

**BOARD OF ADJUSTMENT, PANEL A  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
TUESDAY, April 16, 2019**

MEMBERS PRESENT AT BRIEFING: Cheri Gambow, chair, Jay Narey, regular member, John Jones, regular member, Temeckia Derrough, regular member, Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No One

STAFF PRESENT AT BRIEFING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, Elaine Hill, Board Secretary, David Nevarez, Engineer, Phil Erwin, Chief Arborist and David Cossum, Building Inspection Administrator

MEMBERS PRESENT AT HEARING: Cheri Gambow, chair, John Jones, regular member, Jay Narey, regular member, Temeckia Derrough, regular member, Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No One

STAFF PRESENT AT HEARING: Steve Long, Chief Planner/Board Administrator, Theresa Pham, Asst. City Atty., Oscar Aguilera, Senior Planner, Charles Trammell, Development Code Specialist, Elaine Hill, Board Secretary, David Nevarez, Engineer, and Phil Erwin, Chief Arborist

**11:03 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 16, 2019** docket.

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**1:19 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**

Approval of the Board of Adjustment Panel A, March 19 public hearing minutes.  
**BOARD OF ADJUSTMENT ACTION: April 16, 2019**

MOTION: None

The minutes were approved without a formal vote.

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**FILE NUMBER:** BDA189-037(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Juan Z. Davila for a special exception to the fence standards regulations at 2016 Vilbig Road. This property is more fully described as Lot 1, Block 3960, and is zoned IR, which prohibits the use of certain materials for a fence. The applicant proposes to construct and/or maintain a fence of a prohibited material, which will require a special exception to the fence standards regulations.

**LOCATION:** 2016 Vilbig Road

**APPLICANT:** Juan Z. Davila

**REQUEST:**

A request for a special exception to the fence standards regulations is made to maintain a fence of a prohibited fence material (corrugated metal) on a site developed with, according to the Certificate of Occupancy, a "commercial parking lot or garage" use.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards 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.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: IR (Industrial/research)
- North: CS (Commercial service)
- South: R-7.5(A) (Single family residential 7,500 square feet)
- East: R-7.5(A) (Single family residential 7,500 square feet)
- West: PD 256 (Planned Development)

**Land Use:**

*The subject site is developed with, according to the most recent Certificate of Occupancy, a “commercial parking lot or garage” use. The area to the north appears to be developed with a commercial use; the area to the east is undeveloped; the area to the south is developed with single family use; and the area to the west is developed with the City of Dallas Police Auto Pound.*

**Zoning/BDA History:**

- |  |   |
|--|---|
| 1. Z189-225, Vilbig at Seale Street (the subject site) | An application for a Specific Use Permit was filed on this property on March 14, 2019 for a “commercial motor vehicle parking” use. This request is tentatively scheduled for a May 16, 2019 City Plan Commission public hearing. |
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**GENERAL FACTS/STAFF ANALYSIS:**

- The request for a special exception to the fence standards regulations related to fence materials focuses on maintaining a fence of a prohibited fence material (corrugated metal) on a site developed with, with, according to the most recent Certificate of Occupancy, a “commercial parking lot or garage” use.
- Section 51A-4.602(a)(9) of the Dallas Development Code states that except as provided in this subsection, the following fence materials are prohibited:
  - Sheet metal;
  - Corrugated metal;
  - Fiberglass panels;
  - Plywood;
  - Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
  - Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and
  - Barbed wire razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.
- The applicant has submitted a revised site plan and revised elevation that represents the location of the existing corrugated metal fence on the property.
- The submitted elevation represents an 8’ high corrugated metal fence.
- The application states that the subject site is 2.17 acres. The submitted site plan represents that there is approximately 830 linear feet of prohibited fence material (corrugated metal fence) located on this property.
- The Board of Adjustment Chief Planner/Board Administrator conducted a field visit of the site and the surrounding area and noted no other fences of prohibited materials.
- As of April 5, 2019, no letters have been submitted in conjunctions with this request.

- The applicant has the burden of proof in establishing that the special exception to the fence standards regulations related to a prohibited fence material (corrugated metal) will not adversely affect neighboring property.
- If the Board were to grant the special exception and impose the submitted revised site plan and revised elevation as a condition, the fence of prohibited material on the property would be limited to what is shown on these documents.

**Timeline:**

February 19, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 12, 2019: The Board of Adjustment Chief Planner/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 March 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 5<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 18, 2019: The applicant submitted additional documentation on this application beyond what was submitted with the original application (see Attachment A).

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board

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

**BOARD OF ADJUSTMENT ACTION: April 16, 2019**

**APPEARING IN FAVOR:** Juan Davila, 115 N Justin Ave., Dallas, TX  
Maria Luna, 115 N Justin Ave., Dallas, TX

**APPEARING IN OPPOSITION:** Deborah Carpenter, 2009 Neal, Dallas, TX 75218

**MOTION: Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 189-037, on application of Juan Davila, **deny** the special exception requested by this applicant to maintain a fence of a prohibited material, corrugated metal, **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would adversely affect neighboring property.

**SECONDED: Jones**

**AYES:** 5 – Gambow, Narey, Derrough, Jones, Sibley

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA189-044(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Good Space LLC/David Spence, represented by Santos T. Martinez, for a special exception to the visual obstruction regulations at 604 N. Tyler Street. This property is more fully described as Lot 1, Block A/3108, and is zoned PD 830, which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 604 N. Tyler Street

**APPLICANT:** Good Space, LLC/David Spence  
Represented by Santos T. Martinez

**REQUEST:**

A request for a special exception to the visual obstruction regulations is made to locate, construct, and maintain portions of a fence, a column, and clear plastic sheets/windows that are part of a patio in the 20' visibility triangle on the south side of the driveway into the site from N. Tyler Street on a site that is developed with a retail 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 revised elevation is required.

Rationale:

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

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 830 (Subdistrict 6) (SUP 2238) (Planned Development, Specific Use Permit)  
North: PD 160 (Planned Development)  
South: PD 830 (Subdistrict 6) (Planned Development)  
East: PD 830 (Subdistrict 6) (Planned Development)  
West: PD 830 (Subdistrict 5) (Planned Development)

**Land Use:**

The subject site is developed with a retail structure. The areas to the north, south, east, and west are developed with retail or commercial uses.

**Zoning/BDA History:**

1. Z167-164, East side of North Tyler Street, between Fouraker Street and West Davis Street (the subject site)

On April 12, 2017, the City Council approved an ordinance granting a Specific Use Permit for an alcoholic beverage establishment limited to a bar, lounge, or tavern and a private club-bar on property zoned Subdistrict 6 (Davis Corridor) within PD 830. (Part of the conditions imposed with this request was a site plan, a time limit (4-12-2020), floor area (a maximum of 1,007 square feet), and hours of operation. (Note that the applicant's representative was advised on April 2, 2019, that because his request to the Board of Adjustment for a special

exception to the visual obstruction regulations involves increasing the floor area, he will have to go about the zoning public hearing process of amending the SUP currently on the property).

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

- The request focuses on locating, constructing, and maintaining portions of a fence, a column, and clear plastic sheets/windows that are part of a patio in the 20' visibility triangle on the south side of the driveway into the site from N. Tyler Street on a site that is developed with a retail structure.
- 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 PD 830 which does not provide any visual obstruction regulations. As a result, the provisions in the Dallas Development Code applies, which in this case. requires a 20 foot visibility triangle at drive approaches.
- A site plan and a revised elevation have been submitted indicating part of a fence, a column, and clear plastic sheets/windows that is proposed to be located in the 20' visibility triangle on the south side of the driveway into the site from N. Tyler Street.
- The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing how granting this request to locate and maintain part of a fence, a column, and clear plastic sheets/windows in the 20' visibility triangle on the south side of the driveway into the site from N. Tyler Street does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the item to be located and maintained in the 20' visibility triangle at the south side of the driveway into the site from N. Tyler Street to that what is shown on these documents – part of a fence, a column, and clear plastic sheets.

### **Timeline:**

February 19, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 12, 2019: The Board Administrator/Chief Planner emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 5<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 24 & 27,  
and April 1,  
2019:

The applicant's representative submitted additional documentation on this application beyond what was submitted with the original application (see Attachments A, B, and C).

April 2, 2019:

The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board

April 3, 2019:

The Sustainable Development Department Senior Engineer submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: April 16, 2019**

**APPEARING IN FAVOR:** Michael Wilmoth, 1107 N Edgefield Ave., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 189-044, on application of Good Space LLC/David Spence represented by Santos T. Martinez, **grant** the special exception to the visual obstruction regulations contained in the Dallas Development Code, subject to the following condition:

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

**SECONDED: Sibley**

**AYES: 5 – Gambow, Narey, Derrough, Jones, Sibley**

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

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FILE NUMBER: BDA189-040(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Michael Wilmoth for a variance to the off-street parking regulations at 1107 N. Edgefield Avenue. This property is more fully described as Lot 16, Block D/3788, and is zoned CD 13 (subarea 2), which requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to locate and maintain parking spaces in an enclosed structure with a setback of 5 feet, which will require a variance of 15 feet to the off-street parking regulations.

**LOCATION:** 1107 N. Edgefield Avenue

**APPLICANT:** Michael Wilmoth

**REQUEST:**

A request for a variance for to the off-street parking regulations of 15’ is made to replace an existing approximately 360 square foot garage with parking spaces in it that are accessed from N. Edgefield Avenue to the east with a new approximately 650 square foot garage with parking spaces in it that would be accessed from the alley to the west – parking spaces in this new enclosed structure/garage that would be located 5’ from the right-of-way line adjacent to the alley or 15’ into the 20’ required distance these enclosed parking spaces must be from the alley right-of-way line on a site developed with a single family home.

**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 request does not appear to be contrary to the public interest in that the Sustainable Development and Construction Senior Engineer has no objections, staff recommends that this request be denied because the applicant had not substantiated how the variance is necessary to permit development of this somewhat sloped, rectangular in shape, and approximately 7,700 square site (which prior to the creation of CD 13 in 2005, had been zoned R-7.5(A) where the typical lot size is 7,500 square feet) in a manner commensurate with the development upon other parcels of land with the same CD 13 (Subarea 2) zoning. The features of the site have not restricted it from being developed with a single family home and detached garage that complies with code including off-street parking regulations.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	CD 13 (Subarea 2) (Conservation District)
<u>North:</u>	CD 13 (Subarea 2) (Conservation District)
<u>South:</u>	CD 13 (Subarea 2) (Conservation District)
<u>East:</u>	CD 13 (Subarea 2) (Conservation District)
<u>West:</u>	CD 13 (Subarea 2) (Conservation District)

#### **Land Use:**

The subject site is developed with a single family home. The areas to the north, south, east, 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 (parking variance):**

- This request for a variance to the off-street parking regulations of 15' focuses on replacing an existing approximately 360 square foot garage with parking spaces in it that are accessed from N. Edgefield Avenue with a new approximately 650 square foot garage with parking spaces in it that would be accessed from the alley – parking spaces in this new enclosed structure/garage that would be located 5' from the right-of-way line adjacent to the alley or 15' into the 20' required distance these enclosed parking spaces must be from the alley right-of-way line on a site developed with a single family home.
- Section 51(A)-4.301(a)(9) of the Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.

- The submitted site plan denotes the location of parking spaces in an enclosed structure (the new garage) 5’ from the alley right-of-way line or 15’ into the 20’ setback line that an enclosed parking space must be from this right-of-way line.
- DCAD records indicate the following for the property addressed at 1107 N. Edgefield Avenue: “main improvement” – a structure with 2,605 square feet of total area/living area built in 1925; and “additional improvement” – a 400 square foot detached garage.
- The subject site is somewhat sloped, rectangular in shape, and is approximately 7,700 square feet in area. Prior to the creation of CD 13 in 2005, the subject site and surrounding properties had been zoned R-7.5(A) where the typical lot size is 7,500 square feet.
- The Sustainable Development and Construction Department Senior Engineer 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 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 CD 13 (Subarea 2) 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 CD 13 (Subarea 2) zoning classification.
- If the Board were to grant the request for a variance of 15’, staff recommends imposing the following conditions:
  1. Compliance with the submitted site plan is required.
  2. An automatic garage door must be installed and maintained in working order at all times.

(These conditions are imposed to help assure that the variance will not be contrary to the public interest).

**Timeline:**

- February 7, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 12, 2019: 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 March 27<sup>th</sup> deadline to

submit additional evidence for staff to factor into their analysis; and the April 5<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.

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board

April 3, 2019: The Sustainable Development and Construction Senior Engineer submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: April 16, 2019**

APPEARING IN FAVOR: Michael Wilmoth, 1107 N Edgefield Ave., Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Narey**

I move that the Board of Adjustment, in Appeal No. BDA 189-040, on application of Michael Wilmoth, **grant** the 15-foot variance to the off-street parking 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.
- Automatic garage door must always be installed and maintained in working order.
- At no time may the area in front of the garage be utilized for parking of vehicles.

**SECONDED: Jones**

AYES: 5 – Gambow, Narey, Derrough, Jones, Sibley  
NAYS: 0  
MOTION PASSED: 5 – 0 (unanimously)

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**FILE NUMBER:** BDA189-043(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Mirna Badillo, represented by Santos Martinez, for a special exception to the minimum side yard setback requirements to preserve an existing tree at 2831 Jordan Valley Road. This property is more fully described as Lot 1, Block A/8789, and is zoned A(A), which requires a side yard setback of 20 feet. The applicant proposes to construct and/or maintain structure and provide a 3-foot 4-inch side yard setback, which will require a 16-foot 8-inch special exception to the minimum side yard setback requirements to preserve an existing tree.

**LOCATION:** 2831 Jordan Valley Road

**APPLICANT:** Mirna Badillo  
Represented by Santos Martinez

**April 16<sup>th</sup> public hearing notes:**

- The Sustainable Development and Construction Department Board of Adjustment Senior Planner circulated an email from the applicant’s representative to the Board at the briefing requesting that action on this application be delayed until the next Panel A hearing in May (see Attachment B).

**REQUEST:**

A request for a special exception to the minimum side yard requirements to preserve existing trees of 16’ 8” is made to maintain an approximately 6,250 square foot “stable” structure which is located 3’ 4” from the side property line or 16’ 8” into the 20’ side yard setback on a site that is developed with a “commercial stable” use.

**STANDARD FOR A SPECIAL EXCEPTION TO THE MINIMUM SIDE YARD REQUIREMENTS TO PRESERVE AN EXISTING TREE:**

Section 51(A)-4.402(d) of the Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements in this section to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- (A) Whether the requested special exception is compatible with the character of the neighborhood.
- (B) Whether the value of surrounding properties will be adversely affected.
- (C) Whether the tree is worthy of preservation.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The City of Dallas Chief Arborist has indicated that that the congregation of trees are not worthy of preservation. In addition, the applicant had not substantiated how the requested special exception is compatible with the character of the neighborhood, and how the value of the surrounding properties would not be adversely affected.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: A (A) (Agricultural District)  
North: A (A) (Agricultural District)  
South: A (A) (Agricultural District)  
East: R-10 (A) (Single-family district 10,000 square feet)  
West: A (A) (Agricultural District)

**Land Use:**

The subject site is developed with a “commercial stable” use. The areas to the north, south, east, and west are developed with agricultural uses and 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:**

- This request for a special exception to the minimum side yard requirements to preserve existing trees of 16’ 8” focuses on maintaining an approximately 6,250 square foot “stable” structure located 3’ 4” from the side property line or 16’ 8” into the 20’ side yard setback on a site that is developed with a “commercial stable” use.
- The property is located in an A (A) (Agricultural District) zoning district which requires a minimum side yard of 20 feet.
- The submitted site plan indicates a “stable” structure located 3’ 4” from the north side property line or 16’ 8” into this 20’ side yard setback, and several trees within the site.
- The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A). The memo stated that the arborist staff has investigated the site and the trees and concluded based on the observed circumstances of construction and site activities at the building location, the congregation of trees are not worth of preservation.
- The applicant has the burden of proof in establishing the following:

- Whether the requested special exception is compatible with the character of the neighborhood.
- Whether the value of surrounding properties will be adversely affected.
- Whether the tree is worthy of preservation.
- If the Board were to grant the special exception request, and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document – which in this case is a structure that is located 3’ 4” from the site’s side property line (or 16’ 8” into this 20’ side yard setback).

**Timeline:**

February 14, 2019: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

March 11, 2019: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 13, 2019: 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 March 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 5<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.”

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

April 4, 2018: The City of Dallas Chief Arborist emailed the Board Administrator information regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: April 16, 2019**

APPEARING IN FAVOR: Santos Martinez, 52 Cheerful Way, Angel Fire, NM

APPEARING IN OPPOSITION: No one

MOTION: **Sibley**

I move that the Board of Adjustment in Appeal No. BDA 189-043, hold this matter under advisement until May 21, 2019.

SECONDED: **Jones**

AYES: 5 – Gambow, Derrough, Jones, Sibley Narey

NAYS: 0

MOTION PASSED: 5 – 0 (unanimously)

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FILE NUMBER: BDA189-046(OA)

**BUILDING OFFICIAL’S REPORT:** Application of Darryl Evans, represented by Michael Forbes, for variances to the side yard setback and off-street parking regulations, and for a special exception to the visual obstruction regulations at 1611 Browder Street. This property is more fully described Tract 14, Block 448, and is zoned PD 317 (Subdistrict 1), which requires a side yard setback of 10 feet, requires a parking space to be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley, and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct and/or maintain a structure and provide a 3 foot side yard setback, which will require a 7 foot variance to the side yard setback regulations, to locate and maintain parking spaces in an enclosed structure with a setback of 17 feet, which will require a variance of 3 feet to the off-street parking regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

LOCATION: 1611 Browder Street

APPLICANT: Darryl Evans  
Represented by Michael Forbes

**REQUESTS:**

The following requests have been made on a property that is currently one building site (approximately 102’ in length and approximately 48’ in width) developed with a vacant single-family home that the applicant intends to demolish and construct a multi-family structure:

1. A request for a variance to the side yard setback regulations of 7’ is made to construct and maintain a three-story 4-unit multi-family structure with an approximately 2,480 square foot building footprint located 3’ from the site’s northwestern side property line or 7’ into this required 10’ side yard setback.
2. A request for a variance to the off-street parking regulations of 3’ is made to locate and maintain parking spaces in an enclosed structure (four (4) attached garages) of the aforementioned three-story 4-unit multi-family structure that is proposed on the

subject site where spaces in this enclosed garages would be located 17' from the right-of-way line adjacent to the street or 3' into the required 20' distance from the right-of-way line adjacent to McKee Street.

3. A request for a special exception to the visual obstruction regulations is made to construct and maintain the aforementioned three-story 4-unit multi-family structure in the 45' visibility triangle at the intersection of McKee Street and Browder Street.

### **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:

- (D) 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;
- (E) 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
- (F) 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.

### **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 (side yard setback variance):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots in the PD 317(1) zoning district. The total size of the subject site is approximately 4,950 square feet which is smaller than that of 15 other corner lots listed of properties in PD 317(1) zoning district. The average lot size of 15 other properties listed in the applicant's document is approximately 8,300 square feet.
- In addition, staff concluded the proposed development is commensurate with the development upon other parcels of land with the same zoning because the applicant has shown by submitting a document indicating among other things that total size of each unit of the proposed 4-unit multi-family structure on the subject site is

approximately 1,780 square feet which are equal to that of 4 other units listed of properties in PD 317(Subdistrict 1) zoning district.

**STAFF RECOMMENDATION (parking variance):**

Denial

Rationale:

- While the applicant substantiated how the variance to the off-street parking regulations is necessary to permit development by demonstrating that the total size of the subject site is approximately 4,950 square feet which is smaller than that of 15 other corner lots listed of properties in PD 317(1) zoning district and that staff concluded that the subject site is unique and different from most lots in the PD 317(1) zoning district, the Sustainable Development and Construction Senior Engineer has submitted a review comment sheet marked “recommends denial” stating commenting “maneuvering of vehicles on public right of way out of a multifamily development with two more drives that the maximum allow by city code”.

**STAFF RECOMMENDATION (visibility triangle special exception):**

Denial

Rationale:

- The Sustainable Development and Construction Senior Engineer has submitted a review comment sheet marked “recommends denial” stating that “driveway encroaches into the already reduce (36 x 36-foot) visibility triangle”.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 317(1) (Planned Development Subdistrict 1)  
North: PD 317(1) (Planned Development Subdistrict 1)  
South: PD 317(1) (Planned Development Subdistrict 1)  
East: PD 317(1) (Planned Development Subdistrict 1)  
West: PD 317(1) (Planned Development Subdistrict 1)

**Land Use:**

The subject site is currently one building site (approximately 102’ in length and approximately 48’ in width) developed with a single-family home that the applicant intends to demolish and built a three-story 4-unit multi-family structure. The areas to the north, south, east, and west are undeveloped.

**Zoning/BDA History:**

1. BDA189-013, Property at 1475 McKee Street (the subject site) On February 19, 2019, the Board of Adjustment Panel A denied a request for

variances to the side yard setback regulations of 7', the off-street parking regulations of 3', and a special exception to the visual obstruction regulations. These requests are made to construct and maintain a single family home in the rear yard setback, and to locate and maintain parking spaces in an enclosed structure (an attached garage) proposed on the undeveloped subject site – spaces in an enclosed structure that would be located 17' from the right-of-way line adjacent to the street or 3' into the required 20' distance from the right-of-way line adjacent to McKee Street, and to locate and maintain the single-family home in the 45' visibility triangle at the intersection of McKee Street and Browder Street.

2. BDA189-014, Property at 1467 McKee Street (the subject site)

On February 19, 2019, the Board of Adjustment Panel A denied a request for variances to the rear yard setback regulations of 7' and to off-street parking regulations of 3' made to construct and maintain a single family home in the rear yard setback, and to locate and maintain parking spaces in an enclosed structure (an attached garage) proposed on the undeveloped subject site – spaces in an enclosed structure that would be located 17' from the right-of-way line adjacent to the street or 3' into the required 20' distance from the right-of-way line adjacent to McKee Street.

3. BDA189-015, Property at 1459 McKee Street (the subject site)

On February 19, 2019, the Board of Adjustment Panel A denied a request for variances to the rear yard setback regulations of 7' and to off-street parking regulations of 3' made to construct and maintain a single family home in the rear yard setback, and to locate and maintain parking spaces in an enclosed structure (an attached garage) proposed on the undeveloped subject site – spaces in an enclosed structure that would be located 17' from the right-of-way line adjacent to the street or 3' into the required 20' distance from the right-of-way line adjacent to McKee Street.

4. BDA189-016, Property at 1451

On February 19, 2019, the Board of

McKee Street (the subject site)

Adjustment Panel A denied a request for variances to the rear yard setback regulations of 7' and to off-street parking regulations of 3' made to construct and maintain a single family home in the rear yard setback, and to locate and maintain parking spaces in an enclosed structure (an attached garage) proposed on the undeveloped subject site – spaces in an enclosed structure that would be located 17' from the right-of-way line adjacent to the street or 3' into the required 20' distance from the right-of-way line adjacent to McKee Street.

**GENERAL FACTS/STAFF ANALYSIS (side yard setback variance):**

- This request for a variance to the side regulations of 7' focuses on constructing and maintaining a three-story, 4-unit multi-family structure with an approximately 2,480 square foot building footprint located 3' from the site's northwestern side property line or 7' into this required 10' side yard setback on property that is currently one building site (approximately 102' in length and approximately 48' in width) developed a vacant single-family home that the applicant intends to demolish.
- The subject site is zoned PD 317 (Subdistrict 1) where the side yard setback is not required; however, if a side yard is provided, it must be a minimum of 10 feet.
- The applicant has submitted a site plan that represents that the proposed three-story 4-unit multi-family structure provides a 3' side yard setback from the side property line on the northwest.
- DCAD records indicate the following improvements for property located at 1611 Browder Street: "main improvement: "converted residence" with 1,302 square feet built in 1940".
- The subject site is flat, virtually rectangular in shape (approximately 48' x 25'), and according to the submitted application, is 0.11 acres (or 4,800 square feet) in area. While this site is located at the corner of Browder Street and McKee Street and has two front yard setbacks, this feature is typical of any lot on a corner that is not zoned single family, duplex, or agricultural district.
- The applicant submitted a document with the application materials indicating that the total size of the subject site is approximately 4,950 square feet which is smaller than that of 15 other corner lots he listed of properties in PD 317 (Subdistrict 1) zoning. (The average lot size of 15 other properties listed in the applicant's document is approximately 8,300 square feet). Furthermore, the document represents that the total size of each unit of the proposed 4-unit multi-family structure on the subject site is approximately, 1,780 square feet which are equal than that of 4 other units he listed of properties in PD 317 (Subdistrict 1) zoning. The average square footage of 4 other properties listed in the applicant's document is approximately 1,750 square feet.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the side yard setback 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 317 (Subdistrict 1) 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 317 (Subdistrict 1) zoning classification.
- If the Board were to grant the request for a variance of 7' and impose the submitted site plan as a condition, the structure in the side yard would be limited to that what is shown on this document.

### **GENERAL FACTS/STAFF ANALYSIS (parking variance):**

- This request for a variance to the off-street parking regulations of 3' focuses on locating parking spaces in an enclosed structure (four (4) attached garages) of proposed three-story 4-unit multi-family structure where these parking spaces entered from the street right-of-way line would be located 17' from the McKee Street right-of-way line or 3' into the required 20' distance from this right-of-way line.
- The subject site is zoned PD 317 (Subdistrict 1) where no minimum front yard setback is required.
- Section 51(A)-4.301(a)(9) of the Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan denotes the location of parking spaces in the enclosed structure 17' from the McKee Street right-of-way line or 3' into the 20' setback line that an enclosed parking space must be from this right-of-way line. (The submitted site plan represents that the parking spaces in the enclosed structure are approximately 23' from the McKee Street pavement line).
- DCAD records indicate the following improvements for property located at 1611 Browder Street: "main improvement: "converted residence" with 1,302 square feet built in 1940".
- The subject site is flat, virtually rectangular in shape (approximately 48' x 25'), and according to the submitted application, is 0.11 acres (or 4,800 square feet) in area. While this site is located at the corner of Browder Street and McKee Street and has two front yard setbacks, this feature is typical of any lot on a corner that is not zoned single family, duplex, or agricultural district.
- The applicant submitted a document with the application materials indicating that the total size of the subject site is approximately 4,950 square feet which is smaller than that of 15 other corner lots he listed of properties in PD 317 (Subdistrict 1) zoning. (The average lot size of 15 other properties listed in the applicant's document is approximately 8,300 square feet). Furthermore, the document represents that the total size of each unit of the proposed 4-unit multi-family

structure on the subject site is approximately, 1,780 square feet which are equal than that of 4 other units he listed of properties in PD 317 (Subdistrict 1) zoning. The average square footage of 4 other properties listed in the applicant's document is approximately 1,750 square feet.

- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Recommends that this be denied" with the following comment:
  - "Maneuvering of vehicles on public right of way out of a multifamily development with two more driveways than the maximum allowed by code" (Attachment A).
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the 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 317 (Subdistrict 1) 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 317 (Subdistrict 1) zoning classification.
- If the Board were to grant the request for a variance of 3', staff recommends imposing the following conditions:
  3. Compliance with the submitted site plan is required.
  4. An automatic garage door must be installed and maintained in working order at all times.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception):**

- The request for special exception to the visual obstruction regulations focuses on locating and maintaining three-story 4-unit multi-family structure in the 45' visibility triangle at the intersection of McKee Street and Browder Street on a property that is currently one building site (approximately 102' in length and approximately 48' in width) developed a vacant single-family home that the applicant intends to demolish and subdivide into 4-unit multi-family structure.
- 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 PD 317 which requires a 45-foot visibility triangle at the intersection of two streets.
- A site plan and an elevation have been submitted a single-family home structure to be located in the 45' visibility triangle at the intersection of McKee Street and Browder Street.
- The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Recommends that this be denied" with the following comment:
  - "Driveway encroaches into an already reduce (36 x 36 foot) visibility triangle" (Attachment A).
- The applicant has the burden of proof in establishing how granting this request to locate and maintain a structure in the 45' visibility triangle at the intersection of McKee Street and Browder Street does not constitute a traffic hazard.
- Granting this request with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the item to be located and maintained in the 45' intersection visibility triangle to that what is shown on these documents – a portion of a three-story 4-unit multi-family structure.

**Timeline:**

February 22, 2019: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

March 11, 2019: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. 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".

March 13, 2019: 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 March 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 5<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.

April 2, 2019: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April 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 Chief Arborist, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Senior Engineer, the Sustainable Development and Construction Department Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

April 5, 2019: The Sustainable Development Department Assistant Director of Engineering has submitted a review comment sheet marked "Recommends that this be denied" with the following comment: "Maneuvering of vehicles on public right of way out of a multifamily development with two more driveways than the maximum allowed by code and Driveway encroaches into an already reduce (36 x36 foot) visibility triangle" (Attachment A).

**BOARD OF ADJUSTMENT ACTION: April 16, 2019**

APPEARING IN FAVOR: Michael Forbes, 1611 Browder, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION 1 of 3: Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 189-046, on application of Darryl Evans, represented by Michael Forbes, **grant** the seven-foot variance to the side yard setback 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: 5 – Gambow, Jones, Narey, Derrough, Sibley**

**NAYS: 0**

**MOTION PASSED: 5 – 0 (unanimously)**

**MOTION 2 OF 3: Derrough**

I move that the Board of Adjustment, in Appeal No. BDA 189-046, on application of Darryl Evans, represented by Michael Forbes, **grant** the three-foot variance to the off-street parking 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

1. Compliance with the submitted site plan is required.
2. Automatic garage door must always be installed and maintained in working order.

**SECONDED: Sibley**

**AYES:** 5 – Gambow, Jones, Narey, Derrough, Sibley

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION 3 OF 3: Sibley**

I move that the Board of Adjustment, in Appeal No. BDA 189-046, on application of Darryl Evans, represented by Michael Forbes, **grant** the request to maintain items in the visibility triangle at the street intersection as a special exception to the visual obstruction regulation contained in the Dallas Development Code, as amended, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard.

I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code, as amended:

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

**SECONDED: Jones**

**AYES:** 5 – Gambow, Jones, Narey, Derrough, Sibley

**NAYS:** 0

**MOTION PASSED:** 5 – 0 (unanimously)

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**2:01 P. M.:** Board Meeting adjourned for **April 16, 2019.**

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CHAIRPERSON

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BOARD ADMINISTRATOR

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.