bounded by Matalee Street, Greenville Avenue, Martel Avenue and Worcola Street; all of City Block B/2909 bounded by Martel Avenue, Greenville Avenue, Longview Street and Worcola Street; all of City Blocks H/2912 and A/2913 bounded by Longview Street, Greenville Avenue, McCommas Boulevard and Worcola Street; all of City Block 1/2193 bounded by McCommas Boulevard, Greenville Avenue, Morningside Avenue and Worcola Street; all of City Block 2/2194 bounded by Morningside Avenue, Greenville Avenue, Mercedes Avenue, and Worcola Street; all of City Block 3/2890 bounded by Ellsworth Avenue, Matilda Street, Kenwood Avenue and Greenville Avenue; all of City Block 2/2889 bounded by Kenwood Avenue, Matilda Street, Penrose Avenue and Greenville Avenue; all of City Block 1/2888 bounded by Penrose Avenue, Matilda Street, Martel Street and Greenville Avenue; all of City Blocks A/2894 and 2895 bounded by Martel Avenue, Matilda Street, McCommas Boulevard and Greenville Avenue; all of City Blocks 2896 and 4/2149 bounded by McCommas Boulevard, Matilda Street, Morningside Avenue and Greenville Avenue; and all of City Block 3/2148 bounded by Morningside Avenue, Matilda Street, Mercedes Avenue and Greenville Avenue.

Tract II: Being all of City Block B/2170 bounded by Monticello Avenue, Greenville Avenue, Ridgedale Avenue and Worcola Street; all of City Block C/2171 bounded by Ridgedale Avenue, Greenville Avenue, Vanderbilt Avenue and Worcola Street; all of City Blocks D/2172 and 1/2076 bounded by Vanderbilt Avenue, Greenville Avenue, Goodwin Avenue and Worcola Street; all of City Block 8/1926 bounded by Goodwin Avenue, Greenville Avenue, Vickery Boulevard and Worcola Street; all of City Block 9/1927 bounded by Vickery Boulevard, Greenville Avenue, Miller Avenue and Worcola Street; all of City Block 1/2146 bounded by Monticello Avenue, Matilda Street, Marquita Avenue, and Greenville Avenue; all of City Blocks 1/2168 and 5/2166 bounded by Marquita Avenue, Matilda Street, Vanderbilt Avenue and Greenville Avenue; all of City Blocks 1/2164 and 1/2162 bounded by Vanderbilt Avenue, Matilda Street, Goodwin Street and Greenville Avenue; all of City Block 8/1918 bounded by Goodwin

19726

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Avenue, Matilda Street, Vickery Boulevard and Greenville Avenue; all of City Block 9/1919 bounded by Vickery Boulevard, Matilda Street, Llano Street and Greenville Avenue; and all of City Block 1/1885 bounded by Llano Street, Matilda Street, Velasco Avenue and Greenville Avenue.

Tract III:

Being all of City Block 8/2012 bounded by Belmont Avenue, Greenville Avenue, Richmond Avenue, and Summit Avenue; all of City Block 7/2071 and part of City Block 1982 bounded by Richmond Avenue, Greenville Avenue, Bell Avenue and Summit Avenue; part of City Block 1982 and all of City Block D/1982 bounded by Bell Avenue, Greenville Avenue, Sears Street and Summit Avenue; all of City Block C/1983 bounded by Sears Street, Greenville Avenue, Alta Street and Summit Avenue; all of City Block B/1988 bounded by Alta Street, Greenville Avenue, Lewis Street and Summit Avenue, part of City Block 1472 bounded by Lewis Street, Greenville Avenue, Ross Avenue and the westward prolongation of the centerline of Ross Avenue from Greenville Avenue to Summit Avenue, and Summit Avenue; all of City Block 17/1901 bounded by Belmont Avenue, Matilda Street, Richmond Street and Greenville Avenue; all of City Block 24/1904 bounded by Richmond Avenue, Matilda Street, Prospect Avenue and Greenville Avenue; all of City Block 1/1905 bounded by Prospect Avenue, Matilda Street, Oram Street and Greenville Avenue; all of City Block 1907 and part of City Block 1908 bounded by Oram Street, Matilda Street, LaVista Street and Greenville Avenue, all of City Blocks A/1473 and B/1474 bounded by LaVista Street, Matilda Street, Lewis Street and Greenville Avenue; and all of City Blocks F/1473 and G/1474 bounded by Lewis Street, Matilda Street, Ross Avenue and Greenville Avenue.

SECTION 2. That no nonconforming parking spaces may be carried forward by a use under the delta theory, as defined in Section 51-4.704 of CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, when a use located in this district is expanded.

SECTION 3. That when a use located in this district is converted to a new use having greater parking or loading requirements, the rights to any nonconforming parking or

loading under the delta theory may not be used to meet the new parking requirements.

SECTION 4. That when a use located in this district is converted to a new use having lesser parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.

SECTION 5. 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 state an extreme circumstance that demonstrates that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more.

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 7. That CHAPTER 51 of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

19726

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SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

ANALESIE MUNCY, City Attorney

BY *Christopher M. de Steener*
Assistant City Attorney

Passed and correctly enrolled OCT 21 1987.

Zoning File No. Z867-228/6254-E

5623I

HOOVER SLOVACEK LLP

A REGISTERED LIMITED LIABILITY PARTNERSHIP

JOSEPH O. SLOVACEK, P.C.
PARTNER

slovacek@hooverslovacek.com
www.hooverslovacek.com

ATTORNEYS AT LAW
GALLERIA TOWER II
5051 WESTHEIMER, SUITE 1200
HOUSTON, TEXAS 77056

(713) 977-8686
FAX (713) 977-5395

REPLY TO:
P.O. BOX 4547
HOUSTON, TEXAS 77210

October 3, 2017

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc.

Attn: Harry E. Demarco, its President and Registered Agent
3018 Greenville Avenue
Dallas, Texas 75206

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc. and any and all occupants
3018 Greenville Avenue
Dallas, Texas 75206

RE: Month-to-Month Tenancy related to a certain Lease Agreement dated April 28, 1992 (the "Lease"), by and between SHIELDS LIMITED PARTNERSHIP, as successor-in-interest to Bernard E. Shields, a Texas limited partnership (the "Landlord"), and H.D.'S, INC., a Texas corporation (the "Tenant"), covering certain premises as further described within the Lease and commonly known as 3018 Greenville Avenue, Dallas, Texas 75206 (the "Premises")

Dear H.D.'s, Inc. and Any and All Occupants of the Premises:

Please be advised that the undersigned attorney and law firm represent Landlord with respect to the above-referenced matter. Capitalized terms used, but not defined, herein shall have the same meaning as in the Lease. Effective immediately, all communications regarding the matters addressed herein should be directed to me.

As Tenant is aware, the Lease expired by its own terms and Tenant has been occupying the Premises on a month-to-month basis. The purpose of this letter is to notify Tenant that Landlord is exercising its right, under Texas law, to terminate Tenant's month-to-month tenancy and Tenant's right to occupy the Premises **effective November 30, 2017** (the "Termination Date"). Tenant is expected to fulfill all rental obligations for the months of both October and November 2017 as well as return the Premises to Landlord in a clean and rentable condition on or before the Termination Date. Tenant will be responsible for any and all damages done to the

Premises above and beyond normal wear and tear or as otherwise required under the Lease and Texas law.

Tenant and all occupants are hereby given written notice to vacate the Premises. Unless Tenant and all occupants have vacated the Premises **on or before November 30, 2017**, Landlord fully intends to file suit to evict any and all parties in possession of the Premises. In addition, the Landlord intends to file suit against Tenant and any other parties liable under the Lease, if any, for collection of all delinquent amounts, interest, late fees, attorneys' fees, and any other damages and amounts due under the Lease and in connection with the month-to-month tenancy.

Any delay or postponement of any of Landlord's actions shall not constitute a waiver. This letter should not be interpreted by Tenant as an election of remedies. Landlord reserves and preserves all rights and remedies available to it pursuant to the Lease and as otherwise granted by Texas law. Additionally, this letter shall not constitute a waiver of any other Tenant default that might exist at the present.

This letter is being sent to Tenant in accordance with the notice provisions of the Lease and the requirements of Texas law. No further communication will necessarily be sent to Tenant from Landlord or from this law firm prior to the time that suit is instituted in the event that Tenant and any and all occupants fail to vacate the Premises by the Termination Date indicated herein.

Sincerely yours,

HOOVER SLOVACEK LLP

Joseph O. Slovacek

JOS:AJB

bcc: client (via email)

6-21-95

ORDINANCE NO. 22472

An ordinance amending Ordinance No. 19726, which established Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District); amending Section 5 of that ordinance; providing that the board of adjustment may not grant a special exception for required parking; providing an extension of the walking distance for remote parking; providing that more than 50 percent of required parking may consist of special parking; providing that the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, shall govern this district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council of the City of Dallas, in accordance with the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Ordinance No. 19726; and

WHEREAS, the city council finds that it is in the public interest to amend Modified Delta Overlay District No. 1 as specified in this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 5 of Ordinance No. 19726 is amended to read as follows:

"SECTION 5. That the right to carry forward nonconforming parking and loading

22472

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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~~~~[state an extreme circumstance that demonstrates]~~ 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:

(a) A decline in the rental rates for the area which has affected the rental market.

(b) An unusual increase in the vacancy rates for the area which has affected the rental market.

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

SECTION 2. That a new Section 5A is added to Ordinance No. 19726 to read as follows:

"SECTION 5A. That the board of adjustment may not grant a special exception for required off-street parking in this district."

SECTION 3. That a new Section 5B is added to Ordinance No. 19726 to read as follows:

"SECTION 5B. That the walking distances contained in Paragraphs (1) and (2)(A) of Section 51A-4.324(d) of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, are extended to 600 and 900 feet, respectively, for remote parking in this district."

SECTION 4. That a new Section 5C is added to Ordinance No. 19726 to read as follows:

"SECTION 5C. That special parking, as defined in Section 51A-4.321 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, may account for more than 50 percent of the off-street parking required for any use."

SECTION 5. That a new Section 5D is added to Ordinance No. 19726 to read

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as follows:

"SECTION 5D. That the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, govern this district."

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

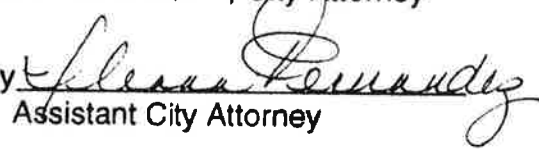
SECTION 7. That CHAPTERS 51 and 51A, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and Ordinance No. 19726 shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

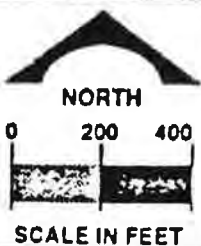
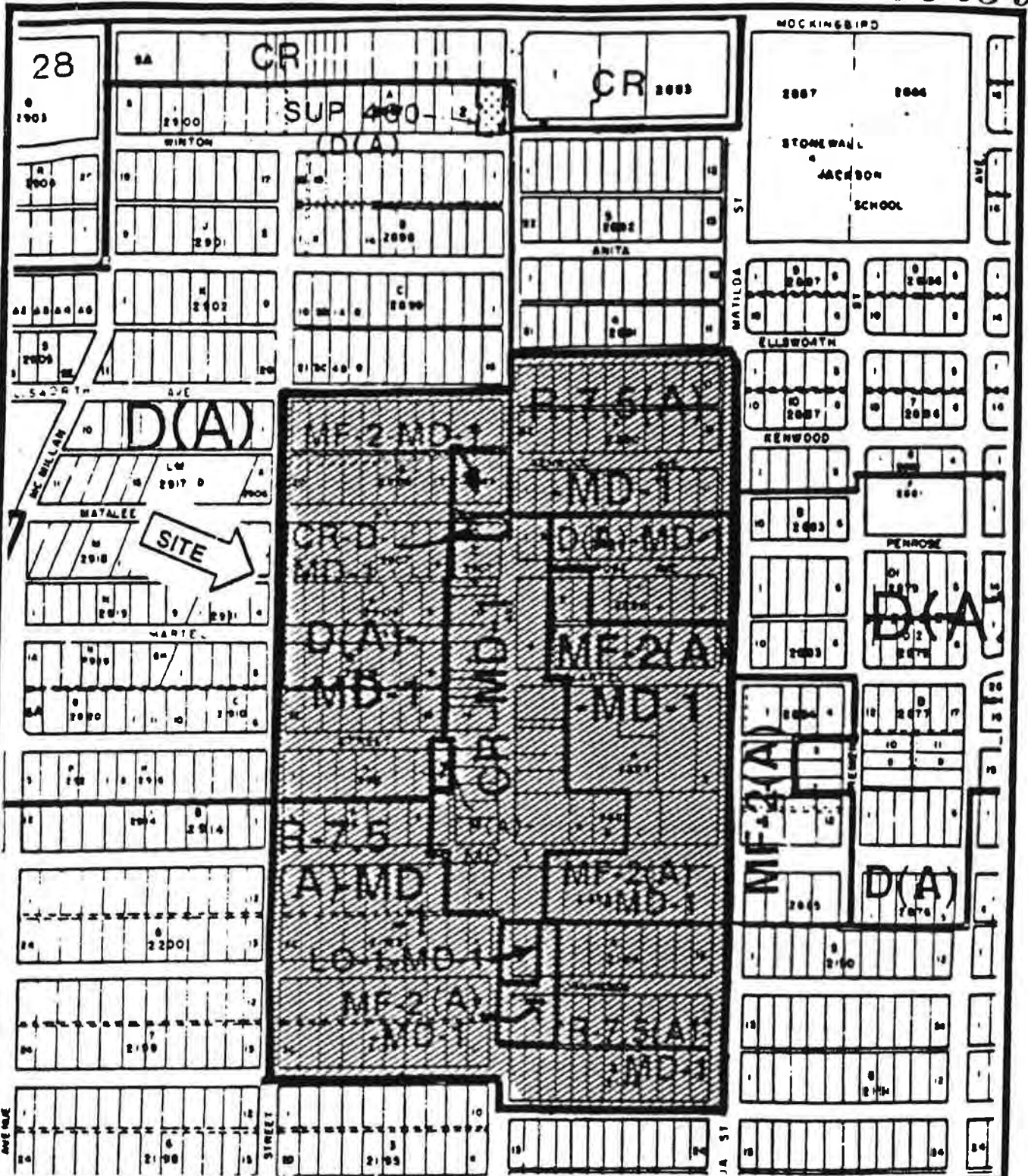
SAM A. LINDSAY, City Attorney

By 
Assistant City Attorney

JUN 28 1995

Passed _____

File No. Z945-206/6254-E

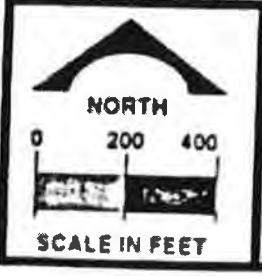
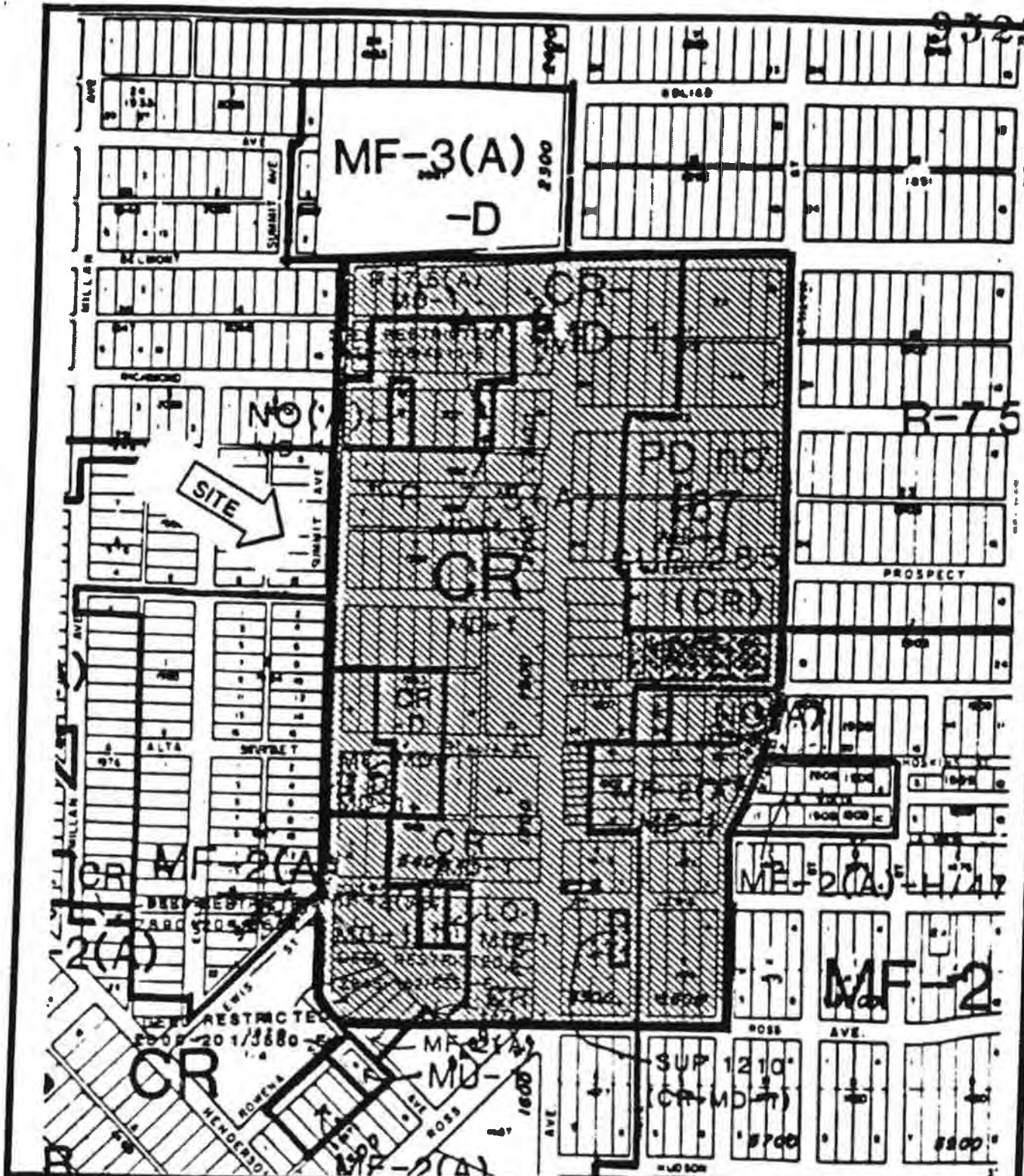


ZONING HISTORY
"AREA 1"

Map No. H-8, I-8

Case No. Z945-206/6254-E

232395



ZONING HISTORY
"AREA 3"

Map No. H-8, I-8
Case No. Z945-206/6254-E

PARKING AGREEMENT

STATE OF TEXAS }
COUNTY OF DALLAS }

DEED RECORD

I. A 0835 2 23.00 DEED
1 05/11/87

Bernard E. Shields

("Owner A") is the owner of the below described property ("Tract A"):

Street Address 3020, 3022 and 3024 Greenville Avenue

Property Description: Lot 11 Block 2168

Addition Tucker Heights

more particularly described in Volume 1358, page 114

of the Deed Records of Dallas County, Texas.

II.

Fickling/Patterson Properties, a Texas general partnership

("Owner B") is the owner of the below described property ("Tract B"):

Street Address 5710 Marquita

Property Description: Lot 10 Block 2168

Addition Tucker Heights

more particularly described in Volume 82204, page 2192

of the Deed Records of Dallas County, Texas.

III.

Owner A and Owner B for the consideration of the City of Dallas granting a building permit and/or a certificate of occupancy for Tract A, agree that Tract B shall be used to provide 18 required off-street parking spaces for Tract A to comply with the Dallas Development Code of the City of Dallas.

IV.

The location of the off-street parking spaces provided on Tract B for Tract A shall be shown on a site plan that is attached to and made a part of this parking agreement. The site plan shall provide sufficient information to demonstrate compliance with the Dallas Development Code and all other applicable ordinances and regulations. The site plan may be amended only by filing in the deed records a revised site plan approved by the building official in accordance with Paragraph V.

1.

87090 5558

V.

This agreement may be amended or terminated only upon the filing in the Deed Records of Dallas County, Texas, of an instrument signed by the building official of the City of Dallas, Texas, or his designee, authorizing the amendment or termination of this agreement, because the required off-street parking has been provided in accordance with the Dallas Development Code of the City of Dallas and all other applicable ordinances and regulations. Owner A or Owner B shall file the amending or terminating instrument in the Deed Records of Dallas County, Texas, at the sole cost and expense of Owner A or Owner B.

VI.

If for any reason the required off-street parking for Tract A is not provided in accordance with this agreement, the City of Dallas may revoke Owner A's certificate of occupancy for Tract A, and Owner A shall have no right to use Tract A for any use until required off-street parking is provided.

VII.

This agreement shall be recorded in the deed records, Dallas County, Texas and shall be a covenant running with Tract A and Tract B. Owner A and Owner B agree that this agreement shall bind their successors, heirs and assigns, if any.

EXECUTED at Dallas, Texas this the 27th day of June 1986.

R.M. Jindaly
Owner A.

Sue Hill
Owner B.

Attach acknowledgments for both
Owner A and Owner B

ANNE L. MUNCY, City Attorney

By Cynthia Foster Skinner
Assistant City Attorney

90588/th

2

87090 5559

(3) Attorney in Fact

THE STATE OF TEXAS

COUNTY OF DALLAS

Before me, the undersigned authority, on this day personally appeared R.M. Lindsley, known to me to be the person whose name is subscribed to the foregoing instrument, as the attorney in fact of Bernard E. Shields, and acknowledged to me that he subscribed the name of Bernard E. Shields thereto as principal and his own name as attorney in fact, and executed the same for the purposes and consideration therein expressed and in the capacity therein set forth.

Given under my hand and seal of office on this 27th day of June, 19 86.



J.W. Lindsley III
Notary Public, State of Texas
Notary's name printed:
J.W. LINDSLEY III
My commission expires: 11-30-88

(4) Partnership (By Member of)

THE STATE OF TEXAS

COUNTY OF DALLAS

Before me, the undersigned authority, on this day personally appeared Scott Fickling, a member of the partnership firm of Fickling/Patterson Properties, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act of Fickling/Patterson Properties, a partnership, for the purposes and consideration therein expressed and in the capacity therein stated.

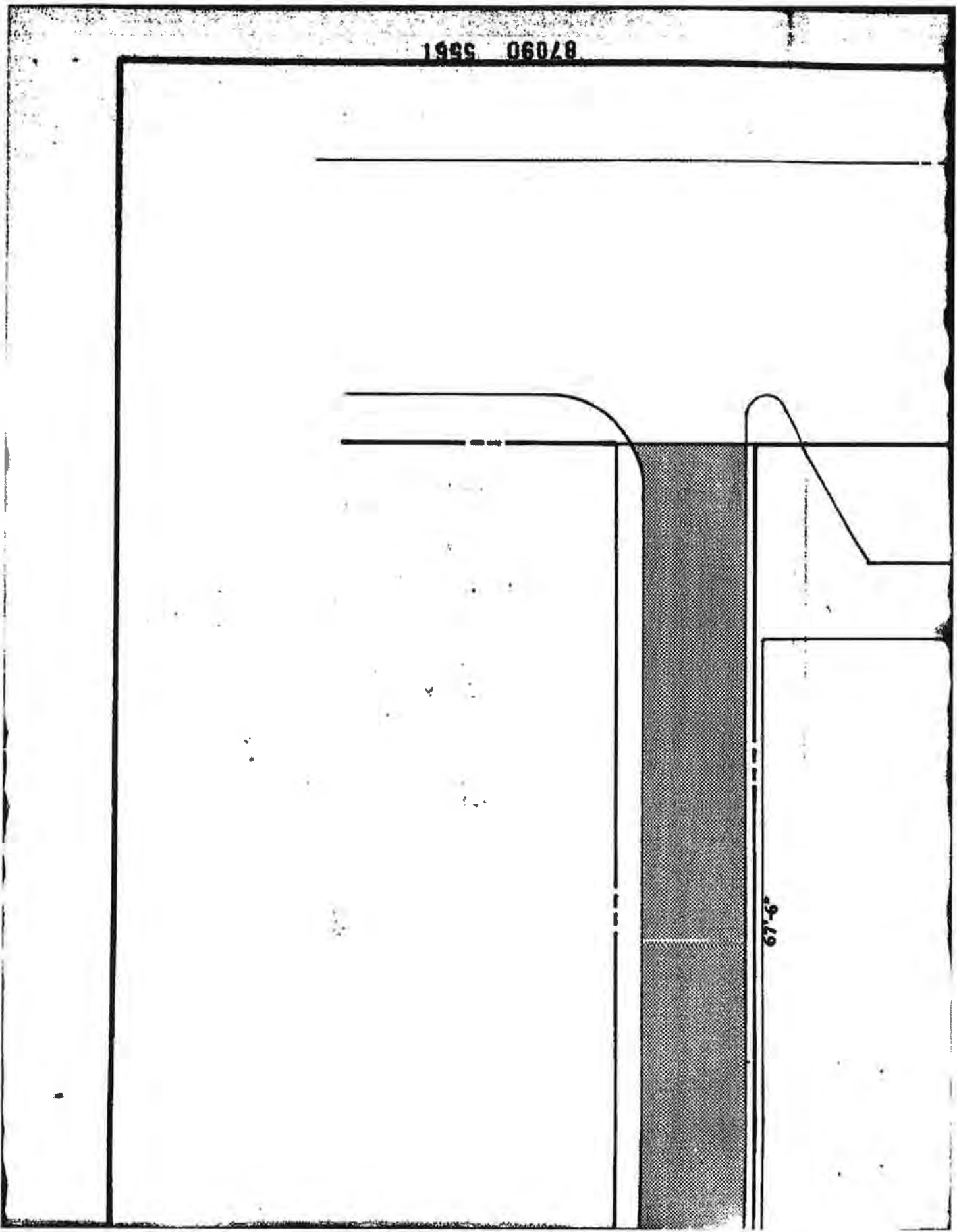
Given under my hand and seal of office on this 29th day of June, 19 86.



Cynthia Widener
Notary Public, State of Texas
Notary's name printed:
Cynthia Widener
My commission expires: 9-19-87

Printed & bound by the State of Texas
NOTARY PUBLIC
JOHN W. LINDSLEY III

87090 5560



GREENVILLE

179.33' PROPERTY L

14 SPACES

8' WALK

141'-11"

67'-6"

LOT 11 ONE STO

BLOCK 2168

AVENUE

PROPERTY LINE

ACES

ALK

141'-11"

ONE STORY BRICK

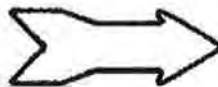
SAN FRANCISCO ROSE CAFE

77'-9"

115.33'
6 SPACES

OCK 2168

1100 2228



AVENUE

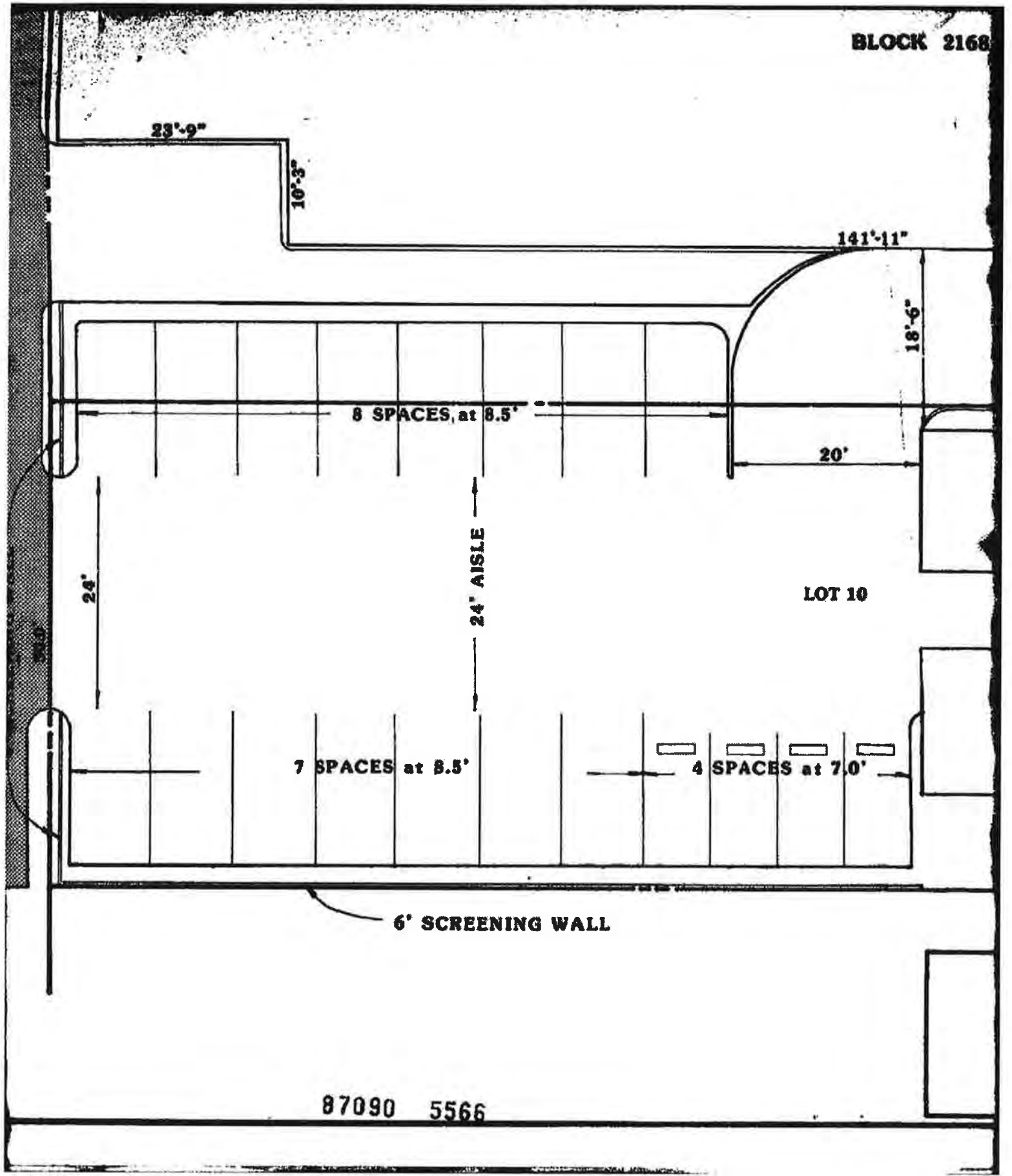
115.33'

6 SPACES

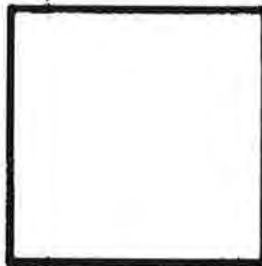
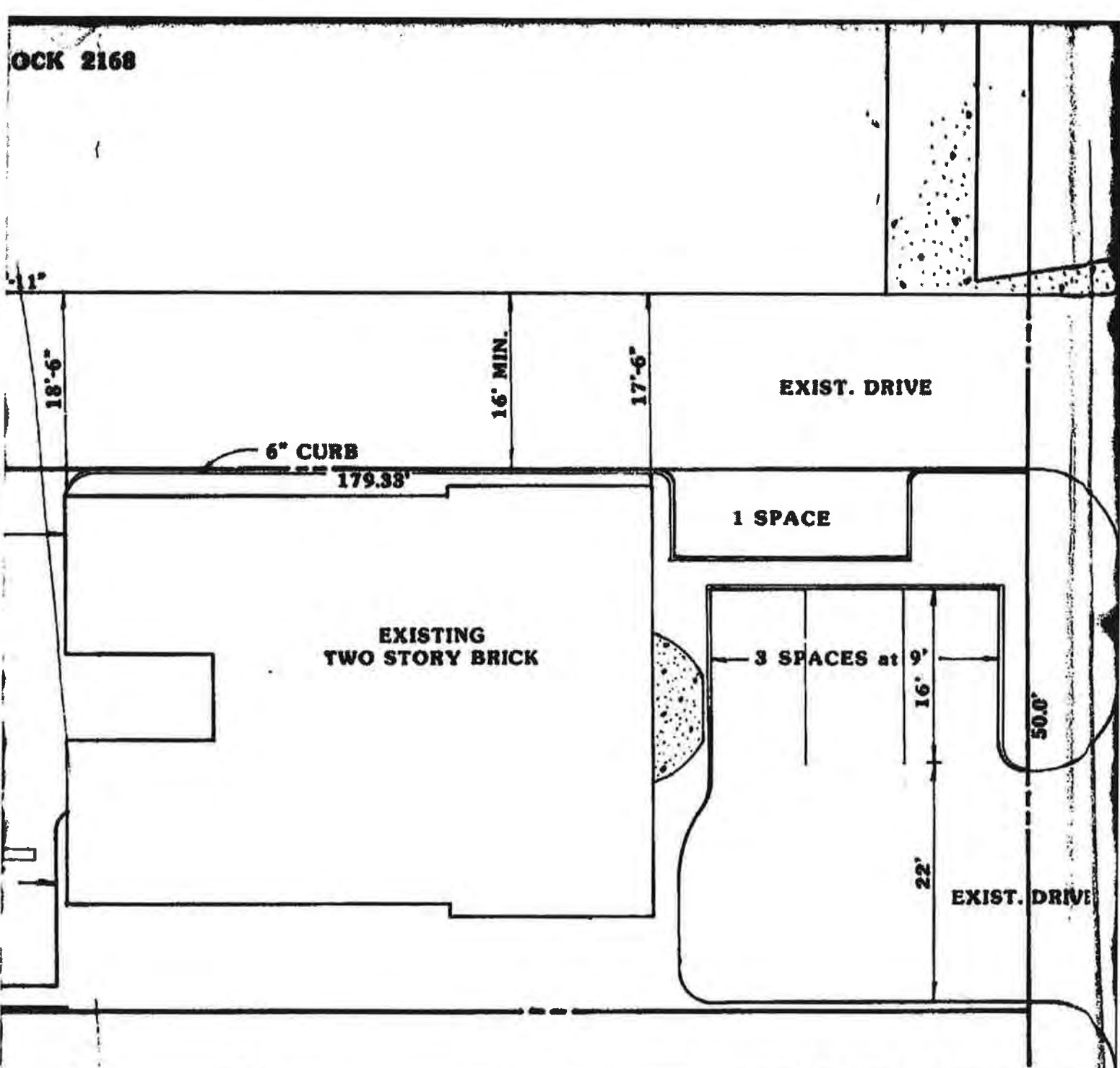
IS ALLEY

U.S. DEPARTMENT OF JUSTICE

87090 5565



OCK 2168

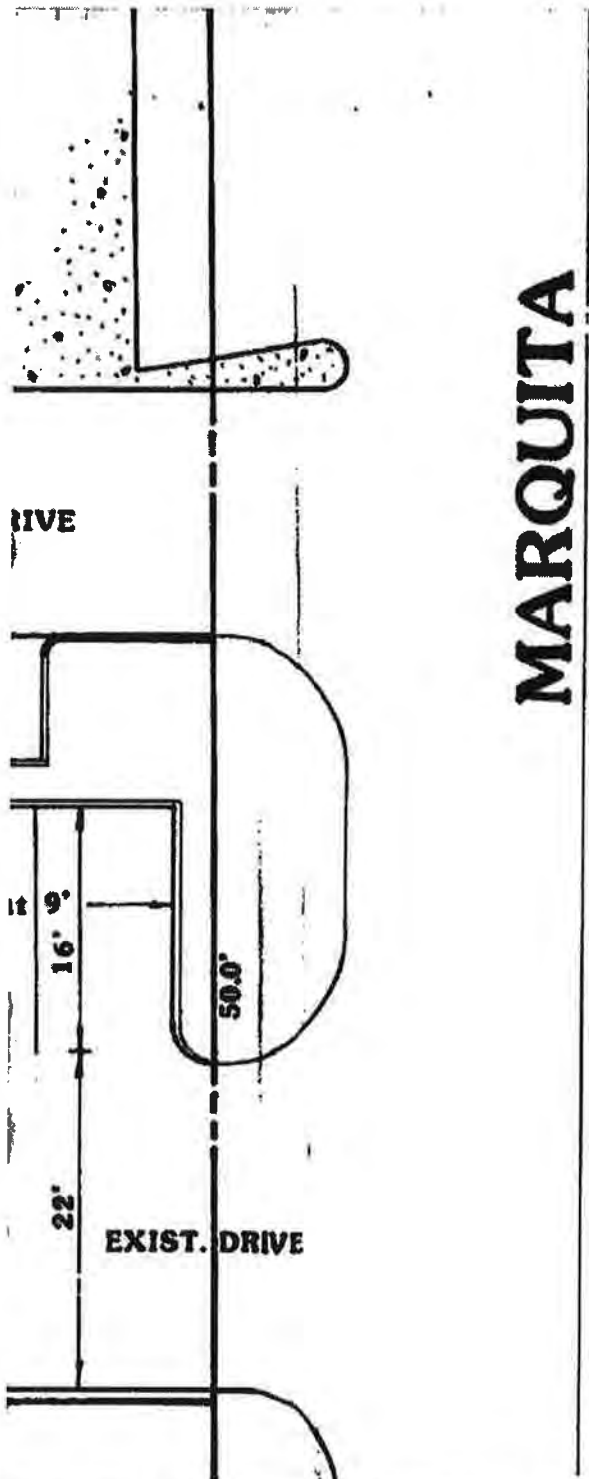


revision	date

NDM NAT CONSU

Three NorthPark / 8900 N. Central
Dallas, Texas 75281

07000 5587



MARQUITA

REQUIRED NUMBER OF PARKING STALLS, AISLE AREA AND DRIVEWAYS SHALL BE FREE OF ALL TREES, UTILITY POLES, TRAFFIC CONTROL DEVICES, OR ANY OTHER OBJECTS.
 APPROVED: Date 6/27/86
 TRAFFIC DESIGN PUBLIC WORKS
 By Tom Pasco

□ COMPACTS ONLY
 23 PARKING SPACES TOTAL

DM NATHAN D. MAIER
 CONSULTING ENGINEERS, INC.

**SAN FRANCISCO ROSE
 PARKING LAYOUT**

sheet 07090 5568

NorthPark / 8800 N. Central Expwy. / Suite 200
 Dallas, Texas 75225 / (214) 739-6741

design	drawn	scale	date	notes
AM	LCG	1"-10"	6-1986	

job no.
 86-04-042

Barry R. Knight
1001 East R. Blvd. 789
Dallas, Texas 75201

BARRY R. KNIGHT

After filing return to:

STATE OF TEXAS
COUNTY CLERK
COUNTY OF DALLAS
I hereby certify that the instrument was filed on the
date and time hereby shown by the seal and date on the
face hereof and that the same is a correct and true
copy of the original as shown by the record.
MAY 11 1987
Eugene B. Smith
COUNTY CLERK, Dallas County, Texas

FILED
Eugene B. Smith
COUNTY CLERK
DALLAS COUNTY
87 MAY 11 PM 3:07

PROVISIONS CONTAINED IN ANY DOCUMENT WHICH RESTRICT
THE SALE, RENTAL, OR USE OF THE REAL PROPERTY DESCRIBED
THEREIN BECAUSE OF RACE OR COLOR ARE INVALID UNDER
FEDERAL LAW AND ARE UNENFORCEABLE.
ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL,
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR
LAW, OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL

87090 5569

From: Kay, Kiesha <kiesha.kay@dallascityhall.com>
Sent: Tuesday, September 11, 2018 12:05 PM
To: Rob Baldwin <rob@baldwinplanning.com>
Subject: Re: 3014 Greenville

Rob,

Yes, this is correct.

Thank you,

Kiesha Kay

Get [Outlook for Android](#)

From: Rob Baldwin <rob@baldwinplanning.com>
Sent: Tuesday, September 11, 2018 10:49:40 AM
To: Kay, Kiesha
Subject: 3014 Greenville

Good afternoon Kiesha

I am working with the owner of the property known as 3014 Greenville. We are processing building permits and a CA review to allow us to renovate this building. This building is in the Modified Delta District and we want to make sure that we do not lose our delta credits while we are going through the renovation process. Would you please confirm my understanding that if we have an active building permit in place and are regularly calling in our inspections, we will not lose our delta credits while we are under construction and while we are actively marketing the spaces for lease.

Thanks for your help.

Rob

Rob Baldwin
Baldwin Associates, LLC
(214) 729-7949
rob@baldwinplanning.com



CITY OF DALLAS

September 6, 2019

Michele Stoy
Baldwin Associates
3904 Elm Street, STE: B
Dallas, TX 75226

RE: Zoning Determination Request; 3014-3024 Greenville

Dear Ms. Stoy:

As detailed in your letter dated February 27, 2019 and attached, you have requested a written determination pertaining to the non-conforming rights, or "delta credits" for the property referenced above.

The above stated property is located within CD 11, the M Streets East Conservation District, and located within the MD-1 Overlay, Greenville Ave Modified Delta Overlay District (Tract 2). The MD-1 Overlay ordinance 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. Based on our research and the attached floor plan used to verify the floor area of each suite, information on the most recent certificate of occupancy and delta credits is provided for each address.

3014 Greenville Avenue - (5999) General merchandise, CO#1807251124, - 1,559 square feet - 8 delta credits.

3016 Greenville Avenue - (5999) General merchandise, CO#1207091020, - 1,707 square feet -9 delta credits.

3018 Greenville - (5999), General merchandise, CO#8111172414, - 1,526 square feet -8 delta credits.

3020 Greenville - (5811) Restaurant, CO#9702141024, - 3,913 square feet, 39 delta credits.

3024 Greenville - (5821) Alcohol Beverage Establishment, CO#1604221106, - 3,846 square, 9 spaces obtained via a parking agreement, 29 delta credits remaining.

Therefore, based on this research, the possible non-conforming parking rights afforded per Section 51A-4.704(b)(4)(A) of the Dallas Development code could be 93 delta credits.

The delta credits for this property need to be considered per tenant when located in the MD Overlay to verify if the deltas have been lost due to vacancy. Per the parking ordinance parking must be met for the entire site, but deltas may be allocated to a specific tenant due to an adjacent tenant losing their rights to delta credits.



CITY OF DALLAS

Please note that when a use is converted to a new use having lesser parking requirements, the rights to any portion of the nonconforming parking that is not needed to meet the new requirement are lost.

Also, per Sec.51A-4.704(b)(4)(A), 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 required off-street parking and loading spaces are provided.

This letter does not constitute a building permit or certificate of occupancy, nor does it imply that a building permit or certificate of occupancy will be approved without complying with all applicable rules and regulations. The City of Dallas does not provide letters certifying that a property or development complies with all applicable rules and regulations.

If you have any further questions, please contact me at 214-948-4501 or megan.wimer@dallascityhall.com.

Respectfully,

A handwritten signature in black ink that reads "megan wimer".

Megan Wimer, AICP, CBO
Assistant Building Official
Building Inspection Division

cc: Phil Sikes, CBO, Building Official

From: [Munoz, Jennifer](#)
To: [Redacted]

Good Evening,

Yes, we can hold this case to November. It has not yet been advertised.

Thank you,



Jennifer Muñoz
Chief Planner/Board Administrator
City of Dallas | www.dallascityhall.com
Current Planning Division
Sustainable Development and Construction
1500 Marilla Street, 5BN
Dallas, TX 75201
O: 214-670-4208
jennifer.munoz@dallascityhall.com



****OPEN RECORDS NOTICE:** This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.**

From: Jennifer Hiromoto [Redacted]
Sent: Monday, October 5, 2020 1:34 PM
To: Munoz, Jennifer <jennifer.munoz@dallascityhall.com>
Cc: Rob Baldwin [Redacted]
Subject: RE: Letter of support for the Window Seat to be allowed to remain open

External Email!

Good afternoon Jennifer,

We would like to ask that case BDA190-092 for the BO Appeal be on the November docket. There is potential that this case is not needed if the other cases are successful. Please let us know if you can accommodate this request.

Thanks,
Jennifer

Jennifer Hiromoto
Baldwin Associates
3904 Elm Street Suite B
Dallas, TX 75226
Office: 214-824-7949
Cell: 469-275-2414



November 6, 2020

Via Email to BDA Secretary

Board of Adjustment, Panel B
1500 Marilla St., 5BN
Dallas, Texas 75201

Re: City Staff's Brief in Response to the Appeal of the Building Official's Decision as to 3018 Greenville, BDA 190-092

Dear Board Members:

Below is a summary the of key points that will be addressed by City staff in response to the appeal of the building official's decision in BDA 190-092.

I. Facts

A certificate of occupancy (No. 8111172414) was issued for 3018 Greenville Avenue, Dallas, Texas 75206 in November 1981. (Exhibit A). The property had 8 delta credits (these are credits that can be used to offset the required number of parking spaces for a property) for its use at that time. A new certificate of occupancy (No. 1906071094) ("CO") was issued in March 2020 which changed the use from a *general merchandise or food store 3,500 square feet or less* use to a *restaurant without drive-in or drive-through service* use. (Exhibit B).

On July 14, 2020, Sarah May, Chief Planner, Building Inspection Division, sent a letter to the Property owners, Drew M. Martin and Tom Shields, informing them that the CO was being revoked because it had been issued in error. (Exhibit C).

The applicant has appealed the building official's decision to revoke the CO.

II. Reason for Revocation

A. Change in Use – Greater Parking Requirement

Under Chapter 52, Section 306.13 of the Dallas City Code, the building official is required to revoke a certificate of occupancy if she determines that “the certificate of occupancy is issued in error” or “the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more.” (Ex. D). Section 3 of Ordinance No. 19726 for the Modified Delta Overlay No. 1, which covers 3018 Greenville Avenue, states: “That when a use located in this district is converted to a new use having greater parking or loading requirements, the rights to any nonconforming parking or loading under the delta theory may not be used to meet the new parking requirements.” (Exhibit E).

Initially the CO was approved based, in part, on compliance with off-street parking requirements which had been presumed to be met, in part, with the eight delta credits. (Exhibit C). However, because the application for the CO was to convert from a *general merchandise or food store 3,500 square feet or less* use to a *restaurant without drive-in or drive-through service* use, which has a greater parking requirement, rights to any nonconforming parking cannot be used to meet parking requirements pursuant to Section 3 of Ordinance No. 19726 for the Modified Delta Overlay No 1. (Id. and Exhibit F). When the use at 3018 Greenville Avenue was converted to a restaurant use, the delta credits were not available and the parking requirements for the property were no longer met and so the CO should not have been issued. Therefore, the building official properly revoked the CO as required by Chapter 52, Section 306.13 of the Dallas City Code.

B. Loss of Delta Credits Due to Discontinued Use/Vacancy

Dallas City Ordinance 22472 amended Dallas City Ordinance 19726, which established Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) for the area where the Property is located. Section 1 of Ordinance No. 22472 states that Section 5 of Ordinance No. 19726 is amended to read: “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.” (Exhibit G). It further provides “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: (a) A decline in the rental rates for the area which has affected the rental market, (b) An unusual increase in the vacancy rates for the area which has affected the rental market, or (c) Obsolescence of the subject property, including environmental hazards, extensive renovation or remodeling, and extreme deterioration of adjacent properties, affecting the marketability of property.” (Id.).

The building official relied upon a termination notice sent to the former tenant with an effective termination date of November 30, 2017, to conclude that the previous use had been discontinued for more than 12 months by the time the CO application was submitted on June 7, 2019. (Exhibit C and Exhibit H). Based on Section 1 of Ordinance No. 22472 she informed the owners that the eight delta credits had been lost and, therefore, this was an additional reason they could not be used to meet the parking requirements for the new restaurant use. This too supports the decision to revoke the CO. It is up to the board of adjustment to determine if a basis for a special exception has been established for the discontinued use. However, the restoration of the

Board of Adjustment, Panel B

November 6, 2020

Page 4

delta credits due to a special exception does not have any bearing on the primary basis for the revocation of the CO which was the change in use as discussed above.

III. Relief Requested

The building official's decision was proper, and the City requests that the decision be affirmed. The panel should sustain the building official's decision to revoke the March 2020 certificate of occupancy at the Property and her finding that the 8 delta credits have been lost.

Respectfully,

Christopher C. Gunter
Assistant City Attorney
214-670-4288
christopher.gunter@dallascityhall.com

On behalf of the building official

Exhibit A

Certificate of Occupancy

This Certificate of Occupancy is a reprint from Building Inspection files

Address: 3018 GREENVILLE AVE 75206

Owner: VICKI & HARRY DEMARCO
000000

DBA:

Land Use: (5610) Men's and boys' clothing and furnishings - retail

C.O.#: 8111172414

Issued Date: 11/20/1981

Lot:	Block:	Zoning:	PDD:	SUP:
Historic Dist:	Consrv Dist:	Pro Park:	Req Park:	Park Agrmt:
Dwlg Units: 0	Stories: 0	Occ Code: B2	Lot Area: 0	Total Area: 0
Type Const:	Sprinkler:	Occ Load:	Alcohol: N	Dance Floor: N

Remarks:

This certificate shall be displayed on the above premise at all times.

Exhibit B



Certificate of Occupancy

City of Dallas

Address: 3018 GREENVILLE AVE 75206

Issued: 03/03/2020

Owner: SHIELDS LTD, P.S.
3040 GREENVILLE AVE
DALLAS, TX 75206

DBA: WINDOW SEAT

Land Use: (5811) RESTAURANT WITHOUT DRIVE-IN SERVICE

Occupied Portion:

C.O.#: 1906071094

Lot:	11	Block:	2168	Zoning:	CD-11	PDD:		SUP:	
Historic Dist:		Consrv Dist:	M Streets E	Pro Park:	109	Req Park:	109	Park Agrmt:	Y
Dwlg Units:		Stories:	1	Occ Code:	B	Lot Area:	20620	Total Area:	1435
Type Const:	IIIB	Sprinkler:	None	Occ Load:		Alcohol:	N	Dance Floor:	N

Remarks: ALL WORK SUBJECT TO FIELD INSPECTOR APPROVAL. PARKING IS FOR THE ENTIRE SITE. 2 DELTA CREDITS HAVE BEEN LOST. PARKING AGREEMENT EXCEED THE NUMBER OF PARKING REQUIRED BY TWO SPACES. 3018 GREENVILLE AVE ONLY RETAINS 6 DELTA CREDITS MOVING FORWARD.10/11/19 KH NO EXTERIOR HAS BEEN APPROVED.KH

Philip Sikes
Philip Sikes, Building Official

This certificate shall be displayed on the above premise at all times.

EXHIBIT C

July 14, 2020

CERTIFIED MAIL No. 7019 1640 0001 6327 1312

Drew M. Martin

PO Box 470007

Fort Worth, Texas 76147

CERTIFIED MAIL No. 7019 1640 0001 6327 1305

Tom Shields

Shields Ltd. P.S.

418 E Shore Dr

Kemah, Texas 77565-2525

RE: Revocation of Certificate of Occupancy No. 1906071094 for a *Restaurant Without Drive-In or Drive-Through Service* use at 3018 Greenville Avenue, Dallas, Texas 75206

Dear Mr. Martin and Mr. Shields:

The above-referenced certificate of occupancy was approved based, in part, on compliance with off-street parking requirements which had been presumed to be met, in part, with eight delta credits. However, because the above application was to convert from a *general merchandise or food store 3,500 square feet or less* use to a *restaurant without drive-in or drive-through service* use, which has a greater parking requirement, rights to any nonconforming parking cannot be used to meet parking requirements pursuant to Section 3 of Ordinance No. 19726 for the Modified Delta Overlay No. 1 (Exhibit A).

The building official is required to revoke a certificate of occupancy if the building official determines that the use or occupancy authorized by the certificate of occupancy has been issued in error.¹ Therefore, the above-referenced certificate of occupancy is hereby revoked.

Further, based upon the attached noticed to vacate (Exhibit B), the use discontinued and the suite became vacant on or by November 30, 2017. Since the previous use had been discontinued for more than 12 months by the time the above-referenced certificate of occupancy application was submitted on June 7, 2019, eight delta credits for the previous occupancy had been lost pursuant to Section 1 of Ordinance No. 22472 for the Modified Delta Overlay No. 1 (Exhibit C). Fortunately, this ordinance allows the owner to make an appeal to the Board of Adjustment for a special exception to the provision that terminates delta credits as described in the attached ordinance.

¹ Section 306.13(1) of Chapter 52, "Administrative Procedures for the Construction Codes."

Any determination made by the building official is final unless appealed before the 15th day after written notice of the action or determination is given in accordance with Section 306.15 of Chapter 52 and Section 51A-4.703 of the Dallas Development Code. Questions about the appeal process should be directed to the building official at 214-948-4625 and questions about the Board of Adjustments should be directed to Charles Trammell at 214-948-4618.

Sincerely,



Sarah May
Chief Planner
Building Inspection
Sustainable Development and Construction Department

cc: Kris Sweckard, Director, Sustainable Development and Construction
Carl Simpson, Director, Code Compliance
David Session, CBO, Interim Building Official
Megan Wimer, CBO, Assistant Building Official
Tammy Palomino, Executive Assistant City Attorney
Casey Burgess, Executive Assistant City Attorney
Charles Trammell, Board of Adjustment Development Code Specialist
Kim Haynie, Development Project Coordinator

10/21/87

ORDINANCE NO. 19726

An ordinance amending CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; establishing Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) for the following described property, to wit:

Tract I is generally located south of Ellsworth Avenue, west of Matilda Street, north of Mercedes Avenue and east of Worcola Street.

Tract II is generally located south of Monticello Avenue, west of Matilda Street, north of Velasco Avenue and east of Worcola Street.

Tract III is generally located south of Belmont Avenue, west of Matilda Street, north of Ross Avenue and east of Summit Avenue;

providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the provisions of the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Article IV, "Zoning Regulations," of CHAPTER 51, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

1

CHECKED BY

JCK

SECTION 1. That CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, is amended by establishing Modified Delta Overlay District No. 1 ("this district") on the following described Property, to-wit:

Tract I: Being all of City Block B/2906 bounded by Ellsworth Avenue, Greenville Avenue, Matalee Street and Worcola Street; all of City Blocks C/2907, E/2907 and A/2908 bounded by Matalee Street, Greenville Avenue, Martel Avenue and Worcola Street; all of City Block B/2909 bounded by Martel Avenue, Greenville Avenue, Longview Street and Worcola Street; all of City Blocks H/2912 and A/2913 bounded by Longview Street, Greenville Avenue, McCommas Boulevard and Worcola Street; all of City Block 1/2193 bounded by McCommas Boulevard, Greenville Avenue, Morningside Avenue and Worcola Street; all of City Block 2/2194 bounded by Morningside Avenue, Greenville Avenue, Mercedes Avenue, and Worcola Street; all of City Block 3/2890 bounded by Ellsworth Avenue, Matilda Street, Kenwood Avenue and Greenville Avenue; all of City Block 2/2889 bounded by Kenwood Avenue, Matilda Street, Penrose Avenue and Greenville Avenue; all of City Block 1/2888 bounded by Penrose Avenue, Matilda Street, Martel Street and Greenville Avenue; all of City Blocks A/2894 and 2895 bounded by Martel Avenue, Matilda Street, McCommas Boulevard and Greenville Avenue; all of City Blocks 2896 and 4/2149 bounded by McCommas Boulevard, Matilda Street, Morningside Avenue and Greenville Avenue; and all of City Block 3/2148 bounded by Morningside Avenue, Matilda Street, Mercedes Avenue and Greenville Avenue.

Tract II: Being all of City Block B/2170 bounded by Monticello Avenue, Greenville Avenue, Ridgedale Avenue and Worcola Street; all of City Block C/2171 bounded by Ridgedale Avenue, Greenville Avenue, Vanderbilt Avenue and Worcola Street; all of City Blocks D/2172 and 1/2076 bounded by Vanderbilt Avenue, Greenville Avenue, Goodwin Avenue and Worcola Street; all of City Block 8/1926 bounded by Goodwin Avenue, Greenville Avenue, Vickery Boulevard and Worcola Street; all of City Block 9/1927 bounded by Vickery Boulevard, Greenville Avenue, Miller Avenue and Worcola Street; all of City Block 1/2146 bounded by Monticello Avenue, Matilda Street, Marquita Avenue, and Greenville Avenue; all of City Blocks 1/2168 and 5/2166 bounded by Marquita Avenue, Matilda Street, Vanderbilt Avenue and Greenville Avenue; all of City Blocks 1/2164 and 1/2162 bounded by Vanderbilt Avenue, Matilda Street, Goodwin Street and Greenville Avenue; all of City Block 8/1918 bounded by Goodwin

Avenue, Matilda Street, Vickery Boulevard and Greenville Avenue; all of City Block 9/1919 bounded by Vickery Boulevard, Matilda Street, Llano Street and Greenville Avenue; and all of City Block 1/1885 bounded by Llano Street, Matilda Street, Velasco Avenue and Greenville Avenue.

Tract III:

Being all of City Block 8/2012 bounded by Belmont Avenue, Greenville Avenue, Richmond Avenue, and Summit Avenue; all of City Block 7/2071 and part of City Block 1982 bounded by Richmond Avenue, Greenville Avenue, Bell Avenue and Summit Avenue; part of City Block 1982 and all of City Block D/1982 bounded by Bell Avenue, Greenville Avenue, Sears Street and Summit Avenue; all of City Block C/1983 bounded by Sears Street, Greenville Avenue, Alta Street and Summit Avenue; all of City Block B/1988 bounded by Alta Street, Greenville Avenue, Lewis Street and Summit Avenue, part of City Block 1472 bounded by Lewis Street, Greenville Avenue, Ross Avenue and the westward prolongation of the centerline of Ross Avenue from Greenville Avenue to Summit Avenue, and Summit Avenue; all of City Block 17/1901 bounded by Belmont Avenue, Matilda Street, Richmond Street and Greenville Avenue; all of City Block 24/1904 bounded by Richmond Avenue, Matilda Street, Prospect Avenue and Greenville Avenue; all of City Block 1/1905 bounded by Prospect Avenue, Matilda Street, Oram Street and Greenville Avenue; all of City Block 1907 and part of City Block 1908 bounded by Oram Street, Matilda Street, LaVista Street and Greenville Avenue, all of City Blocks A/1473 and B/1474 bounded by LaVista Street, Matilda Street, Lewis Street and Greenville Avenue; and all of City Blocks F/1473 and G/1474 bounded by Lewis Street, Matilda Street, Ross Avenue and Greenville Avenue.

SECTION 2. That no nonconforming parking spaces may be carried forward by a use under the delta theory, as defined in Section 51-4.704 of CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, when a use located in this district is expanded.

SECTION 3. That when a use located in this district is converted to a new use having greater parking or loading requirements, the rights to any nonconforming parking or

loading under the delta theory may not be used to meet the new parking requirements.

SECTION 4. That when a use located in this district is converted to a new use having lesser parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.

SECTION 5. 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 state an extreme circumstance that demonstrates that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more.

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 7. That CHAPTER 51 of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

ANAESLIE MUNCY, City Attorney

BY *Christopher M. du Sable*
Assistant City Attorney

Passed and correctly enrolled OCT 21 1987.

Zoning File No. Z867-228/6254-E

5623I

HOOVER SLOVACEK LLP

A REGISTERED LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

GALLERIA TOWER II

5051 WESTHEIMER, SUITE 1200

HOUSTON, TEXAS 77056

(713) 977-8686

FAX (713) 977-5395

JOSEPH O. SLOVACEK, P.C.
PARTNER

slovacek@hooverslovacek.com

www.hooverslovacek.com

REPLY TO:
P.O. BOX 4547
HOUSTON, TEXAS 77210

October 3, 2017

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc.

Attn: Harry E. Demarco, its President and Registered Agent

3018 Greenville Avenue

Dallas, Texas 75206

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc. and any and all occupants

3018 Greenville Avenue

Dallas, Texas 75206

RE: Month-to-Month Tenancy related to a certain Lease Agreement dated April 28, 1992 (the "Lease"), by and between SHIELDS LIMITED PARTNERSHIP, as successor-in-interest to Bernard E. Shields, a Texas limited partnership (the "Landlord"), and H.D.'S, INC., a Texas corporation (the "Tenant"), covering certain premises as further described within the Lease and commonly known as 3018 Greenville Avenue, Dallas, Texas 75206 (the "Premises")

Dear H.D.'s, Inc. and Any and All Occupants of the Premises:

Please be advised that the undersigned attorney and law firm represent Landlord with respect to the above-referenced matter. Capitalized terms used, but not defined, herein shall have the same meaning as in the Lease. Effective immediately, all communications regarding the matters addressed herein should be directed to me.

As Tenant is aware, the Lease expired by its own terms and Tenant has been occupying the Premises on a month-to-month basis. The purpose of this letter is to notify Tenant that Landlord is exercising its right, under Texas law, to terminate Tenant's month-to-month tenancy and Tenant's right to occupy the Premises **effective November 30, 2017** (the "Termination Date"). Tenant is expected to fulfill all rental obligations for the months of both October and November 2017 as well as return the Premises to Landlord in a clean and rentable condition on or before the Termination Date. Tenant will be responsible for any and all damages done to the

Notice to Vacate
H.D.'s, Inc.
October 3, 2017
Page 2

Premises above and beyond normal wear and tear or as otherwise required under the Lease and Texas law.

Tenant and all occupants are hereby given written notice to vacate the Premises. Unless Tenant and all occupants have vacated the Premises **on or before November 30, 2017**, Landlord fully intends to file suit to evict any and all parties in possession of the Premises. In addition, the Landlord intends to file suit against Tenant and any other parties liable under the Lease, if any, for collection of all delinquent amounts, interest, late fees, attorneys' fees, and any other damages and amounts due under the Lease and in connection with the month-to-month tenancy.

Any delay or postponement of any of Landlord's actions shall not constitute a waiver. This letter should not be interpreted by Tenant as an election of remedies. Landlord reserves and preserves all rights and remedies available to it pursuant to the Lease and as otherwise granted by Texas law. Additionally, this letter shall not constitute a waiver of any other Tenant default that might exist at the present.

This letter is being sent to Tenant in accordance with the notice provisions of the Lease and the requirements of Texas law. No further communication will necessarily be sent to Tenant from Landlord or from this law firm prior to the time that suit is instituted in the event that Tenant and any and all occupants fail to vacate the Premises by the Termination Date indicated herein.

Sincerely yours,

HOOVER SLOVACEK LLP

Joseph O. Slovacek

JOS:AJB

bcc: client (via email)

6-21-95

ORDINANCE NO. 22472

An ordinance amending Ordinance No. 19726, which established Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District); amending Section 5 of that ordinance; providing that the board of adjustment may not grant a special exception for required parking; providing an extension of the walking distance for remote parking; providing that more than 50 percent of required parking may consist of special parking; providing that the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, shall govern this district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council of the City of Dallas, in accordance with the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Ordinance No. 19726; and

WHEREAS, the city council finds that it is in the public interest to amend Modified Delta Overlay District No. 1 as specified in this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 5 of Ordinance No. 19726 is amended to read as follows:

"SECTION 5. 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~~~~[state an extreme circumstance that demonstrates]~~ 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:

(a) A decline in the rental rates for the area which has affected the rental market.

(b) An unusual increase in the vacancy rates for the area which has affected the rental market.

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

SECTION 2. That a new Section 5A is added to Ordinance No. 19726 to read as follows:

"SECTION 5A. That the board of adjustment may not grant a special exception for required off-street parking in this district."

SECTION 3. That a new Section 5B is added to Ordinance No. 19726 to read as follows:

"SECTION 5B. That the walking distances contained in Paragraphs (1) and (2)(A) of Section 51A-4.324(d) of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, are extended to 600 and 900 feet, respectively, for remote parking in this district."

SECTION 4. That a new Section 5C is added to Ordinance No. 19726 to read as follows:

"SECTION 5C. That special parking, as defined in Section 51A-4.321 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, may account for more than 50 percent of the off-street parking required for any use."

SECTION 5. That a new Section 5D is added to Ordinance No. 19726 to read

as follows:

“SECTION 5D. That the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, “PART II OF THE DALLAS DEVELOPMENT CODE,” of the Dallas City Code, as amended, govern this district.”

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 7. That CHAPTERS 51 and 51A, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and Ordinance No. 19726 shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

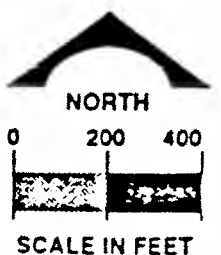
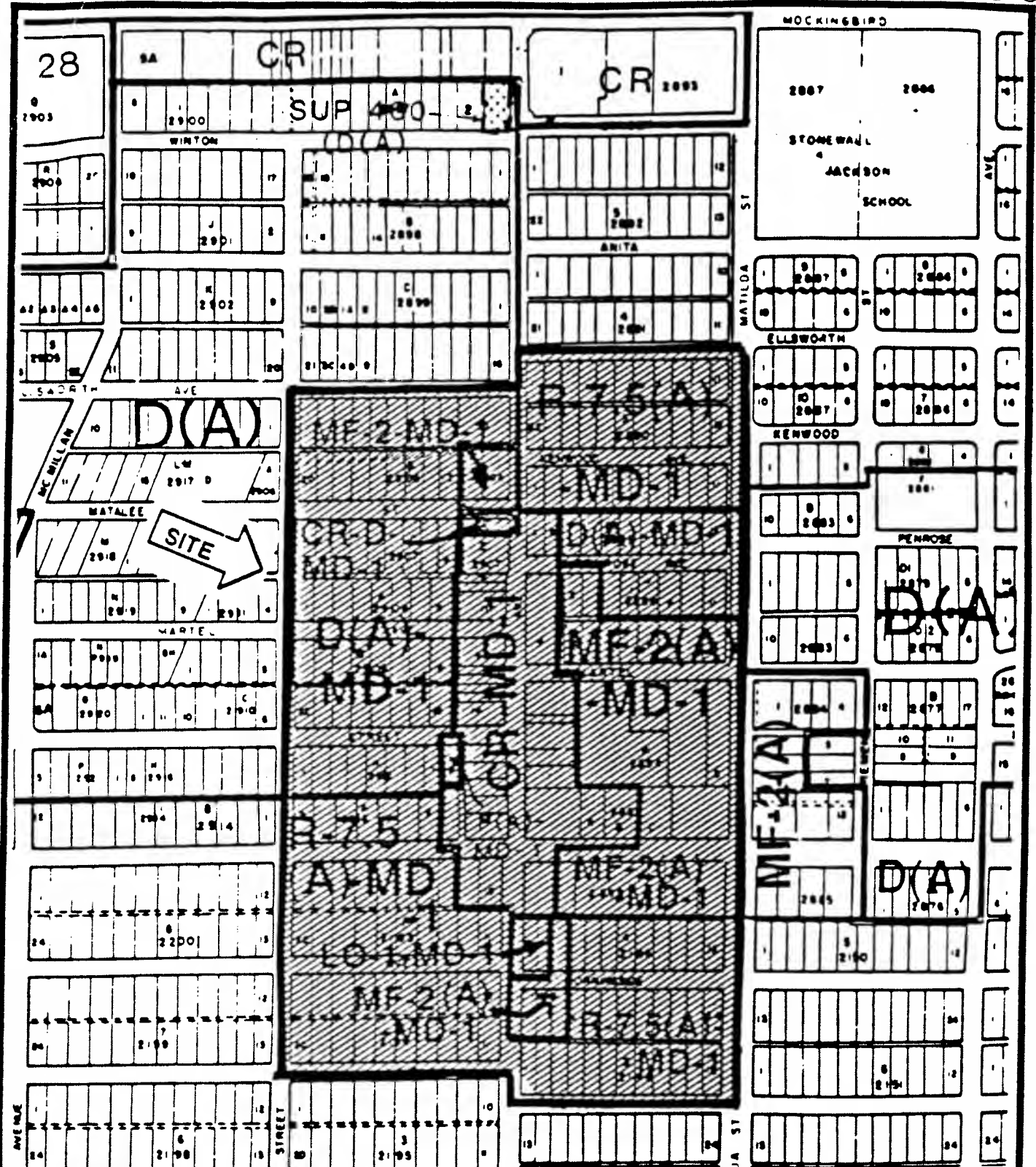
SAM A. LINDSAY, City Attorney

By 
Assistant City Attorney

JUN 28 1995

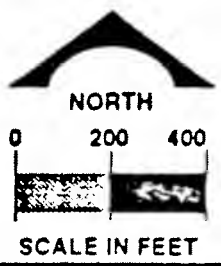
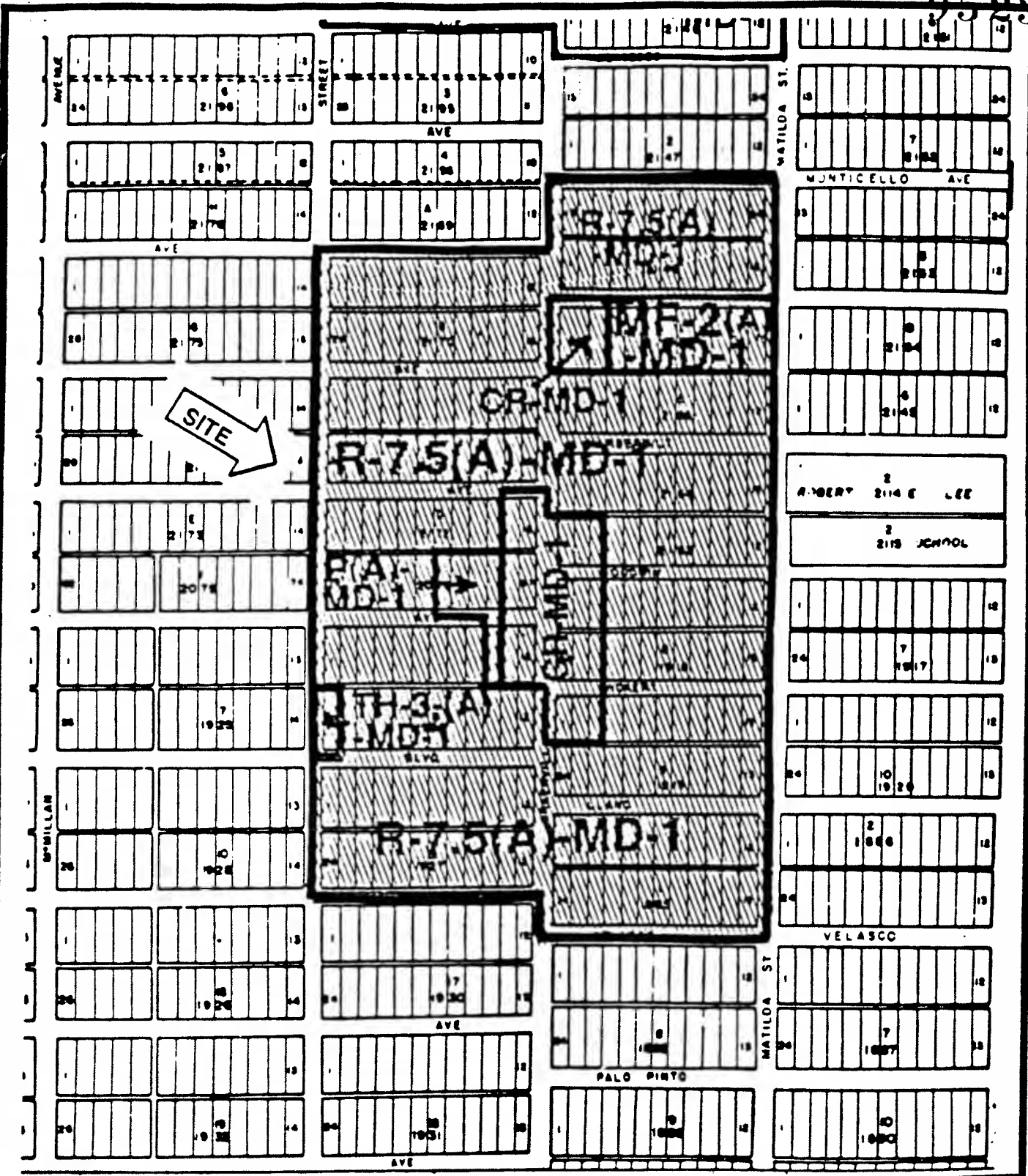
Passed _____

File No. Z945-206/6254-E



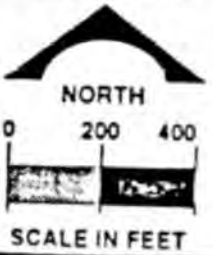
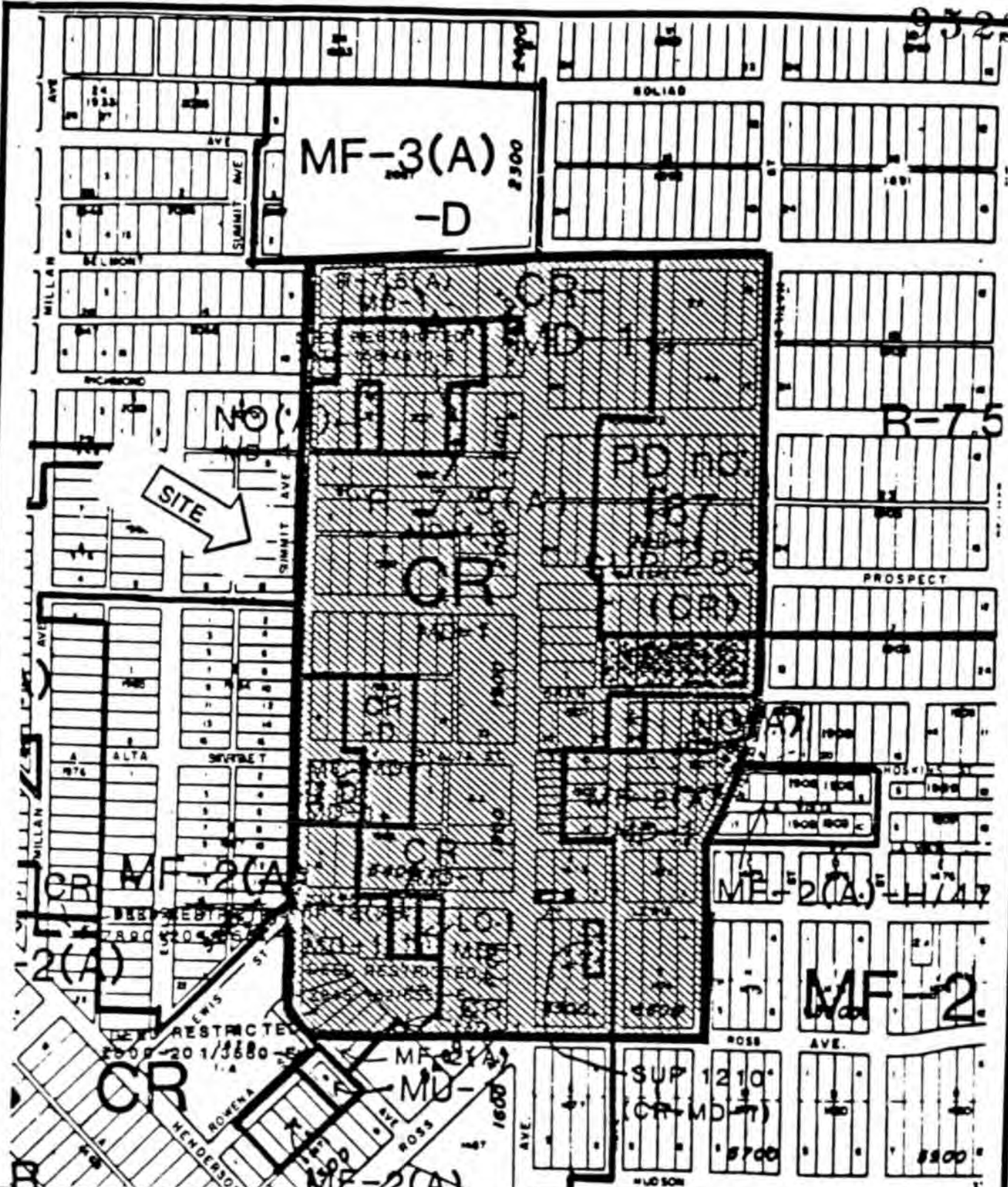
ZONING HISTORY
"AREA 1"

Map No. H-8, I-8
Case No. Z945-206/6254-E



ZONING HISTORY
"AREA 2"

Map No. H-8, I-8
Case No. Z945-206/6254-E



ZONING HISTORY
"AREA 3"

Map No. H-8, I-8
Case No. Z945-206/6254-E

EXHIBIT D

306.12 Voiding of certificate of occupancy.

306.12.1 Void *ab initio*. A certificate of occupancy shall be void *ab initio* if the use or occupancy authorized by that certificate of occupancy is not commenced before the 120th day after the date of its issuance unless one or more extensions are granted under Subsection 306.12.2, in which case the certificate of occupancy shall be void *ab initio* if the use or occupancy is not commenced during the extended time period(s). (Ord. 26029; 26579)

306.12.2 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each if the building official finds that circumstances beyond the control of the holder of the certificate of occupancy have prevented the use or occupancy from being commenced. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.12.3 Void. A certificate of occupancy shall be void if:

1. A specific use permit required by the *Dallas Development Code* to operate the use or occupancy expires; or
2. A compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed. (Ord. 26579)

306.13 Revocation of certificate of occupancy. The building official shall revoke a certificate of occupancy if the building official determines that:

1. the certificate of occupancy is issued in error;
2. the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information supplied;
3. a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
4. the structure or portion of the structure is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
5. a required city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired;

6. the holder of the certificate of occupancy has refused, upon request, to supply the building official with records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages within the required time period; or
7. the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more. (Ord. 26029; 26579)

306.14 Written notice. Written notice of any action taken or determination made by the building official under this section must be given to the owner of the structure and land and to the operator of the use or occupancy at the address shown on the certificate of occupancy by certified mail with a five-day return receipt requested or by hand-delivery. Except when a compliance date has been set in accordance with the *Dallas Development Code*, the notice must state that the action taken or determination made by the building official is final unless appealed. The fact that the notice is returned undelivered or that the return receipt is not signed by the addressee shall not affect the validity of the notice. (Ord. 26579)

306.15 Appeal of actions and determinations. Any action taken or determination made by the building official under this section shall be final unless appealed as follows:

1. If the action taken or determination made was pursuant to the codes, an appeal must be made to the building inspection advisory, examining, and appeals board in accordance with Section 208 before the 15th day after written notice of the action taken or determination made is given in accordance with Section 306.14; or
2. Except as provided in Paragraph 3, if the action taken or determination made was pursuant to the *Dallas Development Code*, an appeal must be made to the board of adjustment in accordance with the *Dallas Development Code*.
3. A certificate of occupancy that is void because a compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed may not be appealed under this subsection. (Ord. 26029; 26579)

306.16 Stay pending appeal. An appeal of an action taken or determination made by the building official under this section stays all proceedings in furtherance of the action taken or determination made that is appealed unless the building official certifies in writing to the appropriate board facts supporting the building official's opinion that a stay would cause imminent peril to life or property. Then, the proceedings may be stayed only by a restraining order granted by the district court, after notice to the building official, if due cause is shown. (Ord. 26579)

EXHIBIT E

10/21/87

ORDINANCE NO. 19726

An ordinance amending CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; establishing Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District) for the following described property, to wit:

Tract I is generally located south of Ellsworth Avenue, west of Matilda Street, north of Mercedes Avenue and east of Worcola Street.

Tract II is generally located south of Monticello Avenue, west of Matilda Street, north of Velasco Avenue and east of Worcola Street.

Tract III is generally located south of Belmont Avenue, west of Matilda Street, north of Ross Avenue and east of Summit Avenue;

providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council, in accordance with the provisions of the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Article IV, "Zoning Regulations," of CHAPTER 51, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

1

CHECKED BY

JCK

SECTION 1. That CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, is amended by establishing Modified Delta Overlay District No. 1 ("this district") on the following described Property, to-wit:

Tract I: Being all of City Block B/2906 bounded by Ellsworth Avenue, Greenville Avenue, Matalee Street and Worcola Street; all of City Blocks C/2907, E/2907 and A/2908 bounded by Matalee Street, Greenville Avenue, Martel Avenue and Worcola Street; all of City Block B/2909 bounded by Martel Avenue, Greenville Avenue, Longview Street and Worcola Street; all of City Blocks H/2912 and A/2913 bounded by Longview Street, Greenville Avenue, McCommas Boulevard and Worcola Street; all of City Block 1/2193 bounded by McCommas Boulevard, Greenville Avenue, Morningside Avenue and Worcola Street; all of City Block 2/2194 bounded by Morningside Avenue, Greenville Avenue, Mercedes Avenue, and Worcola Street; all of City Block 3/2890 bounded by Ellsworth Avenue, Matilda Street, Kenwood Avenue and Greenville Avenue; all of City Block 2/2889 bounded by Kenwood Avenue, Matilda Street, Penrose Avenue and Greenville Avenue; all of City Block 1/2888 bounded by Penrose Avenue, Matilda Street, Martel Street and Greenville Avenue; all of City Blocks A/2894 and 2895 bounded by Martel Avenue, Matilda Street, McCommas Boulevard and Greenville Avenue; all of City Blocks 2896 and 4/2149 bounded by McCommas Boulevard, Matilda Street, Morningside Avenue and Greenville Avenue; and all of City Block 3/2148 bounded by Morningside Avenue, Matilda Street, Mercedes Avenue and Greenville Avenue.

Tract II: Being all of City Block B/2170 bounded by Monticello Avenue, Greenville Avenue, Ridgedale Avenue and Worcola Street; all of City Block C/2171 bounded by Ridgedale Avenue, Greenville Avenue, Vanderbilt Avenue and Worcola Street; all of City Blocks D/2172 and 1/2076 bounded by Vanderbilt Avenue, Greenville Avenue, Goodwin Avenue and Worcola Street; all of City Block 8/1926 bounded by Goodwin Avenue, Greenville Avenue, Vickery Boulevard and Worcola Street; all of City Block 9/1927 bounded by Vickery Boulevard, Greenville Avenue, Miller Avenue and Worcola Street; all of City Block 1/2146 bounded by Monticello Avenue, Matilda Street, Marquita Avenue, and Greenville Avenue; all of City Blocks 1/2168 and 5/2166 bounded by Marquita Avenue, Matilda Street, Vanderbilt Avenue and Greenville Avenue; all of City Blocks 1/2164 and 1/2162 bounded by Vanderbilt Avenue, Matilda Street, Goodwin Street and Greenville Avenue; all of City Block 8/1918 bounded by Goodwin

Avenue, Matilda Street, Vickery Boulevard and Greenville Avenue; all of City Block 9/1919 bounded by Vickery Boulevard, Matilda Street, Llano Street and Greenville Avenue; and all of City Block 1/1885 bounded by Llano Street, Matilda Street, Velasco Avenue and Greenville Avenue.

Tract III:

Being all of City Block 8/2012 bounded by Belmont Avenue, Greenville Avenue, Richmond Avenue, and Summit Avenue; all of City Block 7/2071 and part of City Block 1982 bounded by Richmond Avenue, Greenville Avenue, Bell Avenue and Summit Avenue; part of City Block 1982 and all of City Block D/1982 bounded by Bell Avenue, Greenville Avenue, Sears Street and Summit Avenue; all of City Block C/1983 bounded by Sears Street, Greenville Avenue, Alta Street and Summit Avenue; all of City Block B/1988 bounded by Alta Street, Greenville Avenue, Lewis Street and Summit Avenue, part of City Block 1472 bounded by Lewis Street, Greenville Avenue, Ross Avenue and the westward prolongation of the centerline of Ross Avenue from Greenville Avenue to Summit Avenue, and Summit Avenue; all of City Block 17/1901 bounded by Belmont Avenue, Matilda Street, Richmond Street and Greenville Avenue; all of City Block 24/1904 bounded by Richmond Avenue, Matilda Street, Prospect Avenue and Greenville Avenue; all of City Block 1/1905 bounded by Prospect Avenue, Matilda Street, Oram Street and Greenville Avenue; all of City Block 1907 and part of City Block 1908 bounded by Oram Street, Matilda Street, LaVista Street and Greenville Avenue, all of City Blocks A/1473 and B/1474 bounded by LaVista Street, Matilda Street, Lewis Street and Greenville Avenue; and all of City Blocks F/1473 and G/1474 bounded by Lewis Street, Matilda Street, Ross Avenue and Greenville Avenue.

SECTION 2. That no nonconforming parking spaces may be carried forward by a use under the delta theory, as defined in Section 51-4.704 of CHAPTER 51, "PART I OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, when a use located in this district is expanded.

SECTION 3. That when a use located in this district is converted to a new use having greater parking or loading requirements, the rights to any nonconforming parking or

loading under the delta theory may not be used to meet the new parking requirements.

SECTION 4. That when a use located in this district is converted to a new use having lesser parking or loading requirements, the rights to any portion of the nonconforming parking or loading not needed to meet the new requirements are lost.

SECTION 5. 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 state an extreme circumstance that demonstrates that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more.

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 7. That CHAPTER 51 of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

ANALES LIE MUNCY, City Attorney

BY *Christina M. de Steiner*
Assistant City Attorney

Passed and correctly enrolled OCT 21 1987.

Zoning File No. 2867-228/6254-E

5623I

EXHIBIT F

SEC. 51A-4.210. RETAIL AND PERSONAL SERVICE USES.

(a) General provisions. Except as otherwise provided in this article, the following general provisions apply to all uses listed in this section:

(1) All uses must be retail or service establishments dealing directly with consumers. No person may produce goods or perform services on the premises unless those goods or services are principally sold on the premises to individuals at retail.

(2) Outside sales, outside display of merchandise, and outside storage may be classified as either main or accessory uses. Accessory outside sales, accessory outside display of merchandise, and accessory outside storage are limited to five percent of the lot. If these uses occupy more than five percent of the lot, they are only allowed in districts that permit them as a main use.

(3) In a GO(A) district, a retail and personal service use:

(A) must be contained entirely within a building; and

(B) may not have a floor area that, in combination with the floor areas of other retail and personal service uses in the building, exceeds 10 percent of the total floor area of the building.

(b) Specific uses.

(13) General merchandise or food store 3,500 square feet or less.

(A) Definition: A retail store with a floor area of 3,500 square feet or less for the sale of general merchandise or food. Typical general merchandise includes clothing and other apparel, equipment for hobbies and sports, gifts, flowers and household plants, dry goods, toys, furniture, antiques, books and stationery, pets, drugs, auto parts and accessories, and similar consumer goods. The term “food store”

includes a grocery store, delicatessen, convenience store without drive-through, and specialty foods store. This use does not include other uses in this article that are specifically listed.

(B) Districts permitted: By right in GO(A)*, retail, CS, industrial, central area, mixed use, multiple commercial, and urban corridor districts. By right as a limited use only in MF-3(A), MF-4(A), LO(A), and MO(A) districts. *Note: This use is subject to restrictions in the GO(A) district. See Subsection (a)(3).

(C) Required off-street parking: One space per 200 square feet of floor area.

(D) Required off-street loading: One space.

(E) Additional provisions:

(i) If this use has a drive-through facility, a minimum of two stacking spaces must be provided. See Section [51A-4.304](#) for more information regarding off-street stacking spaces generally.

(ii) The outside sale, display, or storage of furniture is permitted if the furniture is:

(aa) customarily used outside; and

(bb) made of a material that is resistant to damage or deterioration from exposure to the outside environment.

(iii) The outside sale, display, or storage of furniture, other than the furniture described in Section [51A-4.210\(b\)\(13\)\(E\)\(ii\)](#), is permitted only on Saturday and Sunday.

(24) Restaurant without drive-in or drive-through service.

(A) Definition: An establishment principally for the sale and consumption of food on the premises. (This use does not include a restaurant with drive-in or drive-through service.)

(B) Districts permitted: By right in GO(A)*, retail, CS, industrial, central area, mixed use, multiple commercial, and urban corridor districts. By right as a limited use only in MF-4(A), LO(A), and MO(A) districts. By SUP only in the NO(A) district. RAR required in MF-4(A), LO(A), MO(A), GO(A), retail, CS, industrial, mixed use, and multiple commercial districts. *Note: This use is subject to restrictions in the GO(A) district. See Subsection (a)(3).

(C) Required off-street parking:

(i) As a main use: except as otherwise provided, one space per 100 square feet of floor area.

(ii) As a limited or accessory use: except as otherwise provided, one space per 200 square feet of floor area.

(iii) One space per 500 square feet of floor area used for the manufacture of alcoholic beverages as an accessory use to the restaurant without drive-in or drive-through service use.

(D) Required off-street loading:

SQUARE FEET OF FLOOR AREA IN STRUCTURE	TOTAL REQUIRED SPAC
0 to 5,000	NONE
5,000 to 25,000	1
25,000 to 50,000	2
Each additional 50,000 or fraction thereof	1 additional

(E) Additional provisions:

(i) The sale and service of alcoholic beverages in conjunction with the operation of this use is allowed generally, but may be prohibited if this use is located in a liquor control overlay district. See Section [51A-4.503](#).

EXHIBIT G

6-21-95

ORDINANCE NO. 22472

An ordinance amending Ordinance No. 19726, which established Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District); amending Section 5 of that ordinance; providing that the board of adjustment may not grant a special exception for required parking; providing an extension of the walking distance for remote parking; providing that more than 50 percent of required parking may consist of special parking; providing that the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, shall govern this district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council of the City of Dallas, in accordance with the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Ordinance No. 19726; and

WHEREAS, the city council finds that it is in the public interest to amend Modified Delta Overlay District No. 1 as specified in this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 5 of Ordinance No. 19726 is amended to read as follows:

"SECTION 5. 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~~~~[state an extreme circumstance that demonstrates]~~ 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:

(a) A decline in the rental rates for the area which has affected the rental market.

(b) An unusual increase in the vacancy rates for the area which has affected the rental market.

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

SECTION 2. That a new Section 5A is added to Ordinance No. 19726 to read as follows:

"SECTION 5A. That the board of adjustment may not grant a special exception for required off-street parking in this district."

SECTION 3. That a new Section 5B is added to Ordinance No. 19726 to read as follows:

"SECTION 5B. That the walking distances contained in Paragraphs (1) and (2)(A) of Section 51A-4.324(d) of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, are extended to 600 and 900 feet, respectively, for remote parking in this district."

SECTION 4. That a new Section 5C is added to Ordinance No. 19726 to read as follows:

"SECTION 5C. That special parking, as defined in Section 51A-4.321 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, may account for more than 50 percent of the off-street parking required for any use."

SECTION 5. That a new Section 5D is added to Ordinance No. 19726 to read

as follows:

"SECTION 5D. That the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, govern this district."

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 7. That CHAPTERS 51 and 51A, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and Ordinance No. 19726 shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

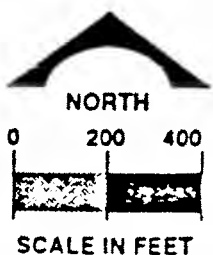
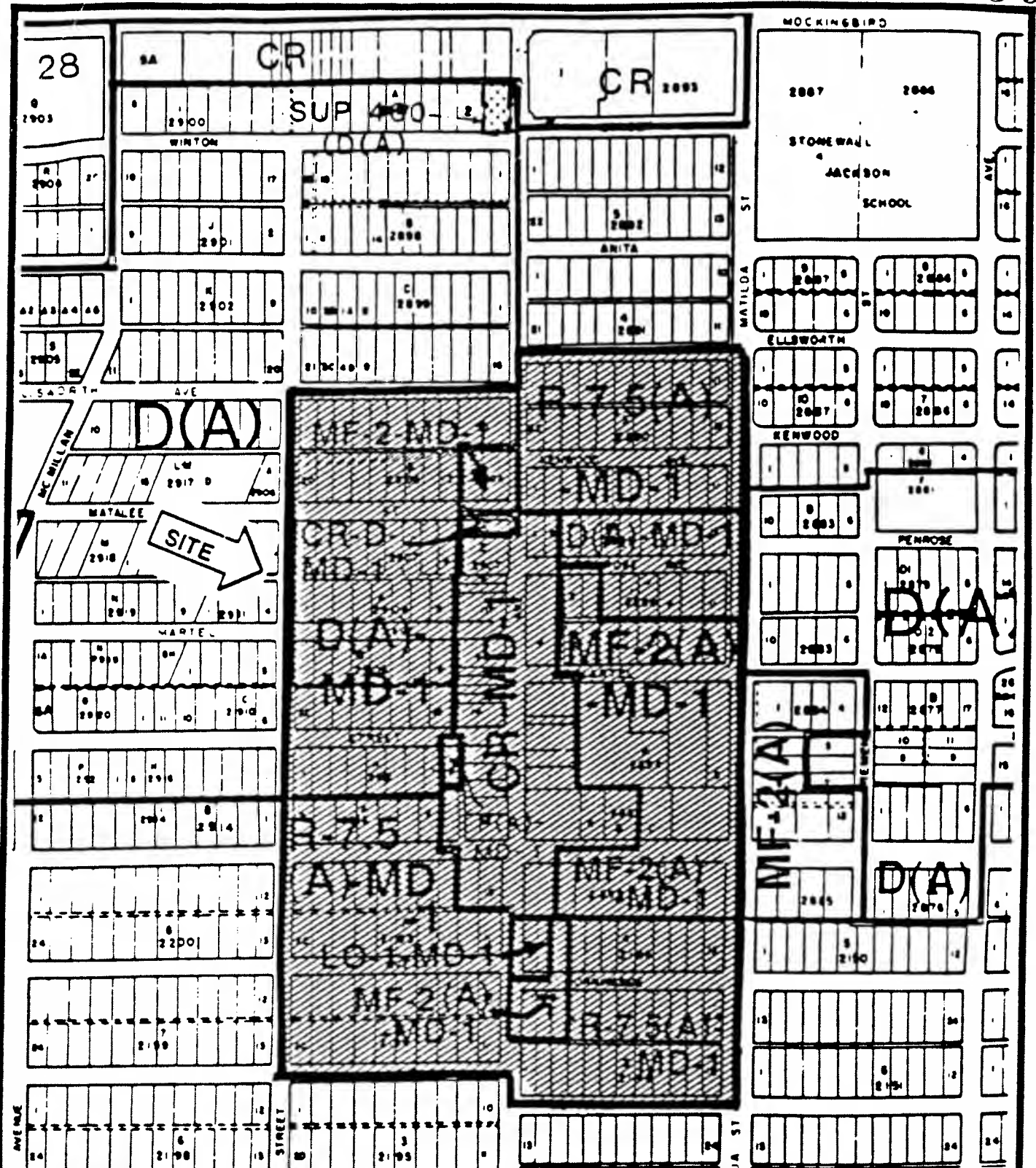
SAM A. LINDSAY, City Attorney

By  Assistant City Attorney

JUN 28 1995

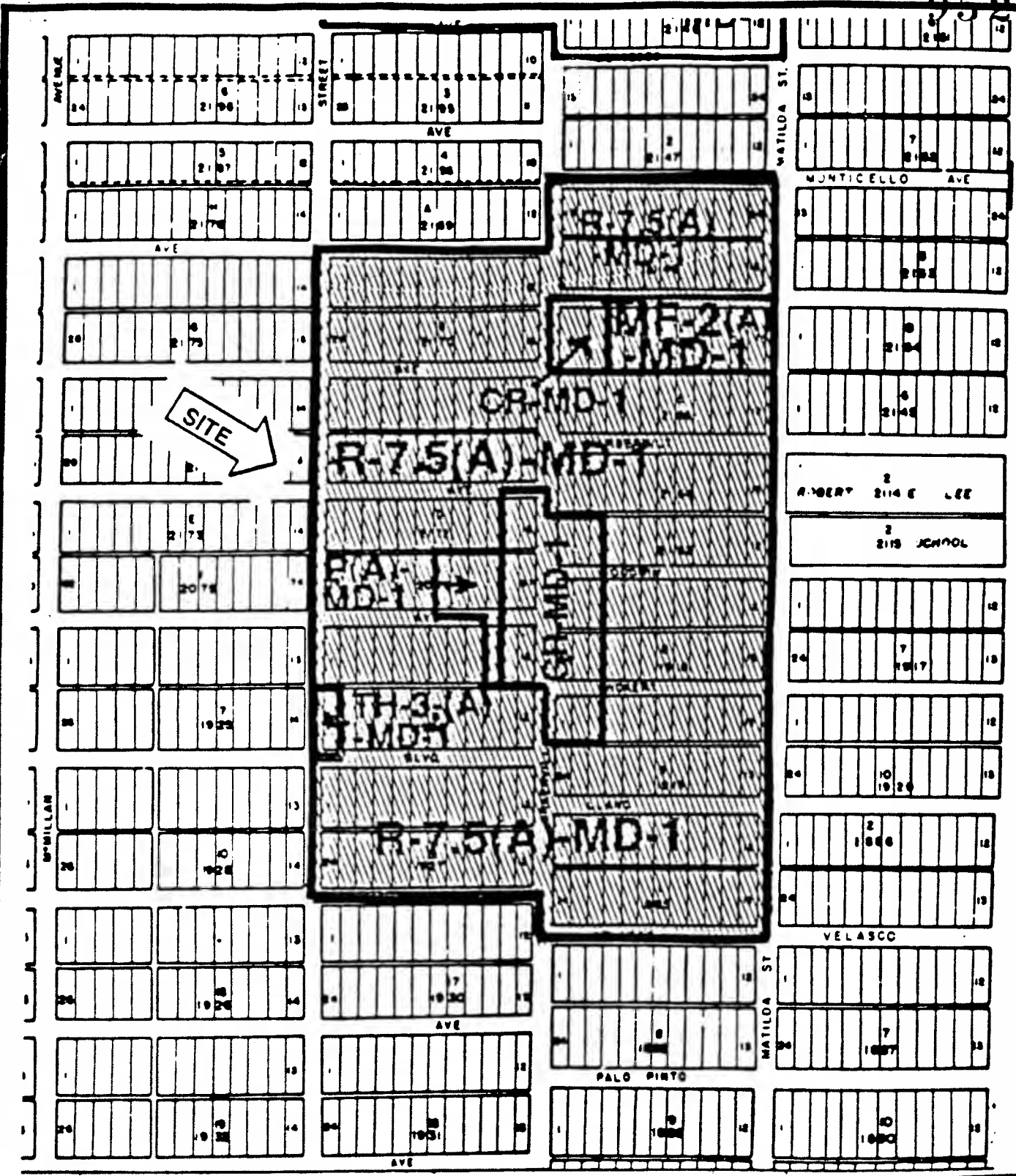
Passed _____

File No. Z945-206/6254-E



ZONING HISTORY
"AREA 1"

Map No. H-8, I-8
Case No. Z945-206/6254-E



2
ROBERT 2114 E LEE

2
2115 SCHOOL

1
24
7
1917

1
24
10
1924

1
24
2
1926

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1929

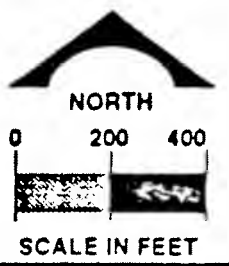
1
24
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1930

1
24
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1931

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24
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1932

1
24
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1933

1
24
10
1934

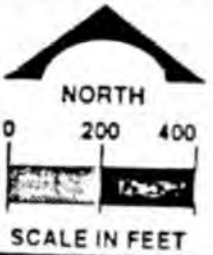
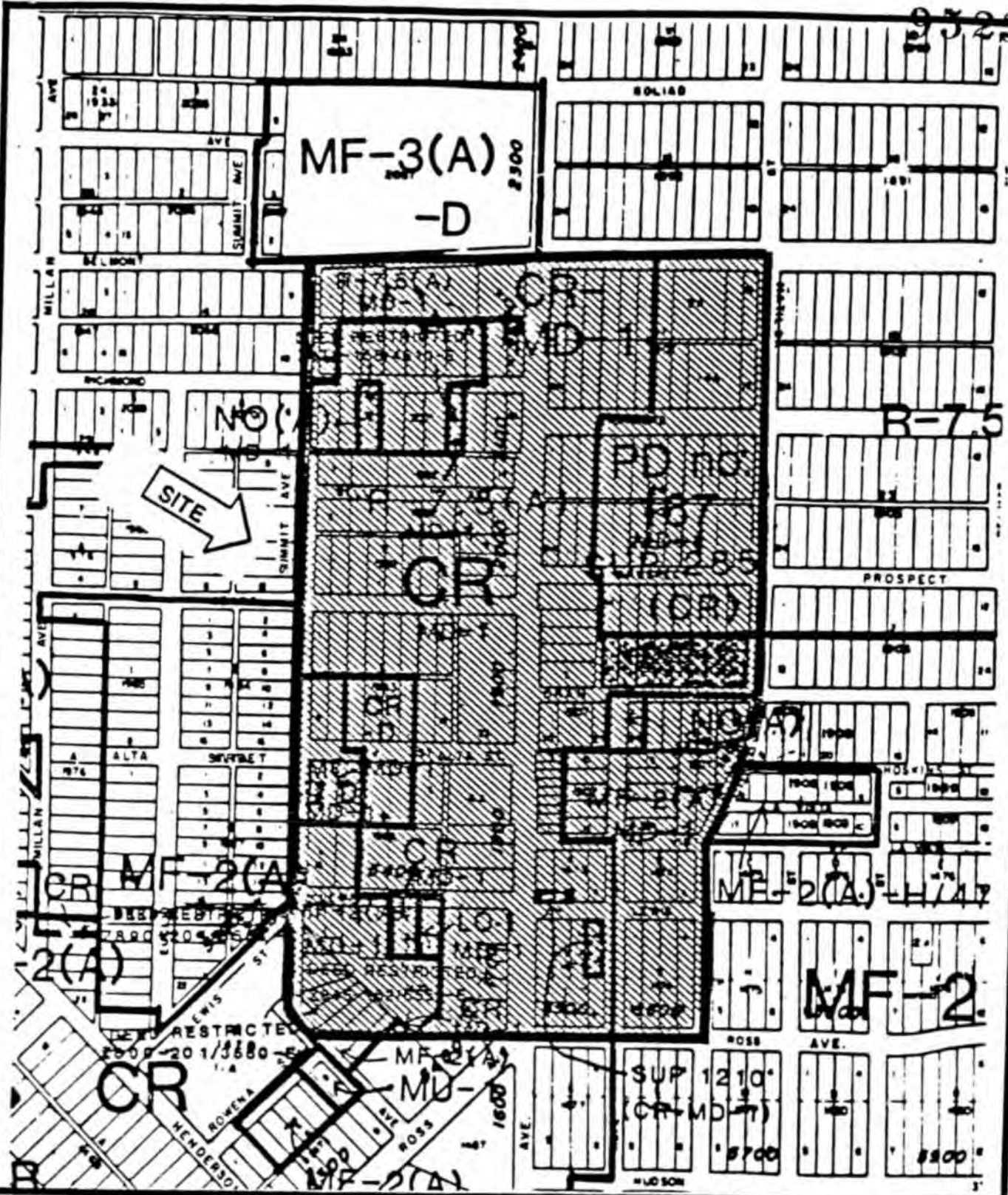


ZONING HISTORY

"AREA 2"

Map No. H-8, I-8

Case No. Z945-206/6254-E



ZONING HISTORY
"AREA 3"

Map No. H-8, I-8
Case No. Z945-206/6254-E

EXHIBIT H

HOOVER SLOVACEK LLP

A REGISTERED LIMITED LIABILITY PARTNERSHIP

JOSEPH O. SLOVACEK, P.C.
PARTNER

slovacek@hooverslovacek.com
www.hooverslovacek.com

ATTORNEYS AT LAW
GALLERIA TOWER II
5051 WESTHEIMER, SUITE 1200
HOUSTON, TEXAS 77056

(713) 977-8686
FAX (713) 977-5395

REPLY TO:
P.O. BOX 4547
HOUSTON, TEXAS 77210

October 3, 2017

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc.

Attn: Harry E. Demarco, its President and Registered Agent
3018 Greenville Avenue
Dallas, Texas 75206

**Via Certified Mail, Return Receipt Requested
and U.S. Mail**

H.D.'s, Inc. and any and all occupants
3018 Greenville Avenue
Dallas, Texas 75206

RE: Month-to-Month Tenancy related to a certain Lease Agreement dated April 28, 1992 (the "Lease"), by and between SHIELDS LIMITED PARTNERSHIP, as successor-in-interest to Bernard E. Shields, a Texas limited partnership (the "Landlord"), and H.D.'S, INC., a Texas corporation (the "Tenant"), covering certain premises as further described within the Lease and commonly known as 3018 Greenville Avenue, Dallas, Texas 75206 (the "Premises")

Dear H.D.'s, Inc. and Any and All Occupants of the Premises:

Please be advised that the undersigned attorney and law firm represent Landlord with respect to the above-referenced matter. Capitalized terms used, but not defined, herein shall have the same meaning as in the Lease. Effective immediately, all communications regarding the matters addressed herein should be directed to me.

As Tenant is aware, the Lease expired by its own terms and Tenant has been occupying the Premises on a month-to-month basis. The purpose of this letter is to notify Tenant that Landlord is exercising its right, under Texas law, to terminate Tenant's month-to-month tenancy and Tenant's right to occupy the Premises **effective November 30, 2017** (the "Termination Date"). Tenant is expected to fulfill all rental obligations for the months of both October and November 2017 as well as return the Premises to Landlord in a clean and rentable condition on or before the Termination Date. Tenant will be responsible for any and all damages done to the

Notice to Vacate
H.D.'s, Inc.
October 3, 2017
Page 2

Premises above and beyond normal wear and tear or as otherwise required under the Lease and Texas law.

Tenant and all occupants are hereby given written notice to vacate the Premises. Unless Tenant and all occupants have vacated the Premises **on or before November 30, 2017**, Landlord fully intends to file suit to evict any and all parties in possession of the Premises. In addition, the Landlord intends to file suit against Tenant and any other parties liable under the Lease, if any, for collection of all delinquent amounts, interest, late fees, attorneys' fees, and any other damages and amounts due under the Lease and in connection with the month-to-month tenancy.

Any delay or postponement of any of Landlord's actions shall not constitute a waiver. This letter should not be interpreted by Tenant as an election of remedies. Landlord reserves and preserves all rights and remedies available to it pursuant to the Lease and as otherwise granted by Texas law. Additionally, this letter shall not constitute a waiver of any other Tenant default that might exist at the present.

This letter is being sent to Tenant in accordance with the notice provisions of the Lease and the requirements of Texas law. No further communication will necessarily be sent to Tenant from Landlord or from this law firm prior to the time that suit is instituted in the event that Tenant and any and all occupants fail to vacate the Premises by the Termination Date indicated herein.

Sincerely yours,

HOOVER SLOVACEK LLP

Joseph O. Slovacek

JOS:AJB

bcc: client (via email)

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 August 18 and 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. The zoning case is still pending and the applicant is seeking a new holdover.

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 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:
 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.

August 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.

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

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)

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**

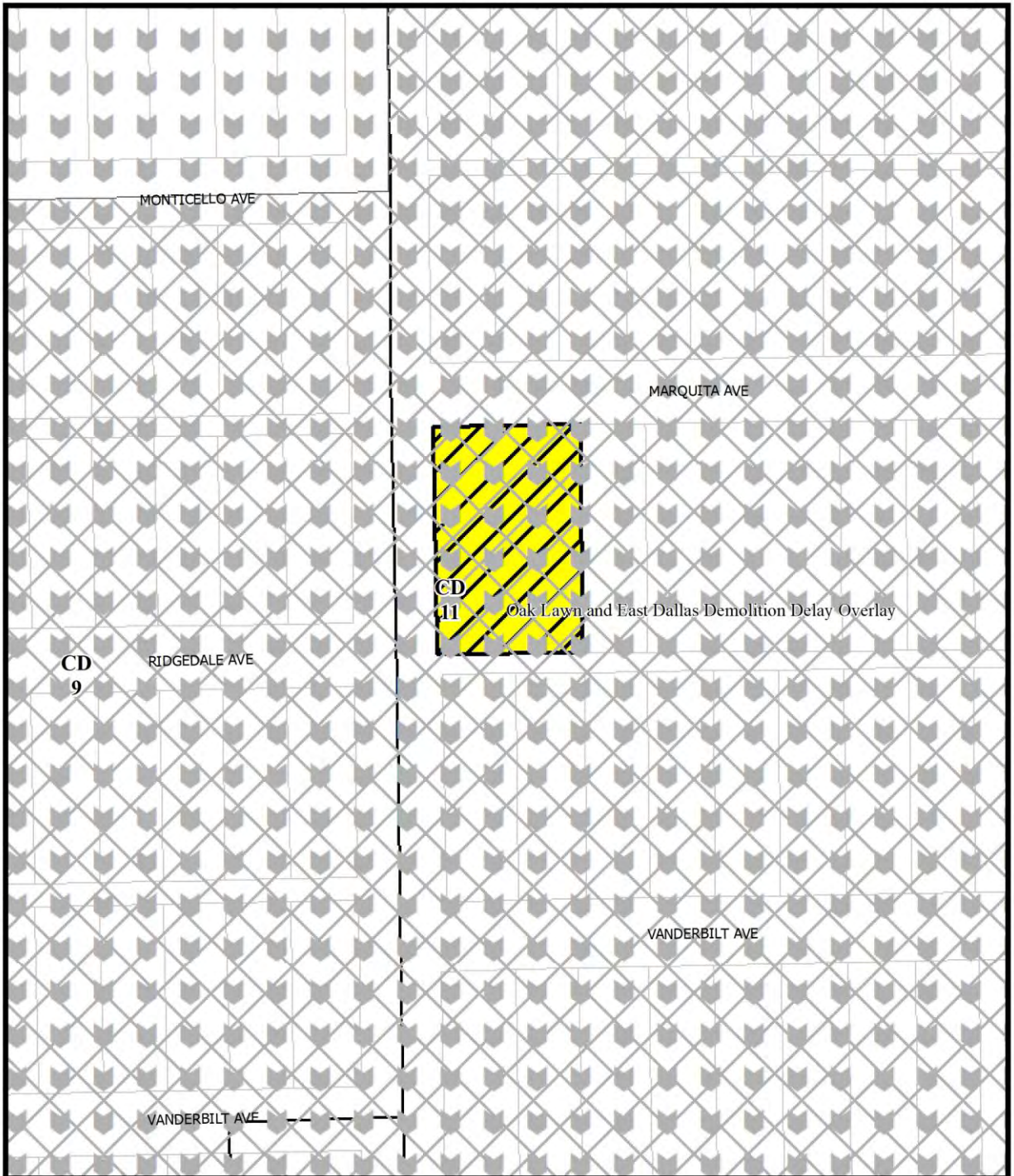
I move that the Board of Adjustment in Appeal No. BDA 190-093, **hold** this matter under advisement until **November 18, 2020**.

SECONDED: **Vermillion**

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

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

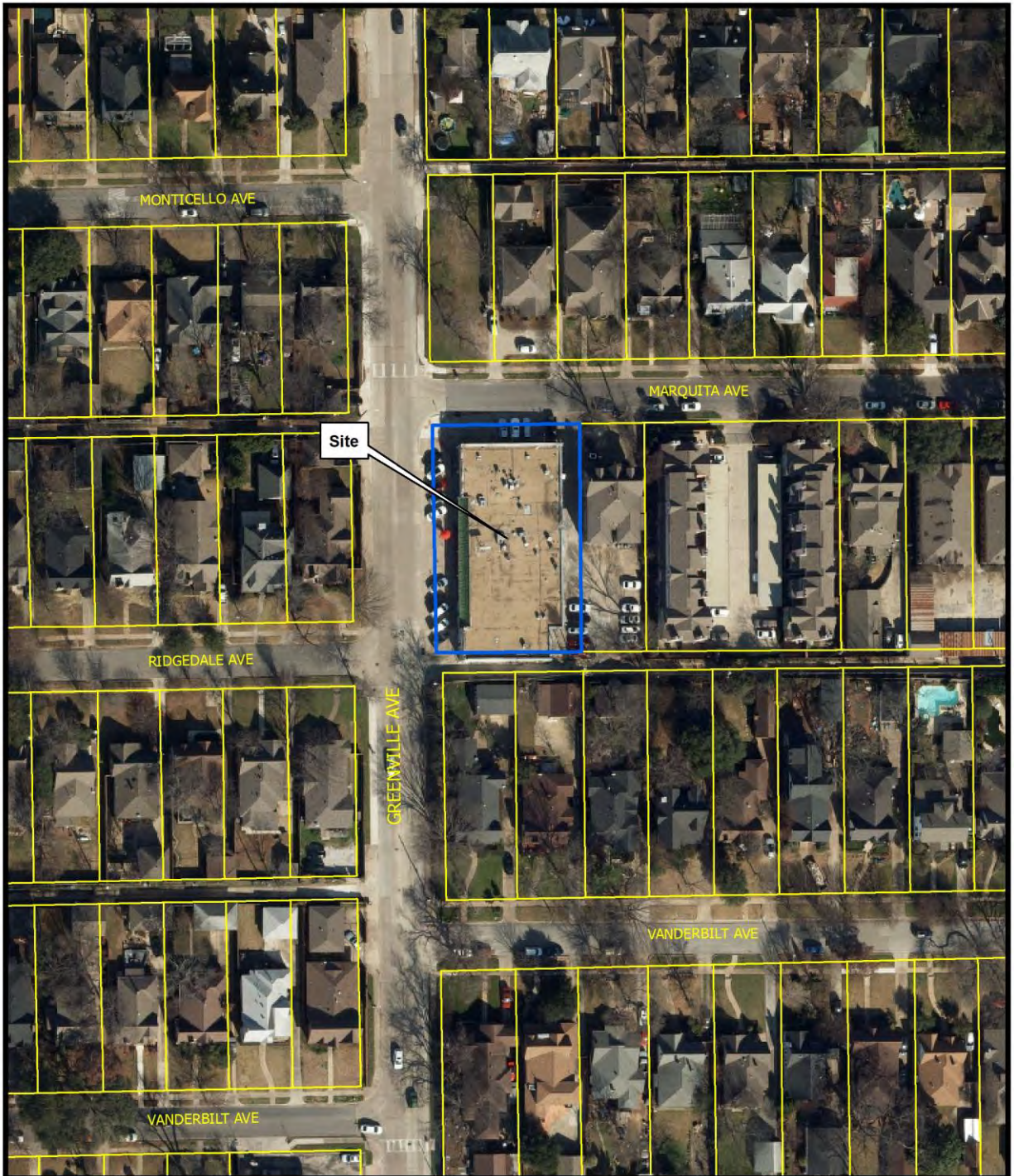


1:1,200

ZONING MAP

Case no: BDA190-093

Date: 10/1/2020

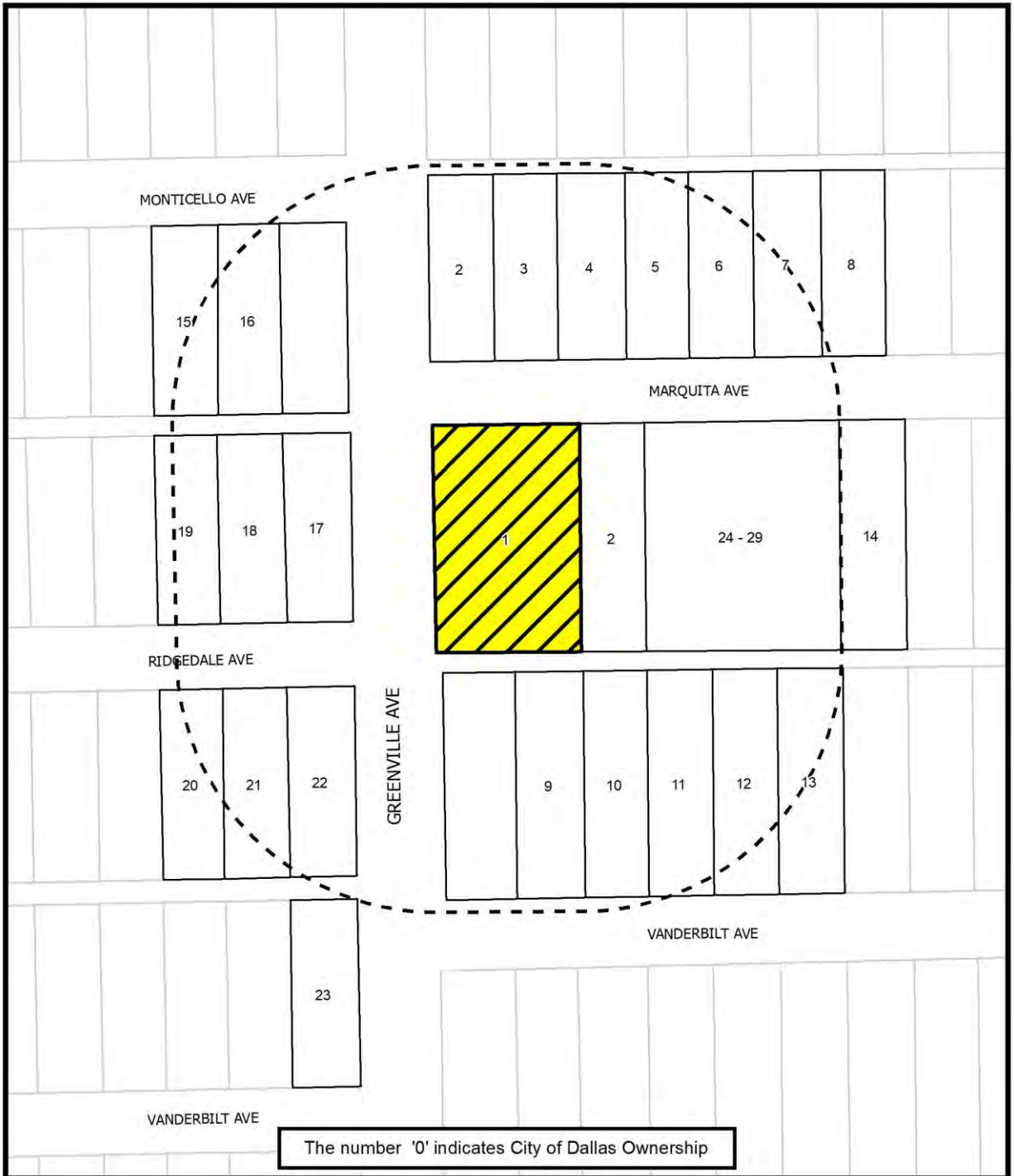


1:1,200

AERIAL MAP

Case no: BDA190-093

Date: 10/1/2020



1:1,200

NOTIFICATION

200' AREA OF NOTIFICATION
29 NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA190-093**
 Date: **10/1/2020**

10/01/2020

Notification List of Property Owners

BDA190-093

29 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	3014 GREENVILLE AVE	SHIELDS LTD PS
2	5701 MARQUITA AVE	PASHA & SINA INC
3	5707 MARQUITA AVE	RENTZ BAILEY
4	5711 MARQUITA AVE	VAHDANI CHRISTOPHER &
5	5715 MARQUITA AVE	NUNNALLY HARVEY W III
6	5719 MARQUITA AVE	BOLGER DOROTHY E
7	5723 MARQUITA AVE	VELIS BILL D
8	5727 MARQUITA AVE	LAWSON CLIFFORD J & JANE G
9	5707 VANDERBILT AVE	OROZCO RICHARD & RUFINA
10	5711 VANDERBILT AVE	MOORE HARRY E & SAMMIE S
11	5715 VANDERBILT AVE	ANTHONY JOHN ROSS
12	5719 VANDERBILT AVE	MILLER EMILY
13	5723 VANDERBILT AVE	KALMBACH ERIC W
14	5726 MARQUITA AVE	O B A INC
15	5638 MONTICELLO AVE	BASU NEIL K
16	5642 MONTICELLO AVE	ASKEW ANTONINA M VENTURA
17	5647 RIDGEDALE AVE	BELL PHILIP
18	5643 RIDGEDALE AVE	KONKEL RICHARD ARTHUR
19	5639 RIDGEDALE AVE	BATTAGLIA SCOTT &
20	5640 RIDGEDALE AVE	BARNETT JAMES C
21	5642 RIDGEDALE AVE	PLATTS DOUGLAS &
22	5644 RIDGEDALE AVE	SCHUCK CORD BRITTON
23	5647 VANDERBILT AVE	SU STUART
24	5720 MARQUITA AVE	PATTON JEFF
25	5720 MARQUITA AVE	WILLINGHAM KIRK R
26	5720 MARQUITA AVE	BURKE GARY A

10/01/2020

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	5720 MARQUITA AVE	LOBO VINAY J
28	5720 MARQUITA AVE	BIRNBAUM MARC A &
29	5720 MARQUITA AVE	XOCHOTL LARA



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 190-093

Data Relative to Subject Property:

Date: 8/4/2020

Location address: 3024 Greenville Avenue, Dallas, TX 75206 Zoning District: CD-11

Lot No.: 11 Block No.: 2168 Acreage: 0.51 Census Tract: 0002.02

Street Frontage (in Feet): 1) 179.16 2) 124.00 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Shields Limited Partnership

Applicant: Thomas Shields Telephone: 281-635-4250

Mailing Address: 418 E. Shore Drive, Kemah, TX Zip Code: 77565

E-mail Address: tom.shields@shields-lagniappe.com

Represented by: Steven Dimitt/Rob Baldwin Telephone: 214-559-2700

Mailing Address: 1201 N. Riverfront Blvd., Suite 150, Dallas, TX Zip Code: 75207

E-mail Address: sdimitt@pcrfirm.com / rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance _____, or Special Exception X, of Section 5 of Ordinance 19726 regarding the termination of delta credits for parking and loading spaces that are terminated because a use is discontinued or vacant for 12 months.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: Owner can state an extreme circumstance that demonstrates that there was not an intent to abandon the use even though the use was discontinued or remained vacant for 12 months or more, including but not limited to, extensive renovations and remodeling of the property.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Thomas Shields (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)



Subscribed and sworn to before me this 3 day of August, 2020

[Signature]
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was---Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that THOMAS SHIELDS
represented by Steven Dimitt
did submit a request to restore lost delta credits
at 3024 Greenville Avenue

BDA190-093. Application of THOMAS SHIELDS represented by Steven Dimitt to restore delta parking credits at 3024 GREENVILLE AVE. This property is more fully described as Lot 11, Block 2168, and is zoned CD-11(MD-1), which states that the right to nonconforming delta parking credits are lost if the use is vacant for twelve months or more. The board may grant a special exception to this provision only if the owner can demonstrate there was not an intent to abandon the use. The applicant proposes to restore the lost delta parking credits, which will require a special exception to the Modified Delta Overlay-1 regulation.

Sincerely,


David Session, Building Official



CITY OF DALLAS

AFFIDAVIT

Appeal number: BDA 190-093

I, Shields Limited Partnership, Owner of the subject property
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 3024 Greenville Avenue, Dallas, Texas 75206
(Address of property as stated on application)

Authorize: Thomas Shields
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

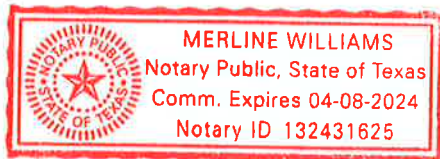
Special exception under Section 5 of Ordinance 19726 regarding the termination of delta credits for parking and loading spaces that are terminated because a use is discontinued or vacant for 12 months.

Shields Ltd. P.S./Thomas Shields Thomas Shields 8/3/2020
 Print name of property owner/agent Signature of property owner/agent Date

Before me, the undersigned, on this day personally appeared Thomas Shields

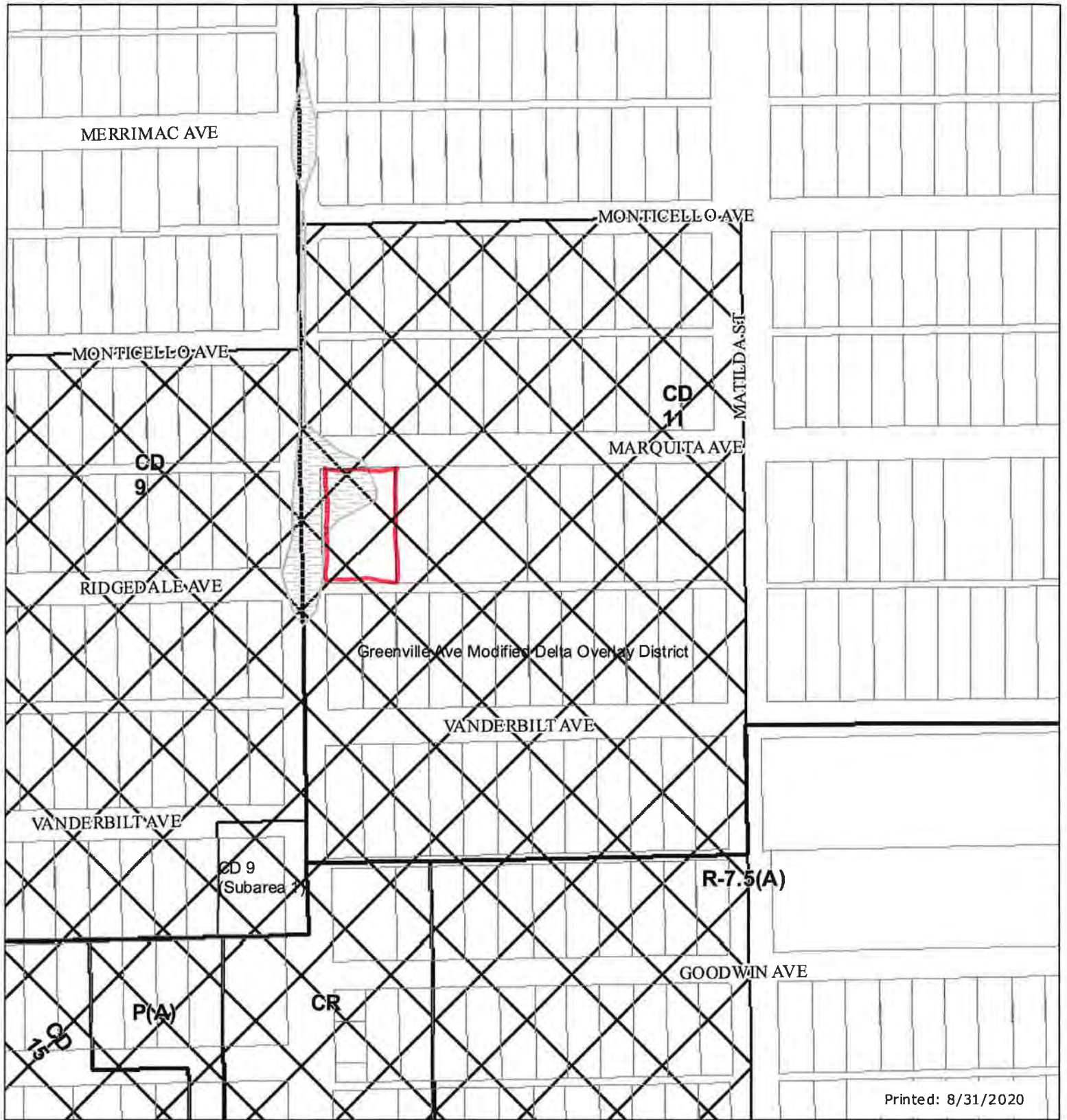
Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 3 day of August, 2020



Merline Williams
Notary Public for Dallas County, Texas

Commission expires on 04-08-2024



Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSP Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay 34-4 |
| | | Height Map Overlay | |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





City of Dallas

Certificate of Occupancy

Address: 3024 GREENVILLE AVE 75206

Issued: 01/09/2017

Owner: SHIELDS LTD PS
418 E SHORE DR , KEMAH TEXAS 775652525 UNITED STATES OF AMERICA

DBA: SAN FRANCISCO ROSE

Land Use: (5821) ALCOHOLIC BEVERAGE ESTABLISHMENT

Occupied Portion:

C.O.#: 1604221106

Lot:	11	Block:	2168	Zoning:	CD-11	PDD:	SUP:
Historic Dist:		Consrv Dist:	M Streets E	Pro Park:	36	Req Park:	36
Dwlg Units:		Stories:	1	Occ Code:	A2	Lot Area:	20620
Type Const:	IIB	Sprinkler:	None	Occ Load:	87	Alcohol:	N
						Dance Floor:	N

Remarks: SUBJECT TO FIELD INSPECTOR APPROVAL / MAX OCC'Y LOAD IN BUILDING = 87; IN OPEN PATIO=30 PERSONS/

Philip Sikes
Philip Sikes, Building Official

This certificate shall be displayed on the above premise at all times.



CITY OF DALLAS

July 14, 2020

CERTIFIED MAIL No. 7019 1640 0001 6327 1329

Boo Bradberry

40/40 Enterprises, Inc DBA San Francisco Rose
1009 Stoneport Lane
Allen, Texas 75002

CERTIFIED MAIL No. 7019 1640 0001 6327 1305

Tom Shields

Shields Ltd. P.S.
418 E Shore Dr
Kemah, Texas 77565-2525

RE: Revocation of Certificate of Occupancy No. 1604221106 for an *Alcoholic Beverage Establishment* use at 3024 Greenville Avenue, Dallas, Texas 75206

Dear Mr. Bradberry and Mr. Shields:

Based upon articles written in the *Dallas Observer* and the San Francisco Rose Facebook page (Exhibit A), the building official has determined that the above use was discontinued in late 2017, over two years ago. The building official is required to revoke a certificate of occupancy if the building official determines that the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more.¹ Therefore, the above-referenced certificate of occupancy is hereby revoked.

Additionally, the above-referenced certificate of occupancy was approved based, in part, on compliance with off-street parking requirements which had been met, in part, with delta credits. Since this location has been closed for more than twelve months, all delta credits for this occupancy have been lost pursuant to the provisions of Ordinance No. 22472 for the Modified Delta Overlay No. 1 (Exhibit B). Fortunately, this ordinance allows the owner to make an appeal to the Board of Adjustment for a special exception to the provision that terminates delta credits as described in the attached ordinance. Questions about the Board of Adjustments should be directed to Charles Trammell at 214-948-4618.

¹ Section 306.13(7) of Chapter 52, "Administrative Procedures for the Construction Codes."



CITY OF DALLAS

Finally, since the above-referenced certificate of occupancy was issued for a nonconforming *alcoholic beverage establishment* use, which has been discontinued for more than six months, nonconforming right to open another nonconforming *alcoholic beverage establishment* use has also been lost.²

Any determination made by the building official is final unless appealed before the 15th day after written notice of the action or determination is given in accordance with Section 306.15 of Chapter 52, "Administrative Procedures for the Construction Codes." Questions about the appeal process should be directed to the building official at 214-948-4625.

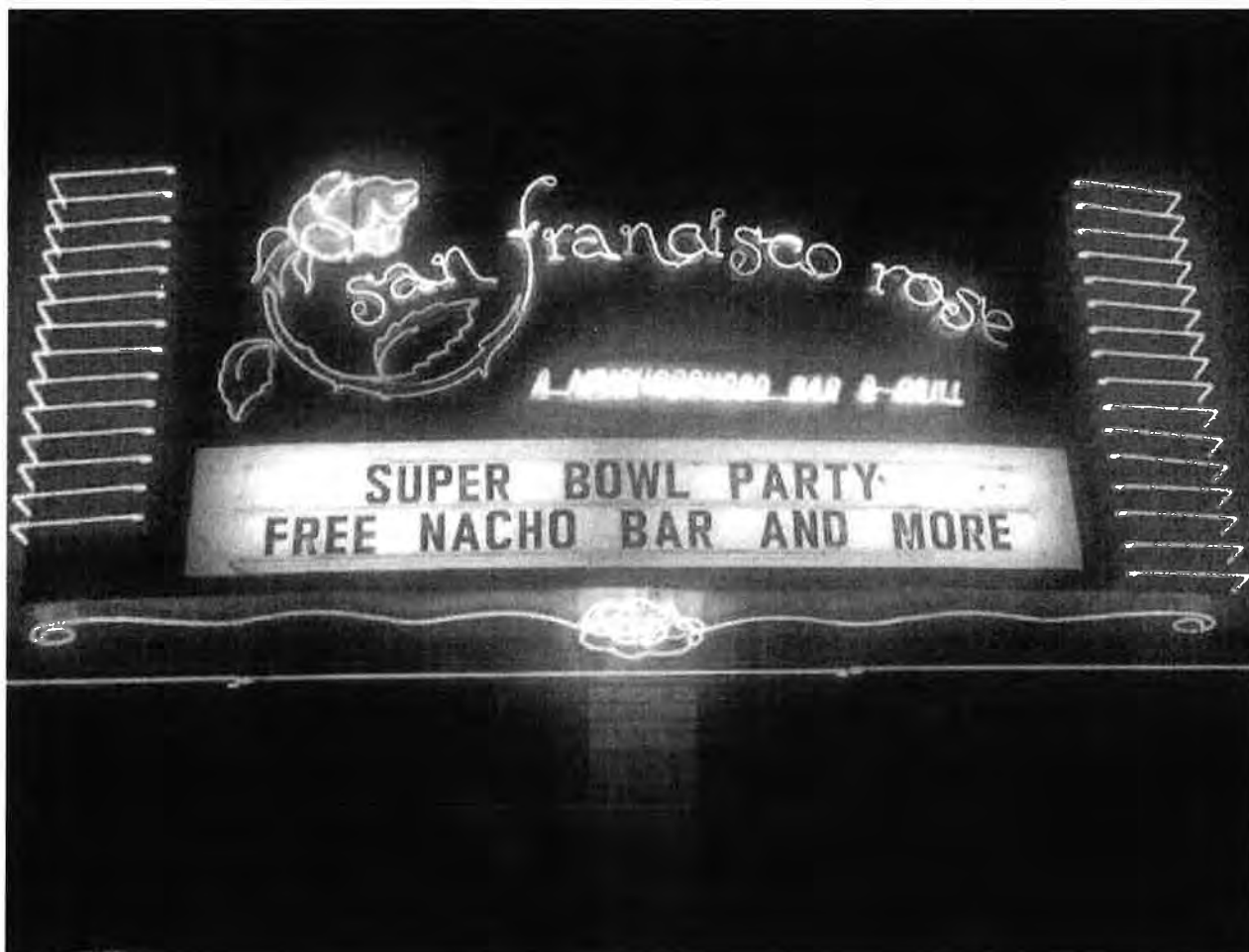
Sincerely,

A handwritten signature in cursive script that reads "Sarah May".

Sarah May
Chief Planner
Building Inspection
Sustainable Development and Construction Department

cc: Kris Sweckard, Director, Sustainable Development and Construction
Carl Simpson, Director, Code Compliance
David Session, CBO, Interim Building Official
Megan Wimer, CBO, Assistant Building Official
Tammy Palomino, Executive Assistant City Attorney
Casey Burgess, Executive Assistant City Attorney
Charles Trammell, Board of Adjustment Development Code Specialist
Kim Haynie, Development Project Coordinator

² Section 51A-4.704(a)(2) of the Dallas Development Code.



The San Francisco Rose, which opened in '77, is part of a tradition started by the original TGI Fridays in New York City. / [San Francisco Rose on Facebook](#)

Texas Supreme Court Intervention May Doom The San Francisco Rose on Greenville

NICHOLAS BOSTICK | OCTOBER 18, 2017 | 4:00AM

In 1977, Dallas welcomed its first “fern bar,” San Francisco Rose, and thus began the city’s love affair with trendy bars and kitschy cocktails. The fern bar concept was born in the mid-’60s, when the original TGI Fridays opened on 63rd Street in New York City. The only remaining bar of this kind in Dallas is likely to close in the next 90 days.

The venue began as an attraction for younger crowds to an area home to dark and smoky saloons. San Francisco Rose survived the inevitable shift in tastes through the ’80s and ’90s, transitioning into a neighborhood haunt with karaoke Wednesdays and pub quiz Thursdays.

But for the past five years, San Francisco Rose owner Boo Bradberry says he's been locked in a battle with his landlord. Bradberry declined to discuss details but referenced the court case Shields Limited Partnership v. Boo Bradberry 40/40 Enterprises Inc., argued March 23 in the Supreme Court of Texas.



The San Francisco Rose on Greenville Avenue is likely to close in the next 90 days. / Taryn Walker

The property owner, Shields Limited, claims Bradberry paid his rent late numerous times. But according to court documents, Shields Limited had been accepting late rent payments since 2012. Shields Limited would have a better case for eviction had the landlord levied late fees against Bradberry or accepted late payments "under protest."

Since the owner willingly accepted late payment, three courts declared that Shields Limited had no grounds to evict Bradberry. The Texas Court of Appeals affirmed the ruling.

But the Texas Supreme Court disagreed, awarding Shields Limited the right to evict Bradberry a month and a half before Bradberry says his lease was supposed to end. The length of the lease was also a point of contention during subsequent court cases.

Experts point out that the court's intervention is atypical and could signal more involvement, new contracts or laws governing commercial contracts.

"Our Supremes never get involved in eviction cases," Stuart Lantin, a real estate lawyer in Dallas, wrote in an online article for the North Texas Commercial Association of Realtors and Real Estate Professionals. "Certainly not in commercial evictions."

As for the San Francisco Rose, it is unknown whether Bradberry will try to keep his bar alive. The Texas Property Code does not allow for commercial evictions to be appealed past the county court level.

RELATED TOPICS: MUSIC DFW MUSIC NEWS

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San Francisco Rose

· November 14, 2017 ·

Turning the marquee off, one last time.

Thank you, EVERYONE. This place has been gutted of tables, chairs, coolers, tv's, lights, etc- but, the love & unity can't ever be taken away. We love you guys. Cheers

779 Views

Nicole Jensen Ivy, Hector Castellanos, Most Relevant Paul Nelson and 33 others like this.

1 Share

5 Comments



Cassandra Jenkins Thanks for the years of memories

2y



Anita Gaviria Torres Thanks for the memories!!!

2y



Shelby Guild Smith Very much so!

6-21-95

ORDINANCE NO. 22472

An ordinance amending Ordinance No. 19726, which established Modified Delta Overlay District No. 1 (the Greenville Avenue Modified Delta Overlay District); amending Section 5 of that ordinance; providing that the board of adjustment may not grant a special exception for required parking; providing an extension of the walking distance for remote parking; providing that more than 50 percent of required parking may consist of special parking; providing that the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, shall govern this district; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city plan commission and the city council of the City of Dallas, in accordance with the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to Ordinance No. 19726; and

WHEREAS, the city council finds that it is in the public interest to amend Modified Delta Overlay District No. 1 as specified in this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 5 of Ordinance No. 19726 is amended to read as follows:

"SECTION 5. That the right to carry forward nonconforming parking and loading

22472

952395

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~~[state an extreme circumstance that demonstrates]~~ 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:

(a) A decline in the rental rates for the area which has affected the rental market.

(b) An unusual increase in the vacancy rates for the area which has affected the rental market.

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

SECTION 2. That a new Section 5A is added to Ordinance No. 19726 to read as follows:

"SECTION 5A. That the board of adjustment may not grant a special exception for required off-street parking in this district."

SECTION 3. That a new Section 5B is added to Ordinance No. 19726 to read as follows:

"SECTION 5B. That the walking distances contained in Paragraphs (1) and (2)(A) of Section 51A-4.324(d) of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, are extended to 600 and 900 feet, respectively, for remote parking in this district."

SECTION 4. That a new Section 5C is added to Ordinance No. 19726 to read as follows:

"SECTION 5C. That special parking, as defined in Section 51A-4.321 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, may account for more than 50 percent of the off-street parking required for any use."

SECTION 5. That a new Section 5D is added to Ordinance No. 19726 to read

22472

952395

as follows:

"SECTION 5D. That the modified delta overlay district regulations contained in Section 51A-4.506 of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, govern this district."

SECTION 6. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

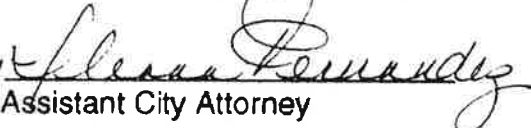
SECTION 7. That CHAPTERS 51 and 51A, "DALLAS DEVELOPMENT CODE," of the Dallas City Code, as amended, and Ordinance No. 19726 shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 8. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 9. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

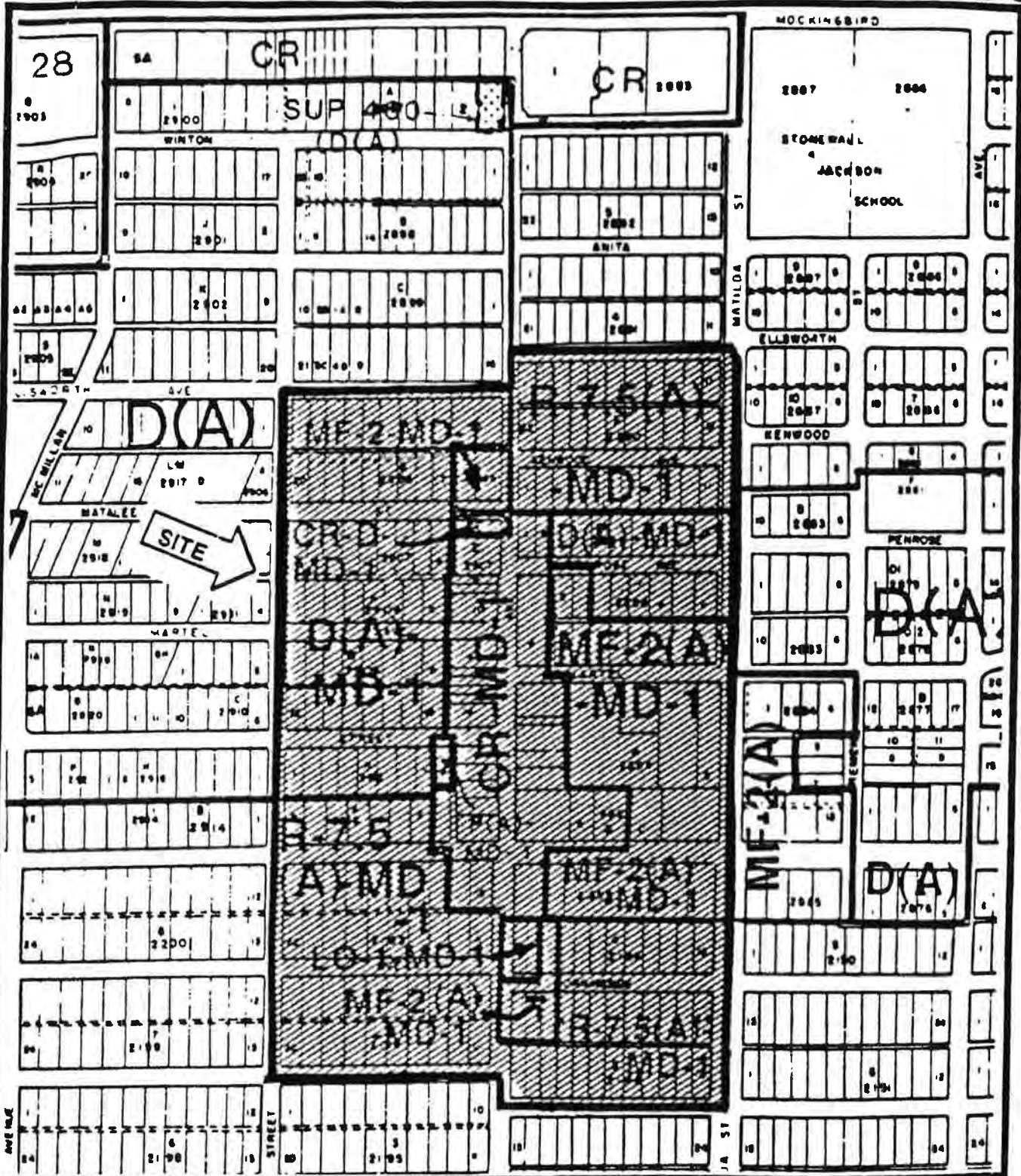
SAM A. LINDSAY, City Attorney

By 
Assistant City Attorney

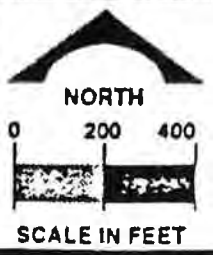
JUN 28 1995

Passed _____

File No. Z945-206/6254-E



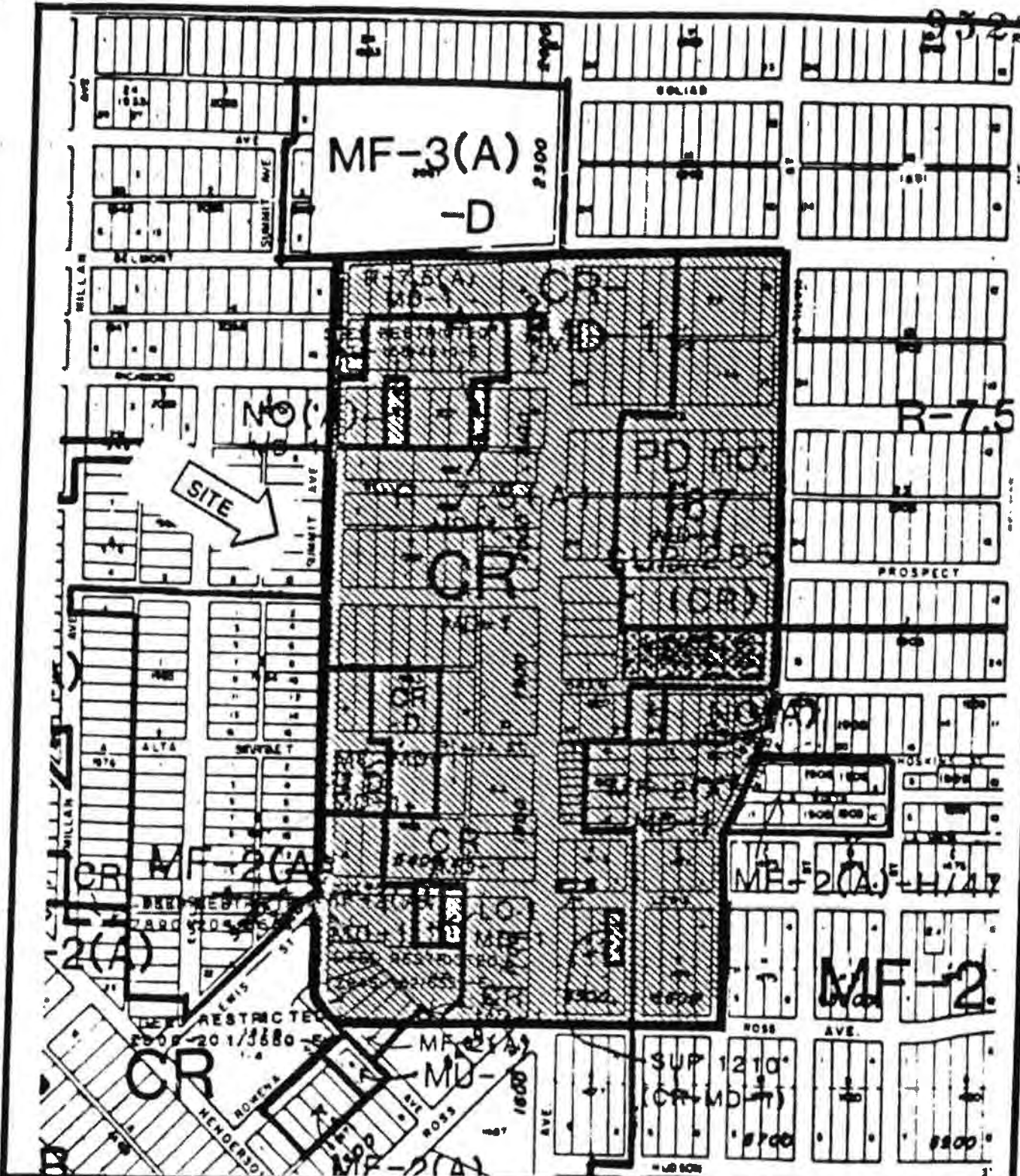
SITE



ZONING HISTORY
"AREA 1"

Map No. H-8, I-8
Case No. Z945-206/6254-E

232395



ZONING HISTORY
"AREA 3"

Map No. H-8, I-8
Case No. Z945-206/6254-E

ATTACHMENT A
BDA190-093

3024 Greenville Avenue

Summary:

Below is a summary of the activities which demonstrate that the property owner, Shields Limited Partnership, did not intend to abandon the use even if the use was discontinued or remained vacant for 12 months or more. The 3024 Greenville space was continuously occupied by the San Francisco Rose from March 19, 1997 to November 14, 2017. The property owner has continuously worked to improve and renovate the building and this specific space since that time, which is evidenced in the timeline below:

1. Lease dated 3/19/97 to 5/31/12.
2. Amended Lease dated 6/1/12 to 5/31/22.
3. Order compelling debtor (SF Rose) to vacate no later than 11/14/17.
4. Proposal signed with +One Design/Construction on 12/5/2017 for building renovation.
5. San Francisco Rose – Certificate of Occupancy – 01/9/17.
6. Confirmation from Texas Dept. of Licensing and Regulation for ADA ramp portion of building renovation - 3/12/2018.
7. First drawings received from +One Design/Construction for building renovation - 3/29/18.
8. Construction permit for building renovation applied for on 4/26/18 (#1804261024).
9. Submitted building permit for remodel on May 31, 2018 with completion date of February 21, 2020.
10. Drawings for building renovation submitted to CD-11 on 7/10/18 for review (#CD18071003).
11. Construction permit to relocate electrical meter applied for 4/4/19 (#190404600).

12. CD-11 review completed on 9/12/18. (#CD18071003)
13. Construction permit for building renovation issued by the City of Dallas on 10/8/18 (#1804261024).
14. Submitted building permit for interior remodel on November 13, 2018 with completion date of January 25, 2019.
15. Contract signed with Highland Builders, Inc. on 11/15/18.
16. Construction permit to remodel to empty shell applied for on 5/31/18.
17. Submitted building permit for relocation of electrical meter on April 4, 2019.
18. Construction permit for Sewer Relay applied for on 9/13/19 with completion date of 12/23/19.
19. Construction has been ongoing from December 2018 through approximately February 2020.
20. Executed lease agreement with tenant, Meyboom Brasserie, LLC on June 22, 2020.
21. The property owner and Meyboom Brasserie, LLC have been actively working on plans and submittals for additional improvements and the continuation of the use at this location.

From: Kay, Kiesha <kiesha.kay@dallascityhall.com>
Sent: Tuesday, September 11, 2018 12:05 PM
To: Rob Baldwin <rob@baldwinplanning.com>
Subject: Re: 3014 Greenville

Rob,

Yes, this is correct.

Thank you,

Kiesha Kay

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From: Rob Baldwin <rob@baldwinplanning.com>
Sent: Tuesday, September 11, 2018 10:49:40 AM
To: Kay, Kiesha
Subject: 3014 Greenville

Good afternoon Kiesha

I am working with the owner of the property known as 3014 Greenville. We are processing building permits and a CA review to allow us to renovate this building. This building is in the Modified Delta District and we want to make sure that we do not lose our delta credits while we are going through the renovation process. Would you please confirm my understanding that if we have an active building permit in place and are regularly calling in our inspections, we will not lose our delta credits while we are under construction and while we are actively marketing the spaces for lease.

Thanks for your help.

Rob

Rob Baldwin
Baldwin Associates, LLC
(214) 729-7949
rob@baldwinplanning.com



CITY OF DALLAS

September 6, 2019

Michele Stoy
Baldwin Associates
3904 Elm Street, STE: B
Dallas, TX 75226

RE: Zoning Determination Request; 3014-3024 Greenville

Dear Ms. Stoy:

As detailed in your letter dated February 27, 2019 and attached, you have requested a written determination pertaining to the non-conforming rights, or "delta credits" for the property referenced above.

The above stated property is located within CD 11, the M Streets East Conservation District, and located within the MD-1 Overlay, Greenville Ave Modified Delta Overlay District (Tract 2). The MD-1 Overlay ordinance 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. Based on our research and the attached floor plan used to verify the floor area of each suite, information on the most recent certificate of occupancy and delta credits is provided for each address.

3014 Greenville Avenue - (5999) General merchandise, CO#1807251124, - 1,559 square feet - 8 delta credits.

3016 Greenville Avenue - (5999) General merchandise, CO#1207091020, - 1,707 square feet - 9 delta credits.

3018 Greenville - (5999), General merchandise, CO#8111172414, - 1,526 square feet - 8 delta credits.

3020 Greenville - (5811) Restaurant, CO#9702141024, - 3,913 square feet, 39 delta credits.

3024 Greenville - (5821) Alcohol Beverage Establishment, CO#1604221106, - 3,846 square, 9 spaces obtained via a parking agreement, 29 delta credits remaining.

Therefore, based on this research, the possible non-conforming parking rights afforded per Section 51A-4.704(b)(4)(A) of the Dallas Development code could be 93 delta credits.

The delta credits for this property need to be considered per tenant when located in the MD Overlay to verify if the deltas have been lost due to vacancy. Per the parking ordinance parking must be met for the entire site, but deltas may be allocated to a specific tenant due to an adjacent tenant losing their rights to delta credits.



CITY OF DALLAS

Please note that when a use is converted to a new use having lesser parking requirements, the rights to any portion of the nonconforming parking that is not needed to meet the new requirement are lost.

Also, per Sec.51A-4.704(b)(4)(A), 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 required off-street parking and loading spaces are provided.

This letter does not constitute a building permit or certificate of occupancy, nor does it imply that a building permit or certificate of occupancy will be approved without complying with all applicable rules and regulations. The City of Dallas does not provide letters certifying that a property or development complies with all applicable rules and regulations.

If you have any further questions, please contact me at 214-948-4501 or megan.wimer@dallascityhall.com.

Respectfully,

A handwritten signature in black ink that reads "megan wimer".

Megan Wimer, AICP, CBO
Assistant Building Official
Building Inspection Division

cc: Phil Sikes, CBO, Building Official

From: [Munoz, Jennifer](#)
To: [Jackson, Latonia](#)
Subject: FW: RE BDA190-090, 091, 092, 093 Holdovers
Date: Wednesday, November 10, 2021 9:14:14 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Holdover request pending zoning case.

Sincerely,



Jennifer Muñoz
Chief Planner/Board Administrator
City of Dallas | www.dallascityhall.com
Planning and Urban Design
1500 Marilla Street, 5BN
Dallas, TX 75201
O: 214-670-4208
Working Remotely, please call:
Google Voice: 972-926-3691
jennifer.munoz@dallascityhall.com



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How am I doing? Please contact my supervisor at andreea.udrea@dallascityhall.com.

From: Jennifer Hiromoto <jennifer@baldwinplanning.com>
Sent: Tuesday, October 26, 2021 11:55 AM
To: Munoz, Jennifer <jennifer.munoz@dallascityhall.com>
Cc: Rob Baldwin <rob@baldwinplanning.com>; sdimitt@pcrfirm.com
Subject: RE: RE BDA190-090, 091, 092, 093 Holdovers

External Email!

Hi Jennifer,

Since this case is scheduled to go to City Council for the zoning change (Z210-213) on December 8th, we would like to respectfully request the Board hold this case until January (since this is a Wednesday panel who does not meet in December).

Thanks,
Jennifer

Jennifer Hiromoto
Baldwin Associates
3904 Elm Street Suite B
Dallas, TX 75226
Office: 214-824-7949
Cell: 469-275-2414

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