

Board of Adjustment

STAFF REPORT



SUBJECT: Case No.: V2023-010
Applicant Rhyne Gailey, representing First 6 Investments, LLC, is requesting a variance from Section 154.13.L(1) Installation and Maintenance of Landscaping—General for property located at 1285 Frey, being parcel R32279 of S4400 KIGHT ADDITION; BLOCK 9; LOT 14 of the City of Stephenville, Erath County, Texas.

MEETING: Board of Adjustment – July 13, 2023

DEPARTMENT: Development Services

STAFF CONTACT: Steve Killen

BACKGROUND:

Mr. Gailey is requesting a variance relating to the requirement of the installation of an irrigation system. Mr. Gailey intends to xeriscape the property to complement the request.

Sec. 154.13. Landscape requirements.

13.A Purpose. It is the purpose of this section to establish regulations pertaining to landscaping within the city for all multi-family dwellings and nonresidential uses located in residential districts and all uses located in the business and industrial zoning districts. These regulations provide standards and criteria for new landscaping and the retention of existing trees, which are intended to:

- (1) Preserve the value of property, enhance the welfare, and improve the physical appearance of the city;
- (2) Reduce the negative effects of glare, noise, erosion and sedimentation caused by expanses of impervious and un-vegetated surfaces within the urban environment;
- (3) Preserve and improve the natural and urban environment by recognizing that the use of landscaping elements and retention of existing trees can contribute to the processes of air purification, oxygen regeneration, groundwater recharge, abatement of noise, glare and heat, and enhance the overall beauty of the city.

13.B Landscape Plan Requirements—Landscape Plan Required.

- (1) The landscape plan may be prepared by the applicant, or applicant's designee. The landscape plan is not required to be prepared by a registered or certified professional.
- (2) The landscape plan shall be submitted as a part of the site plan. A landscape plan meeting the requirements of this ordinance shall be provided and approved prior to the issuance of a building permit.
- (3) The landscape plan shall contain the following information:
 - (a) Drawn to scale;
 - (b) North arrow;
 - (c) Date of plan submittal;
 - (d) Location, size and species of all trees to be preserved. The method of preservation during the construction phase of development shall be according to Section 13.F, Tree Protection;
 - (e) Location of all plants and landscaping material to be used including paving, benches, screens, fountains, statues, topography, ponds/lakes, or other landscape features;

- (f) Size and type of all plant material to be used;
- (g) Spacing of plant material where appropriate;
- (h) Layout and description of irrigation, sprinkler or water system; including placement of water sources;
- (i) Description of maintenance provisions of the landscape plan;
- (j) Persons responsible for the preparation of the landscape plan.

13.C Landscape Installation Required.

- (1) Fifteen percent of the total land area in any proposed development or construction that occurs for any use after the effective date of this ordinance shall be landscaped. This 15% requirement shall apply to each phase as it is developed.
- (2) The minimum plantings for every 1,000 square feet of required landscape, shall be one three-inch caliper or larger canopy tree and either two ornamental trees or six shrubs.
- (3) Where the construction is to be a single phase of a multi-phase development, only the area being constructed in the current phase need be subject to the landscape regulations. However, each phase will be required to meet the landscaping requirements as they may hereafter be amended when that phase is developed.
- (4) The use of drought tolerant plants is encouraged to meet requirements of this section.
- (5) Artificial plants or turf are expressly prohibited.
- (6) Alternative species of trees may be used upon approval by the Director of Community Development or his or her designee.
- (7) An irrigation system must be provided.

13.D Location Criteria.

- (1) No less than 30% of the total landscaping area and planting materials shall be located in the designated front yard. Parcels that are adjacent to more than one roadway may count the street yards of all adjacent roadways towards satisfying the front yard requirement.
- (2) In the I "Industrial" zoning district, only the front-yard 30% of the total 15% of required landscaping shall be required. The rear and side yard landscape requirements may be waived upon submittal of a landscape plan showing compliance with all other requirements.
- (3) There shall be a 15-foot landscaping buffer located along the right-of-way of U.S. Hwy. 377, Hwy. 67, Hwy. 281, Hwy. FM 8, and Hwy. FM 988. All landscaping that occurs within this 15-foot foot buffer shall be included within the landscape calculation toward meeting the landscape requirements contained in this Section 13, Landscape Requirements.
- (4) The required landscaping around monument signs shall count towards total landscaping requirements and towards front yard landscaping requirement.
- (5) All landscape material shall comply with visibility requirements of the Subdivision Ordinance regulations.

13.E Tree Survey. A tree survey shall be provided for any new construction prior to permit issuance. A tree survey will also be required for any remodeling or construction that proposes to enlarge the footprint of the structure and/or requires a building permit:

- (1) This requirement is limited to sites which are located in any non-residential district or for any non-residential use located in a residential district.
- (2) The tree survey shall be provided prior to any construction, including any earthwork on any site.
- (3) The survey shall be submitted with the building permit application, or may be submitted prior to the building permit application if the applicant so desires. As soon as the Director of Community Development approves the tree survey, earthwork may be initiated at the discretion of the Director of Community Development; however, no work may be initiated on structural elements of the building without an approved building permit.
- (4) The tree survey shall show the exact location of the tree, size of the tree measured by diameter, and the common name of all trees of a six-inch caliper or height of seven feet.

13.F Tree Protection. The following procedures shall be followed on all construction projects to protect existing trees, to be preserved, in order to satisfy the requirements of this section:

- (1) All preserved trees shall be flagged with bright fluorescent orange vinyl tape wrapped around the main trunk at a height of four feet or more so that the tape is visible to workers operating construction equipment.
- (2) A protective fencing shall be required for trees to be preserved if the trees are located so close to the construction that construction equipment will infringe upon the root systems. The fence will be placed between the trees and the construction activity in a manner to ensure that the tree roots, up to the drip line, will be protected from construction equipment.

13.G Additional Requirements Adjacent to Residential. The following standards shall apply to all multifamily and nonresidential developments. These standards may be met by saving existing trees on the site of six inches caliper or more, measured 12 inches above grade, or by planting new trees from the approved tree list contained in this section. Minimum requirements for development located within the multifamily, business and industrial districts shall be as follows:

- (1) A landscape buffer of 20 feet will be required along any property line abutting a RE, R-HA, R-1, R-1.5, R-2, R-3, and B-3 residential district.
- (2) Not less than 15% of the gross site area shall be devoted to open space, including required yards and buffer areas. Open space shall not include areas covered by structures, parking areas, driveways, and internal streets.
- (3) Landscaping consisting of the planting of new or retention of existing shrubs, trees, and flowering plants shall be placed in the yard facing any public roadways.
- (4) The method of irrigation must be indicated on site plan.

13.H Landscaping Within the City Rights-of-Way. Landscaping requirements pertaining to the city rights-of-way shall apply only to non-residentially zoned property and non-residential development located in residential districts.

- (1) At the option of the owner-developer, and issuance of a permit by the city, the owner-developer may landscape the city rights-of-way easements, including parkways and medians, on public streets adjoining the subject property in accordance with this section and with the following limitations.
- (2) Trees located in the public right-of-way shall be located on an average of 25 feet on center, and shall be a minimum of three inches in diameter at the time of planting. Trees planted in street rights-of-way must be maintained such that the lowest branches are no lower than nine feet above the ground in order to allow adequate visibility.
- (3) The trees located in the right-of-way shall not be arranged in a manner to interfere with traffic flow or traffic view.
- (4) Trees shall not be permitted in rights-of-way containing city water and sanitary sewer mains.
- (5) No trees or vertical plants shall be permitted within five feet of any fire hydrant.
- (6) The owner recognizes that the city or any franchised utility will not be responsible for damage to any landscaping while performing repairs or maintenance to its system.
- (7) An irrigation system must be provided.
- (8) If the owner-developer elects hereunder to provide landscaping within the right-of-way, this landscaping will count toward the total landscaping required. For each one square foot, exclusive of driveways, sidewalks and paved areas, there shall be allowed a four square foot credit against the overall landscaping requirement of 15% of the total land area in the development up to a maximum and not to exceed 5%.

13.I Parking Area Requirements. Landscaping requirements pertaining to parking areas shall apply only to non-residentially zoned property, non-residential development located in residential districts, and multifamily development.

- (1) Landscape planting shall not be erected or installed in such a manner to interfere with traffic view or impose safety hazards.
- (2) Interior parking lot landscaped areas must be provided in each parking lot at a minimum average density of one shade tree a minimum of three inches in caliper for each 12 parking spaces. Additionally, interior parking lot landscaping shall be provided in accordance with the following:
 - (a) One landscaped parking island (9' x 18') shall be provided for each 12 parking spaces located in the parking lots.
 - (b) Parking lot landscaping shall be met for all customer and employee parking. Parking lot landscaping requirements do not apply to storage or standing parking spaces incidental to uses such as sales and rental of motor vehicles, mobile homes, boats, trailers or other similar uses.

- (3) The required landscaping for parking lots shall be evenly distributed throughout the parking lot, although adjustments may be approved by the Director of Community Development or his or her designee where the shape and size of the parking lot, the location of existing trees or other natural constraints reasonably prevent such distribution.
- (4) All landscaped areas, including the permeable areas and drip lines around trees and planting beds used for visual screening which abut any parking lot or vehicular travel area, shall be protected with curbs, tire stops/parking blocks or similar barriers sufficient to protect them from vehicular intrusion.
- (5) The requirements listed in this section shall not apply to single family and two to four family residential development.

13.J Credits Towards Landscaping Requirements.

- (1) Grass is an appropriate landscape material. However, a variety of plant material is recommended. Additional Enhancement Credit may be obtained by providing the optional landscaping elements listed in the Landscape Area Credit table.
- (2) In no instance shall the total amount of landscaping on a lot be reduced through credits by more than 50% of the landscaped area required by this section.
- (3) Xeriscaped area and methodology shall be clearly located and detailed on the site plan.
- (4) A flower bed is any area where the soil has been specifically prepared for the planting of flowering plants. In order to be considered for credit calculations, at least 80% of the prepared area must be covered with flowering plant material at the time of peak growth.
- (5) Caliper of trees are to be measured at a point 12 inches above top of ground.
- (6) In order to receive credit for protecting and keeping existing trees, the area within the dripline of the tree must be protected by fencing during grading and construction.

Landscape Area Credit	
Landscape Element	Amount of Area Credit (Square Feet)
For each existing 6-inch tree protected and kept	800
For each 6-inch tree	400
For each 3-inch tree	200
For each 5-gallon shrub	25
For each 1-gallon shrub	10
For each square foot of Xeriscape area	5
For each square foot of flowering beds	2.5
For each square foot of landscaped R.O.W.	0.5

13.K Non-Conforming Landscape. All landscaping, in existence at the time of the adoption of this Ordinance, which does not meet the landscape requirements of this section, will be considered a nonconformity. Nonconforming landscaping will be subject to nonconforming uses and structures, unless otherwise provided in the section.

13.L Installation and Maintenance of Landscaping—General.

- (1) All required landscaped area shall be permanently landscaped with living plant material and be served with an automatic irrigation system. Water conservation measures are highly encouraged.
- (2) Landscaped areas shall be kept free of trash, litter, weeds, and other such material or plants not a part of the landscaping.
- (3) All plant materials shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Maintenance shall include mowing, watering, trimming, pruning, and the like.
- (4) Plant materials which die shall be replaced with plant material of similar variety and size within 90 days, with a one time extension not exceeding 90 days being provided upon approval of the Director of Community Development or his or her designee.

13.M Certificate of Occupancy.

- (1) All landscaping shall be completed and installed in accordance with the approved landscape plan prior to a certificate of occupancy being issued. A one time temporary certificate of occupancy, not to exceed 90 days, may be granted based upon documentation of a hardship.

- (2) If a temporary certificate of occupancy is granted and the landscaping requirements have not been satisfied within the 90-day period from when the temporary certificate of occupancy is issued, the property owner shall be considered in violation of this Ordinance.

13.N Approved Tree List. Trees preserved or planted to satisfy the requirements of this Ordinance must be according to the following approved tree list:

APPROVED TREE LIST	
Common Name	Scientific Name
Ash, Texas	Fraxinus texensis
Cedar Elm	Ulmus crassifolia
Cedar, Eastern Red	Juniperus virginiana
Cypress, Bald	Taxodium distichum
Elm, Lace Bark	Ulmus parvifolia
Magnolia, Southern	Magnolia grandiflora
Maple, Bigtooth	Acer gradidentatum
Maple, Caddo	Acer saccharum
Oak, Bur	Quercus macrocarpa
Oak, Chinquapin	Quercus muhlenbergil
Oak, Escarpment Live	Quercus fusi formis
Oak, Lacey	Quercus glaucoides
Oak, Live	Quercus virginiana (Escarpment)
Oak, Post	Quercus stellata
Oak, Red	Quercus shumardi
Oak, Texas Red	Quercus texana
Osage Orange	Maclura pomifers (thornless and fruitless)
Pecan (native)	Carya illinoensis
Pistache, Chinese	Pistacia chinensis
Soapberry, Western	Sapindus drummondii
Walnut, Black	Juglans nigra
* Dwarf Varieties shall not be counted as an ornamental tree but as a shrub.	

APPROVED ORNAMENTAL TREES	
Common Name	Scientific Name
Buckeye, Mexican	Ungnadia speciosa
Buckeye, Texas	Aesculus glabra var. arguta
Buckthorn, Carolina	Rhamnum caroliniana
Chaste Tree	Vitex agnus-castus
Crabapple, Prairie	Pyrus ioensis
Crape Myrtle	Lagerstroemia indica
Eves Necklace	Sophora affinis
Goldenball Leadtree	Leucaena rietusa
Hawthorne	Crataegus phaenopyrum
Hawthorne	Cratoegus crus-galli
Holly, Possumhaw	Ilex decidua
Indigo, False	Hawthorne
Mountain Laurel, Texas	Sophora secundiflora
Persimmon, Texas	Diospyros texana
Plum, Mexican	Prunus mexicana
Redbud	Cercis canadensis
Smoketree	Cotinus obovatus
Smoketree	Cotinus caggyria
Sumac, Praire Flame-leaf	Rhus lanceolata
Viburnum, Rusty Blackhow	Viburnum rufidulum
Wax Myrtle	Myrica cerifera

Willow, Desert	Chilopsis linearis
Yaupon Holly	Ilex vomitoria
* Dwarf Varieties shall not be counted as an ornamental tree but as a shrub.	

VARIANCE:

Section 154.21.1.1

1. A variance from the literal enforcement of the Zoning Ordinance in order to achieve a reasonable development of the property. Whenever owing to exceptional and extraordinary conditions, the literal enforcement of the zoning regulations will result in unnecessary hardship in the development of the property, an appeal for a variance may be filed with the Board of Adjustment.

2. When a property owner can show that a strict application of the terms of this ordinance relating to the use, construction or alteration of buildings or structures or the use of land will impose upon him or her practical difficulties or particular hardship, the Board may consider and allow variations of the strict application of the terms of this ordinance if the variation are in harmony with the general purpose and intent of this ordinance, and the Board is satisfied, under the evidence heard by it, that a granting of the variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable hardship or difficulty so great as to warrant a variation from the Zoning Regulations.

3. The Board may authorize a variance where by reason of exceptional narrowness, shallowness, or shape of specific piece of property of record at the time of the adoption of this ordinance, or by reason of exceptional situation or condition of a specific piece of property, the strict application of a provision of this ordinance would result in peculiar and exceptional practical difficulties and particular hardship upon the owner of the property and amount to a practical confiscation of the property as distinguished from a mere inconvenience to the owner, provided the variation can be granted without substantial detriment to the public good, and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this ordinance.

(a) Papers required. An appeal for a variance shall include:

1. A site plan, drawn to scale, showing the location and dimension of the lot and of all existing and proposed improvements:
 - a. When an appeal is based upon hardship resulting from sharp changes in topography or unusual terrain features, the site plan shall include topographic information related to known base points of surveys, and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.
 - b. When an appeal is submitted for variance of side yard or rear yard requirements, the applicant shall provide the same information for the properties adjoining the common lot line as may be applicable to the appealed requirements.
 - c. When an appeal is submitted for a variance from front yard setback, or for side yard setback on a side street, the applicant shall furnish a strip map showing the setback of main walls of all buildings on the same side of the street within a distance of 200 feet of the applicant's property.
2. A statement of facts and reasons why the Zoning Regulations should not be applied to the property in question and how the standards governing the Board's action would be satisfied; and
3. A statement by the Enforcing Officer citing the reasons for refusing to issue a permit under the plans submitted.

(b) Basis for action.

- (1) Before acting on an appeal for variance the Board shall consider:
 - a. The facts filed with the application;
 - b. The testimony presented at the public hearing on the appeal;
 - c. The City Staff's technical report on the appeal; and d. The Board's findings in its field

inspection of the property.

(2) The Board may grant an appeal, subject to such terms and conditions as it may fix, provided

ALTERNATIVES:

1. Approve the Variance Request
2. Deny the Variance Request