

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, MARCH 20, 2018**

MEMBERS PRESENT AT BRIEFING: Peter Schulte, Vice-chair, John Jones, regular member, Jay Narey, regular member, Elizabeth Nelson, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Administrator, Kanesia Williams, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Trena Law, Board Secretary, Shombray Irby, Acting Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, Vice-chair, John Jones, regular member, Jay Narey, regular member, Elizabeth Nelson, regular member, and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Administrator, Kanesia Williams, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, David Nevarez, Engineering, Trena Law, Board Secretary, Shombray Irby, Acting Board Secretary

**11:35 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 20, 2018** docket.

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**1:09 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.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel February 20, 2018 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2018**

MOTION: None

The minutes were approved without a formal vote.

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**FILE NUMBER:** BDA178-035(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Bryan Adkins for special exceptions to the visual obstruction regulations at 1602 Melbourne Avenue. This property is more fully described as Lot 8, Block 10/4750, and is zoned R-7.5(A), which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 1602 Melbourne Avenue

**APPLICANT:** Bryan Adkins

**REQUESTS:**

Requests for special exceptions to the visual obstruction regulations are made to construct and maintain an 8’ high solid wood fence in the two 20’ visibility triangles on both sides of the driveway into the site from Tennessee Avenue, and to construct and maintain an 8’ high solid wood fence with a swing gate in the 20’ visibility triangle at where the alley meets Tennessee Avenue on a site developed with a single family home.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

Section 51A-4.602(d)(3) of the Dallas Development Code states that the Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items to be located in the visibility triangles do not constitute a traffic hazard.

**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 subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

**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.

**GENERAL FACTS/STAFF ANALYSIS:**

- These requests for special exceptions to the visual obstruction regulations focus on constructing and maintaining an 8' high solid wood fence in the two 20' visibility triangles on both sides of the driveway into the site from Tennessee Avenue, and an 8' high solid wood fence with a swing gate in the 20' visibility triangle at where the alley meets Tennessee Avenue on a site developed with a single family home.
- Section 51A-4.602(d) of the Dallas Development Code states the following: a person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

- The property is located in an R-7.5(A) zoning district which requires, the portion of a lot with a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and the adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge end the street curb line 20 feet from the intersection.
- A revised site plan and an elevation have been submitted indicating portions of “the 8’ high solid wood fence” located in the two 20’ visibility triangles on both sides of the driveway into the site from Tennessee Avenue, and indicating portions of the 8’ high solid wood fence with a swing gate located in the 20’ visibility triangle at where the alley meets Tennessee Avenue.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing how granting the requests for special exceptions, to the visual obstruction regulations, to complete and maintain an 8’ high solid wood fence in the two 20’ visibility triangles on both sides of the driveway into the site from Tennessee Avenue and to construct and maintain an 8’ high solid wood fence with a swing gate in the 20’ visibility triangle at where the alley meets Tennessee Avenue, do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted revised site plan and elevation would limit the items located in the 20’ drive approach visibility triangles into the site from Tennessee Avenue and would limit the items located in the 20’ visibility triangle where the alley meets Tennessee Avenue, to that what is shown on these documents – an 8’ high solid wood fence and an 8’ high solid wood swing gate.

**Timeline:**

- January 26, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 12, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 13, 2017: The Board Administrator emailed the applicant/owner the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the February 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 9<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standards that the board will use in their decision to approve or deny the requests; and
  - The Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the

Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 8, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A).

March 8, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2018**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Schulte**

I move to grant that the Board of Adjustment grant application **BDA 178-035(OA)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Narey**

AYES: 5 – Schulte, Jones, Narey, Nelson, Sibley

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

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**FILE NUMBER:** BDA178-036(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Robert O’Neal for special exceptions to the visual obstruction regulations at 8567 San Leandro Drive. This property is more fully described as Lot 1, Block 29/5280, and is zoned PD 575 (Subarea H), which requires a 20 foot visibility triangle at alleys and at driveway approaches. The applicant

proposes to locate and maintain items in a required visibility triangles, which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 8567 San Leandro Drive

**APPLICANT:** Robert O'Neal

**REQUESTS:**

Requests for special exceptions to the visual obstruction regulations are made to construct and maintain portions of an 8' – 9' high wood fence/gate proposed to be located in the two, 20' visibility triangles on either side of the driveway into the site from Lakeland Drive, and an 8' high wood fence in the 20' visibility triangle at where the alley meets Lakeland Drive on a site that is developed with a single family home structure.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

Section 51A-4.602(d)(3) of the Dallas Development Code states that the Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development Department Senior Engineer has no objections to the requests.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be granted (with the suggested conditions imposed) because the items located in the visibility triangles do not constitute a traffic hazard.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PD 575 (Subarea H) (Planned Development)
<u>North:</u>	PD 575 (Subarea F) (Planned Development)
<u>South:</u>	R-10(A) (Single family residential 10,000 square feet)
<u>East:</u>	R-7.5(A) (Single family residential 7,500 square feet)
<u>West:</u>	PD 575 (Subarea H) (Planned Development)

### **Land Use:**

The subject site is developed with a single family use. The areas to the north, south, east and west are developed with single family residential uses.

### **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.

## **GENERAL FACTS/STAFF ANALYSIS:**

- The requests for special exceptions to the visual obstruction regulations focus on locating and maintaining portions of an 8' – 9' high wood fence/gate proposed to be located in the two, 20' visibility triangles on either side of the driveway into the site from Lakeland Drive, and an 8' high wood fence in the 20' visibility triangle at where the alley meets Lakeland Drive on a site that is developed with a single family home structure.
- Section 51A-4.602(d)(1) of the Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45 foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- The submitted site plan and elevation indicates portions of an 8' – 9' high wood fence/gate to be located in the two, 20' visibility triangles on either side of the driveway into the site from Lakeland Drive, and an 8' high wood fence in the 20' visibility triangle at where the alley meets Lakeland Drive.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".

- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to locate and maintain portions of an 8' – 9' high wood fence/gate proposed to be located in the two, 20' visibility triangles on either side of the driveway into the site from Lakeland Drive, and an 8' – 9' high wood fence in the 20' visibility triangle at where the alley meets Lakeland Drive do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the items located in the 20' visibility triangles to that what is shown on these documents – an 8' – 9' high wood fence and/or gate.

**Timeline:**

January 26, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 12, 2018: 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 February 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 9<sup>th</sup> 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.

March 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 8, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2018**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION:** Schulte

I move to grant that the Board of Adjustment grant application **BDA 178-036(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED:** Narey

**AYES:** 5 – Schulte, Jones, Narey, Nelson, Sibley

**NAYS:** 0 -

**MOTION PASSED:** 5– 0 (unanimously)

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**FILE NUMBER:** BDA178-028(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Gerardo Alvarez for a variance to the off-street loading regulations at 309 W 8th Street. This property is more fully described as Lot 8, Block 2/3142, and is zoned CD 7, which requires off-street loading spaces to be provided. The applicant proposes to construct and/or maintain a structure with a general merchandise or food store less than 3500 square foot use and provide 0 of the required 1 loading spaces, which will require a 1 space variance to the off-street loading regulations.

**LOCATION:** 309 W 8th Street

**APPLICANT:** Gerardo Alvarez

**REQUEST:**

A variance to the off-street loading regulations of 1 loading space is made to expand an existing approximately 900 square foot vacant structure with an approximately 560 square foot addition, lease it with a “general merchandise or food store 3,500 square feet or less” use, and provide 0 of the required 1 loading spaces.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot

depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance 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.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- While granting this variance to the off-street loading regulations does not appear to be contrary to public interest in that the Sustainable Development and Construction Department Senior Engineer has no objections to the request, staff concluded that the applicant had not substantiated how the features of the slightly sloped, rectangular in shape (119' x 50'), and approximately 6,000 square feet in area precludes it from being developed in a manner commensurate with the development upon other parcels of land with the same CD 7 zoning.
- In addition, staff concluded that the applicant had not substantiated how if the Board were to grant this request it would not be to relieve a self-created or personal hardship, nor for financial reasons only. In this particular case, it appears that the applicant could choose to lease the expanded approximately 1,500 square foot structure on the subject site with a use that requires no off-street loading space hence no variance to off-street loading regulations. (It appears that main uses permitted in CD 7 that require no off-street loading spaces for a use that is 5,000 square feet or less includes restaurant, child-care facility, medical clinic, office, antique shop, bed and breakfast).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 7 (Conservation District)  
North: CD 7 (Conservation District)  
South: CD 7 (Conservation District)  
East: CD 7 (Conservation District)  
West: CD 7 (Conservation District)

**Land Use:**

The subject site is developed with a vacant structure. The area to the north is developed with a surface parking lot; and the areas to east, south, and west are developed with a mix of uses.

### **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.

### **GENERAL FACTS/STAFF ANALYSIS:**

- The request for a variance to off-street loading regulations of 1 space focuses on expanding an existing approximately 900 square foot vacant structure with an approximately 560 square foot addition, leasing it with a “general merchandise or food store 3,500 square feet or less” use, and providing 0 of the 1 loading spaces required for this proposed use.
- The site is zoned CD 7 which states the following with regard to off-street loading: Except as provided in the ordinance, consult the use regulations in Chapter 51(A) to determine the off-street loading requirements for each use. (CD 7 provides specific off-street parking and/or loading requirements for the following uses: alcoholic beverage establishments or restaurant with or without drive-in or drive through, art gallery, antique shop, bed and breakfast, bookstore, and florist store uses).
- Section 51A-4.210(13) of the Dallas Development Code requires the following off-street loading requirements for a general merchandise or food store 3,500 square feet or less use: One space.
- The applicant proposes to lease the expanded approximately 1,400 square foot structure with “general merchandise or food store 3,500 square feet or less” use and provide 0 of the 1 off-street loading spaces.
- According to DCAD records, the “improvements” listed at 309 W. 8<sup>th</sup> Street is a “converted residence” with 1,010 square feet constructed in 1945.
- The subject site is slightly sloped, rectangular in shape (119’ x 50’), and according to the submitted application is 0.14 acres or approximately 6,000 square feet in area. The site is zoned CD 7.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street loading 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 variances 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 IM (Industrial/manufacturing) zoning classification.
  - If the Board were to grant the variance, it would not be 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 CD 7 zoning classification.

- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the existing structure on the site could be expanded as shown on this plan, leased with a “general merchandise or food store 3,500 square feet or less” use where 0 of the 1 required loading spaces would be required for this specific use.

**Timeline:**

January 16, 2018: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

February 12, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 12, 2018: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the February 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 9<sup>th</sup> 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.”

February 23, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

March 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Building Official, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Conservation District Chief Planner, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

March 8, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked “Has no objections”.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2018**

APPEARING IN FAVOR: Gerardo Alvarez, 309 W 8<sup>th</sup> St., Dallas, TX  
Carla Adkins, 1602 Melbourne Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Nelson**

I move that the Board of Adjustment, in Appeal No. BDA 178-028, on application of Gerardo Alvarez, **GRANT** the one space variance to the off-street loading regulations requested by this 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:

- Compliance with the submitted site plan is required.

**SECONDED: Jones**

AYES: 1 – Nelson

NAYS: 4 - Schulte, Jones, Narey, Sibley

MOTION FAILED: 1– 4

**MOTION #2: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 178-028, on application of Gerardo Alvarez, **DENY** the variance to the off-street loading regulations requested by this applicant without prejudice, because our evaluation of the property and the testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would NOT result in unnecessary hardship to this applicant.

**SECONDED: Schulte**

AYES: 5 – Schulte, Jones, Narey, Nelson, Sibley

NAYS: 0

MOTION PASSED: 5– 0 (unanimously)

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**MOTION: Sibley**

I move to adjourn this meeting.

**SECONDED: Schulte**

AYES: 5 – Schulte, Jones, Narey, Nelson, Sibley

NAYS: 0 -  
MOTION PASSED: 5 – 0 (unanimously)

**1:41 P. M.:** Board Meeting adjourned for **March 20, 2018.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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