

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, OCTOBER 18, 2011**

MEMBERS PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member, Johnnie Goins, regular member and Scott Jackson, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Rob Richmond, Chair, Jordan Schweitzer, Panel Vice-Chair, Scott Hounsel, regular member, Johnnie Goins, regular member and Scott Jackson, alternate member

MEMBERS PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Jerry Svec, Traffic Engineer, Lloyd Denman, Asst. Director, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, David Cossum, Asst. Director, Todd Duerksen, Development Code Specialist, Lloyd Denman, Asst. Director, Phil Erwin, Chief Arborist and Trena Law, Board Secretary

**11:30 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 18, 2011** docket.

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**1:30 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A **September 20, 2011** public hearing minutes as amended.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2011**

**MOTION: Hounsel**

I move **approval** of the Tuesday, **September 20, 2011** public hearing minutes.

**SECONDED: Jackson**

**AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

Consideration and approval of Panel A’s 2012 Public Hearing Schedule.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2011**

**MOTION: Goins**

I move **approval** of Panel A’s 2012 Public Hearing Schedule.

**SECONDED: Jackson**

**AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson**

**NAYS: 0 -**

**MOTION PASSED: 5– 0 (unanimously)**

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**FILE NUMBER: BDA 101-092**

**BUILDING OFFICIAL’S REPORT:**

Application of Jackson Walker LLP, represented by Susan Mead/Jonathan Vinson, for a special exception to the fence height regulations at 9762 and 9770 Audubon Place. This property is more fully described as Lots 4 & 5 in City Block 14/5587 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 6 inch high fence in a required front yard, which will require a special exception of 2 feet 6 inches.

**LOCATION: 9762 and 9770 Audubon Place**

**APPLICANT: Jackson Walker LLP**

**REQUEST:**

- A special exception to the fence height regulations of 2' 6" is requested in conjunction with constructing and maintaining a 6' – 6' 3" high open iron picket fence and gate with 6' 6" high decorative metal columns/"pillars" in the site's 40' front yard setback on a lot developed with a single family home. (The proposed fence in this application would be a continuation of an existing fence on the southern half of the property/subject site – a fence that appears to have been a result of a special exception to the fence height regulations granted by the Board of Adjustment Panel A in October of 1997: BDA 967-313).

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence height regulations 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.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**GENERAL FACTS:**

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.  
The applicant has submitted site plan and an elevation indicating that the proposal in the required front yard setback reaches a maximum height of 6' 6".
- The following additional information was gleaned from the submitted site plan:
  - The proposal is approximately 215' in length parallel to the street.
  - The proposal is shown to be located at a range of 0' – 6' from the front property line or at a range of about 19 – 23' from the pavement line.
- One single family home has direct/indirect frontage to the proposal on the subject site, a property with a fence that appears higher than 4' in height in its front yard setback – an approximately 6.5' high open fence with 7.5' high columns that appears to be the result of a granted fence height special exception from March of 1996 – BDA 956-163.
- In addition to the fence mentioned above, the Board Administrator noted one other fence above four feet high in the immediate area (approximately 500 feet from the site along Audubon Place), which appeared to be located in the front yard setback: an approximately 8' high open metal fence with an approximately 10' high open metal gate. (There is no recorded BDA history found on this property).

- The applicant submitted additional information beyond what was submitted with the original application to be forwarded to the Board (see Attachment A).

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

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

**Zoning/BDA History:**

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|--|---|
| <p>1. BDA 967-313, Property at 9762 Audubon Place (what was at the time only the southern side/half of the subject site)</p> | <p>On October 28, 1997, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 5' 6" for a "6 foot, 6 "fence with 6 '10 "columns, and a 9 ' , 6 "entry gate columns" and imposed the submitted site/landscape/elevation plan as a condition to the request.</p>   |
| <p>2. BDA 956-163, Property at 9769 Audubon Place (the property immediately west of the subject site)</p>                    | <p>On March 26, 1996, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations to maintain a 6.5' high open metal fence with 7.5' high columns, and special exception to maintain an additional dwelling unit on the property, subject to deed restricting the property to prevent the use of the additional dwelling unit as rental accommodations.</p> |

**Timeline:**

- July 22, 2011: 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 21, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of

Procedure that states, “If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case.”

September 21, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 30, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application.

October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

October 7, 2011: The applicant submitted additional information beyond what was submitted with the original application to be forwarded to the board (see Attachment A).

**STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a 6’ – 6’ 3” high open iron picket fence and gate with 6’ 6” high decorative metal columns/“pillars” in the site’s 40’ front yard setback on a lot developed with a single family home.
- The proposed fence in this application would be a continuation of an existing fence on the southern half of the property/subject site – a fence that appears to have been a result of a request for a fence height special exception granted by the Board of Adjustment Panel A in October of 1997: BDA 967-313.
- The submitted site plan and elevation documents the location, height, and materials of the proposal over 4’ in height in the required front yard setback. The site plan

indicates that the proposal is about 215' in length parallel to the street, approximately 0' – 6' from the site's front property line or about 19' – 23' from the pavement line. (The proposed gates are shown to be located approximately 11' from the front property line or about 25' from the pavement line).

- One single family home has direct/indirect frontage to the proposal on the subject site, a property with a fence that appears higher than 4' in height in its front yard setback – an approximately 6.5' high open fence with 7.5' high columns that appears to be the result of a granted fence height special exception from March of 1996 – BDA 956-163.
- In addition to the fence mentioned above, the Board Administrator noted one other fence above four (4) feet high in the immediate area (approximately 500 feet from the site along Audubon Place) which appeared to be located in the front yard setback: an approximately 8' high open metal fence with an approximately 10' high open metal gate. (There is no recorded BDA history found on this property).
- As of October 10, 2011, 4 letters had been submitted to staff in support of the request and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 6" will not adversely affect neighboring property.
- Granting this special exception of 2' 6" with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Goins**

I move that the Board of Adjustment grant application **BDA 101-092** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted site plan and elevation is required.

**SECONDED: Jackson**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA 101-095

**BUILDING OFFICIAL'S REPORT:**

Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, to appeal the decision of the administrative official at 3300 Knox Street. This property is more fully described as Lots 3 & 4 in City Block S/1538 and is zoned PD-193 (LC) which requires parking to be provided for the issuance of a Certificate of Occupancy. The applicant proposes to appeal the decision of an administrative official in the denial of a Certificate of Occupancy.

**LOCATION:** 3300 Knox Street

**APPLICANT:** Elizabeth McDonald  
Represented by James Harris of Thompson & Knight

**REQUEST:**

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's July 27<sup>th</sup> decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for “retail use” on the property at 3300 Knox Street. The applicant alleges that the Building Official's decision to deny this CO application was in error and should be overturned.

**BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

**GENERAL FACTS:**

- Building Inspection Application No. 1107191052 made by Peter Kavanaugh for a “retail” use for property at 3300 Knox Street was stamped “denied” on 7-27-11 by “T. Duerksen” with the stated reason being: “does not meet code.”
- A July 27<sup>th</sup> letter regarding “Certificate of Occupancy Application – 1107191052 at 3300 Knox Street” written by Building Inspection Senior Plans Examiner Todd Duerksen to the person making the Building Inspection Application for a Certificate of Occupancy No. 1107191052 for “retail use” (Peter Kavanaugh) states the following:
  - “This letter is to advise you that Building Inspection has received your recent application for a certificate of occupancy at the referenced address and has reviewed your request. However we regret to inform you that we are unable to approved your request at this time due to the site does not comply with the parking requirements of the Dallas Development Code. Please see your zoning plans examiner if you have questions concerning this matter.”
- A document submitted with this application states the following:

- Request is made to appeal the decision of the City of Dallas Administrative Official in his/her interpretation of the Dallas Development Code.
- Appeal the decision of the Administrative Official in his interpretation of the Delta Theory (Section 51A-4.704(b)(4)(B) Dallas Development Code).
- The Delta Theory provides nonconforming rights as to parking. Section 51A-4.704(b)(4)(C) provides for reduction of nonconforming rights. There is only one way to reduce nonconforming rights (“Delta Credits”). A change in use of the property to a different use that has a lesser parking requirement than the previous use results in permanent loss of Delta Credits for the property. There is no other action that causes a reduction in Delta Credits.
- The Administrative Official has ruled that providing off-site parking for a use is cause to reduce Delta Credits. That decision has no basis in the Dallas Development Code.
- Request is made to appeal the decision of the Administrative Official. Provision of off-site temporary parking or shared parking is not cause to reduce Delta Credits for a property.
- Property that has Delta Credits can lose those credits only by changing the use of the property. Providing access to more parking than is required is not cause to reduce Delta Credits.
- Section 51(A)- 4.704(b)(4) Nonconformity as to parking or loading provides the following:
  - 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 required off-street parking or loading spaces are provided.
  - Delta Theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces for a use 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 for existing use.
      - Number of existing parking or loading spaces for existing use
    - Nonconforming rights as to parking or loading.
  - Decreased requirements. When a use is converted to a new use having a lesser 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.
- On September 30, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal and his related application at the same address BDA 101-096 beyond what was submitted with the original applications (see Attachment A).
- On October 4, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding his other related appeal at the same address (BDA 101-096) beyond what was submitted with that original application (see Attachment B).
- On October 7, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal and his related application at the same address BDA 101-096 beyond what was submitted with the original applications (see Attachment C).

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: PD No. 193 (LC) (Planned Development, Light Commercial)  
North: PD No. 193 (LC) (Planned Development, Light Commercial)  
South: PD No. 193 (LC) (Planned Development, Light Commercial)  
East: PD No. 193 (LC) (Planned Development, Light Commercial)  
West: PD No. 193 (LC) (Planned Development, Light Commercial)

### **Land Use:**

The subject site is developed with commercial/retail structure, part of which is leased, part of which is vacant. The area to the north is developed with residential use; and the areas to the east, south, and west are developed with retail uses.

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

1. BDA 101-096, Property at 3300 Knox Street (the subject site)

Depending on whether Board of Adjustment Panel A grants the applicant's request in this application made on the subject site (BDA 101-095) on October 18, 2011, overturning/reversing the Building Official's July 27, 2011 decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for "retail use" on the property, will be whether the Board of Adjustment Panel A will consider the applicant's other request on the subject site: BDA 101-096- an application for a variance to off-street parking regulations of 11 spaces.

If the board grants the applicant's request in BDA 101-095 reversing/overturning the Building Official's decision, the applicant is aware that the board will not be required to consider the applicant's other request on the subject site (BDA 101-096) - an application for a variance to the off-street parking regulations.

If the board denies the applicant's request in BDA 101-095 and affirms the Building Official's decision, the applicant is aware that the board will then be required to consider his other request made on the subject site (BDA 101-096): an application for a variance to the off-street parking regulations of 11

spaces.

**Timeline:**

June 10, 2011: 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 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 21, 2011: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 30, 2011: The applicant’s representative submitted additional information to staff beyond what was submitted with both of his applications at this address – BDA 101-095 and 096 (see Attachment A).

October 4, 2011: The applicant’s representative submitted additional information regarding his other related appeal (BDA 101-096) beyond what was submitted with the original application (see Attachment B).

October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

October 7, 2011: The applicant's representative submitted additional information to staff beyond what was submitted with both of his applications at this address – BDA 101-095 and 096 (see Attachment C).

**STAFF ANALYSIS:**

- The applicant is requesting the Board of Adjustment to overturn or reverse the Building Official's July 27<sup>th</sup> decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street.
- If the Board of Adjustment denies the applicant's request and upholds the Building Official's July 27<sup>th</sup> decision, Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street will remain denied. If this action occurs, the Board of Adjustment Panel A will consider the applicant's other request on the subject site that being a request for a variance to the off-street parking regulations of 11 spaces: BDA 101-096.
- If the Board of Adjustment grants the applicant's request and overturns/reverses the Building Official's July 27<sup>th</sup> decision, Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street will be approved. If this action occurs, the applicant will not need approval from the Board of Adjustment Panel A on his other request on the subject site that being a request for a variance to the off-street parking regulations of 11 spaces: BDA 101-096.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2011**

APPEARING IN FAVOR: Jim Harris, 1722 Routh St., Ste 1500, Dallas, TX

APPEARING IN OPPOSITION: Chris Caso, Asst. City Atty., 1500 Marilla, 7DN, Dallas, TX  
Roger Albright, 3301 Elm St., Dallas, TX

**MOTION: Hounsel**

Having fully reviewed the decision of the City of Dallas Building Official in Appeal No. **BDA 101-095**, on application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, and having evaluated the evidence pertaining to the property and heard all testimony and facts supporting the application, I move that the Board of Adjustment **reverse** the decision of the building official and **grant** the relief requested by this applicant.

**SECONDED: Richmond**

AYES: 4 – Richmond, Schweitzer, Hounsel, Jackson

NAYS: 1 - Goins

MOTION PASSED: 4– 1

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**FILE NUMBER:** BDA 101-096

**BUILDING OFFICIAL'S REPORT:**

Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, for a variance to the off-street parking regulations at 3300 Knox Street. This property is more fully described as Lots 3 & 4 in City Block S/1538 and is zoned PD-193 (LC), which requires off-street parking to be provided. The applicant proposes to maintain a structure with certain retail and professional, personal service, and custom crafts uses, and provide 23 of the required 34 parking spaces, which will require a variance of 11 spaces.

**LOCATION:** 3300 Knox Street

**APPLICANT:** Elizabeth McDonal  
Represented by James Harris of Thompson & Knight

**REQUEST:**

- A variance to the off-street parking regulations of 11 parking spaces (or 32 percent reduction of the 34 off-street parking spaces that are required) is requested in conjunction with leasing/maintaining an existing approximately 7,400 square foot commercial/retail structure with certain retail and professional, personal service and custom craft uses, and providing 23 (or 68 percent) of the 34 required off-street parking spaces.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- Staff concludes that there is no property hardship to the site/lot that warrants a variance to the off-street parking requirements.
- The site is flat, slightly irregular in shape, and according to the application, 0.394 acres in area, and zoned PD No. 193 (LC Subdistrict). The site is currently developed with (according to DCAD records), a "free standing retail store" with 7,588 square feet built in 1930.
- As a result of the structure that has been on the site/property for a number of years, it appears that the physical features of the site/lot have not/do not create hardship or preclude its development in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. Although the site is slightly irregular in shape, this feature does not create a hardship on the lot where the applicant cannot provide required off-street parking for a number of uses permitted in the PD No. 193 (LC Subdistrict). The slightly irregular shape does not create a hardship that justifies a variance to the off-street parking regulations for the applicant to develop it in a manner commensurate with the development upon other parcels of land within the same PD No. 193 (LC) zoning district.

- The Sustainable Development Department Project Engineer also recommends denial of the request since the applicant had not submitted an engineered-prepared parking analysis study to justify the proposed parking reduction.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, 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 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.

**GENERAL FACTS:**

- PD No. 193 lists 21 specific “retail uses” each of which (other than “feed store” and “furniture store”) requires 1 space per 220 square feet of floor area. (“Feed store” and “Furniture store” uses require 1 space per 500 square feet of floor area). PD No. 193 lists 24 specific “professional, personal service, and custom crafts uses” of which the applicant is applying for any/all or these with a parking requirement of 1 space per 220 square feet of floor area or greater. The applicant proposes to provide 23 (or 68 percent) of the required 34 off-street parking spaces in conjunction with leasing/maintaining the 7,400 square foot structure with certain “retail uses” and certain “professional, personal service, and custom crafts uses” all of which have a parking requirement of 1 spaces per 220 square feet or greater.
- The site is flat, slightly irregular in shape, and according to the application, 0.394 acres in area. The site is zoned PD No. 193 (LC Subdistrict).
- DCAD records indicate that the “improvements” at 3300 Knox is a “free standing retail store” with 7,588 square feet built in 1930.
- On September 30, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal and his other related application at the same address BDA 101-095 beyond what was submitted with the original application (see Attachment A).
- On October 4, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal beyond what was submitted with the original application (see Attachment B).
- On October 7, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal and his related application at the same address BDA 101-095 beyond what was submitted with the original

applications (see Attachment C). (Note that this information was submitted past the October 4, 2011 staff review team meeting, therefore was not factored into the staff recommendation for this application).

**Zoning:**

Site: PD No. 193 (LC) (Planned Development, Light Commercial)  
North: PD No. 193 (LC) (Planned Development, Light Commercial)  
South: PD No. 193 (LC) (Planned Development, Light Commercial)  
East: PD No. 193 (LC) (Planned Development, Light Commercial)  
West: PD No. 193 (LC) (Planned Development, Light Commercial)

**Land Use:**

The subject site is developed with commercial/retail structure, part of which is leased, part of which is vacant. The area to the north is developed with residential use; and the areas to the east, south, and west are developed with retail uses.

**Zoning/BDA History:**

1. BDA 101-096, Property at 3300 Knox Street (the subject site)

Depending on whether Board of Adjustment Panel A grants the applicant's other request made on the subject site (BDA 101-095) on October 18, 2011, overturning/reversing the Building Official's July 27, 2011 decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for “retail use” on the property, will be whether the Board of Adjustment Panel A will consider the this request of the applicant on the subject site: BDA 101-096- an application for a variance to off-street parking regulations of 11 spaces.

If the board grants the applicant's request in BDA 101-095 reversing/overturning the Building Official's decision, the applicant is aware that the board will not be required to consider the applicant's other request on the subject site (BDA 101-096) - an application for a variance to the off-street parking regulations.

If the board denies the applicant's request in BDA 101-095 and affirms the Building Official's decision, the applicant is aware that the board will then be required to consider his other request made on the subject site

(BDA 101-096): an application for a variance to the off-street parking regulations of 11 spaces.

**Timeline:**

June 10, 2011: 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 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

September 21, 2011: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the October 7<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

September 30, 2011: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

October 4, 2011: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B).

October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Recommends this be denied” with the following comments: “Applicant needs to submit for review a parking analysis study, by a qualified registered professional engineer, to justify the proposed parking reduction.”

October 7, 2011: The applicant's representative submitted additional information to staff beyond what was submitted with both of his applications at this address – BDA 101-095 and 096 (see Attachment C). (Note that this information was submitted past the October 4, 2011 staff review team meeting, therefore was not factored into the staff recommendation for this application).

### **STAFF ANALYSIS:**

- The request focuses on reducing required off-street parking on the site by 11 spaces or 32 percent of what is required for the certain retail and personal services uses that the applicant proposes to lease/maintain within an existing approximately 7,400 square foot commercial/retail structure.
- The applicant proposes to provide 23 (o 68 percent) of the 34 off-street parking spaces required for the certain retail and professional, personal service, and custom craft uses all with a parking requirement of 1 space per 220 square feet of floor area or greater that the applicant proposes to lease/maintain in the existing structure.
- Depending on the decision made by the Board of Adjustment Panel A on the applicant's other request on the site, BDA 101-095 - an appeal requesting the Board of Adjustment to overturn or reverse the Building Official's July 27<sup>th</sup> decision to deny an application for a Certificate of Occupancy (CO) on the subject site will be whether the applicant needs the board's consideration or approval of this request for a variance to the off-street parking regulations on the subject site.
- If the Board of Adjustment denies the applicant's other request on the subject site (BDA 101-095) and upholds the Building Official's July 27<sup>th</sup> decision, Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street will remain denied. If this action occurs, the Board of Adjustment Panel A will consider this request for a variance to the off-street parking regulations of 11 spaces on the subject site.
- If the Board of Adjustment grants the applicant's other request on the subject site (BDA 101-095) and overturns/reverses the Building Official's July 27<sup>th</sup> decision, Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street will be approved. If this action occurs, the applicant will not need approval from the Board of Adjustment Panel A on this request for a variance to the off-street parking regulations of 11 spaces on the subject site.
- On October 6, 2011, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following comments: "Applicant needs to submit for review a parking analysis study, by a qualified registered professional engineer, to justify the proposed parking reduction."
- The site is flat, slightly irregular in shape, and according to the application, 0.394 acres in area. The site is zoned PD No. 193 (LC Subdistrict).
- DCAD records indicate that the "improvements" at 3300 Knox is a "free standing retail store" with 7,588 square feet built in 1930.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this

chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) 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 PD No. 193 (LC) zoning classification.

**BOARD OF ADJUSTMENT ACTION: OCTOBER 18, 2011**

APPEARING IN FAVOR: Jim Harris, 1722 Routh St., Ste 1500, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment, in Appeal No. **BDA 101-096**, on application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, **deny** the off-street parking variance requested by this applicant **without prejudice**.

SECONDED: **Richmond**

AYES: 5 – Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED: 5– 0(unanimously)

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MOTION: **Goins**

I move to adjourn this meeting.

SECONDED: **Jackson**

AYES: 5– Richmond, Schweitzer, Hounsel, Goins, Jackson

NAYS: 0 -

MOTION PASSED 5– 0 (unanimously)

**2:51 P.M.** - Board Meeting adjourned for **October 18, 2011**.

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.