

**BOARD OF ADJUSTMENT, PANEL C
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
MONDAY, AUGUST 13, 2012**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Danny Alan Scott, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Joel Maten, regular member, Ross Coulter, regular member, Bob Richard, regular member and Danny Alan Scott, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Building Official, David Cossum, Asst. Director and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Building Official, David Cossum, Asst. Director and Trena Law, Board Secretary

12:07 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 13, 2012** docket.

1:07 P.M.

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

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel C June 18, 2012 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2012

MOTION: Richard

I move **approval** of the Monday, **June 18, 2012** public hearing minutes.

SECONDED: Maten

AYES: 5– Richardson, Maten, Coulter, Richard, Scott

NAYS: 0 –

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 112-069

BUILDING OFFICIAL’S REPORT:

Application of Jonathan Vinson for a variance to the off-street parking regulations at 2728 Cedar Springs Road. This property is more fully described as Lot 1E in City Block 13/958 and is zoned PD-184 (Zone 1), which requires off-street parking to be provided. The applicant proposes to construct a structure for multifamily use and provide 1.5 of the required 2 off-street parking spaces per dwelling unit, which will require a variance to the required off-street parking regulations of 0.5 spaces per dwelling unit for a reduction of 25 percent.

LOCATION: 2728 Cedar Springs Road

APPLICANT: Jonathan Vinson

REQUEST:

- A variance to the applicable off-street parking regulations for the multifamily use of PD 184, Zone 1, is to according to an amended application (see Attachment B) “reduce the currently-required parking ratio for the “multiple family” (per PD 184) multifamily use from 2.0 spaces per dwelling unit to 1.5 spaces per dwelling unit (including the 0.25 unassigned space per unit visitor parking” for a reduction of 25 percent from the currently-required parking ratio.” (The subject site is currently undeveloped).

STAFF RECOMMENDATION:

Rationale:

- The applicant had not substantiated the following:
 - a. how a literal enforcement of the code provisions would result in unnecessary hardship (the parking standard requested to be varied was specifically adopted by Council for this specific development site in May of 2008);
 - b. how the variance is necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels with the same PD 184 (Zone 1) zoning district (the subject site is the only parcel of land with this zoning);
 - c. nor how the variance is not needed to relieve a self-created or personal hardship, nor for financial reasons only.
- Neither the site's slope nor its irregular shape preclude the applicant from developing the subject site in compliance with the off-street parking regulations of PD 184 (Zone 1) - the only parcel of land with this zoning classification with a specific set of development standards adopted in 2008 for this specific development site.
- The Sustainable Development and Construction Department Engineering Division Assistant Director recommends that this request be denied commenting "Engineering agrees with the parking analysis as submitted but does not support this parking variance as the vehicle to reduce required parking within this PD. No special conditions are evident that would result in an unnecessary hardship on the property if the PD was enforced. It was because of the "public interest" that the parking requirements within PD 184 were created."

STANDARD FOR A VARIANCE:

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

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is 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) the variance is 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.

BACKGROUND INFORMATION:

Zoning:

Site: PD 184 (Zone 1) (Planned Development)
North: PD 193 (PDS 61) (Planned Development, Planned Development)
South: PD 193 (PDS 61) (Planned Development, Planned Development)
East: PD 184 (Zone 1) (Planned Development)
West: PD 193 (HC) (Planned Development, Heavy Commercial)

Land Use:

The subject site is undeveloped. The area to the north is the Katy Trail; the areas to the east, south, and west are mostly developed with multifamily uses.

Zoning/BDA History:

This tract of Planned Development No. 284 was amended on May 28, 2008 to require a minimum of two parking spaces per multifamily dwelling unit. There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

- April 27, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- May 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- May 17, 2012: 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 May 30th deadline to submit additional evidence for staff to factor into their analysis; and the June 8th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the requests; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- May 25, 2012: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded an amended application and Building Official's Report to the Board Administrator (see Attachment A).
- June 5, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current

Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Board Administrator, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

- June 6, 2012: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded an amended application and Building Official's Report to the Board Administrator (see Attachment B).
- June 7, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director has submitted a review comment sheet marked "Recommends that this be denied" commenting "Engineering agrees with the parking analysis as submitted but does not support this parking variance as the vehicle to reduce required parking within this PD. No special conditions are evident that would result in an unnecessary hardship on the property if the PD was enforced. It was because of the "public interest" that the parking requirements within PD 184 were created."
- June 8, 2012: The applicant forwarded additional information beyond what was submitted with the original application and beyond what was discussed at the June 5th staff review team meeting (see Attachment C).
- June 18, 2012: The Board of Adjustment Panel C conducted a public hearing on this application and delayed action until their next public hearing to be held on August 13, 2012.
- July 27, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director emailed the Board Administrator responses for applications to be heard in August but stated that in the email that "our response for the holdover case 112-069 stays the same."
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: The applicant forwarded additional information beyond what was submitted with the original application, at the June 18th hearing, and at the July 31st staff review team meeting (see Attachment D).

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on reducing the parking ratio for the “multiple family”/ multifamily use required in PD 184 from 2.0 spaces per dwelling unit to 1.5 spaces per dwelling unit, including the 0.25 unassigned space per unit visitor parking, for a reduction of 25 percent from the ordinance required parking ratio on a site is currently undeveloped.
- The subject site is zoned PD 184, Zone 1. The subject site is the only property zoned PD 184 (Zone 1); and only one of two properties in PD 184 (the other PD 184-zoned property being located in Zone 2). The parking standards requested to be varied were adopted as part of a zoning amendment that increased height on a portion of the subject site from 196 feet to 299 feet while restricting height on other portions of the site. These amendments were adopted by City Council in May of 2008 and impacted only this specific development site.
- The parking standards adopted as part of the 2008 PD 184 zoning amendment are as follows: a minimum of two off-street parking spaces is required for each dwelling unit, with at least 0.25 of the off-street parking spaces left unassigned for guest parking. Compact parking spaces are prohibited.
- The applicant has submitted an amended application for a variance to the applicable off-street parking regulations for the multifamily use of PD 184, Zone 1 (see Attachment B). The applicant’s revised application states that the application is made “to reduce the currently-required parking ratio for the “multiple family” (per PD 184) multifamily use from 2.0 spaces per dwelling unit to 1.5 spaces per dwelling unit (including the 0.25 unassigned space per unit visitor parking) for a reduction of 25 percent from the currently-required parking ratio.”
- Dallas Development Code Section 51A-4.311(a)(1) states that the Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets; and that the maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- However, Dallas Development Code Section 51A-311(a)(6) states that the Board of Adjustment *shall not* grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
 - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
 - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.
- Therefore, because PD 184 expressly specifies the number of off-street parking spaces for multifamily uses, this request to reduce the off-street parking regulations

- The subject site has some slope. The site slopes down to Cedar Springs as it crosses under the Katy Trail but is primarily flat from Carlisle back to the Katy Trail.
- The subject site is not strictly rectangular so could be considered somewhat irregular in shape and, according to the application, 2.3 acres in area, which is larger than Zone 2 of Planned Development No. 184 that was developed in 1985.
- DCAD records indicate “no improvements” for property at 2728 Cedar Springs Road.
- On June 8, 2012, the applicant submitted additional information for the board’s consideration beyond what was submitted with the original application (see Attachment C).
- On August 3, 2012, the applicant submitted additional information for the board’s consideration beyond what was submitted with the original application, at the June 18th hearing, and at the July 31st staff review team meeting (see Attachment D).
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the off-street parking regulations of 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 184 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 PD 184 zoning classification.
- Given that the City Council approved amendments to PD 184 to require 2 off-street parking spaces per multifamily dwelling unit for development on this specific tract as recent as May 28, 2008, staff believes the appropriate forum for this request is an application for a zoning amendment to the parking requirements in PD 184.
- The Sustainable Development and Construction Department Engineering Division Assistant Director has indicated that his response made on June 7th stays the same - a review comment sheet marked “Recommends that this be denied” commenting “Engineering agrees with the parking analysis as submitted but does not support this parking variance as the vehicle to reduce required parking within this PD. No special conditions are evident that would result in an unnecessary hardship on the property if the PD was enforced. It was because of the “public interest” that the parking requirements within PD 184 were created.”

BOARD OF ADJUSTMENT ACTION: JUNE 18, 2012

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX

APPEARING IN OPPOSITION: Frank Stich, 4224 N Hall St., Dallas, TX

MOTION: **Richard**

I move that the Board of Adjustment, in Appeal No. **BDA 112-069**, hold this matter under advisement until **August 13, 2012**.

SECONDED: **Coulter**

AYES: 3–Coulter, Richard, Duarte

NAYS: 2 – Richardson, Maten

MOTION PASSED: 3– 2

BOARD OF ADJUSTMENT ACTION: AUGUST 13, 2012

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Dallas, TX
Paul Johnson, 909 Lake Carolyn Pkwy Ste 960, Irving, TX
Frank Stich, 4224 N Hall St., Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION #1: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 112-069**, on application of Jonathan Vinson, **grant** a variance to the off-street parking regulations for multifamily uses in PD 184 from 2.0 off-street parking spaces per dwelling unit to 1.5 off-street parking spaces per dwelling unit (including .25 unassigned off-street parking spaces per unit for visitor parking) for a reduction of 25 percent, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant.

SECONDED: **Coulter**

AYES: 2– Maten, Coulter

NAYS: 3 – Richardson, Richard, Scott

MOTION FAILED: 2– 3

MOTION #2: **Maten**

I move that the Board of Adjustment, in Appeal No. **BDA 112-069**, on application of Jonathan Vinson, **deny** the off-street parking variance requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the

provisions of the Dallas Development Code, as amended, would not result in unnecessary hardship to this applicant.

SECONDED: **Richard**

AYES: 5– Richardson, Maten, Richard, Coulter, Scott

NAYS: 0 –

MOTION PASSED: 5– 0(unanimously)

MOTION: **Maten**

I move to adjourn this meeting.

SECONDED: **Coulter**

AYES: 5– Richardson, Maten, Coulter, Richard, Scott

NAYS: 0 -

MOTION PASSED: 5 – 0 (Unanimously)

1:57 P. M. - Board Meeting adjourned for **August 13, 2012.**

CHAIRPERSON

BOARD ADMINISTRATOR

BOARD SECRETARY

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