

**BOARD OF ADJUSTMENT, PANEL B
PUBLIC HEARING MINUTES
CITY HALL, L1FN CONFERENCE CENTER AUDITORIUM
WEDNESDAY, DECEMBER 14, 2005**

MEMBERS PRESENT AT BRIEFING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, regular member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Alice Cox, Vice-Chair, Taylor Brannon, Panel Vice-Chair, Samuel Gillespie, regular member, Marla Beikman, regular member and Christian Chernock, regular member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Claire Swann, Asst. City Attorney, Ileana Fernandez, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Frank Dominguez, Senior Planner, Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Claire Swann, Asst. City Attorney, Ileana Fernandez, Asst. City Attorney, Donnie Moore, Chief Planner, Steve Long, Board Administrator, Danny Sipes, Development Code Specialist, Frank Dominguez, Senior Planner, Karl Evans, Code Inspector, Trena Law, Board Secretary

10:12 AM. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's December 14, 2005 docket.

1:15 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 November 16, 2005 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: December 14, 2005

MOTION: Gillespie

I move **approval** of the **Wednesday, November 16, 2005** Board of Adjustment Public Hearing minutes.

SECONDED: Brannon

AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED 5 – 0 (Unanimously)

FILE NUMBER: BDA 056C-01

BUILDING OFFICIAL'S REPORT:

Application of Thirteen Homeowners Association, represented by Dolores G. Wolfe requesting a compliance date and discontinuance of a non-conforming manufactured home park use located at 1802 Highland Road. This property is more fully described as a tract of land in City Block 7028 and is zoned R-7.5 (A) which does not permit a manufactured home park use. Referred to the Board of Adjustment in accordance with Section 51A-3.102(d) (4) of the Dallas Development Code, as amended, which states the power of the Board to bring about the discontinuance of a nonconforming use.

LOCATION: 1802 Highland Road

APPLICANT: Thirteen Homeowners Association
Represented by Dolores G. Wolfe

December 14, 2005 Public Hearing Notes:

- The applicant and the attorney representing the owner of the subject site submitted additional evidence and letters regarding the appeal.

REQUEST:

- A request is made for the Board of Adjustment to establish a compliance date for a nonconforming manufactured home park use.

COMPLIANCE REGULATIONS FOR NONCONFORMING USES: SEC. 51A-4.704. **NONCONFORMING USES AND STRUCTURES** of the Dallas Development Code provides the following provisions:

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection 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.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(B) Factors to be considered. The board shall consider the following factors when determining whether continued operation of the nonconforming use will have an adverse effect on nearby properties:

(i) The character of the surrounding neighborhood.

(ii) The degree of incompatibility of the use with the zoning district in which it is located.

(iii) The manner in which the use is being conducted.

(iv) The hours of operation of the use.

(v) The extent to which continued operation of the use may threaten public health or safety.

(vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.

(vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.

(viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.

(ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

(C) Finality of decision. A decision by the board to grant a request to establish a compliance date is not a final decision and cannot be immediately appealed. A decision by the board to deny a request to establish a compliance date is final unless appealed to state court within 10 days in accordance with Chapter 211 of the Local Government Code.

(D) Determination of amortization period.

(i) If the board determines that continued operation of the nonconforming use will have an adverse effect on nearby properties, it shall, in accordance with the law, provide a compliance date for the nonconforming use under a plan whereby the owner's actual investment in the use before the time

that the use became nonconforming can be amortized within a definite time period.

- (ii) The following factors must be considered by the board in determining a reasonable amortization period:
 - (aa) The owner's capital investment in structures, fixed equipment, and other assets (excluding inventory and other assets that may be feasibly transferred to another site) on the property before the time the use became nonconforming.
 - (bb) Any costs that are directly attributable to the establishment of a compliance date, including demolition expenses, relocation expenses, termination of leases, and discharge of mortgages.
 - (cc) Any return on investment since inception of the use, including net income and depreciation.
 - (dd) The anticipated annual recovery of investment, including net income and depreciation.
- (E) Compliance requirement. If the board establishes a compliance date for a nonconforming use, the use must cease operations on that date and it may not operate thereafter unless it becomes a conforming use.
- (F) For purposes of this paragraph, "owner" means the owner of the nonconforming use at the time of the board's determination of a compliance date for the nonconforming use.

GENERAL FACTS:

- Building Inspection states that the manufactured home park use on the subject site became nonconforming on July 22, 1952. This conclusion was reached by research conducted by the Building Inspection Development Code Specialist who found that this "House Trailer Park" was annexed into the City of Dallas on July 22, 1952. In addition, the code specialist found that at that time, the property was zoned for single family uses only and then later zoned R-7.5 which did not allow for "House Trailer Parks" therefore it was granted a nonconforming status.
- The Dallas Development Code states that "nonconforming use" means "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 subject site is zoned R-7.5(A).
- The Dallas Development Code combines "manufactured home park" use in a grouping of other use including "manufactured home subdivision," and "campground" in Section 51A-4.209(b)(4). This section of the code provides the following:
 - 'Manufactured home park, manufactured home subdivision or campground.'
 - "Definition: A manufactured home park is a unified development of transient stands arranged on a lot under single ownership."
 - "Definition: A manufactured home subdivision is plat designed specifically for manufactured home development."
 - "Definition: A campground is a lot used to accommodate recreation vehicles, tents, or manufactured homes on a rental basis for temporary camping purposes."
 - "Districts permitted: By right in the MH(A) district."

- The owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining a change in zoning to MH(A) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site's existing R-7.5(A) zoning classification. Uses permitted by right in this zoning district include crop production use, temporary construction or sales office use, public park, playground, or golf course use, or single family use.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included notebook of information including the following series of exhibits and documents:
 - Certificate of Occupancy;
 - Original Application;
 - DCAD Property Records;
 - Detailed Compliance Records;
 - Police Records;
 - Texas Criminal History Records; and
 - Dallas Code and Ordinances.

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) (Single family district 7,500 square feet)
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 site is currently developed with a manufactured home park use. The areas to the north, east, south, and west appear to be undeveloped tracts of land.

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 26, 2005: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

Sept. 22, 2005: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

- Sept. 23, 2005: The Board Administrator contacted the applicant and shared the following information:
- the public hearing date and panel that will consider the application;
 - the criteria/standard that the board will use in their decision to approve or deny the request;
 - the importance of evidence submitted by the applicant with regard to the board's decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board.
- October 3, 2005: The Board Administrator contacted the applicant and shared the following information:
- the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
 - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- October 3, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board Administrator, the Development Services Senior Transportation Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- October 5, 2005: City staff postponed scheduling this case until November 16th. (The Board Administrator informed the applicant of this postponement).
- October 6, 2005: The Board Administrator wrote/sent the owner of the site a certified letter that informed him that a Board of Adjustment case had been filed against his property. The letter included following enclosures:
- a copy of the Board of Adjustment application and related materials that had been submitted in conjunction with the application;
 - a copy of the section of the Dallas Development Code that described the Board of Adjustment (Section 51A-3.102);
 - a copy of the section of the Dallas Development Code that provides the definition of "nonconforming use" (Section 51A-2.102(90));

- a copy of the section of the Dallas Development Code that provides the definition and provisions set forth for “manufactured home park, manufactured home subdivision, or campground” use (Section 51A-4.209(b)(4));
- a copy of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704).

The letter also informed the owner of the date, time, and location of the public hearing.

Oct. 24, 2005: The Board Administrator contacted the applicant and shared the following information:

- the public hearing date and panel that will consider the application;
- the October 27th deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
- the November 4th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the November public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

October 31, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Subdivision and Plats Chief Planner, the Board Administrator, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

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

November 2, 2005: The Board Administrator wrote/sent the owner of the site a certified letter that:

- included an enclosure of the most current section of the section of the Dallas Development Code that provides provisions for “nonconforming uses and structures” (Section 51A-4.704); and
- a reminder of the date, time, and location of the public hearing on this matter.

November 4, 2005 The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

- Nov. 11, 2005 Staff became aware that the notification sign had not been placed on the subject site in accordance with provisions set forth in the Dallas Development Code. As a result, it was determined that the public hearing that was scheduled for November 16, 2005 could not be held.
- Nov. 16, 2005 The Chair of Board of Adjustment Panel B called a special meeting/public hearing to hear this matter: December 14, 2005.
- Nov. 21, 2005 The Board Administrator contacted the applicant and shared the provisions set forth in the Dallas Development Code pertaining to “notification signs required to be obtained and posted.”
- Nov. 28, 2005: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the December public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- Dec. 2, 2005 Notice of the December 14, 2005 public hearing on this matter was sent to all property owners within a 200 foot radius of the site, and advertised in the Dallas Morning News.

STAFF ANALYSIS:

- The manufactured home park use on the subject site is a nonconforming use.
- The manufactured home park use on the subject site became nonconforming on July 22, 1952.
- The Dallas Development Code states that it is the declared purpose of this subsection (Sec. 51A-4.704. Nonconforming Uses and Structures) 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 owner of the site could eliminate the nonconforming use status of the existing manufactured home park use by obtaining a change in zoning to MH(A) zoning from City Council.
- The owner of the site could transition the use of the site from manufactured home park use to any use that is permitted by right in the site’s existing R-7.5(A) zoning classification. Uses permitted by right in this zoning district include crop production

use; temporary construction or sales office use; public park, playground, or golf course use; or single family use.

- The applicant has the burden of proof in establishing the following:
 - Continued operation of the nonconforming manufactured home park use will have an adverse effect on nearby properties.
- The purpose of the Board of Adjustment's December 14th public hearing shall be to determine whether continued operation of the nonconforming manufactured home park use will have an adverse effect on nearby properties. The Dallas Development Code states that if, based on the evidence presented at the public hearing, the board determines that continued operation of this use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use (at a subsequent public hearing); otherwise, it shall not.

BOARD OF ADJUSTMENT ACTION: November 16, 2005

- * **Due to an administrative error, the board lacked jurisdiction to hear this case and it was therefore held over to December 14, 2005.**

BOARD OF ADJUSTMENT ACTION: December 14, 2005

APPEARING IN FAVOR:

Delores Wolfe, 2125 Ash Grove Way, Dallas, TX
Vicki Martin, 8230 Claremont, Dallas, TX
John Vanbuskirk, 2450 Wildoar Dr., Dallas, TX
Norton Rosentrial, 8438 San Benito Way, Dallas, TX 75218
Susan Walker, 5820 Gardendale Dr., Dallas, TX
Richard Murray, 1740 Glenlivet, Dallas, TX 75218
Bill Forester, 8163 Santa Fe Drive, Dallas, TX

APPEARING IN OPPOSITION:

Mark Josephs, 5808 Glendora Ave., Dallas, TX
Steve Crossett, 530 Dragon, Austin, TX 78734
Marty Ray, 8166 Barbaree, Dallas, TX 75228
Jack Lougheed, 1802 Highland Rd, #35, Dallas,
Susan Graham, 1802 Highland Rd #7, Dallas, TX
Antonia Rodriguez, 1802 Highland Rd #33,
Dallas,
Dwane C McCowner, 1802 Highland RD #40,
Dallas, TX
Tracy Shook, 1802 Highland RD #17, Dallas, TX
Evelyn Rangel, 1802 Highland RD #5, Dallas, TX
Bill Ashe, 1802 Highland RD #44, Dallas, TX
Julia Hernandez, 1802 Highland RD #43, Dallas
Kenneth Belrend, 1802 Highland Rd #19, Dallas
Willie Ramirez, 1802 Highland RD #48, Dallas,

APPEARING IN OPPOSITION:

Lola Boshier, 8223 Barbaree Blvd, Dallas, TX
Benito Laredo, 1802 Highland Rd, Dallas, TX

MOTION: Brannon

I move that the Board of Adjustment in Appeal No. **BDA 056-C01**, based on the evidence presented at the public hearing, find that continued operation of this nonconforming use **will** have an adverse effect on nearby properties, and set a hearing date of **February 15, 2006** for the purpose of establishing a compliance date for this nonconforming use.

SECONDED: Beikman

AYES: 5–Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 – None

MOTION PASSED: 5 – 0 (Unanimously)

MOTION: Brannon

I move to adjourn this meeting.

SECONDED: Gillespie

AYES: 5– Cox, Brannon, Gillespie, Beikman, Chernock

NAYS: 0 -

MOTION PASSED 5 – 0 (unanimously)

3:50 P.M. - Board Meeting adjourned for December 14, 2005.

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.