

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, NOVEMBER 16, 2011**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, David Wilson, regular member, Paula Leone, regular member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM BRIEFING: Christian Chernock, regular member

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, David Wilson, regular member, Paula Leone, regular member and Hilda Duarte, alternate member

MEMBERS ABSENT FROM HEARING: Christian Chernock, regular member

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

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11:04 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **November 16, 2011 docket.**

1:03 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 B October 19, 2011 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2011

MOTION: Duarte

I move approval of the **Wednesday, October 19, 2011** Board of Adjustment Public Hearing minutes.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-099

BUILDING OFFICIAL’S REPORT:

Application of B.G. Gipson, represented by B. G. Gipson and Stephanie Dailey, to restore a nonconforming use at 1701 Shaw Street. This property is more fully described as Lot 10 in City Block 13/7118 and is zoned R-5(A), which limits the legal uses in a zoning district. The applicant proposes to restore a nonconforming general merchandise or food store 3500 square feet or less use, which will require a special exception to the nonconforming use regulations.

LOCATION: 1701 Shaw Street

**APPLICANT: B.G. Gipson
 Represented by B. G. Gipson and Stephanie Dailey**

REQUEST:

- A special exception to reinstate nonconforming use rights is requested in conjunction with obtaining a Certificate of Occupancy (CO) for a “general merchandise or food store 3500 square feet or less” use (Gipson Groceries) on the subject site even though this nonconforming use was discontinued for a period of six months or more.

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to operate a nonconforming use if that use is discontinued for six months or more since the basis for this type of appeal is based on whether the board determines that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

STANDARD FOR A SPECIAL EXCEPTION TO OPERATE A NONCONFORMING USE IF THAT USE IS DISCONTINUED FOR SIX MONTHS OR MORE: The Dallas

Development Code specifies that the Board may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

GENERAL FACTS:

- The Dallas Development Code defines “nonconforming use” as “a use that does not conform to the use regulations of this chapter, but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.

The nonconforming use regulations of the Dallas Development Code state it is the declared purpose of the nonconforming use section of the code that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

The nonconforming use regulations continue to state that the right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more, and that the board of adjustment may grant a special exception to operate a nonconforming use that has been discontinued for six months or more if the owner can show that there was a clear intent not to abandon the nonconforming use even though the use was discontinued for six months or more.

- The subject site is zoned R-5(A) – a zoning district that does not permit a “general merchandise or food store 3,500 square feet or less” use.
- According to information from Dallas Central Appraisal District (DCAD), the “main improvements” for property located at 1701 Shaw Street are a “convenience store” with 2,312 square feet built in 1950.
- Building Inspection has stated that these types of special exception requests originate when an owner/officer related to the property apply for a CO and Building Inspection sees that the use is a nonconforming use. Before a CO can be issued, the City requires the owner/officer related to the property to submit affidavits stating that the use was not abandoned for any period in excess of 6 months since the issuance of the last valid CO. The owners/officers need to submit documents and records indicating continuous uninterrupted use of the nonconforming use, which in this case, they could not.
- This nonconforming “general merchandise or food store 3,500 square feet or less” use is subject to a request that the Board of Adjustment consider establishing a compliance date as is the case with any other nonconforming use.
- The “general merchandise or food store 3,500 square feet or less” use may obtain “conforming use” status by obtaining a zoning change from the current R-5(A) zoning district.
- The owner of the site could develop the site with any use that is permitted in the site’s existing R-5(A) zoning district.
- The Board Administrator has informed the applicant of the provisions set forth in the Dallas Development Code pertaining to nonconforming uses.
- Building Inspection has included a document that includes the following information about this request:
 1. The nonconforming use to be reinstated: “gen. merch. less than 3500 sf”

2. Reason the use is classified as nonconforming: zoning change
 3. Date the nonconforming use was discontinued: Fall 2009
 4. Date that the use became nonconforming: 2-4-87 (51A); date of annexation: 12-30-52; date of construction: 1950 "groc. mkt."
 5. Current zoning of the property on which the use is located: R-5(A)
 6. Previous zoning of the property on which the use is located: R-5, R-6
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: R-5(A) (Single family 5,000 square feet)
North: R-5(A) (Single family 5,000 square feet)
South: R-5(A) (Single family 5,000 square feet)
East: R-5(A) (Single family 5,000 square feet)
West: R-5(A) (Single family 5,000 square feet)

Land Use:

The subject site is developed with a retail use that appears vacant. The area to the north is undeveloped; and the areas to the east, south, and west are developed with single family uses.

- July 25, 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 B.
- 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 section from the Dallas Development Code pertaining to nonconforming uses and structures; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- 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.

November 7, 2011: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

STAFF ANALYSIS:

- This special exception request is made to restore nonconforming use rights (and obtain a Certificate of Occupancy) for a nonconforming “general merchandise or food store 3500 square feet or less” use (Gipson Groceries) that has been discontinued for six months or more.
- The applicant has submitted a document, which states that he had no intentions to vacate or abandon the general merchandise store that has been on the property for over 50 years, and that he only did so due to illness/hospitalization in January of 2009.
- The applicant has the burden of proof in establishing the following related to the special exception request:
 - There was a clear intent not to abandon the nonconforming “general merchandise or food store 3500 square feet or less” use on the subject site even though the use was discontinued for six months or more.
- Granting this request would reinstate/restore the nonconforming use rights that were lost when the “general merchandise or food store 3500 square feet or less” use was vacant for a period of six months or more.
- Granting this request would restore the “general merchandise or food store 3500 square feet or less” use as legal nonconforming use but not as a legal *conforming* use.
- To make the “general merchandise or food store 3500 square feet or less” use on the site a legal conforming use, the applicant would have to make application for a change in zoning and obtain approval from City Council.
- If restored/reinstated, the nonconforming use would be subject to compliance with use regulations of the Dallas Development Code by the Board of Adjustment as any other nonconforming use in the city. (The applicant has been advised by staff of Section 51A-4.704 which is the provision in the Dallas Development Code pertaining to “Nonconforming Uses and Structures”).

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2011

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Duarte**

I move that the Board of Adjustment grant application **BDA 101-099** 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.

SECONDED: **Leone**

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-101

BUILDING OFFICIAL’S REPORT:

Application of Kyle Russell for a variance to the off-street parking regulations at 1719 W. 10th Street. This property is more fully described as Lot 34 in City Block 28/3447 and is zoned LO-1, which requires parking to be provided. The applicant proposes to construct/maintain a structure for medical clinic or ambulatory surgical center use and provide 6 of the required 10 parking spaces, which will require a variance of 4 spaces.

LOCATION: 1719 W. 10th Street

APPLICANT: Kyle Russell

REQUEST:

- A variance to the off-street parking regulations of 4 parking spaces (or a 40 percent reduction of the 10 off-street parking spaces that are required) is requested in conjunction with leasing/maintaining an existing vacant 2,000 square foot structure with “medical clinic or ambulatory surgical center” use, and providing 6 (or 60 percent) of the 10 required off-street parking spaces.

STAFF RECOMMENDATION:

Approval

Rationale:

- Staff concludes that a literal enforcement of the off-street parking regulations would result in unnecessary hardship to the applicant. The site is virtually triangular in shape, 0.16 acres in area, and according to DCAD records developed with a “medical office building” with 2,239 square feet built in 1944. The irregular shape of the site along with its relatively small area for development precludes the applicant from providing any of the required off-street parking for the use of the structure on

the site built in the 1940's. Furthermore, granting the variance to the off-street parking regulations does not appear to be contrary to public interest - the Sustainable Development Department Project Engineer has no objections to the request.

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:

- The Dallas Development Code requires an off-street parking requirement of 1 space per 200 square feet of "medical clinic or ambulatory surgical center" use. The applicant proposes to provide 6 (or 60 percent) of the 10 off-street parking spaces required in conjunction leasing the vacant 2,000 square foot structure with "medical clinic or ambulatory surgical center" use. The applicant has submitted a site plan that denotes an "existing 2,000 sf bldg" part of which is located in the 15' front yard setback along Jefferson Boulevard. The structure is most likely a nonconforming structure (a structure that does not conform to the current front yard setback regulations but was lawfully constructed under the regulations in force at the time of construction) where the applicant (who has been fully advised of code provisions related to nonconforming structures – that being the right to rebuild a nonconforming structure ceases if the structure is destroyed by the intentional act of the owner or the owner's agent) has chose not to seek variance for it.
- The site is flat, virtually triangular in shape, and according to the application, 0.16 acres in area. The site is zoned LO-1 (Limited Office).
- DCAD records indicate that the "improvements" at 1719 W. Tenth is a "medical office building" with 2,239 square feet built in 1944.

Zoning:

Site: LO-1 (Limited Office)
North: R-7.5(A) & PD No. 87 (Single family & Planned Development)
South: R-7.5(A) (Single family residential 7,500 square feet)

East: PD No. 87 (Planned Development)
West: R-7.5(A) (Single family residential 7,500 square feet)

Land Use:

The subject site is developed with a vacant structure. The area to the north is developed with a surface parking lot and an institutional use (Salvation Army), the areas to the east and south are developed with what appears to be a combination of neighborhood retail and single family uses; and the area immediately west is undeveloped.

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:

- July 29, 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 B.
- October 19, 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.
- 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:

- The request focuses on leasing/maintaining an existing vacant 2,000 square foot structure built in the 1940's with "medical clinic or ambulatory surgical center" use, and providing 6 (or 60 percent) of the 10 required off-street parking spaces.
- The applicant proposes to provide 6 (or 60 percent) of the 10 off-street parking spaces required to lease the existing vacant structure with a "medical clinic or ambulatory surgical center" use at 1 space per 220 square feet of floor area.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."
- The site is flat, virtually triangular in shape, and according to the application, 0.16 acres in area. The site is zoned LO-1 (Limited Office).
- DCAD records indicate that the "improvements" at 1719 W. Tenth is a "medical office building" with 2,239 square feet built in 1944.
- 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 LO-1 (Limited Office) 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 LO-1 (Limited Office) zoning classification.

BOARD OF ADJUSTMENT ACTION: **NOVEMBER 16, 2011**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Duarte**

I move that the Board of Adjustment grant application **BDA 101-101** 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.

SECONDED: **Leone**

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-103

BUILDING OFFICIAL’S REPORT:

Application of Chad Sargent, represented by Ronnie Deford, for a special exception to the fence height regulations at 1528, 1530, 1534, 1536, and 1537 Sienna Court. This property is more fully described as Lots 31C, 31D, 31E, 31F, and 31K in City Block 5/642 and is zoned PD-298 (Subarea 8), 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: 1528, 1530, 1534, 1536, and 1537 Sienna Court

APPLICANT: Chad Sargent
Represented by Ronnie Deford

REQUESTS:

- The following appeals have been made in this application on a site that is currently being developed with a townhome development:
 1. a special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining a 6’ high solid cedar board-on-board fence atop a 2’ high stone retaining wall to be located in the front yard setback along N. Haskell Avenue; and
 2. a special exception to the fence height regulations of 4’ is requested in conjunction with constructing and maintaining an 8’ high open wrought iron sliding gate to be located in the front yard setback along San Jacinto Street.

STAFF RECOMMENDATION (fence height special exceptions):

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:

- PD No. 298 states that for all residential uses, maximum fence height in the required front yard is four feet. PD No. 298 states that the front yard setback in Subarea 8 is not less than 5’ and not more than 15’.
The subject site is located at the southern corner of San Jacinto Street and N. Haskell Avenue with front yard setbacks on both streets

The applicant had submitted a site plan and elevation indicating that the proposal in the required front yard setbacks on N. Haskell Avenue and San Jacinto Street reaches a maximum height of 8’.

- With regard to the proposal along N. Haskell Avenue, the following additional information was gleaned from the submitted site plan:
 - The proposal is shown to be approximately 130’ in length parallel to the street and approximately 8’ – 11.5’ in length perpendicular to the street on the northwest and southeast sides in the front yard setbacks.
 - The proposed is shown to be located approximately on the front property line or about 13’ from the projected curb/pavement line.
- With regard to the proposal along N. Haskell Boulevard, no single family home “fronts” to the proposal on the subject site.
- With regard to the proposal along San Jacinto Street, the following additional information was gleaned from the submitted site plan:
 - The proposal is shown to be approximately 24’ in length parallel to the street.
 - The proposed is shown to be located approximately 9’ from the front property line or about 22’ from the projected curb/pavement line.
- With regard to the proposal along San Jacinto Street, no single family home “fronts” to the proposal on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in a front yard setback – an approximately 6’ high open metal/wire fence atop a solid stone retaining wall located immediately north of the site with no recorded BDA history.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	PD No. 298 (Planned Development)
<u>North:</u>	PD No. 298 (Planned Development)
<u>South:</u>	PD No. 298 (Planned Development)
<u>East:</u>	PD No. 298 (Planned Development)
<u>West:</u>	PD No. 298 (Planned Development)

Land Use:

The subject site is being developed with a townhome development. The areas to the north, east, and south are developed with residential uses, and the area to the west is developed with retail use.

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:

- July 20, 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 B.
- 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.
- 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 constructing and maintaining a 6' high solid cedar board-on-board fence atop a 2' high stone retaining wall to be located in the front yard setback along N. Haskell Avenue, and an 8' high open wrought iron sliding gate to be located in the front yard setback along San Jacinto Street on a site being developed with a townhome development.
- The submitted site plan and revised documents the location, height, and materials of the fence over 4' in height in the required front yards. The site plan shows the proposal along Haskell Avenue to be approximately 130' in length parallel to the street and approximately 8' – 11.5' in length on the sides in the front yard setback, approximately on the front property line or about 13' from the curb/pavement line. The site plan shows the proposal along San Jacinto Street to be approximately 24' in length parallel to the street, approximately 9' from the front property line or about 22' from the curb/pavement line. The elevation denotes that the fence along N. Haskell

to be 6' high solid cedar board-on-board fence atop a 2' high stone retaining wall and the "fence" on San Jacinto to be an 8' high open wrought iron sliding gate.

- No single family home "fronts" to the proposed fence or gate proposed on the subject site.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in a front yard setback – an approximately 6' high open metal/wire fence atop a solid stone retaining wall located immediately north of the site with no recorded BDA history.
- As of November 7, 2011, no letters have been submitted in support or opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 4' will not adversely affect neighboring property.
- Granting these special exceptions of 4' with a condition imposed that the applicant complies with the submitted site plan and elevation would provide assurance that the proposal exceeding 4' in height in the required front yards would be constructed and maintained in the locations and of the heights and materials as shown on these documents.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2011

APPEARING IN FAVOR: Ronnie Deford, 4209 Woodfin, Dallas, TX
 Justin Henry, 1600 N. Haskell Ave., Unit #1, Dallas, TX
 Charles Honeycutt, 1600 N. Haskell Ave., Unit #13, Dallas, TX

APPEARING IN OPPOSITION: Michael Eric Williamson, 3507 Bryan St., Dallas, TX

MOTION #1: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 101-103**, on application of Ronnie Deford, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: No one
***Motion failed for lack of a second.**

MOTION #2: Leone

I move that the Board of Adjustment, in Appeal No. **BDA 101-103**, on application of Ronnie Deford, **grant** the request of this applicant to construct and maintain an eight-foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. 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: Duarte
AYES: 2– Leone, Duarte
NAYS: 3 – Reynolds, Gillespie, Wilson
MOTION FAILED 2 – 3

MOTION #3: Gillespie

I move that the Board of Adjustment, in Appeal No. **BDA 101-103**, on application of Ronnie Deford, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

SECONDED: Wilson
AYES: 5– Reynolds, Gillespie, Wilson, Leone, Duarte
NAYS: 0 –
MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-106

BUILDING OFFICIAL’S REPORT:

Application of Joe Cavagnaro, represented by Matt Cragun, for a variance to the off-street parking regulations at 1899 McKinney Avenue. This property is more fully described as being Block 293 and is zoned PD-193 (HC), which requires parking to be provided. The applicant proposes to construct/maintain a structure for a restaurant without drive-in or drive-through service use and provide 35 of the required 71 parking spaces, which will require a variance of 36 spaces.

LOCATION: 1899 McKinney Avenue

APPLICANT: Joe Cavagnaro
Represented by Matt Cragun

REQUEST:

- A variance to the off-street parking regulations of 36 parking spaces (or a 51 percent reduction of the 71 off-street parking spaces that are required) is requested in conjunction with maintaining an approximately 7,100 square foot structure as “restaurant without drive-in or drive through service” use (Glass at 1899).

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- The applicant shall provide 71 off-street parking spaces within a walking distance of 600 feet from the subject site.

Rationale:

- Staff concludes that a literal enforcement of the off-street parking regulations would result in unnecessary hardship to the applicant. The site is virtually triangular in shape, 0.4 acres in area, and according to DCAD records developed with an “office building” built in 1966. The irregular shape of the site along with its relatively small area for development precludes the applicant from providing the required off-street parking for the use of the structure on the site built in the 1960’s on the site.
- Furthermore, granting the variance to the off-street parking regulations does not appear to be contrary to public interest with the staff suggested condition imposed - the Sustainable Development Department Project Engineer has no objections to the request. In this particular case, the applicant is providing/would be required to provide (if the staff suggested condition is imposed) the entire amount of off-street parking required for the use/size of the structure on the subject site but not in accordance to the specific “special parking regulation” within PD No. 193 that requires that at least 50 percent of the off-street parking required for any other main use must be located on the same lot as that use or on a lot directly adjacent to or across an alley from that use.

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 requires an off-street parking requirement of 1 space per 100 square feet of “restaurant without drive-in or drive-through service” use. PD No. 193 additionally provides certain “special parking regulations” with a “general standard” stating: “At least 50 percent of the off-street parking required for any other main use must be located on the same lot as that use or on a lot directly adjacent to or across an alley from that use.” The application and Building Official’s report states that variance is sought for 36 spaces where the City recognizes the applicant providing 35 (or 49 percent) of the 71 off-street parking spaces required in conjunction maintaining the existing 7,143 square foot structure with “restaurant without drive-in or drive-through service” use.

- The parking provisions mentioned above allow the City to recognize only 35 (or 49 percent) of the 71 off-street parking spaces required for this sized structure leased with this specific use even though the applicant is providing 100 percent of the required parking for the use on the subject site at a location not on the same lot as the use, and not on a lot directly adjacent to or across an alley from that use. The applicant’s representative has submitted a site plan and a letter (see Attachment A) documenting that 71 parking spaces required for the use on the subject site are provided in a remote parking agreement at 1900 Cedar Springs – a location that begins approximately 300’ north of the subject site and across St. Paul Street from the subject site.
- The site is somewhat sloped, virtually triangular in shape, and according to the application, 0.447 acres in area. The site is zoned PD No. 193 (HC).
- DCAD records indicate that the “improvements” at 1899 McKinney is an “office building” with 7,953 square feet built in 1966.

Zoning:

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

Land Use:

The subject site is developed an approximately 7,100 square foot “restaurant without drive-in or drive through service” structure/use (Glass at 1899). The areas to the north, east, south, and west is developed with a mix of uses, most of which appear to be office uses.

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. BDA 001-155, Property at 1899 McKinney Avenue (the subject site) | <p>On February 20, 2001, Board of Adjustment Panel B granted a request for a special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition. The case report stated that the request was made in conjunction with renovating and expanding an existing office building on the site where the existing building footprint would remain intact and eight floors would be added atop that would include 19 residential units.</p> |
|---|--|

Timeline:

- August 26, 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 assigned this case to Board of Adjustment Panel B.
- October 19, 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 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's representative 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 Department Project Engineer submitted a Review Comment Sheet marked "Has no objections."

STAFF ANALYSIS:

- The request focuses on maintaining an approximately 7,100 square foot structure as "restaurant without drive-in or drive through service" use (Glass at 1899) where the City only recognizes 35 required off-street parking spaces as being provided off-street parking spaces.
- The applicant is not adhering to PD No. 193's "special parking regulation" that requires "At least 50 percent of the off-street parking required for any other main use must be located on the same lot as that use or on a lot directly adjacent to or across an alley from that use."
- While the applicant is providing 71 off-street parking spaces or 100 percent of the required parking for the use on the subject site, all 71 off-street parking spaces

required for the use on the subject site are being provided in a remote parking agreement at 1900 Cedar Springs – a parking garage location that begins approximately 300’ north of the subject site and across St. Paul Street from the subject site. The “special parking regulation” mentioned above only allows the City to recognize only half of the required 71 off-street parking spaces for the use on the subject site in this location.

- The Sustainable Development and Construction Department Project Engineer has submitted a Review Comment Sheet marked “Has no objections.”
- The site is somewhat sloped, virtually triangular in shape, and according to the application, 0.447 acres in area. The site is zoned PD No. 193 (HC).
- DCAD records indicate that the “improvements” at 1899 McKinney is an “office building” with 7,953 square feet built in 1966.
- 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.
- If the Board were to grant this request and impose the staff suggested condition, the applicant would be required to provide 71 off-street parking spaces required for the 7,100 square foot restaurant use on the subject site within a walking distance of 600 feet from the subject site.

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2011

APPEARING IN FAVOR: Joe Cavagnaro, 14785 Preston Rd., #750, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Leone**

I move that the Board of Adjustment, in Appeal No. **BDA 101-106**, on application of Joe Cavagnaro, represented by Matt Cragun, **grant** the 36 space off-street parking variance requested by the applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- 71 off-street parking spaces must be provided for the restaurant use within a walking distance of 600 feet from the subject site.

SECONDED: Wilson

AYES: 5– Reynolds, Gillespie, Wilson, Leone, Duarte

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

FILE NUMBER: BDA 101-107

BUILDING OFFICIAL’S REPORT:

Application of Jackson Walker, LLP, represented by Susan Mead and Jonathan Vinson, for a variance to the height regulations at 3700 McKinney Avenue. This property is more fully described as Lot 1.1 in City Block A/977 and is zoned PD 305 (Subdistrict D-2), which limits the maximum structure height to 240 feet. The applicant proposes to construct/maintain a structure with a building height of 260 feet, which will require a variance to the maximum height regulations of 20 feet.

LOCATION: 3700 McKinney Avenue

**APPLICANT: Jackson Walker, LLP
Represented by Susan Mead and Jonathan Vinson**

REQUEST:

- A variance to the height regulations of 20’ is requested in conjunction with constructing and maintaining a mixed–use residential and retail project that would reach (according to the revised application and submitted conceptual elevation) 260’ in height on a site that is currently undeveloped.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff was unable to conclude that the parcel differs from other parcels of land by being of such restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.
- Staff concludes however that granting this request would not be contrary to the public interest.
- Staff acknowledges that the Board of Adjustment identified a unique hardship on this site in 2005 and granted, among other things, a variance to the height regulations.
- Staff also acknowledges that the current application is one of a lesser height and is a more limited request for relief than what was applied for/granted on this site by the Board of Adjustment in 2005.

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. 305 (Subdistrict D) states that the maximum height for structures is 240 feet. The revised application and revised Building Official's report (see Attachment A) states that variance is sought for 20' in height. The applicant has submitted an elevation that appears conceptual in nature denoting a rectangle labeled "proposed building," with height references on the side/top of the rectangle/ "proposed building" denoting "240' – height allowed in PD 305" and "260' – height variance request." The applicant has submitted a development plan in conjunction with this request indicating the following with regard to "building area" – retail/residential/pers serv: 60,000 sf; and residential: 429,149 sf for a total of 489,149 sf. The development plan denotes that only the approximate northern third of the site as the 'height variance area' or the area of the site that would reach 260' in height.
- The site is flat, somewhat irregular in shape, and according to the application, 3.083 acres in area. The site is zoned PD No. 305 (Subdistrict D). The site has four 10' front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "improvements" at 3700 McKinney is a "recreation building" with 10,500 square feet built in 1994.
- The applicant forwarded additional information to the staff beyond what was submitted with the original application.
- The applicant forwarded additional information to the Board Administrator to be forwarded to the Board members beyond what was submitted with the original application and to staff (see Attachment B).

Zoning:

Site: PD No. 305 (Subdistrict D) (Planned Development)
North: PD No. 305 (Subdistrict D) (Planned Development)
South: PD No. 305 (Subdistrict D) (Planned Development)
East: PD No. 305 (Subdistrict D) (Planned Development)
West: PD No. 305 (Subdistrict B) (Planned Development)

Land Use:

The subject site is currently vacant. The areas to the north, east, and south are developed with a mix of office, retail, and residential uses, and the area to the east is undeveloped.

Zoning/BDA History:

1. BDA 056-013, Property at 3636 McKinney Avenue (the subject site)

On October 19, 2005, Board of Adjustment Panel B granted a request for a variance of 5' to the front yard setback regulations (imposing the submitted site plan and revised elevations as conditions to the request), a request for a variance to the height regulations of 25' (imposing the submitted site plan and revised elevations as conditions to the request), and a request for a special exception to the landscape regulations (imposing the submitted revised landscape plan as a condition to the request). The case report stated that the requests were made in conjunction with constructing and maintaining a 19 story retail/office/residential tower, a 12 story retail/residential tower, a 7 story retail/office/residential tower, a 2.5 story parking tower, and a restaurant on a site that was developed as a recreation use (The Hank Haney Golf Driving Range).

Timeline:

September 9, 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 assigned this case to Board of Adjustment Panel B. 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."

October 19, 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 to staff for staff review purposes beyond what was submitted with the original application.

November 1, 2011: The applicant submitted a revised application and other related information to staff (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.

November 4, 2011: The applicant submitted additional information to the Board Administrator to be forwarded to the Board members beyond what was submitted with the original application (see Attachment B).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a mixed use residential and retail project on a site that is undeveloped, part of which would exceed the maximum height for structures on properties zoned PD 305 (Subdistrict D) of 240 feet.
- The applicant has submitted an elevation that appears conceptual in nature denoting a rectangle labeled "proposed building," with height references on the side/top of the rectangle/ "proposed building" denoting "240' – height allowed in PD 305" and "260' – height variance request."
- The applicant has submitted a development plan in conjunction with this request indicating the following with regard to "building area" – retail/residential/pers serv: 60,000 sf; and residential: 429,149 sf for a total of 489,149 sf. The development plan

denotes that only the approximate northern third of the site as the 'height variance area' or the area of the site that would reach 260' in height.

- The site is flat, somewhat irregular in shape, and according to the application, 3.083 acres in area. The site is zoned PD No. 305 (Subdistrict D). The site has four 10' front yard setbacks which is typical of any lot that has a street frontage and is not zoned single family, duplex, or agricultural.
- DCAD records indicate that the "improvements" at 3700 McKinney is a "recreation building" with 10,500 square feet built in 1994.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to height 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. 305 (Subdistrict D) 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. 305 (Subdistrict D) zoning classification.
- If the Board were to grant the height variance request of 20', subject to the submitted elevation and development plan described previously in this case report, the structure would be allowed to reach 260' in height as shown on these submitted conceptual documents.

***Member Sam Gillespie recused himself and did not hear or vote on this matter.**

BOARD OF ADJUSTMENT ACTION: NOVEMBER 16, 2011

APPEARING IN FAVOR: Jonathan Vinson, 901 Main Street, Ste. 6000, Dallas, TX
David Swaim, 4701 Parliament Ct., Arlington TX
Neal Sleeper, 3324 Blackburn, Dallas, TX
Robert Bagwell, 3699 McKinney Ave., Dallas, TX
Jim Truitt, 1800 Main St., #250, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Wilson**

I move that the Board of Adjustment, in Appeal No. **BDA 101-107**, on application of Jackson Walker, LLP, represented by Susan Mead and Jonathan Vinson, **grant** the 20-foot variance to the height regulations, because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

SECONDED: Leone

AYES: 4– Reynolds, Wilson, Leone, Duarte

NAYS: 0 –

MOTION PASSED 4 – 0 (unanimously)

MOTION: Wilson

I move to adjourn this meeting.

SECONDED: Leone

AYES: 4– Reynolds, Wilson, Leone, Duarte

NAYS: 0 -

MOTION PASSED 4– 0 (unanimously)

2:34 P.M. - Board Meeting adjourned for **November 16, 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.