

**BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, COUNCIL CHAMBERS
TUESDAY, NOVEMBER 15, 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: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Jerry Svec, Traffic Engineer, and Trena Law, Board Secretary

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

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Tammy Palomino, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Jerry Svec, Traffic Engineer, and Trena Law, Board Secretary

12:00 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 15, 2011** docket.

1:00 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 A **October 18, 2011** public hearing minutes as amended.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2011

MOTION: Hounsel

I move **approval** of the Tuesday, **October 18, 2011** public hearing minutes.

SECONDED: Schweitzer

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-109

BUILDING OFFICIAL’S REPORT:

Application of William J. Harkinson for a special exception to the off-street parking regulations at 5706 E. Mockingbird Lane. This property is more fully described as Lot 1 in City Block 2893 and is zoned CR, which requires parking to be provided. The applicant proposes to construct/maintain a structure for restaurant without drive-in or drive-through service, general merchandise or food store 3500 square feet or less, personal service, dry cleaning or laundry store, and medical clinic or ambulatory surgical center uses and provide 196 of the required 245 parking spaces, which will require a special exception of 49 spaces.

LOCATION: 5706 E. Mockingbird Lane

APPLICANT: William J. Harkinson

REQUEST:

- A special exception to the off-street parking regulations of 49 spaces is requested in conjunction with leasing and maintaining square footage/space within an existing approximately 48,000 square foot 3-story structure (Mockingbird Park) with a certain mix of uses (restaurant without drive-in or drive through service, dry cleaning and laundry store, general merchandise or food store 3,500 square feet or less, personal service, dry cleaning or laundry store, and medial clinic or ambulatory surgical center uses), and providing 196 (or 80 percent) of the 245 required off-street parking spaces.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The special exception shall automatically and immediately terminate if and when the store, general merchandise or food store 3,500 square feet or less, personal service, dry cleaning or laundry store, and medical clinic or ambulatory surgical center uses are changed or discontinued.

Rationale:

- The applicant has substantiated how the parking demand generated by the existing/proposed general merchandise, personal service, and restaurant uses 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.
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the applicant's request.

STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:

- 1) 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. 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. For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 50 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to already existing nonconforming rights.
- 2) In determining whether to grant a special exception, the board shall consider the following factors:
 - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
 - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
 - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
 - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
 - (E) The availability of public transit and the likelihood of its use.
 - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:

- (A) establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
 - (B) impose restrictions on access to or from the subject property; or
 - (C) impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
 - 6) The board 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.

GENERAL FACTS:

- The Dallas Development Code requires the following off-street parking requirement:
 - General merchandise or food store 3,500 square feet or less: 1 space for 200 square feet of floor area.
 - Personal service use: 1 space per 200 square feet of floor area.
 - Dry cleaning or laundry service: 1 spaces per 200 square feet of floor area
 - Restaurant without drive-in service use: 1 space per 200 square feet of floor area
 - Medical clinic or ambulatory surgical center use: 1 space per 200 square feet of floor area

The applicant proposes to provide 196 (or 80 percent) of the required 245 off-street parking spaces in conjunction with the site being leased/maintained with a combination of the uses mentioned above.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: MU-3 (Mixed Use)
South: R-7.5(A) (NSO 2)(Single family residential 7,500 square feet, Neighborhood Stabilization Overlay)
East: CR (Community Retail)
West: CR (Community Retail)

Land Use:

The subject site is developed with an existing approximately 480,000 square foot 3-story structure. The area to the north is undeveloped, the areas to the east and west

are developed with retail/commercial uses; and the area to the south is developed with single family uses.

Zoning/BDA History:

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| 1. BDA 089-047, Property at 5646 E. Mockingbird Lane (the lot immediately west of the site) | On April 13, 2009, the Board of Adjustment Panel C granted a request for a special exception to the landscape regulations (imposing the submitted revised alternate landscape plan dated 4-13-09 as a condition to the request) but denied requests for a special exception to the screening regulations, special exceptions to the visual obstruction regulations without prejudice. The case report states that the requests were made in conjunction with developing the site as a financial institution with drive-in window use. |
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Timeline:

- September 8, 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.
- October 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 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 October 28th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th 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 24, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building

Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

November 3, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

STAFF ANALYSIS:

- This request focuses on leasing and maintaining square footage/space within an existing approximately 48,000 square foot 3-story structure (Mockingbird Park) with a certain mix of uses, and providing 196 (or 80 percent) of the 245 required off-street parking spaces.
- The request is triggered from the applicant's attempt to lease a vacant 2,000 square foot suite within this structure with a "general merchandise or food store 3,500 square feet or less" use.
- The applicant seeks this parking reduction request in his attempt to re-lease the vacant 2,000 square feet suite with what the applicant thought would be a Certificate of Occupancy for the same type of use – one "general merchandise" use for another "general merchandise" use, or a "My Fit Foods" store/use in place of what had been a "3-Day Framing" store/use.
- The applicant discovered however in his attempt to re-lease this suite with as a "general merchandise or food store" use that the "3 Day Framing" store suite had been erroneously "CO'd" for "office" use - a use with a lesser parking requirement rather than what it should have been "CO'd" for - a "general merchandise or food store" use. Hence the applicant's attempt to re-lease the same suite with a "general merchandise" use could not be issued without seeking a reduction to the off-street parking requirement for the same "general merchandise or food store" use – in this case, a proposed "My Fit Foods" store/use in the suite that had been a "3 Day Framing" store/use - erroneously CO'd for "office" use for over the past five years.
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the applicant's request for the 20 percent parking reduction.
- The applicant has the burden of proof in establishing the following:
 - The parking demand generated by the existing/proposed uses on the site does not warrant the number of off-street parking spaces required, and
 - The special exception of 49 spaces (or a 20 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, subject to the condition that the special exception of 49 spaces shall automatically and immediately terminate if and when the restaurant without drive-in or drive through service, dry cleaning and laundry store, general merchandise or food store 3,500 square feet or less, personal service, dry cleaning or laundry store, and medical clinic or ambulatory surgical center uses are changed or discontinued, the applicant would be allowed to lease/maintain the site with these specific uses and provide 196 of the 245 code required off-street parking spaces.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Schweitzer

I move that the Board of Adjustment grant application **BDA 101-109** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- The special exception shall automatically and immediately terminate if and when the restaurant without drive-in or drive through service, dry cleaning and laundry store, general merchandise or food store 3,500 square feet or less, personal service, and medical clinic or ambulatory surgical center uses are changed or discontinued.

SECONDED: Goins

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

FILE NUMBER: BDA 101-119

BUILDING OFFICIAL’S REPORT:

Application of Sarah Griffis for a special exception to the fence height regulations at 13608 Knollwood Drive. This property is more fully described as Lot 1 in City Block 23/7497 and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct/maintain an 8 foot high fence in a required front yard, which will require a special exception of 4 feet.

LOCATION: 13608 Knollwood Drive

APPLICANT: Sarah Griffis

REQUEST:

- A special exception to the fence height regulations of 4’ is requested in conjunction with maintaining a wood fence represented on submitted elevations as being from 7’ 3” - 8’ in height located in one of the site’s two required front yards on a site developed with a single family home – Spring Grove Avenue. (No fence proposal is shown to be located in the site’s Knollwood Drive required front yard).

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 provides for front yard provisions for residential districts, specifically stating that if a corner lot in a single family zoning district has two street frontages of unequal distance, the shorter frontage is governed by the front yard regulations, and the longer frontage is governed by the side yard regulations. But the code continues to state that notwithstanding this provision, the continuity of the established setback along street frontage must be maintained.
- The subject site is a property zoned R-7.5(A) located at the north corner of Knollwood Drive and Spring Grove Avenue. The property has street frontages of unequal distances – the property’s frontage along Knollwood Drive is 100’; the property’s frontage along Spring Grove Avenue is 110’.
This site has two required front yards - a 30’ required front yard created by a platted building line along its shorter frontage (Knollwood Drive) and a 20’ required front yard (created by another platted building line) along its longer frontage (Spring Grove Avenue). Regardless of how the site’s Spring Grove Avenue frontage functions as a side yard on the property and is the longer of the property’s street frontages (which is typically deemed a side yard where a fence can be erected by right at 9’ in height), it is a front yard nonetheless in order to maintain continuity of the required front yards established by the lots northeast of the site fronting southeastward onto Spring Grove Avenue.
- 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 a site plan and elevation indicating that the proposal in the 20’ Spring Grove Avenue required front yard reaches a maximum height of 8’.
- The following additional information was gleaned from the submitted site plan:
 - The proposal located in the Spring Grove Avenue required front yard over 4’ in height is approximately 80’ in length parallel to the street and approximately 18’ in length *perpendicular* to Spring Grove Avenue on the north and south sides of the site in the required front yard.
 - The proposal is shown to be located 2’ from the site’s Spring Grove Avenue front property line or 18’ from the curb line.

- Three single family homes “front” to the existing fence on the subject site, none of which have fences in their front yards.
- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: R-7.5(A) (Single family district 7,500 square feet)
North: R-7.5(A) (Single family district 7,500 square feet)
South: R-7.5(A) (SUP 499) (Single family district 7,500 square feet, Specific Use Permit)
East: R-7.5(A) (Single family district 7,500 square feet)
West: R-7.5(A) (Single family district 7,500 square feet)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, and west are developed with single family uses; and the area to the south is developed as a public elementary school (Spring Valley Elementary School).

Zoning/BDA History:

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

Timeline:

- August 24, 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.
- October 14, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- October 20, 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 October 28th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th 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 28, 2011: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

November 1, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Acting Building Official, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Department Project Engineer, the Chief Arborist, and the Assistant City Attorney to the Board.

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

STAFF ANALYSIS:

- This request focuses on maintaining 7' 3" – 8' high wood fence along Spring Grove Avenue - one of the site's two required front yards on a site developed with a single family home. (No fence proposal is shown to be located in the site's Knollwood Drive front yard setback).
- The subject site is a property zoned R-7.5(A) located at the north corner of Knollwood Drive and Spring Grove Avenue. The property has street frontages of unequal distances – the property's frontage along Knollwood Drive is 100'; the property's frontage along Spring Grove Avenue is 110'.
This site has two required front yards - a 30' required front yard created by a platted building line along its shorter frontage (Knollwood Drive) and a 20' required front yard (created by another platted building line) along its longer frontage (Spring Grove Avenue). Regardless of how the site's Spring Grove Avenue frontage functions as a side yard on the property and is the longer of the property's street frontages (which is typically deemed a side yard where a fence can be erected by right at 9' in height), it is a front yard nonetheless to maintain continuity of the required front yards established by the lots northeast of the site fronting southeastward onto Spring Grove Avenue.
- The submitted site plan and elevation documents the location, height, and material of the existing fence over 4' in height in the Spring Grove Avenue required front yard. The site plan shows the fence is approximately 80' in length parallel to Spring Grove Avenue and approximately 18' in length *perpendicular* to Spring Grove Avenue on the north and south sides of the site in the required front yard; and located approximately 2' from the site's Spring Grove Avenue front property line or about 18' from the curb line. The elevation shows that the existing fence to be 7' 3" – 8' in height. The site plan denotes that the fence is a "wood fence."
- Three single family homes "front" to the existing fence on the subject site, none of which have fences in their front yards.

- The Board Administrator conducted a field visit of the site and surrounding area and noted no other fences above four (4) feet high which appeared to be located in a front yard setback.
- As of November 7, 2011, a petition signed by 10 neighbors/owners had been submitted in support of the request and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' (whereby the proposal/existing fence that reaches a maximum height of 8' in the site's Spring Grove Avenue required front yard) does not adversely affect neighboring property.
- Granting this special exception of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would assure that the proposal/existing fence exceeding 4' in height in the Spring Avenue required front yard would be maintained in the location and of the height and material as shown on these documents.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 15, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Schweitzer**

I move that the Board of Adjustment grant application **BDA 101-119** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

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

SECONDED: **Goins**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION: **Goins**

I move to adjourn this meeting.

SECONDED: **Jackson**

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

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

1:05 P.M. - Board Meeting adjourned for **November 15, 2011.**

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.