

ZONING BOARD OF ADJUSTMENT, PANEL A
TUESDAY, FEBRUARY 20, 2018
AGENDA

BRIEFING	ROOM 5ES 1500 MARILLA STREET DALLAS CITY HALL	11:00 A.M.
PUBLIC HEARING	COUNCIL CHAMBERS 1500 MARILLA STREET DALLAS CITY HALL	1:00 P.M.

Neva Dean, Assistant Director
Steve Long, Board Administrator/Chief Planner

MISCELLANEOUS ITEM

Approval of the January 16, 2018 Panel A Public Hearing Minutes	M1
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UNCONTESTED CASES

BDA178-017(SL)	5530 Falls Road REQUEST: Application of Russell Thomas for a special exception to the fence standards regulations, and for special exceptions to the visual obstruction regulations	1
BDA178-025(SL)	2920 Kendale Drive REQUEST: Application of Joe Cortez to enlarge a nonconforming use	2

REGULAR CASES

BDA178-016(SL)	4217 Swiss Avenue REQUEST: Application of Mike Northrup to appeal the decision of the administrative official in removing a stop work order	3
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BDA178-022(SL)

4711 Maple Avenue

REQUEST: Application of Ray Quintanilla,
represented by Kori Haug, for a special exception to
the landscape regulations

4

EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex Govt. Code §551.087]
7. deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementations of security personnel, critical infrastructure, or security devices. [Tex. Govt. Code §551.089]

FILE NUMBER: BDA178-017(SL)

BUILDING OFFICIAL'S REPORT: Application of Russell Thomas for a special exception to the fence standards and for special exceptions to the visual obstruction regulations at 5530 Falls Road. This property is more fully described as Lot 4, Block 6/5607, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence standards regulations, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5530 Falls Road

APPLICANT: Russell Thomas

REQUESTS:

The following requests have been made on a site that is currently being developed with a single family home structure:

1. A special exception to the fence standards related to fence height of 2' 6" is made to construct and maintain a 6' high open wrought iron fence and gate with 6' 6" high brick columns in the front yard setback; and
2. Special exceptions to the visual obstruction regulations are made to locate and maintain portions of the aforementioned 6' high open wrought iron fence/gate and 6' 6" high brick columns located in one of two or both, 20' visibility triangles on both sides of the driveway into the site from this street.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:

Section 51A-4.602(a)(11) 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.

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 (Fence special exception):

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.

STAFF RECOMMENDATION (Visual obstruction special exceptions):

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 to be located in the visibility triangles do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single family residential 1 acre)
North: R-1ac(A) (Single family residential 1 acre)
South: R-1ac(A) (Single family residential 1 acre)
East: R-1ac(A) (Single family residential 1 acre)
West: R-1ac(A) (Single family residential 1 acre)

Land Use:

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

Zoning/BDA History:

1. BDA145-029, Property at 5522 Falls Road (the lot west of the subject site)

On March 17, 2015, the Board of Adjustment Panel A granted requests for a special exception to the fence standards regulations of 7' 1" for a fence in the front yard setback and 3' 6" for a fence in the side yard setback, and imposed the following condition: Compliance with submitted revised site plan/elevation is required.

The case report stated the requests were made to construct and maintain in the front yard setback parallel to the street an approximately 90' long, 5' high open wrought iron fence with two entry features that include 8' high open wrought iron gates flanked by 6' – 7' high masonry walls and caps; perpendicular to the street on the east side: an approximately 38' long, 5' high open wrought iron fence, with 6'- 7' high masonry columns, and perpendicular to the street on the west side: an approximately 23' long, 5' high open wrought iron fence, and an approximately 15' long, 10' 7" high fence (8' wood fence atop a 2' 7" high retaining wall) with 11' 1" high masonry columns; and in the side yard setback on the east side of the site an approximately 70' long, 12' 6" high masonry fence with 12' 6" high columns on a site being developed that was being with a single family home.

2. BDA178-019, Property at 5539 Falls Road (the lot northeast of the subject site)

On February 22, 2018, the Board of Adjustment Panel C will consider a request for a special exception to the fence standards regulations related to height regulations of 6', made to construct and maintain a 7' 3" high open wrought iron fence with 8' stone columns and a 10' high open wrought iron entry gate flanked by 9' high stone columns on a site being developed with a single family home.

GENERAL FACTS/STAFF ANALYSIS (Fence standards special exception):

- The request for a special exception to the fence standards related to height focus on constructing and maintaining a 6' high open wrought iron fence and gate with 6' 6" high brick columns in the front yard setback on a site being developed with a single family home.
- Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The property is located in an R-1ac(A) zoning district which requires a minimum front yard setback of 40 feet.
- The submitted elevation indicates that the proposal would reach a maximum height of 6' 6" to account for height of the brick columns.
- The submitted site plan denotes the following:
 - The proposal in the front yard setback is represented as being approximately 100' in length parallel to this street in the front yard setback.
 - The proposal is represented as being located approximately on the front property line, and approximately 15' from the pavement line.
- A single family lot fronts the proposal on the subject site. This lot has no fence in its front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area on the street from Hollow Way Drive to Hathaway Street and noted one other fence that appeared to be over 4' in height and in a front yard setback. This fence (a 5' high open wrought iron fence with two entry features that include 8' high open wrought iron gates flanked by 6' – 7' high masonry walls and caps) is located immediately west of the subject site and appears to be a result of special exceptions to the fence standards granted by the Board in 2015 (see the "Zoning/BDA History" section of this case report for additional details).
- As of February 9, 2018, a petition signed by 4 persons had been submitted in support of the application, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence standards related to fence height of 2' 6" will not adversely affect neighboring property.
- Granting this special exception with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height to be located in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

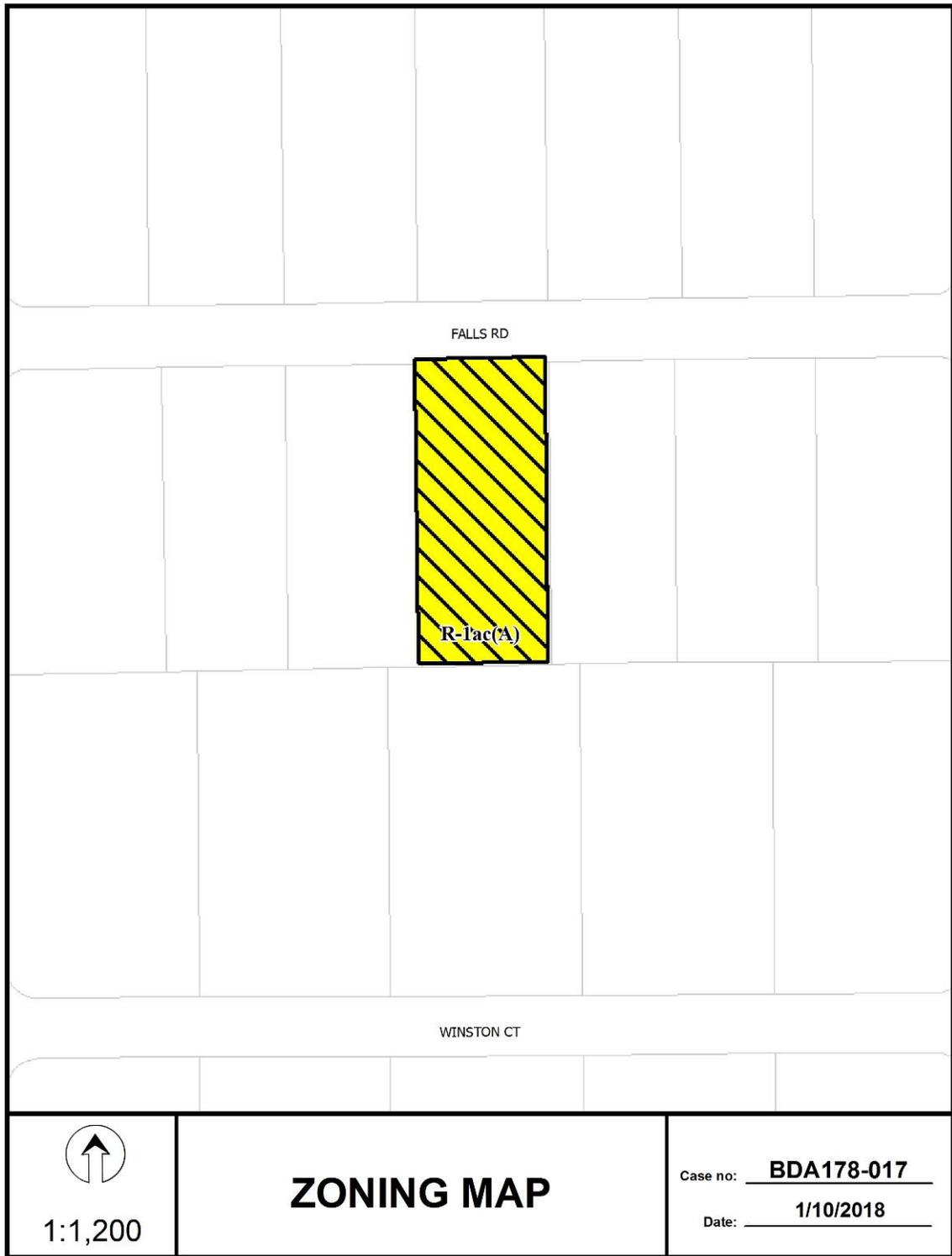
- The requests for special exceptions to the visual obstruction regulations focus on locating and maintaining portions of a 6’ high open wrought iron fence/gate and 6’ 6” high brick columns in one of two or both 20’ visibility triangles on both sides of the driveway into the site from the street on a site being developed with a single family home.
- Section 51A-4.602(d)(1) of the Dallas Development Code 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 submitted elevation indicates portions a 6’ high open wrought iron fence/gate and 6’ 6” high brick columns located in the one of two or both 20’ visibility triangles on both sides of the driveway into the site from this street.
- 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 a 6’ high open wrought iron fence/gate and 6’ 6” high brick columns located in one of two or both, 20’ visibility triangles on both sides of the driveway into the site do not constitute a traffic hazard.
- Granting these requests with a condition imposed that the applicant complies with the submitted site plan and submitted elevation would limit the items located in the 20’ drive approach visibility triangles to that what is shown on these documents – a 6’ high open wrought iron fence/gate with 6’ 6” high brick columns.

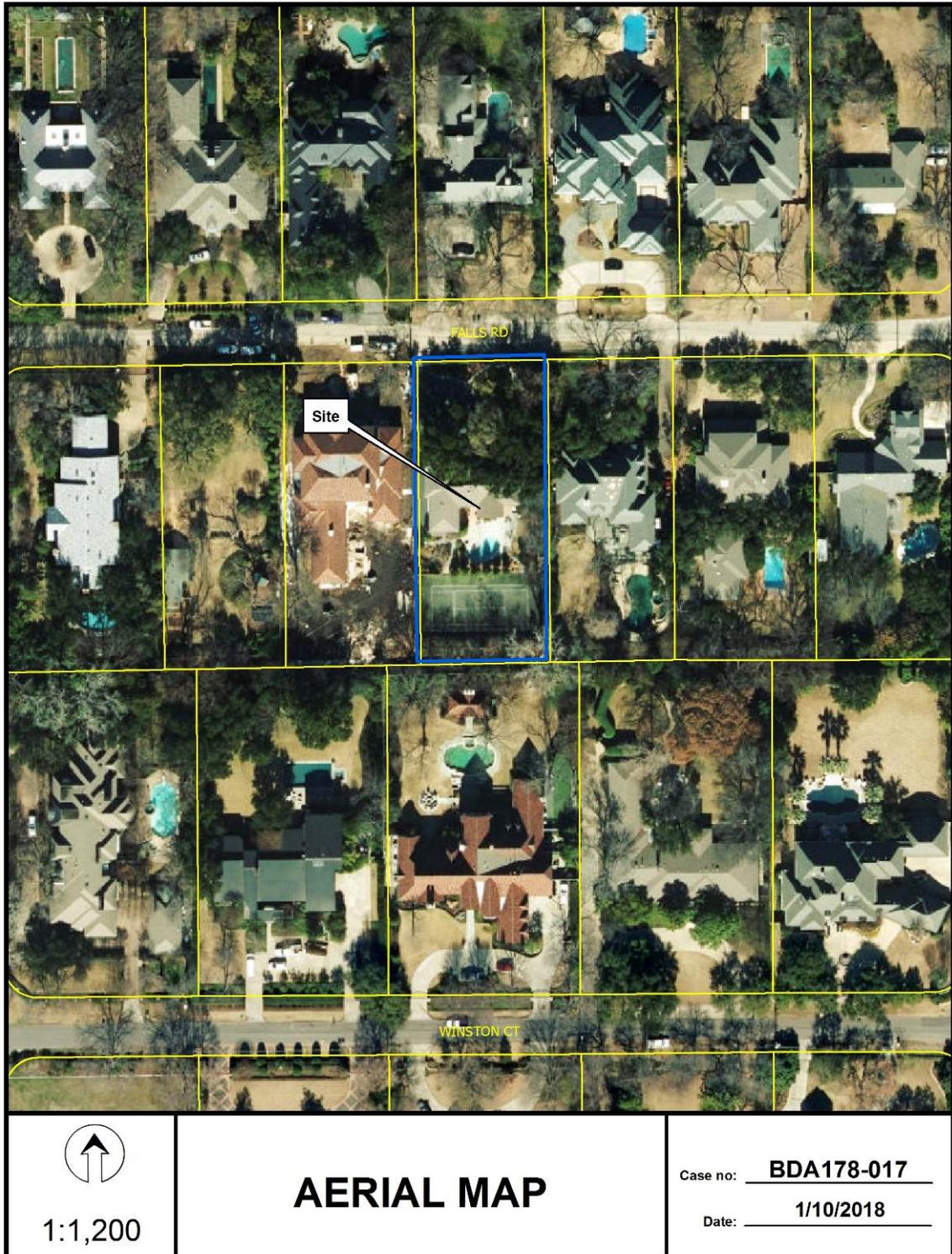
Timeline:

November 14, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- January 5, 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th 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 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- February 8, 2018: The Sustainable Development Department Senior Engineer has submitted a review comment sheet marked "Has no objections".





1:1,200

AERIAL MAP

Case no: BDA178-017

Date: 1/10/2018



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 178-017

Data Relative to Subject Property:

Date: 11-14-17

Location address: 5530 Falls RD. Zoning District: R-12c(A)

Lot No.: 4 Block No.: 6/5607 Acreage: .62 Census Tract: 206.00

Street Frontage (in Feet): 1) 107.92 2) _____ 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Whitley Family Properties

Applicant: Russell Thomas Telephone: 214-906-2145

Mailing Address: 6310 Joyce Way Zip Code: 75225

E-mail Address: RCTHOMAS1978@yahoo.com

Represented by: _____ Telephone: _____

Mailing Address: _____ Zip Code: _____

E-mail Address: _____

Affirm that an appeal has been made for a Variance __, or Special Exception , of 2'6" to the fence height in a front yard, and visibility triangle construction of driveway

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

There will be no adverse affect to the neighborhood or individual houses because of the high quality material being used to construct it and the added architectural appeal to the block. The style and height of fence is common on this block and throughout the neighborhood.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

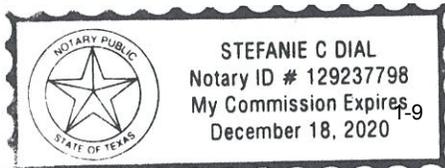
Affidavit

Before me the undersigned on this day personally appeared Russell Thomas
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 14 day of November, 2017



[Signature]
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that Russell Thomas
did submit a request for a special exception to the fence height regulations, and for a special
exception to the visibility obstruction regulations
at 5530 Falls Drive

BDA178-017. Application of Russell Thomas for a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations at 5530 Fall Rd. This property is more fully described as Lot 4, Block 6/5607, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence regulations, and to construct a single family fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulations.

Sincerely,

Philip Sikes
Philip Sikes, Building Official

City of Dallas

Internal Development Research Site

178-017

Legend

Locate Property

Search by:

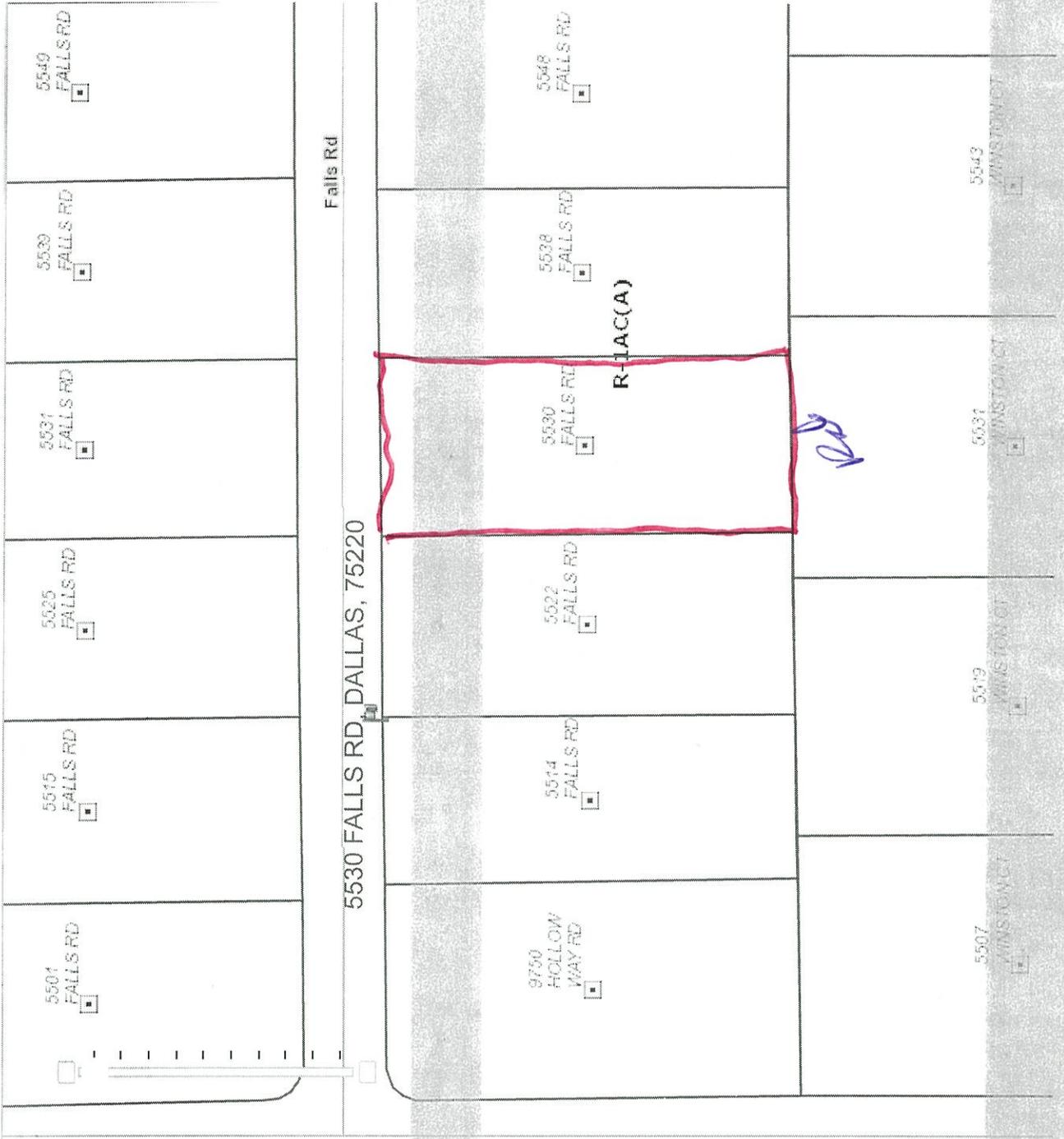
GIS Account #

OR

Street address.
5530 falls

OR

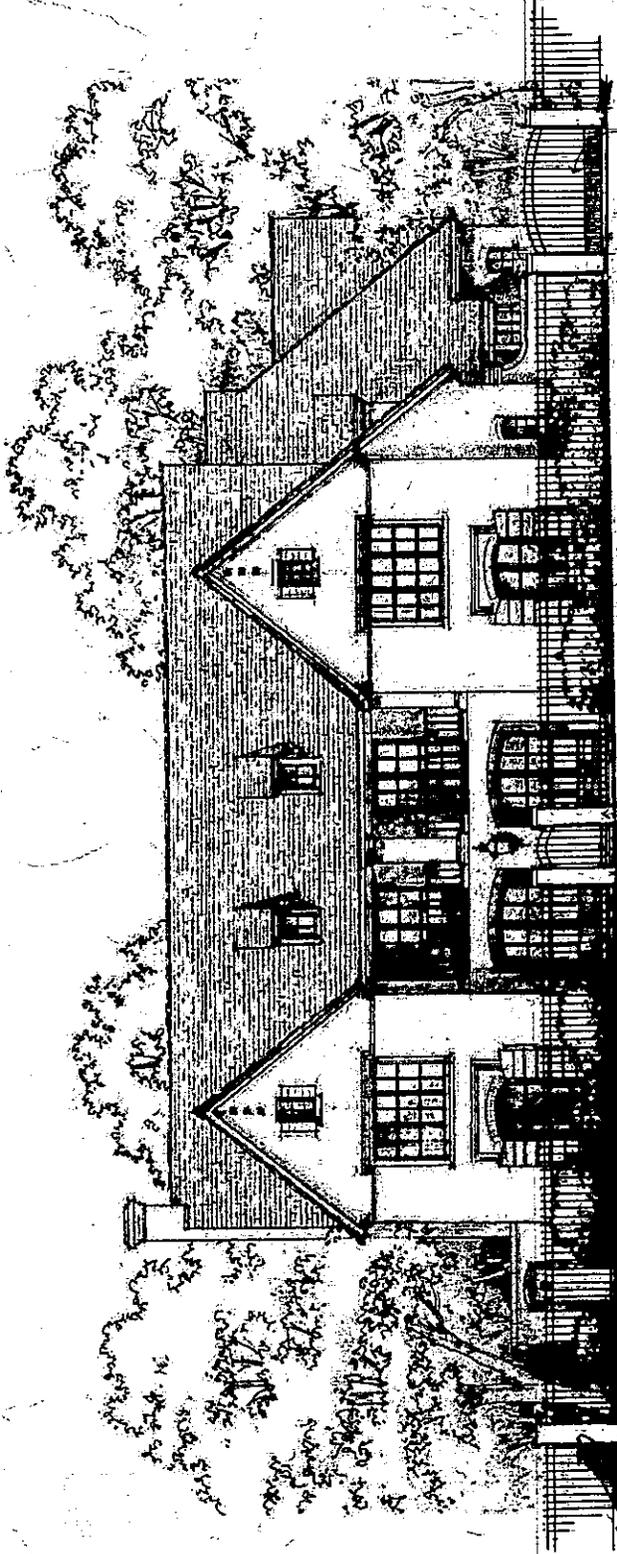
Parcel address.
Use street type for better re



1-11

5530 Falls Rd

- Neighbors have reviewed proposed fence heights and placement per the following elevation and have approved.



6 1/2' Columns OK? SIGNATURE
 6' Fence OK
OK
OK
OK

15' x 4" x 6" TALL BRICK COLUMNS
 4" x 6" TALL BRICK TERN FENCE
 SLIDE BY UNDEPT 1800 SHS

NAME: Harris Clark
Mark Dale
Ryan Wyatt
MARK SHORES

ADDRESS: 5531 Falls Rd
5525 Falls Rd
5530 Falls Rd
5520 Falls Rd

DATE: 11/10/17
11/10/17
11-11-17
11/14/17

PROJECT TEAM

ARCHITECT: FUSCH ARCHITECTS, INC.
 4907 Arrowhead Ave, Suite 200
 Dallas, TX 75249
 214-496-9999
 Contact: Cliff Vaughn

CONTRACTOR: Cliff Vaughn
 4907 Arrowhead Ave, Suite 200
 Dallas, TX 75249
 214-496-9999
 Contact: Cliff Vaughn

INTERIOR DESIGNER: LANDSCAPE ARCHITECT

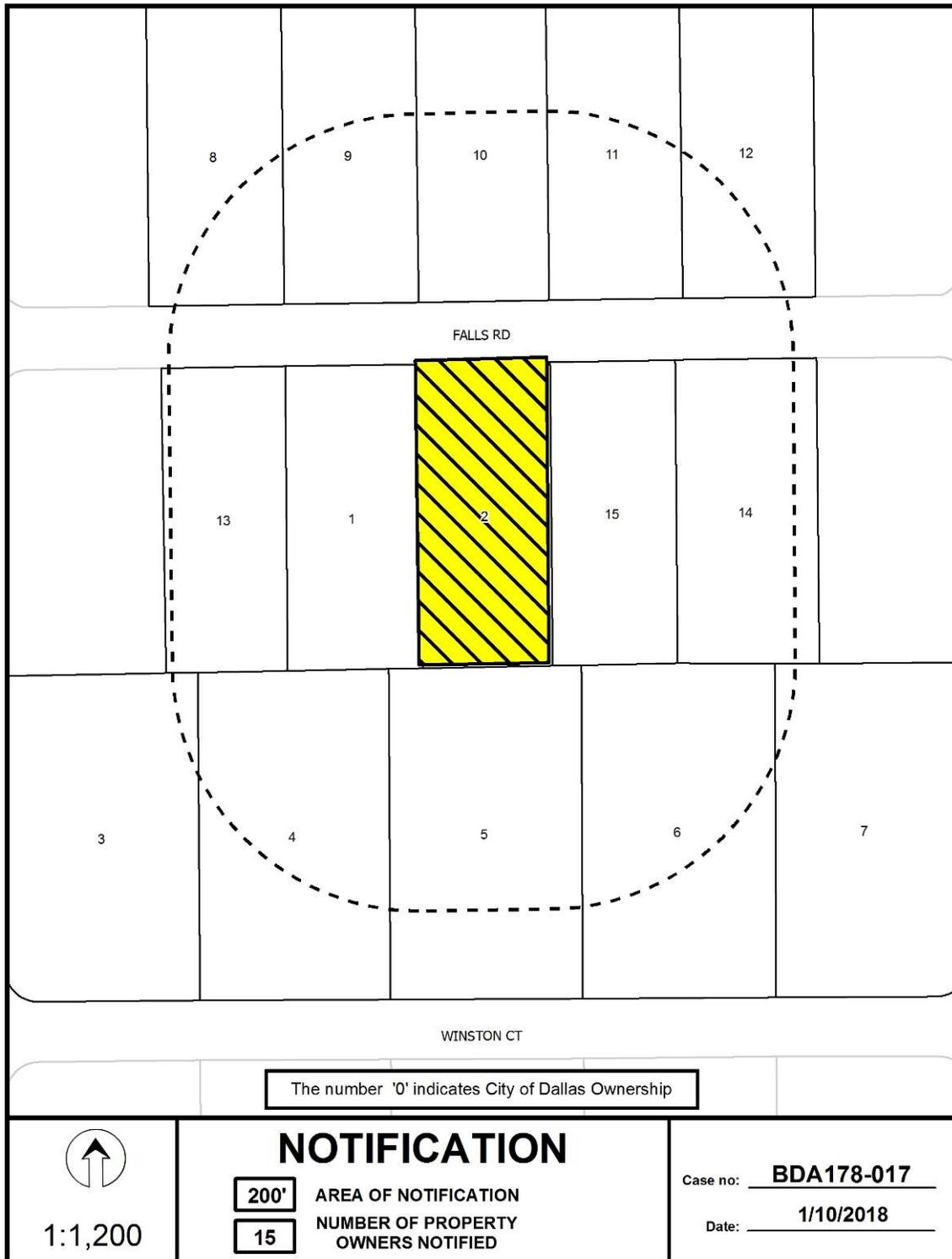
178-017

A-RESIDENCE-DESIGNED FOR
 5530 FALLS ROAD



FUSCH ARCHITECTS, INC.
 ARCHITECTS PLANNERS

COVER SHEET
 A001
 Project No. 178-017



Notification List of Property Owners

BDA178-017

15 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	5522 FALLS RD	SHORES MARK M & MARY M
2	5530 FALLS RD	WHITLEY FAMILY PROPERTIES LLC
3	5507 WINSTON CT	ELBAOR JAMES EDWARD
4	5519 WINSTON CT	ZILBERMANN MARK & PEGGY
5	5531 WINSTON CT	BOSCAMP KEVIN D &
6	5543 WINSTON CT	ROWLEY SHIRLEY G
7	5555 WINSTON CT	THOMPSON JAMES R
8	5515 FALLS RD	SMITH EARL THOMAS &
9	5525 FALLS RD	ZALE MARK S & LISA G
10	5531 FALLS RD	CLARK HARRIS &
11	5539 FALLS RD	JOHNSEY RONALD &
12	5549 FALLS RD	GOH KIAT TZE & JANET HO
13	5514 FALLS RD	SIMMONS LISA KAREN
14	5548 FALLS RD	MCDEARMAN JOHN R
15	5538 FALLS RD	WYATT MICHAEL S &

FILE NUMBER: BDA178-025(SL)

BUILDING OFFICIAL'S REPORT: Application of Joe Cortez to enlarge a nonconforming use at 2920 Kendale Drive. This property is more fully described as Lot 2A, Block 6/5778, and is zoned LO-1, which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming multifamily use, which will require a request to enlarge a nonconforming use.

LOCATION: 2920 Kendale Drive

APPLICANT: Joe Cortez

REQUEST:

A request is made to enlarge a nonconforming "multifamily" use (In Place Apartments), specifically by remodeling/ "enlarging" five of six existing structures on the site, not by increasing the size of the footprints of these structures but by increasing the height of these structure from 17' 4" to 22' 6": adding new hip roofs to these existing flat roof structures from 17' 4" to 22' 6" in height.

STANDARD FOR ENLARGING A NONCONFORMING USE:

Section 51A-4.704(b)(5)(B) of the Dallas Development Code states the board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

STAFF RECOMMENDATION:

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, *in the opinion of the Board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	LO-1 (Limited office)
<u>North:</u>	CR (Community Retail)
<u>South:</u>	CR (Community Retail)
<u>East:</u>	CR (Community Retail)
<u>West:</u>	LO-1 (Limited office)

Land Use:

The subject site is developed as a “multifamily” use (In Place Apartments). The submitted site plan represents six building footprints and a pool on the subject site. The area to the north is developed with a park (Overlake Park), the area to the east is developed with retail and multifamily uses; the area to the south is developed with commercial uses; and the area to the west is developed with multifamily 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 focuses on the enlargement of a nonconforming “multifamily” use (In Place Apartments) on the subject site, which in this particular case, involves the remodeling/ “enlarging” five of six existing structures on the site, not by increasing the size of the footprints of these structures but by adding new hip roofs to these existing flat roof structures. (According to submitted elevations, flat roof structures that are 17’ 4” would be remodeled by adding hip roofs where the remodeled structures would be 22’ 6” in height).
- The subject site is zoned LO-1 (Limited Office).
- A “multifamily” use is not permitted in Limited Office districts.
- Section 51A-2.102(89) of the Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- Section 51A-4.704(b)(5)(A) of the Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.

- It appears from research conducted by the Board Administrator/Chief Planner that the multifamily use became a nonconforming use in the late 80's when (during the city-wide zoning transition effort from Chapter 51 to Chapter 51A) the property that had been zoned O-1 (that permitted multifamily use) was changed to a less cumulative zoning district LO-1 (that does not permit multifamily use). The City has recognized the multifamily use on the property therefore to be a legal nonconforming use.
- Any use permitted in the LO-1 zoning district (that includes office use) could reach a maximum structure height of 70 feet without going to the board of adjustment for a variance to the height regulations. But because multifamily use is no longer a permitted use in the LO-1 zoning district, the applicant must seek this request to the board to enlarge the nonconforming multifamily use or, in this case, to increase the height of the existing structures from what is represented on the submitted elevation (page 8 of 12 in the attachment) from 17' 4" to 22' 6".
- The applicant has submitted site plans and elevations of six structures on the site of which five of six are to be enlarged by adding new roofs.
- This application is made to enlarge a nonconforming *use*. The application is *not* made to enlarge a nonconforming *structure*. The structures that comprise the nonconforming "multifamily" use would be in compliance with development code standards such as setbacks, coverage requirements, height requirements, parking requirements, etc. Therefore, the existing structures even if new roofs were added would conforming structures as it relates to development code requirements, located within a broader land use classification (multifamily) that can only be deemed a conforming *use* once and if the zoning is changed.
- Records from Building Inspection Department indicate that the "multifamily" use has been identified by Building Inspection as a nonconforming use.
- The applicant has been informed of the Dallas Development Code provisions pertaining to "Nonconforming Uses and Structures," and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner's actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
 1. does not prolong the life of the nonconforming use;
 2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
 3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted site plans and elevations, the enlargement of the nonconforming use would be limited to what is shown on these documents.

Timeline:

December 15, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

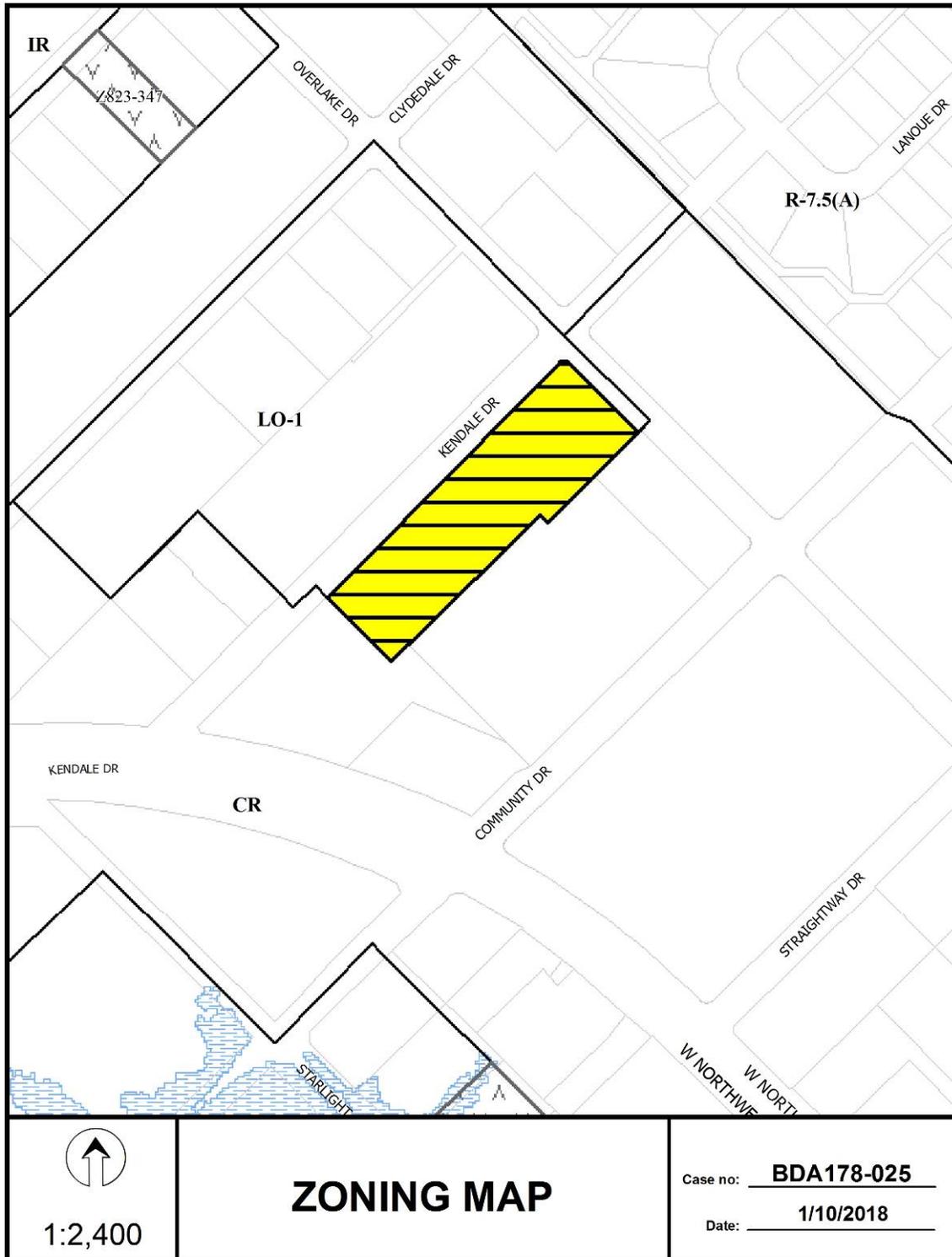
January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

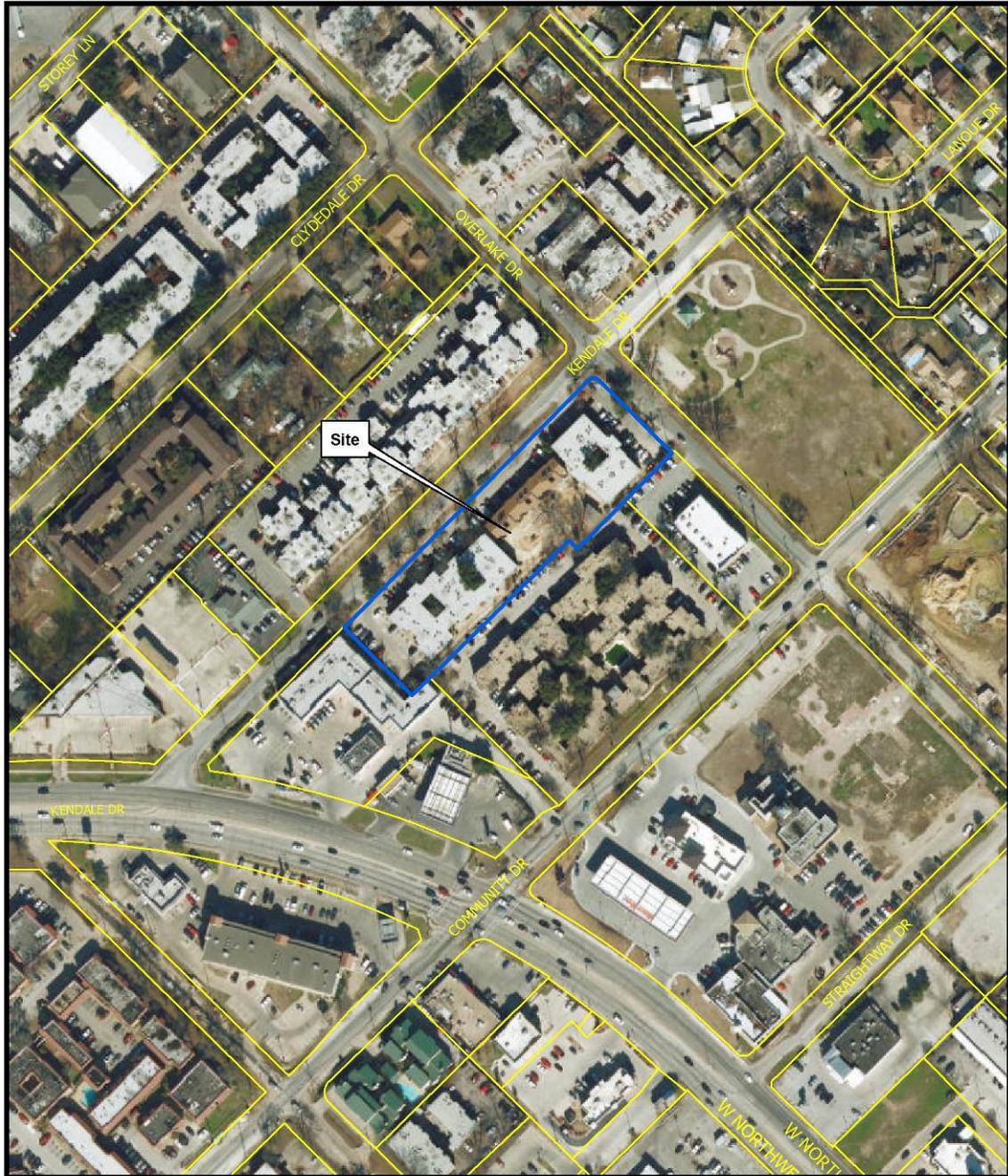
January 5, 2018: The Board Administrator emailed the applicant the following information:

- 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the provision from the Dallas Development Code that provides the standard as to how the board is able to grant a request to enlarge a nonconforming use. (51A-4.704(b)(5)), and the entire section from the code related to nonconforming uses and structures (51A-4.704), advising the applicant that his request does not eliminate the nonconforming status of the use on the site as much as it potentially (if the board chooses to grant your request) merely allows it to be enlarged; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

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

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





1:2,400

AERIAL MAP

Case no: BDA178-025

Date: 1/10/2018



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA/178-022

Data Relative to Subject Property:

Date: 12/13/2017

Location address: 4711 Maple Avenue Zoning District: PD 193 (GR)

Lot No.: 1B Block No.: 6/2289 Acreage: 1.24 Census Tract: 4.01

Street Frontage (in Feet): 1) 349.6 2) 34 3) 4) 5)

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Quintanilla Technologies

Applicant: Ray Quintanilla Telephone: 214 773 6783

Mailing Address: 4739 maple Ave Dallas Zip Code: 75219

E-mail Address: rquinta433@gmail.com

Represented by: Kori Haug Telephone: 214-865-7192

Mailing Address: 4245 N. Central Expy, Suite 501 Dallas, TX Zip Code: 75205

E-mail Address: khaug@bellefirma.com

Affirm that an appeal has been made for a Variance, or Special Exception X, of Approval of an alternative landscape plan.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Due to the hardship of redeveloping an existing 8,405 s.f. building with an existing parking lot and existing 4' sidewalk (installed by the City and located 4' from the back of street curb), we are asking for a Special Exception for the following landscape requirements of PD 193, subdistrict GR: site landscape area, front yard landscape area, sidewalk width and location, tree planting zone width and location and parking lot screen in front of the existing building. Additional lots are being replatted with the existing lot to form a larger lot. To meet parking requirements, these added lots must be mostly paved area, leaving little room for required landscape area.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

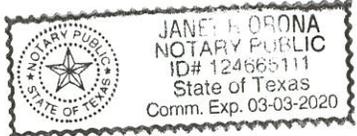
Before me the undersigned on this day personally appeared Ray Quintanilla (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 13 day of December, 2017

(Rev. 08-01-11)



[Signature] Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that Ray Quintanilla
represented by Kori Haug
did submit a request for a special exception to the landscaping regulations
at 4711 Maple Avenue

BDA178-022. Application of Ray Quintanilla represented by Kori Haug for a special exception to the landscaping regulations at 4711 Maple Ave. This property is more fully described as Lot 1B, Block 6/2289, and is zoned PD-193 (GR), which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulation

Sincerely,

Philip Sikes
Philip Sikes, Building Official



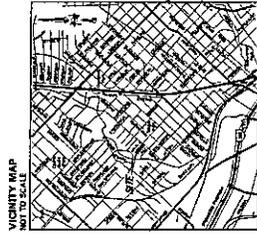
QUINTANILLA'S
SUBD. NO. 2

FILED 5-6-77

2289/6

2292/9

LAKE



VICINITY MAP
 NOT TO SCALE

LANDSCAPE NOTES

- CONTRACTOR SHALL VERIFY ALL EXISTING AND PROPOSED UTILITIES AND VERIFY LANDSCAPE MATERIALS AND SPECIFICATIONS WITH THE CITY OF DALLAS. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED AT ALL TIMES.
- CONTRACTOR SHALL LOCATE ALL EXISTING UNDERGROUND UTILITIES AND NOTIFY LANDSCAPE ARCHITECT IMMEDIATELY IN WRITING. EXERCISE CAUTION WHEN WORKING IN THE VICINITY OF UNDERGROUND UTILITIES.
- CONTRACTOR SHALL PROVIDE A MINIMUM 1% SLOPE TO ALL PLANTING AREAS.
- CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DALLAS AND THE DALLAS WATER DEPARTMENT.
- ALL PLANTING AREAS SHALL BE INSTALLED TO THE TOP OF FINISH GRADE. ALL PLANTING AREAS SHALL BE INSTALLED TO THE TOP OF FINISH GRADE. ALL PLANTING AREAS SHALL BE INSTALLED TO THE TOP OF FINISH GRADE.
- TOP OF FINISH GRADE SHALL BE 1'0" MINIMUM BELOW THE TOP OF WALKER AND CURBS.
- ALL LAWN AREAS SHALL BE 3000 S.F. MINIMUM. ALL LAWN AREAS SHALL BE 3000 S.F. MINIMUM. ALL LAWN AREAS SHALL BE 3000 S.F. MINIMUM.
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LANDSCAPE TABULATIONS

THE CITY OF DALLAS TEXAS - PD 119 (c)(6)

MTS LANDSCAPE

1. 10% of the total to be installed.

2. 10% of the total to be installed.

3. 10% of the total to be installed.

4. 10% of the total to be installed.

5. 10% of the total to be installed.

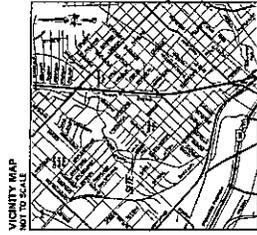
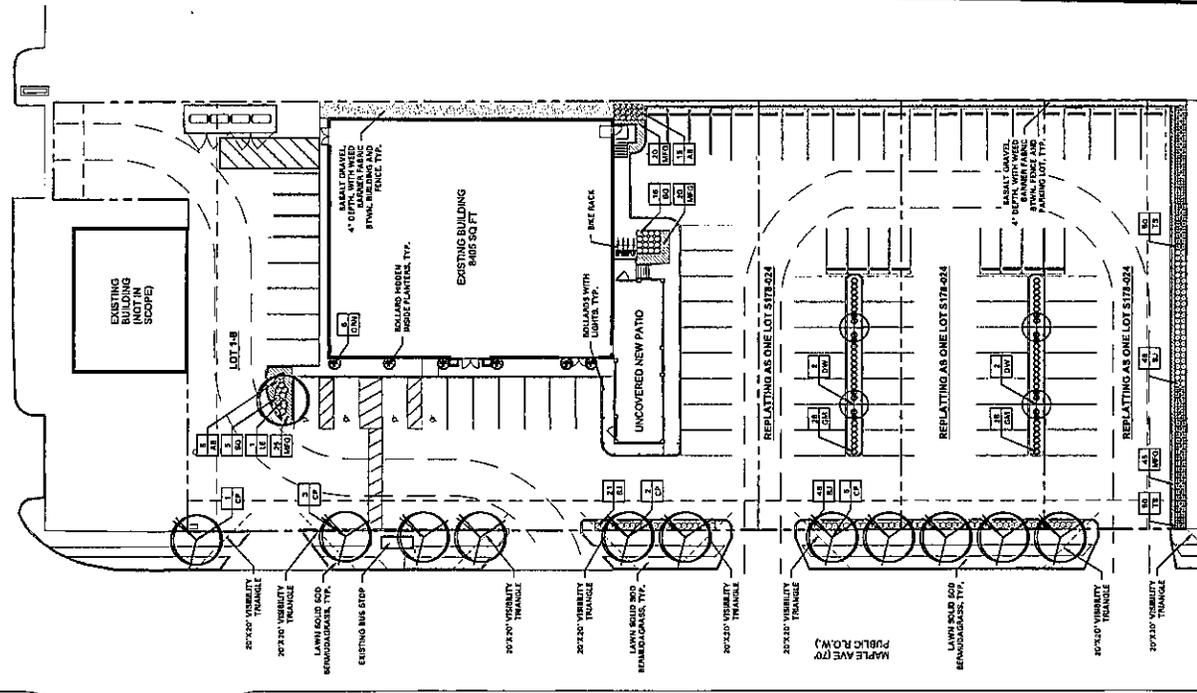
6. 10% of the total to be installed.

7. 10% of the total to be installed.

8. 10% of the total to be installed.

9. 10% of the total to be installed.

10. 10% of the total to be installed.



VICINITY MAP
 NOT TO SCALE

GENERAL LAWN NOTES

- CONTRACTOR SHALL SUBMIT A LAWN PLAN TO THE CITY OF DALLAS FOR APPROVAL. THE LAWN PLAN SHALL SHOW THE LOCATION AND SIZE OF ALL LAWN AREAS. THE LAWN PLAN SHALL SHOW THE LOCATION AND SIZE OF ALL LAWN AREAS.
- CONTRACTOR SHALL LEAVE LAWN AREAS 1' BELOW FINISH GRADE. LAWN AREAS SHALL BE 1' BELOW FINISH GRADE. LAWN AREAS SHALL BE 1' BELOW FINISH GRADE.
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- CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DALLAS AND THE DALLAS WATER DEPARTMENT.

SOLID SOD NOTES

- PLANT SOD BY HAND TO COVER INDICATED AREAS. SOD SHALL BE 100% SOLID SOD. SOD SHALL BE 100% SOLID SOD.
- SOIL SHALL BE AMENDED TO ACHIEVE A MOISTURE RETENTION CAPACITY OF 10%. SOIL SHALL BE AMENDED TO ACHIEVE A MOISTURE RETENTION CAPACITY OF 10%.
- CONTRACTOR SHALL PROVIDE A MINIMUM 1% SLOPE TO ALL PLANTING AREAS.
- CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DALLAS AND THE DALLAS WATER DEPARTMENT.

SYMBOL	QUANTITY	SIZE	COMMON NAME
Q1	11	4" x 4"	Common Name
Q2	4	30" dia.	Common Name
Q3	1	3" x 6"	Common Name
Q4	20	5" x 5"	Common Name
Q5	10	10" x 10"	Common Name
Q6	20	10" x 10"	Common Name
Q7	100	5" x 5"	Common Name
Q8	100	5" x 5"	Common Name
Q9	100	5" x 5"	Common Name
Q10	100	5" x 5"	Common Name

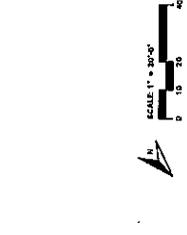
GENERAL NOTE

CONTRACTOR SHALL VERIFY ALL EXISTING AND PROPOSED UTILITIES AND VERIFY LANDSCAPE MATERIALS AND SPECIFICATIONS WITH THE CITY OF DALLAS. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED AT ALL TIMES.

PLANT LIST

SYMBOL	SPACING	COMMON NAME
Q1	4" x 4"	Common Name
Q2	30" dia.	Common Name
Q3	3" x 6"	Common Name
Q4	5" x 5"	Common Name
Q5	10" x 10"	Common Name
Q6	10" x 10"	Common Name
Q7	5" x 5"	Common Name
Q8	5" x 5"	Common Name
Q9	5" x 5"	Common Name
Q10	5" x 5"	Common Name

NOTE: ALL TREES SHALL HAVE STRAIGHT TRUNKS AND BE MATCHING WITHIN VARIETY. PLANT LIST IS IN ORDER OF PRIORITY. CONTRACTOR SHALL VERIFY ALL QUANTITIES ON PLAN. ALL HEIGHTS AND SPACING ARE INDICATED. ALL PLANT MATERIAL SHALL MEET OR EXCEED REQUIREMENTS AS INDICATED.



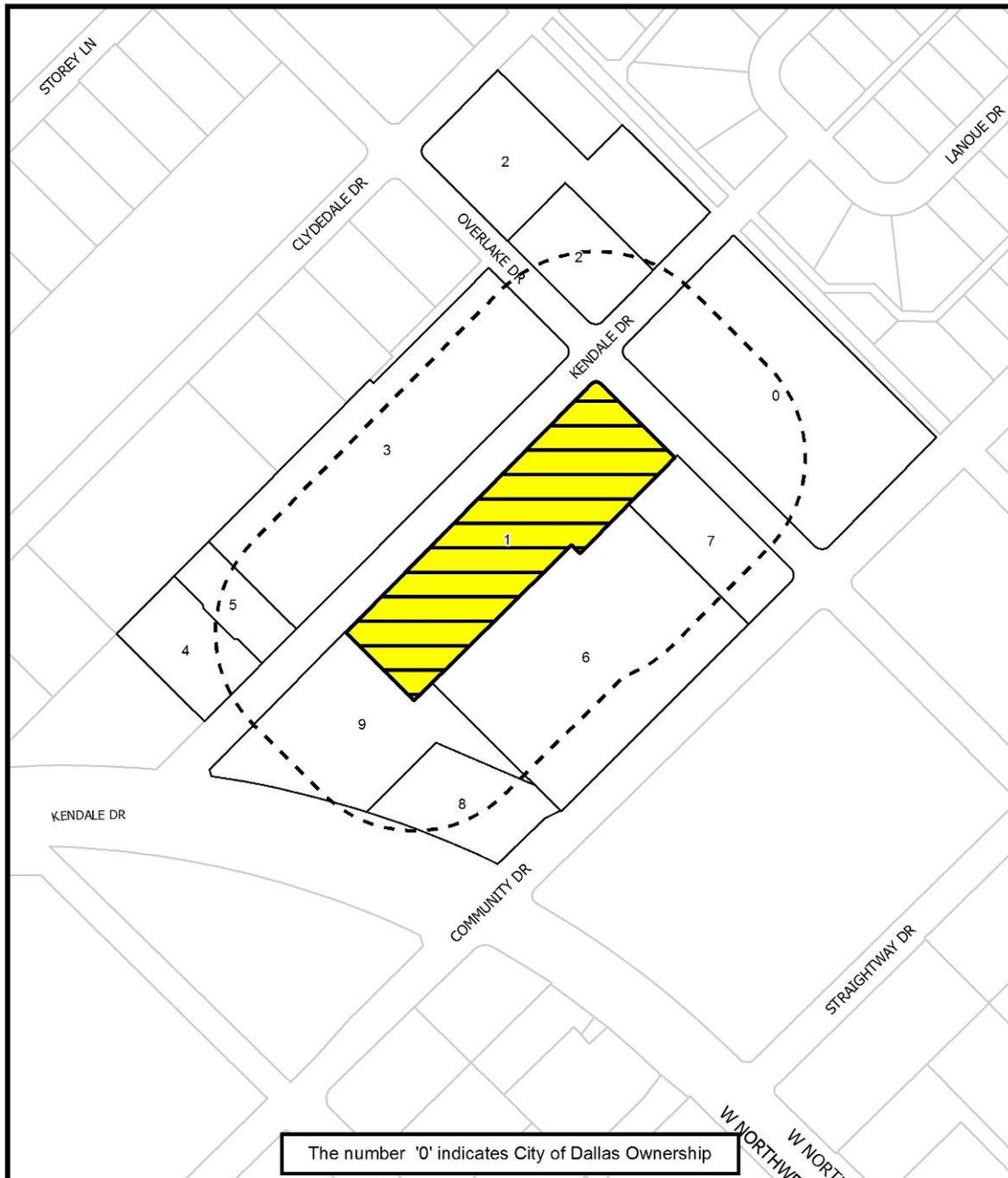
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 1:2,400	NOTIFICATION	Case no: BDA178-025			
	<table border="1"> <tr> <td style="text-align: center;">200'</td> <td>AREA OF NOTIFICATION</td> </tr> <tr> <td style="text-align: center;">9</td> <td>NUMBER OF PROPERTY OWNERS NOTIFIED</td> </tr> </table>	200'	AREA OF NOTIFICATION	9	NUMBER OF PROPERTY OWNERS NOTIFIED
200'	AREA OF NOTIFICATION				
9	NUMBER OF PROPERTY OWNERS NOTIFIED				

Notification List of Property Owners

BDA178-025

9 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	2920 KENDALE DR	JAG RE DEVELOPMENT GROUP LLC
2	3002 CLYDEDALE DR	IRG KENDALE LLC
3	2911 KENDALE DR	YILMAZ DAVID LIVING TRUST
4	2817 KENDALE DR	AMERICAN BANK NA
5	2823 KENDALE DR	KENDALE PPTIES LLC
6	2833 COMMUNITY DR	PARKSIDE APARTMENTS LLC
7	2915 COMMUNITY DR	CENTURY 2915 LLC
8	2745 W NORTHWEST HWY	M RAHMAN INVESTMENTS INC
9	2731 W NORTHWEST HWY	GEMACK INCORPORATED

FILE NUMBER: BDA178-016(SL)

BUILDING OFFICIAL’S REPORT: Application of Mike Northrup to appeal the decision of the administrative official in removing a stop work order at 4217 Swiss Avenue. This property is more fully described as Lot 1A, Block 10/740, and is zoned PD 298 (Subdistrict 10), which the applicant proposes to appeal the decision of an administrative official.

LOCATION: 4217 Swiss Avenue

APPLICANT: Mike Northrup

REQUEST:

A request is made to appeal the decision of the administrative official, in this particular application, the Building Official, where the submitted application states “to appeal decision of Administrative Official to lift a “stop work” order relating to building permit 1512041028 issued to Encore Enterprises” on a site that is under development.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov’t Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

Site: PD 298 (Subarea 10) Tract 2, Planned Development District
North: PD 298 (Subareas 9 & 10) Planned Development District
South: PD 298 (Subarea 10) Tract 2, Planned Development District
East: PD 298 (Subareas 9 & 10) Planned Development District
West: PD 298 (Subareas 9 & 10) Planned Development District

Land Use:

The subject site is under development. The areas to the north, south, east and west are developed with mix of uses.

Zoning/BDA History:

- | | |
|--|--|
| 1. BDA167-014, Property at 4802
4217 Swiss Avenue (the subject
site) | On February 21, 2017, the Board of
Adjustment Panel A affirmed the decision of
the administrative official and denied the
applicant's request without prejudice. |
| 2. BDA167-133, Property at 4802
4217 Swiss Avenue (the subject
site) | On November 17, 2017, the applicant
withdrew an appeal of the decision of the
administrative official that had been
tentatively scheduled for Board of
Adjustment Panel A's January 16, 2018
hearing. |

GENERAL FACTS/STAFF ANALYSIS:

- The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

Timeline:

November 29, 2017: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary assigned this appeal 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".

January 5, 2018: The Board Administrator emailed the applicant the following information:

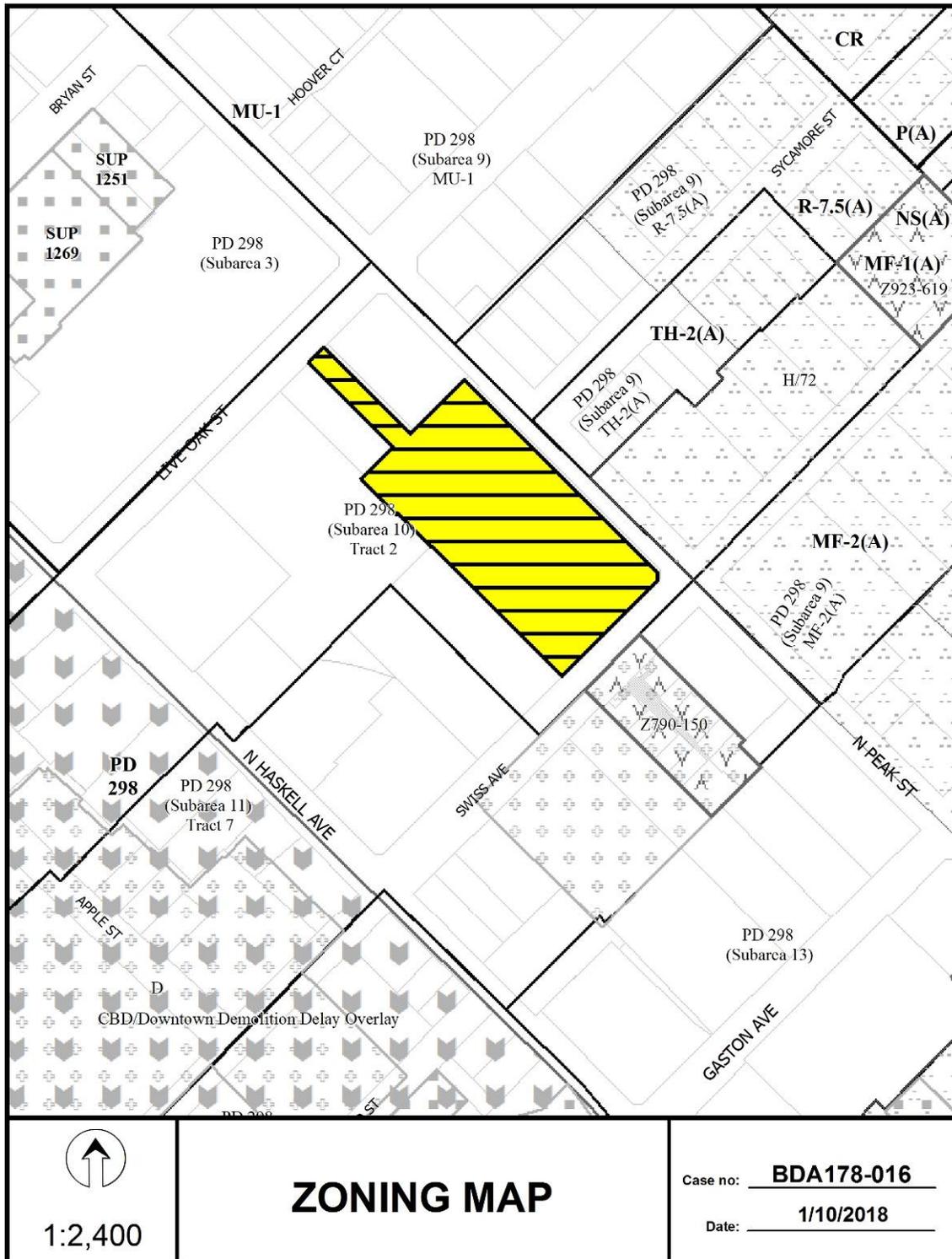
- an attachment that provided the appeal date and panel that will consider the appeal; the January 31st deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of appeal); and the February 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

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

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

February 9, 2018: The applicant submitted additional documentation on this appeal to the Board Administrator beyond what was submitted with the original application (see Attachment A).

February 9, 2018: The assistant city attorney assisting the administrative official submitted documentation on this appeal to the Board Administrator (see Attachment B).





1:2,400

AERIAL MAP

Case no: BDA178-016

Date: 1/10/2018



Attorneys & Counselors

Tel: 214-672-2000 | Fax: 214-672-2020
www.cowlesthompson.com

901 Main Street, Suite 3900
Dallas, TX 75202-3793

BDA 178-016
Attach A
Pg 1



R. Michael Northrup
Board Certified Civil Appellate Law
Texas Board of Legal Specialization
214-672-2150
mnorthrup@cowlesthompson.com

February 9, 2018

C/o Steve Long, Board Administrator
Dallas Board of Adjustment
Dallas City Hall
1500 Marilla, 5BN
Dallas, Texas 75201

via email: steve.long@dallascityhall.com

Re: BDA178-016, appeal of an administrative official's decision to lift a stop-work order at 4217 Swiss Avenue

Members of the Board of Adjustment:

I write to you on behalf of the Peak's Addition Home Owner's Association to urge you to reverse the decision of an administrative official (1) to treat building permit No. 1512041028 as valid and (2) to lift a stop-work order at 4217 Swiss Avenue.

The issue before you today is simple. Will the Board follow the September 11, 2017 decision of the state district court that *reversed* this Board's February 21, 2017 decision that had upheld the decision of the Building Official to issue building permit No. 1512041028 to Encore Enterprises? Building permit No. 1512041028 issued to Encore Enterprises is invalid. The state district court has conclusively ruled in favor of Peak's Addition and against the City on this very issue. Nevertheless, an administrative official made a decision on November 15, 2017, to treat building permit No. 1512041028 as valid and to lift a stop-work order the City had previously issued.

Building permit No. 1512041028 is not valid and the administrative official erred by treating it as valid. Peak's Addition Home Owner's Association asks you to follow the ruling of the district court and reverse the decision of the administrative official treating building permit No. 1512041028 as valid and lifting the stop-work order.

In support of the position of the Peak's Addition Home Owner's Association, I present to you the following factual background (with supporting documents) and argument.

Factual background**Timeline of relevant facts and dates:**

1. The Building Official issued building permit No. 1512041028 to ENCORE ENTERPRISES on November 21, 2016. *See Appendix A-1.*
2. Peak's Addition Homeowner's Association appealed the Building Official's determination and decision to issue building permit No. 1512041028 to the Board of Adjustment on November 28, 2016. *See Appendix A-2.*
3. The Building Official, represented by the City Attorney's office, presented the rationale for issuing the building permit by written memo on February 10, 2017 to Panel A of the Board of Adjustment. *See Appendix A-3.*
4. Panel A of the Board of Adjustment heard Peak's Addition Homeowner's Association's appeal on February 21, 2017, and *affirmed* the decision of the Building Official by a 4-1 vote. *See Appendix A-4.*
5. Peak's Addition Homeowner's Association appealed the Board of Adjustment's decision to uphold the Building Official's decision to state district court, naming the City of Dallas as a defendant and the City of Dallas Board of Adjustment as a defendant. *See Appendix A-5.*
6. The City of Dallas and the City of Dallas Board of Adjustment answered and fully participated in the proceedings in the trial court. *See Appendix A-6, A-7, & A-8.*
7. On September 11, 2017, the state district court signed a final judgment that *reverses* the decision of the board of adjustment ("the decision of the Dallas Board of Adjustment upholding the interpretation of the building official is *Reversed*"). *See Appendix A-9.*
8. The City of Dallas did not appeal. The City of Dallas Board of Adjustment did not appeal. The permit holder—Encore Enterprises—although it was given notice of proceedings in district court and invited to participate, *see Appendix A-10*, did not participate and did not appeal.
9. The City of Dallas issued a stop-work order for the construction site [4217 Swiss Avenue] on September 14, 2017. *See Appendix A-11.*
10. The City of Dallas lifted the stop-work order on November 15, 2017. *See Appendix A-12.*

Argument

When a permit is issued by a municipality, the permit is issued “subject to the right of an appeal and subject to the action of the building [official] being set aside.” *Amarillo v. Stapf*, 101 S.W.2d 229, 233 (Tex. 1937).

By reversing the decision of the Board of Adjustment, the district court necessarily found that the February 21, 2017 decision of the Board was unconstitutional, illegal, invalid or unlawful and that the decision of the building official was not correct. (see Appendix A-6; *see also* Appendix A-13). The undisputed effect of the district court’s reversal is to invalidate building permit No. 1512041028. (*see* Appendix A-13, A-14).

The City of Dallas and the City of Dallas Board of Adjustment are bound by the district court’s judgment. Encore Enterprises, the permittee, is bound by the district court’s judgment. *See Board of Adjustment of Dallas v. Billingsley Family Ltd. P’ship*, 442 S.W.3d 471 (Tex. App.—Dallas 2013, no pet.) (prior decision of district court was res judicata against Dallas Board of Adjustment on issues actually litigated and on issues that could have been litigated in spite of lack of finality of district court decision).

The decision of the administrative official to lift the prior stop-work order on November 15, 2017, was erroneous. Building permit No. 1512041028 issued to Encore Enterprises is invalid. *See Mobil Chem. Co. v. Bell*, 517 S.W.2d 245, 254 (Tex. 1974) (appellate court cannot grant relief in favor of party that does not appeal).

I look forward to answering any questions you may have at the hearing on Peak’s Addition Home Owner’s Association’s appeal. Peak’s Addition Home Owner’s Association respectfully requests that the Board follow the decision of the state district court and reverse the decision of the administrative official treating building permit No. 1512041028 as valid and lifting the stop-work order.

Respectfully,



R. Michael Northrup

C: Justin Roy, assistant city attorney (via e-mail)

Appendix A

Affidavit of R. Michael Northrup

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared R. Michael Northrup, who is personally known to me, and who, after first being duly sworn under oath, deposed and stated as follows:

1. “My name is R. Michael Northrup, I am more than 21 years of age, I am of sound mind, and I am competent to make this Affidavit and to testify to the matters stated herein.

2. I am licensed by the state of Texas as an attorney. I am currently employed by the law firm of Cowles & Thompson, P.C. in its Dallas, Texas offices. The facts contained in this affidavit are true, and I have personal knowledge of the facts described herein because I represent Peak’s Addition Home Owner’s Association in a matter styled as *Peak’s Addition Home Owner’s Association vs. City of Dallas*, Cause No. 17-02532 (134th Judicial District Court, Dallas County, Texas). With the exception of Exhibit A-12, Exhibit A-15, and Exhibit A-16, each of the documents referenced below and attached to this affidavit are documents filed the district court in the case mentioned.

3. Attached to this affidavit as Exhibit A-1 is a true and correct copy of building permit No. 1512041028 issued to ENCORE ENTERPRISES on November 21, 2016.

4. Attached to this affidavit as Exhibit A-2 is a true and correct copy of Peak’s Addition Homeowner’s Association application to appeal the Building Official’s determination and decision to issue building permit No. 1512041028.

5. Attached to this affidavit as Exhibit A-3 is a true and correct copy of a memo from the City Attorney’s office, dated February 10, 2017 to Panel A of the Board of Adjustment

and purporting to explain the rationale behind the Building Official's decision to issue building permit No. 1512041028.

6. Attached to this affidavit as Exhibit A-4 is a true and correct copy of Minutes of the Board of Adjustment, Panel A from its February 21, 2017 hearing.

7. Attached to this affidavit as Exhibit A-5 is a true and correct copy of a Plaintiff's Original Petition and Petition for Writ of certiorari filed in state district court and which was assigned case number 17-02532 and assigned to the 134th District Court of Dallas County.

8. Attached to this affidavit as Exhibit A-6 Is an Original Answer and Affirmative Defenses filed by the City of Dallas and the City of Dallas Board of Adjustment in case No. 17-02532 in the 134th District Court of Dallas County, Texas.

9. Attached to this affidavit as Exhibit A-7 is a motion for summary judgment (without the documents attached to it) filed by Peak's Addition Home Owner's Association in case No. 17-02532 in the 134th District Court of Dallas County, Texas.

10. Attached to this affidavit as Exhibit A-8 is a true and correct copy of a response to a motion for summary judgment filed by the City of Dallas and the City of Dallas Board of Adjustment in case No. 17-02532 in the 134th District Court of Dallas County, Texas.

11. Attached to this affidavit as Exhibit A-9 is a true and correct copy the final judgment signed by the judge of the 134th District Court of Dallas County, Texas in case No. 17-02532.

12. Attached to this affidavit as Exhibit A-10 is a true and correct copy of a return receipt and letter that was sent by the Peak's Addition Home Owner's Association to Encore Enterprises.

13. Attached to this affidavit as Exhibit A-11 is a true and correct copy of a stop-work notice posted by the City of Dallas at 4217 Swiss Avenue in Dallas, Texas. A copy of this notice was filed in the 134th District Court of Dallas County, Texas in case No. 17-02532.

14. Attached to this affidavit as Exhibit A-12 is true and correct copy of a November 15, 2017 letter from the City of Dallas city attorney's office advising that the City was removing the stop-work order on 4217 Swiss Avenue.

15. Attached to this affidavit as Exhibit A-13 is true and correct copy of EMF Swiss Avenue's Petition in Intervention (without its attached documents) filed in case no. 17-02532, 134th District Court, Dallas County, Texas.

16. Attached to this affidavit as Exhibit A-14 is a true and correct copy of EMF Swiss Avenue's Reply in Support of its Motion to Determine Supersedeas Under TRAP 24.2(a)(3), filed in case no. 17-02532, 134th District Court, Dallas County, Texas.

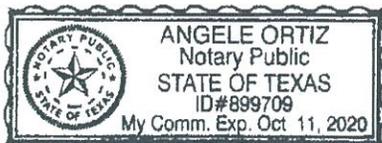
17. Attached to this affidavit as Exhibit A-15 is a true and correct copy of an Application to appeal to the Board of Adjustment, which was submitted by Applicant Jonathan G. Rector, Encore Enterprises, Inc.

18. Attached to this affidavit as Exhibit A-16 is a true and correct copy of a certificate of conversion on file with the Texas Secretary of State for "Encore Enterprises, Inc."

19. Further affiant sayeth not."


R. Michael Northrup

SUBSCRIBED AND SWORN TO BEFORE ME, an officer authorized to administer oaths, on the 9th day of February, 2018, to certify which witness my hand and official seal.




Notary Public in and for the State of Texas

BDA 178-016

Attach A 13 8

Appendix A-1

BDA 178-016

Attach A

PS 9

BDA 167-014

Attach A

PS 15



Permit # 1512041028

City of Dallas

Issue Date: 11/21/2016

Sustainable Construction and Development | Building Inspection Division | 214/948-4480 | www.dallascityhall.com

Address: 4217 SWISS AVE, A1- FLOOR 3 75204

Land-Use Description: MULTI-FAMILY DWELLING

Work Description: NEW CONSTRUCTION MULTI-FAMILY DWELLING WITH PARKNG GA

Value Of Work: \$2,143,600.00

Owner Or Tenant: ENCORE ENTERPRISES
5005 LBJ # 1200
DALLAS TX 75244

Applicant: VICKI RADER

Contractor: MASTERPLAN CONSULTANTS

Business Address: 900 JACKSON ST, STE: #640, DALLAS, TX 75202

Telephone: 214/761-9197 **Fax:** 214/748-7448

Lot: 1A	Block: 10/740	Zoning: PD-298	PDD: 298	SUP:
Historic Dist:	Consv Dist: Bryan Place	Pro Park:	Req Park:	Park Agrmt: N
Dwlg Units: 21	Stories:	New Area: 21436	Lot Area: 135036	Total Area: 21436
Type Const: IIIA	Sprinkler: All	Occ Code: R2	Occ Load:	
Inches Of Removed Trees:				

ALL WORK SUBJECT TO FIELD INSPECTOR APPROVAL. Parking is for entire project.

This document is issued on the basis of information furnished in the application and is subject to the provisions of all governing ordinances, which must be complied with, whether or not herein specified.

THIS DOCUMENT SHALL BE POSTED AT WORK SITE AND IS SUBJECT TO CANCELLATION UPON NOTICE.

BDA 167-014

3-20

Appendix A-2



City of Dallas

A

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 167-014

Data Relative to Subject Property:

Date: NOVEMBER 28, 2016

Location address: 4217 SWISS AVENUE

Zoning District: PD298(Suba 10)

Lot No.: 1B Block No.: 101,740 Acreage: 2.5361 Census Tract: 15.04

Street Frontage (in Feet): 1) 35 154.53 2) 452 670.34 3) 217.67 4) _____ 5) _____ SE27

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): BORDER PLEX SWISS ~~LLC~~ AVENUE, LLC

Applicant: JIM ANDERSON / PEAK'S ADDITION HOA Telephone: 214-620-7870

Mailing Address: 4706 SWISS AVENUE, Zip Code: 75204

E-mail Address: jimandersonpreservation@gmail.com

Represented by: N/A Telephone: _____

Mailing Address: _____ Zip Code: _____

E-mail Address: _____

Affirm that an appeal has been made for a Variance _____, or Special Exception _____, of Appeal decision of an administrative official in the issuance of a building permit

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Issuance of building permit was made in error by city official in that permits were granted which do not conform with residential proximity slope as established in PD 298 and Dallas Development Code 11A.08

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

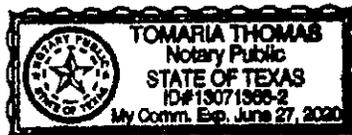
Before me the undersigned on this day personally appeared JIM ANDERSON
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 28 day of NOVEMBER, 2016

(Rev. 08-01-11)



[Signature]
Notary Public in and for Dallas County, Texas

MEMORANDUM OF ACTION TAKEN BY THE BOARD OF ADJUSTMENT

Date of Hearing Feb. 21, 2017

Appeal was--Granted OR Denied

Remarks Affirm the Administrative of Specials decision and deny the appeal.

Chairman [Signature]

Building Official's Report

I hereby certify that Jim Anderson

did submit a request to appeal the decision of an administrative official at 4217 Swiss Avenue

BDA167-014. Application of Jim Anderson representing the Peak's Addition HOA to appeal the decision of an administrative official at 4217 Swiss Avenue. This property is more fully described as Lot 1B, Block 10/740, and is zoned PD-298 (Subarea 10). The applicant proposes to appeal the decision of an administrative official in the issuance of a building permit.

BOARD OF ADJUSTMENT DECISION FILED IN THE OFFICE OF THE BOARD OF ADJUSTMENT THIS THE 22 DAY OF February, 20 17

[Signature] ADMINISTRATOR

Sincerely,

Philip Sikes, Building Official

Appendix A-3



City of Dallas

February 10, 2017

Via Email to BDA Secretary

Board of Adjustment, Panel A
1500 Marilla St., 5BN
Dallas, Texas 75201

Re: City Staff's Brief in the Appeal of building permit issued to 4217 Swiss Avenue

Dear Board Members:

Below is a summary the of key points that will be addressed by City staff in response to Peak's Addition Homeowner's Association's appeal of the issuance of a building permit for 4217 Swiss Avenue.

I. Facts

A building permit was issued, for 4217 Swiss Avenue, Dallas, Texas 75204 ("Site") on November 21, 2016. As part of the application, City staff analyzed the residential proximity slope ("RPS") under PD 298, Bryan Area Special Purpose District, (Exhibit A) and determined that the Site was not subject to the RPS requirements.

On November 28, 2016, Jim Anderson, representing the Peak's Addition Homeowner's Association, filed an application to appeal the issuance of the building permit for the Site. The reason provided for the appeal was the fact that the permit issued for the Site does not require the Site to conform with the RPS requirements of PD 298.

II. Reason for issuance of building permit

Under section 51P-298.109 of PD 298, a structure is limited in height due to the proximity of a residential district. This is the general rule applicable to all subareas within PD 298. In order to determine whether a structure will be limited in height under the RPS regulations, the RPS limitation emanates from the property or properties located either within subarea 6 or any R(A), D(A), or TH(A) districts adjacent to the Bryan Area SPD. This is referred to as the "origination site". Neither Subarea 6 nor any R(A), D(A) or TH(A) districts adjacent to the Bryan Area SPD are proximate to the Site in order to trigger the RPS regulations. However, subarea 9 is located across Peak Street, which is across the street from the Site.

OFFICE OF THE CITY ATTORNEY 1500 Marilla St., Suite 7DN Dallas, TX 75201 PHONE 214-670-3519 FAX 214-670-0622

BDA 167-014

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Board of Adjustment, Panel A
February 10, 2017
Page 2

Under section 51P-298.105 of PD 298, subarea 9 is not subject to the RPS requirements under 51P-298.109. Subarea 9 is subject to the RPS requirements listed in 51A-4.412 (Exhibit B) because as 51P-298.105 states the RPS requirements of R-7.5(A), TH-2(A) and MF-2(A) would be applicable to subarea 9. Under 51A-4.412, the Code states that RPS emanates from properties within the R-7.5(A), TH-2(A) and MF-2(A), making the properties within these zoning categories as the "origination site". However, the RPS emanating from the origination sites from these zoning categories only affect other properties within subarea 9. This is because RPS regulations for subarea 9 are the exception to 51P-298.109, making any regulations for subarea 9 specific to any and all properties *within* subarea 9. Thus, the RPS emanation from subarea 9 would not affect the Site in question.

After understanding and interpreting the Code, the Director was able to make a determination and issue a building permit for the Site without implementing any RPS requirements.

III. Relief

The Director's issuance of a building permit for the Site was proper based on the Dallas City Code and the City requests the Board of Adjustment, Panel A affirm the Director's decision in this matter.

Very truly yours,



Sonia T. Ahmed
Assistant City Attorney
214-670-3950
sonia.ahmed@dallascityhall.com

BDA178-016

Attach A

P3

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Appendix A-4

BOARD OF ADJUSTMENT, PANEL A
PUBLIC HEARING MINUTES
DALLAS CITY HALL, L1FN AUDITORIUM
TUESDAY, FEBRUARY 21, 2017

MEMBERS PRESENT AT BRIEFING: Peter Schulte, vice-chair, Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Casey Burgess, Asst. City Atty., Todd Duerksen, Development Code Specialist, Lloyd Denman, Engineering Asst. Director, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

MEMBERS PRESENT AT HEARING: Peter Schulte, vice-chair, Michael Gibson, regular member, Elizabeth Nelson, regular member, Renee Dutia, regular member and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Kanesia Williams, Asst. City Atty., Casey Burgess, Asst. City Atty, Todd Duerksen, Development Code Specialist, Lloyd Denman, Engineering Asst. Director, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

11:05 A.M. The Board of Adjustment staff conducted a briefing on the Board of Adjustment's February 21, 2017 docket.

1:00 P.M.

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand

upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel January 17, 2016 public hearing minutes.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

MOTION: None

The minutes were approved without a formal vote.

MISCELLANEOUS ITEM NO. 2

FILE NUMBER: BDA167-014(SL)

REQUEST: To reimburse the filing fee submitted in conjunction with a request to appeal the decision of an administrative official.

LOCATION: 4217 Swiss Avenue

APPLICANT: Jim Anderson/Peak's Addition HOA

STANDARD FOR A FEE WAIVER OR A FEE REIMBURSEMENT:

The Dallas Development Code states that the board may waive the filing fee for a board of adjustment application if the board finds that payment of the fee would result in substantial financial hardship to the applicant.

The Dallas Development Code further states:

- The applicant may either pay the fee and request reimbursement at the hearing on the matter or request that the issue of financial hardship be placed on the board's miscellaneous docket for predetermination.
- In making this determination, the board may require the production of financial documents.

Timeline:

November 28, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

January 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

January 6, 2017: 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 1st deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the February 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

February 2, 2017: The applicant emailed the Board Administrator requesting a waiver of the filing fee regarding this application (see Attachment A).

February 2, 2017: The Board Administrator forwarded the code provision as it relates to fee waivers/reimbursements (Sec 51A-1.105(b)(6)) to the applicant, and informed him that typically when this type of request is made, the applicant will submit documentation that shows how payment of the filing fee results in substantial financial hardship to the applicant (i.e. additional financial documents as in but not limited to copies of 1040's, W-4's, bank statements - *all with account numbers redacted*). The Board Administrator also resent the applicant that the deadline to submit information to be included in the Board's docket, and the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence".

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Jim Anderson, 4706 Swiss Ave, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Schulte

I move that the Board of Adjustment **deny** the request to reimburse the filing fee submitted in conjunction with a request to appeal the decision of an administrative official.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA156-109(JM)

BUILDING OFFICIAL'S REPORT: Application of Aaron W. Grieb, represented by John Vecchio of Greenberg Farrow, for a variance to the front yard setback regulations at 13729 N. Central Expressway. This property is more fully described as Lot 1.1, Block B/7763, and is zoned MU-3, which requires a front yard setback of 15 feet. The applicant proposes to construct and/or maintain a structure and provide a 3 foot front yard setback, which will require a 12 foot variance to the front yard setback regulations.

LOCATION: 13729 N. Central Expressway

APPLICANT: Aaron W. Grieb
Represented by John Vecchio of Greenberg Farrow

REQUEST:

A request for a variance to the front yard setback regulations of 12' is made to construct and/or maintain structures for a general merchandise or food store 3,500 square feet or less and motor vehicle fueling station use, part of which would be located 3' from the site's front property line or 12' into the 15' front yard setback along Midpark Road.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that 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:

- The applicant had not substantiated at the time of the February 7th staff review team meeting how the features of the flat, rectangular-shaped, and approximately 23,394

square foot lot precluded him from developing it in a manner commensurate with other developments found on similarly-zoned MU-3 Mixed Use District. There do not seem to be any restrictions hindering the applicant from developing/maintaining the lot with a commensurately-sized structure/use that can comply with setbacks.

BACKGROUND INFORMATION:

Zoning:

<u>Site:</u>	MU-3 Mixed Use District
<u>North:</u>	MU-3 Mixed Use District; SUP No. 1818
<u>East:</u>	IR Industrial Research District
<u>South:</u>	IR Industrial Research District
<u>West:</u>	MU-3 Mixed Use District

Land Use:

The subject site is currently a motor vehicle fueling station. To the immediate north is a general merchandise or food store 100,000 square feet or more use. North Central Expressway lies to the east and south with an office use across the expressway. A restaurant without drive-in or drive-through service exists to the west.

Zoning/BDA History:

1. BDA156-108, Property located at 13729 N. Central Expressway (the subject site)
On November 15, 2016, the Board of Adjustment Panel A granted 1) a special exception to the landscape regulations to construct and maintain a structure and provide an alternate landscape plan; and, 2) a special exception to the off-street parking regulations for 2 spaces.
The case report stated that the request was made in conjunction with constructing and maintaining a 1,200 square foot building for a general merchandise or food store 3,500 square feet or less and a motor vehicle fueling station.

GENERAL FACTS/STAFF ANALYSIS:

- This request focuses on allowing associated structures for a proposed general merchandise or food store 3,500 square feet or less and motor vehicle fueling station use to encroach up to 12' into the 15' front yard setback along Midpark Road. The subject site has two front yards and is required to provide 15' of unobstructed space from the front property line along both North Central Expressway, and Midpark Road.
- The request is to construct and maintain a 1,200 square foot structure for a proposed general merchandise or food store 3,500 square feet or less and motor

vehicle fueling station uses on a site that is developed with a motor vehicle fueling station use. Associated structures including a dumpster and enclosure, and a light post are proposed to be located 3' and 4' from the front property line along Midpark Road, respectively or 12' (dumpster and enclosure) and 11' (light post) into the site's 15' front property line along Midpark Road. No encroachments are proposed within the North Central Expressway front yard.

- The subject site is located at the northeast intersection of Midpark Road and North Central Expressway.
- Lots zoned an MU-3 Mixed Use District are required to provide a minimum front yard setback of 15'.
- The subject property is currently in compliance.
- A site plan has been submitted identifying the total proposed square footage of the main building to be 1,200. The applicant has indicated that they are unable to provide for the two structures in question while accounting for other elements of the site design including safe vehicular traffic, loading/unloading of dumpsters and fuel tankers, and desired signage.
- According to calculations taken by the Board Senior Planner from the submitted site plan, the addition of a dumpster, enclosure, and light post within the Midpark Road front yard setback accounts for about 12 percent of the total square footage of the required front yard along Midpark Road, or 200 square feet.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the front 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 R-7.5(A) 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 R-7.5(A) zoning classification.
- If the board were to grant the variance request, and impose the submitted site plan as a condition, the structures in the front yard setback would be limited to what is shown on this document- which in this case is a portion of a structure located as close as 3' from the site's front property line along Midpark Road (or 12' into the 15' front yard setback).

TIMELINE:

- August 25, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- October 10, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- October 14, 2016: The Senior Planner emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the October 26th deadline to submit additional evidence for staff to factor into their analysis; and the November 4th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the criteria/standard that the board will use in their decision to approve or deny the request; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- November 1, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for November public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- November 21, 2016: The Board of Adjustment Panel A voted unanimously to hold this case to February 21, 2017.
- February 1, 2017: The applicant submitted new evidence, provided in "Attachment A."
- February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Bassam Ziada, 3100 N. Verona Lane, Fayetteville, AR

APPEARING IN OPPOSITION: No one

MOTION: Sibley

I move that the Board of Adjustment, in Appeal No. **BDA 156-109**, on application of Aaron W. Grieb, represented by John Vecchio,, **deny** the variance to the front yard setback 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: Dutia

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-013(SL)

BUILDING OFFICIAL'S REPORT: Application of Nathaniel Mangum for special exceptions to the fence standards and visual obstruction regulations at 5314 Yolanda Lane. This property is more fully described as Lot 7, Block E/5518, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a 7 foot 2 inch high fence in a required front yard, which will require a 3 foot 2 inch special exception to the fence standards, and to locate and maintain items in required visibility triangles, which will require special exceptions to the visual obstruction regulations.

LOCATION: 5314 Yolanda Lane

APPLICANT: Nathaniel Mangum

REQUESTS:

The following requests have been made on a site that is developed with a single family home:

1. A request for a special exception to the fence standards of up to 3' 2" is made to maintain a fence (a 5' 7" high open metal picket fence with 5' 7" high posts, and two arched open metal picket gates ranging in height from 5' 7" to 7' 2") higher than 4' in height in the site's required front yard.
2. Requests for special exceptions to the visual obstruction regulations are made to maintain portions of the aforementioned open metal picket fence in four 20' visibility triangles at the two driveways into the site.

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.

STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:

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 (fence standards):

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.

STAFF RECOMMENDATION (visual obstruction special exceptions):

Denial

Rationale:

- Staff concurred with the Sustainable Development Department Assistant Director Engineering who recommends that these requests be denied.
- Staff concluded that requests for special exceptions to the visual obstruction regulations should be denied because the applicant had not substantiated how the existing 5' 7" high open metal picket fence with 5' 7" high posts in four 20' visibility triangles at the two driveways into the site from the street do not constitute a traffic hazard.

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single family district 1 acre)
North: R-1ac(A) (Single family district 1 acre)
South: R-1ac(A) (Single family district 1 acre)
East: R-1ac(A) (Single family district 1 acre)
West: R-1ac(A) (Single family district 1 acre)

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 (fence standards):

- This request for a special exception to the fence standards focuses on maintaining a 5' 7" high open metal picket fence with 5' 7" high posts, and two arched open metal picket gates ranging in height from 5' 7" to 7' 2" on a site developed with a single family home.
- The subject site is zoned R-1ac(A). While R-1ac(A) zoning requires a 40' front yard setback, the subject site has a 65' required front yard because of a platted building line.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The applicant has submitted a site plan and an elevation of the proposal/existing fence in the front yard setback with notations indicating that the proposal reaches a maximum height of 7' 2".
- The following additional information was gleaned from the submitted site plan:
 - The proposal is represented as being approximately 200' in length parallel to the street and approximately 65' perpendicular to the street on the east and west sides of the site in the required front yard.
 - The fence proposal is represented as being located approximately on the front property line or approximately 15' from the pavement line.
- One single family lot fronts the existing fence, a lot that has no fence in the front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area approximately 300 feet east and west of the site and noted no other fences that appeared to be above 4' in height and located in a front yard setback.
- As of February 10, 2017 no letters have been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exception to the fence standards of 3' 2" will not adversely affect neighboring property.
- Granting this special exception of 3' 2" with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal/existing fence exceeding 4' in height in the front yard setback to be maintained in the location and of the heights and materials as shown on these documents.

GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exceptions):

- The requests for special exceptions to the visual obstruction regulations focus on maintaining portions of a 5' 7" high open metal picket fence with 5' 7" high posts in four 20' visibility triangles at the two driveways into the site.
- 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 applicant submitted a site plan and an elevation representing a 5' 7" high open metal picket fence in the four, 20' visibility triangles at the two driveways into the site.
 - The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet along with a photo (see Attachment A). The review comment sheet was marked "Recommends that this be denied" with the following additional comment: "The fence and gate create a public traffic hazard".
 - The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to maintain portions of a 5' 7" high open metal picket fence located in four 20' visibility triangles at the two driveways into the site do not constitute a traffic hazard.
 - Granting these requests with the condition that the applicant complies with the submitted site plan and elevation would require the items in the visibility triangles to be limited to and maintained in the locations, height and materials as shown on these documents.

Timeline:

- November 22, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 6, 2017: 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 1st.deadline to submit additional evidence for staff to factor into their analysis; and the February 10th 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.
- February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the

BDA 178-016
Attach A Pg. 28

Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

February 10, 2017: The Sustainable Development Department Assistant Director Engineering submitted a review comment sheet along with a photo (see Attachment A). The review comment sheet was marked "Recommends that this be denied" with the following additional comment: "The fence and gate create a public traffic hazard".

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Nathaniel Mangum, 5314 Yolanda Lane, Dallas, TX
Lindsay Mangum, 5314 Yolanda Lane, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Nelson

I move that the Board of Adjustment in Appeal No. **BDA 167-013** hold this matter under advisement until **March 21, 2017**.

SECONDED: Sibley

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

FILE NUMBER: BDA167-014(SL)

BUILDING OFFICIAL'S REPORT: Application of Jim Anderson/Peak's Addition HOA to appeal the decision of an administrative official at 4217 Swiss Avenue. This property is more fully described as Lot 1B, Block 10/740, and is zoned PD-298 (Subarea 10). The applicant proposes to appeal the decision of an administrative official in the issuance of a building permit.

LOCATION: 4217 Swiss Avenue

APPLICANT: Jim Anderson/Peak's Addition HOA

February 21, 2017 Public Hearing Notes:

- The applicant submitted additional written documentation to the Board at the public hearing.

REQUEST:

The submitted application states "appeal decision of an administrative official in the issuance of a building permit" and "issuance of building permit was made in error by city official in that permits were granted which do not conform with residential proximity slope as established in PD 298 and Dallas Development Code".

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

- Site:** PD 298 (Subarea 10) Tract 2, Planned Development District
- North:** PD 298 (Subareas 9 & 10) Planned Development District
- South:** PD 298 (Subarea 10) Tract 2, Planned Development District
- East:** PD 298 (Subareas 9 & 10) Planned Development District
- West:** PD 298 (Subareas 9 & 10) Planned Development District

Land Use:

The subject site is undeveloped. The areas to the north, south, east and west are developed with mix of uses.

Zoning/BDA History:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Miscellaneous Item 2, BDA167-014, Property at 4802 4217 Swiss Avenue (the subject site) | <p>On February 21, 2017, the Board of Adjustment Panel A will consider reimbursing the filing fee made in conjunction with this application.</p> |
|---|--|

GENERAL FACTS/STAFF ANALYSIS:

- The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

- The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment E). This information included Building Permit No.1512041028 – the permit the applicant identified for the appeal of the Director of Sustainable Development and Construction decision pertaining to 4217 Swiss Avenue.

Timeline:

- November 28, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 6, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- January 6, 2017: 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 1st deadline to submit additional evidence for staff to factor into their analysis (with a notation that staff does not form a recommendation on this type of application); and the February 10th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- January 30, 2017: The Building Inspection Senior Plans Examiner/Development Code Specialist forwarded 20 building permits that had been issued for the development (see Attachment A).
- February 1, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, and the Assistant City Attorney to the Board.

Staff determined at this meeting that one permit needed to be identified as the record upon which the appeal is based.

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

February 10, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment C).

February 10, 2017: The Assistant City Attorney assisting the Building Official submitted additional information to staff beyond what was submitted with the original application (see Attachment D).

February 10, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment E). This information included Building Permit No.1512041028 – the permit the applicant identified for the appeal of the Director of Sustainable Development and Construction decision pertaining to 4217 Swiss Avenue.

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR:

Wendy Millsap, 4530 Reiger Ave., Dallas, TX
 Jim Andeson, 4706 Swiss, Dallas, TX
 Larry Offett, 6038 Bryan Pkwy, Dallas, TX
 Jesse Moleno, 132 N. Peak St., Dallas, TX
 Evelyn Montgomery, 4603 Swiss, Dallas, TX
 Philip Canady, 4301 Sycamore St., Dallas, TX

APPEARING IN OPPOSITION: William Cothrum, 900 Jackson St., Ste 640, Dallas, TX

APPEARING FOR THE CITY: Sonia Ahmed, 1500 Marilla, 7DN, Dallas, TX
 Duante Rushton, 320 E. Jefferson, Dallas, TX

MOTION #1: Schulte

I move that the Board of Adjustment suspend its rules and accept the evidence that is being presented today.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION #2: Schulte

Having fully reviewed the decision of the building official of the City of Dallas in Appeal No. BDA 167-014, on application of Jim Anderson/Peak's Addition HOA, and having evaluated the evidence pertaining to the property and heard all testimony and facts

supporting the application, I move that the Board of Adjustment **affirm** the decision of the building official and **deny** the relief requested by the applicant **without prejudice**.

SECONDED: Gibson

AYES: 4 – Schulte, Gibson, Dutia, Sibley

NAYS: 1 - Nelson

MOTION PASSED: 4 – 1

FILE NUMBER: BDA167-020(SL)

BUILDING OFFICIAL’S REPORT: Application of Robert Reeves, represented by Robert Reeves and Associates, Inc., for a special exception to the landscape regulations at 100 Crescent Court. This property is more fully described as Lot 1A, Block 2/948, and is zoned PD-193 (HC), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 100 Crescent Court

APPLICANT: Robert Reeves
Represented by Robert Reeves and Associates, Inc.

REQUEST:

A special exception to the landscape regulations was originally made to amend certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining an approximately 450 square foot outside pavillon to a restaurant use within the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).

However, on February 9th, the applicant submitted a letter to staff (see Attachment B) requesting a delay of this request until the Board of Adjustment Panel A March 21st public hearing to allow additional time to create a revised alternate landscape plan that would represent a new patio for a restaurant use which may have an impact on trees proposed and conveyed on the revised alternate landscape plan that was submitted on February 1st.

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section.

When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Denial

Rationale:

- The applicant had not established at the time of the February 7th staff review team meeting how the special exception will not compromise the spirit and intent of the PD 193 landscape requirements.

BACKGROUND INFORMATION:

- Site: PD 193(HC) (Planned Development, Heavy Commercial)
- North: PD 193(HC) (Planned Development, Heavy Commercial)
- South: PD 193 (PDS 334) (Planned Development, Planned Development)
- East: PD 193(PDS 64) (Planned Development, Planned Development)
- West: PD 193(PDS 74) (Planned Development, Planned Development)

Land Use:

The subject site is developed with a mixed use development (The Crescent). The areas to the north, east, south, and west are developed with a mix of land uses.

Zoning/BDA History:

1. BDA156-076, Property at 100, Crescent Court (the subject site)

On August 16, 2016, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the following conditions: 1) compliance with the submitted alternate landscape plan is required; and 2) All landscape improvements in each landscape area on the property as shown on the submitted revised landscape plan must be completed within 18 months of Board action, and landscape improvements for areas B and D as shown on the submitted landscape plan must be completed before the final building inspections of each permit in areas B and D, respectively.

The case report stated the request was made to amend certain features shown on an alternate landscape plan that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the

- 2. BDA145-037, Property at 100, Crescent Court (the subject site)

subject by Board of Adjustment Panel A on March 17, 2015: BDA145-037. The subject site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent). Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on November 15, 2016).

On March 17, 2015, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted alternate landscape plan as a condition.

The case report stated the request was made to replace an existing drive-through bank facility with an approximately 3,000 square foot restaurant, and not fully providing required landscaping on a site is currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent) (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on June 28, 2016).

- 3. BDA 134-042, Property at 100, Crescent Court (the subject site)

On June 24, 2014, the Board of Adjustment Panel A granted a request for special exception to the landscape regulations and imposed the submitted revised landscape plan as a condition.

The case report stated the request was made to construct and maintain an approximately 1,400 square foot addition to an approximately 1,450,000 square foot mixed use development (The Crescent), and not fully providing required landscaping. (Note that the Board of Adjustment Panel A granted the applicant's request to waive the two year time limitation to refile a new application on this site on January 20, 2015).

- 4. BDA 81-239A, Property at 100, 200, 300, 400, and 500 Crescent Court (the subject site)

On February 14, 1988, the Board of Adjustment granted a request for "a 599 parking space variance and eliminate the set-aside land provisions subject to a TMP program as per the memo from Ken Melston, Manager of Transportation Engineering Services.

5. BDA 81-239, 239, Property at 2304 Cedar Springs Road (the subject site)

On October 13, 1981, the Board of Adjustment granted a 599 parking space variance, subject to a parking study to be conducted approximately one year after initial completion of the project

GENERAL FACTS/ STAFF ANALYSIS:

- This request originally focused on amending certain features shown on an alternate landscape plan (including but not limited to constructing and maintaining an approximately 450 square foot outside pavilion to a restaurant use within the mixed use development) that was imposed as a condition in conjunction with a request for a special exception to the landscape regulations granted on the subject by Board of Adjustment Panel A on August 16, 2016: BDA156-076 on the site currently developed as an approximately 1,450,000 square foot mixed use development (The Crescent).
- However, on February 9th, the applicant submitted a letter to staff (see Attachment B) requesting a delay of this request until the Board of Adjustment Panel A March 21st public hearing to allow additional time to create a revised alternate landscape plan that would represent a new patio for a restaurant use which may have an impact on trees proposed and conveyed on the revised alternate landscape plan that was submitted on February 1st.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist submitted a memo with regard to this application (see Attachment C). This memo stated the following:
 - The Chief Arborist supports the proposed revisions to the alternate landscape plan for 100 Crescent Court which was submitted for the February hearing. The revisions sustain a plan which does not violate the spirit and intent of the ordinance.
 - However, based on the applicant's statement of February 9, there may yet be additional revisions to the alternate landscape plan based on proposed future additions on a building site which is undergoing a period of general modification. Any additional revisions to the landscape plan should be completed before permits are submitted for the future addition. The ordinance requires that any change to floor area, and net increase of impervious surfaces, will require future landscape compliance under this ordinance. The applicant has successfully attempted to report all new adjustments or errors to be updated on the revised alternate landscape plans to date. The arborist office only requests the most efficient means to have a complete landscape plan for the purpose of permitting.

The Chief Arborist will support the applicant, staff, and the board to help achieve the appropriate outcome.

- The applicant has the burden of proof in establishing that the special exception will not compromise the spirit and intent of Section 51P-193-126: "Landscape, streetscape, screening, and fencing standards".
- The applicant has requested that action on this application be delayed until the Board of Adjustment Panel A March 21st public hearing to allow additional time to create a revised alternate landscape plan that would represent a new patio for a restaurant use which may have an impact on trees proposed and conveyed on the revised alternate landscape plan that was submitted on February 1st.

Timeline:

- December 15, 2016: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- January 6, 2017: 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."
- January 6, 2017: The Board Administrator emailed the following information to the applicant:
- 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 1st deadline to submit additional evidence for staff to factor into their analysis; and the February 10th 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 1, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).
- February 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for February public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Assistant Director, the Sustainable Development Department Assistant Director Engineering, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, the Sustainable Development and

Construction Department Senior Planner, and the Assistant City Attorney to the Board.

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

February 9, 2017: The applicant submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment B).

February 10, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment C).

BOARD OF ADJUSTMENT ACTION: FEBRUARY 21, 2017

APPEARING IN FAVOR: Robert Reeves, 900 Jackson St., #160, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Dutia

I move that the Board of Adjustment in Appeal No. BDA 167-020 hold this matter under advisement until **March 21, 2017**.

SECONDED: Nelson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

MOTION: Sibley

I move to adjourn this meeting.

SECONDED: Gibson

AYES: 5 – Schulte, Gibson, Nelson, Dutia, Sibley

NAYS: 0 -

MOTION PASSED: 5 – 0(unanimously)

3:25 P. M.: Board Meeting adjourned for **February 21, 2017**.

CHAIRPERSON

BOARD ADMINISTRATOR

BDA 178-016

Attach A PG. 38

BOARD SECRETARY

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



BDA178-016

Attach A Pg. 39

Appendix A-5

BDA178-016
Attachment A ps. 40

Tonya Pointer

Cause No. DC-17-DC-17-02532

<p>PEAK'S ADDITION HOME OWNER'S ASSOCIATION,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>VS.</p> <p>CITY OF DALLAS and BOARD OF ADJUSTMENT FOR THE CITY OF DALLAS,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>§</p>	<p>IN THE DISTRICT COURT OF THE</p> <p style="padding-left: 40px;">_____ JUDICIAL DISTRICT</p> <p style="padding-left: 40px;">DALLAS COUNTY, TEXAS</p>
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**PLAINTIFF'S ORIGINAL PETITION AND PETITION FOR WRIT OF
CERTIORARI**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff and file this Original Petition and Petition for Writ of Certiorari complaining of Defendants City of Dallas, Texas; and the Board of Adjustment of the City of Dallas, Texas (collectively "Defendants") and for cause of action would respectfully show the Court the following:

**1.
PARTIES**

1.1. Plaintiff Peak's Addition Home Owners Association ("PAHA") is a 501(c)(4) corporation, incorporated in the State of Texas. Peak's Addition Home Owner's Association is located in Old East Dallas and represents approximately 800 properties inclusive of 700 residential properties in Peak's Addition. The boundaries of the neighborhood represented are Haskell to Fitzhugh and Live Oak to Columbia.

1.2. Defendant City of Dallas is a municipal corporation duly organized and

existing under the laws of the State of Texas. THE CITY OF DALLAS may be served by serving its MAYOR, MIKE RAWLINGS, DALLAS CITY HALL, 1500 MARILLA, ROOM 5EN, DALLAS, TEXAS 75201.

1.3. Defendant Board of Adjustment is a duly established board of adjustment created under the laws of the State of Texas. THE BOARD OF ADJUSTMENT may be served through its SECRETARY, TRENA LAW, DALLAS CITY HALL, 1500 MARILLA, ROOM 5BN, DALLAS, TEXAS 75201.

2. **JURISDICTION**

2.1. This Court has subject matter jurisdiction because this action is an appeal and a petition for writ of certiorari pursuant to Texas Local Government Code § 211.011(a).

2.2. Venue is proper in Dallas County, Texas because the cause of action occurred in Dallas County and the cause of action involves land located in Dallas County.

3. **DISCOVERY CONTROL PLAN**

3.1. Discovery in this case is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff seeks at least \$100,000 and non-monetary relief.

4. **FACTS**

4.1. This appeal relates to a challenge brought by Peak's Addition Home Owner's

Association to the decision of City of Dallas Board of Adjustment to uphold a decision of the city building official that a proximity slope would not be applied to property located at 4217 Swiss Avenue in Dallas, Texas, which is located within the boundaries of the Peak's Addition Home Owner's Association and located within Dallas Planned Development District 298 (PD 298).

4.2. On or about April 22, 2016, members of the Peak's Addition Home Owner's Association met with Dallas City Councilman Adam Medrano and a City of Dallas Assistant Building Official regarding construction that was planned for 4217 Swiss Avenue in Dallas, Texas, in subdistrict 10 of PD 298. At that time, the Assistant Building Official advised those present that a residential proximity slope applied to the planned construction site such that the maximum height of the proposed structure could not exceed approximately 26 feet.

4.3. Subsequently, Peak's Addition Home Owner's Association learned that the City of Dallas Director of Sustainable Development and Construction, after talking with representatives of Encore Enterprises—the owner of the subject property—reversed the earlier decision of the building official and concluded that no residential proximity slope applied to the planned construction site such that the height of the proposed structure could reach 62 feet or five stories.

4.4. On or about November 21, 2016, the City of Dallas issued multiple permits to Encore Enterprises in connection with the proposed construction at 4217 Swiss Avenue in Dallas Texas. The Dallas Development Code, Section 51A-4.703(a)(2) allows any aggrieved person to appeal a decision of an administrative official to the board

when that decision concerns issues within the jurisdiction of the board. *See also* TEX. LOC. GOV'T CODE § 211.010(a)(1). Peak's Addition Home Owner's Association timely filed an appeal to the Dallas Board of Adjustment from the issuance of these permits because the permits did not require the applicant to conform to residential proximity slopes emanating from the neighboring properties located in PD 298.

4.5. The Dallas Development Code gives the Dallas Board of Adjustment the power to hear and decide appeals from decisions of administrative officials made in the enforcement of the zoning ordinances of the city, and to interpret the intent of the zoning district map when uncertainty exists because the actual physical features differ from those indicated on the zoning district map and when the rules set forth in the zoning district boundary regulations do not apply. Dallas Dev. Code § 51A-3.102(d); *See also* TEX. LOC. GOV'T CODE § 211.009(a)(1). Pursuant to Section 51A-3.102(d), Panel A of the Dallas Board of Adjustment heard the appeal of Peak's Addition Home Owner's Association on February 21, 2017. In review of a decision of the administrative official, the board has the same authority as an administrative official and it may reverse or affirm, in whole or in part, or modify the administrative official's decision or determination from which an appeal is taken and make the correct decision or determination. TEX. LOC. GOV'T CODE § 211.009(b). In its review of the administrative official's decision, the Board of Adjustment voted to uphold the decision of the Director of Sustainable Development and Construction with respect to the inapplicability of the residential proximity slope.

4.6. While a board of adjustment may uphold the decision of an administrative

official, it must do so in accordance with the rules and standards established to promote compliance with the intent of the subject ordinance. In its review of an administrative official's decision, the Board is required to make "the correct" decision or determination. TEX. LOC. GOV'T CODE §211.009(b).

4.7. Texas Local Government Code Section 211.011 allows any person aggrieved by a decision of the Board of Adjustment to appeal that decision to a district court. Peak's Addition Home Owner's Association is aggrieved and does hereby appeal and asserts that the decision of the Board of Adjustment is illegal in that it renders an incorrect interpretation and application of the residential proximity slope. The Board of Adjustment in this case failed to make the "correct" decision or determination. In particular and without limitation, the Board reached the astounding conclusion that a city-wide residential proximity slope, i.e., Dallas Development Code § 51A-4.412, does not apply and project upward and outward "from every site of origination" to an infinite extent. Plaintiff submits that the Board's conclusion was erroneous and illegal in part and in whole. Plaintiff requests that this Court reverse the decision of the Board of Adjustment and render judgment that the 3-to-1 proximity slope found in Dallas Development Code Section 51A-4.412 applies and projects upward and outward from subtract 9 of PD 298 and to an infinite extent such that it extends into subtract 10 of PD 298.

4.8. As a result of the illegal act of the Board of Adjustment, Plaintiff's member/constituents' property values have been diminished.

5.

WRIT OF CERTIORARI

5.1. Plaintiff realleges and incorporates paragraphs 1.1 through 4.8 above as though fully set forth herein.

5.2. Pursuant to § 211.011 of the Texas Local Government Code, Plaintiff filed a petition for writ of certiorari in order to appeal the Board of Adjustment's decision of February 21, 2017.

5.3. All conditions precedent to granting the writ have occurred.

6.
DUE PROCESS

6.1. Plaintiff realleges and incorporates paragraphs 1.1 through 5.3 above as though fully set forth herein.

6.2. The City's and the Board of Adjustment's unfettered, arbitrary, capricious and unreasonable actions and decisions violate the due process clause of the Texas Constitution, Article I, Section 19. The portions of the Dallas Development Code and PD 298 pertinent to this case have clear and attainable standards that the BOA ignored and violated. As such, Plaintiff has not been afforded due process under the Texas Constitution.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court order a writ of certiorari to issue herein to the BOA of the City of Dallas, Texas and the City of Dallas, Texas; that such writ order a review of the decision of the Board of Adjustment and prescribe the time within which return must be made and service upon the undersigned attorneys; that such writ direct the Board of Adjustment to return certified or sworn copies of all the original papers acted upon by it in reaching

its decision, together with transcripts of the testimony and proceedings received at the February 21, 2017 hearing; that upon hearing, the Court enter judgment reversing the Board of Adjustment and declaring its decision void; and grant Plaintiff such other and further relief at law or in equity to which it may show itself justly entitled.

Respectfully submitted,

By: 

R. Michael Northrup
State Bar No. 15103250

COWLES & THOMPSON, P.C.
901 Main Street, Suite 3900
Dallas, Texas 75202
(214) 672-2000 (Telephone)
(214) 672-2020 (Telecopier)
mnorthrup@cowlesthompson.com

**ATTORNEYS FOR PLAINTIFF,
PEAK'S ADDITION HOMEOWNER'S
ASSOCIATION**

VERIFICATION

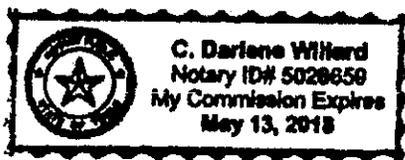
State of Texas §
 §
County of Dallas §

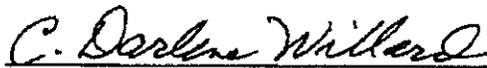
BEFORE ME, the undersigned notary public, on this day personally appeared Jim Anderson, and upon his oath stated that he has read the foregoing petition and that he has personal knowledge of the facts stated, and that the facts stated therein are true and correct.



Jim Anderson

SUBSCRIBED AND SWORN BEFORE ME on March 2, 2017, to certify which witness my hand and official seal.





Notary Public In and For the State of Texas

Appendix A-6

BDA 178-016
Attach A M. 50

3. To the extent that Plaintiff has stated a viable cause of action, the City hereby demands a jury trial.

**IV.
PRAYER**

4. WHEREFORE, the City requests that Court affirm the decision of the Board in whole; that it have judgment of the Court that Plaintiff takes nothing by this suit; that Plaintiff be denied their requests for damages; and that the City be granted such other and further relief as to which it may show itself entitled.

Respectfully submitted,

CITY ATTORNEY OF THE CITY OF DALLAS

Larry E. Casto
City Attorney

/s/ Sonia T. Ahmed
SONIA T. AHMED
Assistant City Attorney
Texas State Bar No. 24082605
sonia.ahmed@dallascityhall.com

CHRISTOPHER C. GUNTER
Senior Assistant City Attorney
Texas State Bar No. 24025750
christopher.gunter@dallascityhall.com

7DN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone: 214-670-3519
Facsimile: 214-670-0622

**ATTORNEYS FOR DEFENDANT
CITY OF DALLAS**

CERTIFICATE OF SERVICE

I certify that on March 23, 2017, a copy of the foregoing document was served in accordance with the Texas Rules of Civil Procedure upon the following counsel of record for the Plaintiff:

R. Michael Northrup
Cowles & Thompson, P.C.
901 Main Street, Suite 3900
Dallas, Texas 75202
Counsel for Plaintiff

/s/ Sonia T. Ahmed
SONIA T. AHMED

BDA 178-016

Attach A

PS. 52

Appendix A-7

slope.” The Dallas Development Code defines a “residential proximity slope” as an imaginary plane projected upward and outward from a site of origination across other surrounding properties. The angle and extent of the projected plane act to impose a limitation on the height of the properties across which it projects. See Dallas Dev. Code § 51A-4.412(b). The intent of such a provision is to protect residential-zoned properties from development of surrounding properties with buildings out of scale to the limited residential heights. BDA-0036, 0045, 0099, 0171.

The City’s ultimate interpretation of its codes and ordinances concluded that there was no residential proximity slope that applied to the development site in question. The City bases its interpretation upon language *not contained* in the Dallas Development Code. The City’s interpretation violates black-letter law governing construction of municipal ordinances.

C. Factual background

The interpretation at issue relates to property located in City of Dallas Planned Development District (PD) 298, also known as the Bryan Area Special Purpose District.¹ More particularly, the City issued a building permit for property located at 4217 Swiss Avenue in Dallas, Texas, which is within PD 298.

The record shows there were conflicting interpretations of the Dallas ordinances at issue by the City staff within the Dallas Sustainable Development and Construction department. Indeed, the City’s only witness at the Board of Adjustment hearing below originally concluded that the residential proximity slope applied. BDA-0231. Two other senior employees in the same department (Megan Wimmer and Frances Estes) also

¹ A planned development district is specialized zoning applicable to a specific area to “provide flexibility in the planning and construction of development projects by allowing a combination of land uses developed under a uniform plan *that protects contiguous land uses* and preserves significant natural features.” Dallas Development Code § 51A-4.702(a)(1) (emphasis added).

agreed that the residential proximity slope applied. BDA-0042, 0047, 0230, 0231.² But this appeal relates to the City of Dallas' subsequent "official" interpretation, which concluded that the residential proximity slope does not apply, thereby allowing for a building permit to be issued that permitted construction that would exceed the height limit that would otherwise apply if the property were subject to a residential proximity slope.

Initially, Peak's Addition got opinions from a senior City building official saying that a residential proximity slope applied. BDA-0042, 0047, 0230, 0231. Subsequently two City senior building officials met with the interested stakeholders and Dallas Councilman Adam Medrano, and also concluded that the proposed building was subject to a residential proximity slope, which limited the height of the proposed structure. BDA-0042, 0047, 0048, 0050, 0162, 0230. The developer of the site was so informed. BDA-0042. Subsequently, the developer and its representatives met separately with other, unnamed City administrative officials. Following that closed meeting, the City issued a building permit for construction of a building that would exceed the restriction imposed by a residential proximity slope. BDA-0042, 0050. Peak's Addition then learned that a different administrative official for the City had concluded that a residential proximity slope does not apply to the site in question. BDA-0042, 0050-0051, 0230.

Peak's Addition challenged this later administrative official's interpretation of the applicable ordinances by filing an appeal with the Dallas Board of Adjustment, as permitted by State law and Dallas ordinance. Tex. Local Gov't Code § 211.009(a)(1) ; Dallas Dev. Code §§ 51A-3.102(d)(1), 51A-4.703(a)(2). More particularly, Peak's

² The record also contains a drawing obtained from the City's records for the subject property in which it appears that a City staffer sketched a residential proximity slope that would have limited the height of the proposed development. BDA-0232.

Addition challenged the administrative official's issuance of a building permit that permitted a building that exceeds a height that would be limited by a residential proximity slope.

At the hearing, the City did not present testimony from the building official regarding the basis of his interpretation. Instead, the City relied upon a hearsay presentation from one of its assistant city attorneys as to the building official's interpretation. See BDA-0063-0064, 0070. The City's assistant city attorney related that the residential proximity slope "would only apply to other properties within Subarea 9," and would not carry over to properties located in Subarea 10 of PD 298. BDA-0067-69. The Vice-chair of the Board inquired what language the building official relied upon to reach that conclusion, and the assistant city attorney replied that there was no specific language:

Vice-Chair: What's the language difference that allows you guys [the City] to interpret that it only goes inwards, not three hundred and sixty?

Ms. Ahmed: And I guess there's no -- there is specific language. It's -- it's the actions of the ones who developed the code. It's the fact that here's the general regulations and these general regulations would not apply to Subarea 9, these regulations within -- that we've carved out for Subarea 9 -- and it's not -- it's not specific language...

BDA-0071; see also BDA-0085 ("Ms. Ahmed: We -- we understand that there is not language that says Subarea 9 does not apply to Subarea 10").

Dallas City administrator Daunte Rushton, who originally concluded that a residential proximity slope applied, BDA-0076, 0231, testified at the hearing. He explained that Dallas Development Code Section 51A-4.074 states that a residential proximity slope cannot be utilized unless it is explicitly listed within the PD, and he concluded that because Subarea 10 (of PD 298) does not list a residential proximity slope, a residential proximity slope cannot be applied. BDA-0075.

The comments of the Board of Adjustment board members conflicted with themselves and between them. The Vice-Chair's stated reasoning conflicted. At one point, he concluded that "the code isn't specific either way," but then he concluded that "it's not that I like it, but it's the – it's the way the code is written." BDA-0097; *see also* BDA-0099 (Vice-Chair: You're right. It would be nice if the code was – was clear."), BDA-0109 ("I feel like our hands were tied with the way the code was written...").

Board member Sibley stated that the City should clarify one way or the other, and he observed that a district court could provide the Peak's Addition the relief needed. BDA-0107.

Board member Gibson stated that he was sympathetic to Peak's Addition but felt like "the standards present something different." BDA-0108.

Board member Nelson disagreed, stating that she felt that "it's pretty clear that the RPS applies in this case..." BDA-0109.

The vote was taken, and the five-member panel of the Board of Adjustment voted 4 to 1 to deny Peak's Addition's challenge to the building official's interpretation. BDA-0110, 0126-0127.

Peak's Addition filed this appeal to the district court from the Board of Adjustment's decision.

II. **Grounds for Summary Judgment**

As a matter of law, the Board of Adjustment for the City of Dallas abused its discretion upholding the decision of the administrative official because the interpretation of the Dallas Development Code and PD 298 is legally incorrect.

III. Standards of Review

In an appeal from a municipal zoning board of adjustment, the sole question before the Court is the legality of the Board of Adjustment's order. *City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006). A party challenging a zoning board's order establishes that the order is illegal by demonstrating a clear abuse of discretion. *Id.* A zoning board abuses its discretion if it acts without reference to any guiding rules and principles or clearly fails to analyze or apply the law correctly. *Id.*; see *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (original proceeding). The abuse-of-discretion review standard is akin to a *de novo* standard when the court reviews legal conclusions made by the zoning board. *Vanesko*, 189 S.W.3d at 771. Because the question here is one involving construction of municipal ordinances—the issue is a legal conclusion for the Court. The construction of such ordinances is appropriate for summary judgment treatment.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Southwestern Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002). The following well-established standards must be applied in determining whether summary judgment is proper:

1. The movant has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law;
2. In deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movants is taken as true; and
3. Every reasonable inference must be indulged in favor of the non-movants and any doubts resolved in their favor.

Nixon v. Mr. Property Mgmt. Co., 690 S.W.2d 546, 548-49 (Tex. 1985). Applying this standard, Peak's Addition is entitled to summary judgment.

IV.

Summary Judgment Evidence

As support for this motion for summary judgment, Peak's Addition relies on the record returned and filed with this Court pursuant to the Court's writ of certiorari on April 21, 2017. Peak's Addition hereby notifies the Court and the Defendants of its intent to rely upon said record.

For the Court's convenience, referenced excerpts of pages of the Board of Adjustment record are attached to this motion as Exhibit A with appropriate hyperlinks to the record excerpts.

Peak's Addition also attaches a copy of PD 298 to this motion as Exhibit B.

Exhibit C are selected sections of the Dallas Development Code, and Exhibit D is Dallas City Ordinance No. 22352, establishing Historic Overlay District No. 72—the Peak Suburban Addition Historic District.

V.

Summary Judgment is Proper

A. Interpretation of statutes (and ordinances) is a question of law.

Because the question before the Court involves the construction of municipal ordinances, the question before the Court is a pure question of law. Statutory construction is a question of law. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 357 (Tex. 2000). Principles of statutory construction also govern construction of ordinances. *Bd. Of Adjustment of City of San Antonio v. Wende*, 92 S.W.3d 424, 430 (Tex. 2002).

A court's primary objective in statutory construction is to give effect to the legislature's intent. *See State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). Thus, the Court must begin with the language of the ordinance itself. *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 20 (Tex. 2016). Where the text is clear, the text is

determinative of the legislative body's intent unless enforcing the plain language would produce absurd results. *See id*; *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). Every word in a statute is to be read as if it were deliberately chosen and presume that the words excluded from a statute are done so purposefully. *See Cameron v. Terrell & Grant, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981); *City of Port Isabel v. Pinnell*, 207 S.W.3d 394, 409 (Tex. App.—Corpus Christi 2006, no pet.). A court may only insert additional words or requirements into a statutory provision if it is necessary to give effect to the legislature's (i.e., city council's) clear intent. *Pinnell*, 207 S.W.3d at 409.

Here, the language in the planned development district ordinance is clear and determinative and it does not produce an absurd result. The City was wrong to go beyond the plain language.

If the Defendants' interpretation of the ordinances is wrong, then by definition the Board of Adjustment has abused its discretion because there is no discretion to determine what the law is. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (original proceeding); *see also City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006) (holding that standard of review is more akin to *de novo* when reviewing legal questions). Moreover, if the City staff's interpretation of the ordinances is wrong, then the building permits issued on the basis of that interpretation are void. *Amarillo v. Stapf*, 101 S.W.2d 229, 232 (Tex. 1937); *Swain v. Board of Adjustment*, 433 S.W.2d 727, 733 (Tex. Civ. App.—Dallas 1968, writ ref'd n.r.e.).

B. A Residential Proximity Slope applies to limit the height of development.

1. What is a "Residential Proximity Slope"?

Dallas Development Code Section 51A-4.412 establishes a "Residential Proximity Slope" ("RPS") that originates on properties zoned as residential and projects from the

boundaries of those properties across surrounding properties at a specified angle and acts to limit the height of buildings on the surrounding properties. More particularly, Dallas Development Code Section [51A-4.412\(b\)](#) provides as follows:

(b) Residential proximity slope defined. The residential proximity slope is a plane projected upward and outward from every site of origination as defined in Subsection (a). Specifically, the slope is projected from the line formed by the intersection of:

- (1) the vertical plane extending through the boundary line of the site of origination; and
- (2) the grade of the restricted building or structure.

Dallas Dev. Code [§ 51A-4.412\(b\)](#). The **angle** and the **extent** of the projection of the RPS depends upon the residential zoning category of the property from which the RPS originates. To wit:

The angle and extent of projection of the residential proximity slope depends on the zoning category of the site of origination as follows:

ZONING CATEGORY	ANGLE OF PROJECTION	EXTENT
R, R(A), D, D(A), TH, and TH(A)	18.4° (1 to 3 slope)	Infinite.
CH, MF-1, MF-1(A), MF-2, and MF-2(A)	45° (1 to 1 slope)	Terminates at a horizontal distance of 50 feet from the site of origination.

Dallas Dev. Code [§ 51A-4.412\(c\)](#). In sum, for properties zoned as R, R(A), D, D(A), TH, and TH(A), the slope is a 1 to 3 slope, and the extent of the projection is infinite. For

other multi-family residential zoning, the slope is 1 to 1 and the extent of the projection terminates 50 feet from the site of origination.³

2. There are properties with residential zoning that trigger a Residential Proximity Slope.

There is no dispute that there are residential properties located in the subject planned development district—PD298—that have one of the residential zoning categories listed in the chart in Dallas Development Code Section 51A-4.412(c). The diagram on page BDA-0138 of the record shows the subject property (4217 Swiss Avenue) shaded with horizontal black lines drawn through it. Opposite of that property to the Northwest are properties located in subarea 9 of PD298, with base zoning of R-7.5(A), TH-2(A), and MF-2(A). BDA-0138, 0223. As noted in the chart in the previous discussion, these properties would have RPS's that emanate from those properties' boundaries and project across other surrounding properties. The only distinction between the properties to the Northwest of 4217 Swiss Avenue is the angle and extent of the projection of the slope. The properties zoned R-7.5(A) and TH-2(A) use a 1 to 3 slope angle and project to infinity. The property zoned MF-2(A) (caddy-corner to 4217 Swiss) would use a 1 to 1 slope and terminate 50 feet from the boundary of the MF-2(A) zoned property. See Dallas Dev. Code § 51A-4.412(c).

³ "Site of origination" is defined to refer to a property zoned as residential. Dallas Dev. Code § 51A-4.412(a)(3).

3. The RPS applies—with apologies to Buzz Lightyear—to infinity and beyond (which includes the development site at issue).

Under the terms of Dallas Development Code Section 51A-4.412, the RPS extends from all four boundaries or sides of the site of origination, meaning that it extends in all four directions. In the case of the properties zoned R-7.5(A) and TH-2(A), the angle of the slope is the most restrictive at 1 to 3 and would project out to infinity. Dallas Dev. Code § 51A-4.412(c).

As illustrated on pages BDA-0223 and BDA-0234, an RPS running from the Southwest boundaries of the properties zoned R-7.5(A) and TH-2(A) would limit the subject property to approximately 36 feet in height.

But notwithstanding internal sharply divided opinions, the City and the Board of Adjustment concluded that the RPS does not pierce the boundary that divides subarea 9 and subarea 10 within PD 298. The basis for this conclusion is the central issue here.

4. Does the Development Code’s RPS apply to properties in the planned development district (i.e., PD 298)?

The answer to this is an unequivocal “yes.” The Dallas Development Code provides that the RPS established by Section 51A-4.412 governs development in a planned development to the extent it is incorporated into the regulations of the PD ordinance. Dallas Dev. Code § 51A-4.702(a)(8). The City acknowledged at the Board of Adjustment hearing that PD 298 incorporates the RPS from the Development Code. See BDA-0065-0066, 0238-0239.

The base zoning of 4301 Sycamore and 4303 Swiss Avenue is R-7.5(A) and the base zoning of 4304 Sycamore is TH-2(A). When the Dallas City Council adopted Ordinance No. 22352 establishing Historic Overlay District No. 72, also known as the Peak’s Suburban Addition Historic District, the council expressly specified that “this historic overlay district shall not affect the existing underlying zoning classification of

the Property, which shall remain subject to the regulations of the underlying zoning district.” Dallas Ordinance No. 22352, § 2; *see also* § 7 (“Chapter 51A, ‘PART II OF THE DALLAS DEVELOPMENT CODE,’ of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.”).

Likewise, when the Dallas City Council passed PD298, the council incorporated the existing base zoning into PD298. [Section 298.105](#) provides that “[t]he zoning district category applicable to each tract in Subarea 9 is shown on Exhibit 298B”, and [Exhibit 298B](#) shows that the R-7.5(A), TH-2(A), and MF-2(A) zoning categories are retained. BDA-0165, 0224.

With respect to the incorporation of the RPS into the planned development district, PD298 provides for its incorporation in multiple places. [Section 51P-298.103\(b\)](#) provides that “the definitions, interpretations, and other provisions of Chapter 51A apply to the Bryan Area SPD unless expressly modified by these conditions.” [Section 51P-298.105](#), which is titled “Subarea 9 Conditions” states “Subarea 9 is subject to the regulations governing the R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR districts of Chapter 51A.” *See also* Dallas Dev. Code [§ 51A-4.702\(a\)\(6\)](#) (stating that PD’s adopted after March 1, 1987, are governed by the regulations in Chapter 51A unless expressly altered by the PD). Dallas Development Code [Section 51A-4.412](#) is plainly one of the regulations in Chapter 51A that applies to these types of zoning districts.

In short, PD298’s plain language makes the RPS from the Dallas Development Code applicable both generally to the PD and specifically to subarea 9.

Notably, [Section 51P-298.109](#) is titled “Residential Proximity Slope” and it sets out a *modified* RPS that applies within Subarea 6 of the PD (and to certain districts adjacent to the PD). Specifically, [Section 51P-298.109](#) provides as follows:

A 1:3 residential proximity slope emanates from the property line of any property within Subarea 6 or any R(A), D(A), or TH(A) district adjacent to the Bryan Area SPD. A 1:1 residential proximity slope emanates for a distance of 50 feet from the property line of any MF(A) district or planned development district for multifamily uses adjacent to the Bryan Area SPD. If any portion of a structure is over 26 feet in height, that portion may not be located above the applicable residential proximity slope.

Exceptions:

(1) The residential proximity slopes does not apply to limit the height of structures located in Subarea 7.

(2) Structures listed in Section 51A-4.408(a)(2) may project through the slope to a height not to exceed the maximum structure height, or 12 feet above the slope, whichever is less. (Ord. Nos. 20049; 24914).

Thus, the RPS in Section 51P-298.109 contains a modified version of the RPS contained in Dallas Development Code Section 51A-4.412. This modified version of the RPS emanates *only from properties located in Subarea 6 or from any R(A), D(A), or TH(A) district that is adjacent to the Bryan Area SPD.* By its own terms, Section 51P-298.109 does not purport to modify the RPS applicable to Subarea 9 in Section 51P-298-105, but in case there is any doubt, Section 51P-298.105 expressly states that “The conditions contained in Sections 298.103 and 298.106 *through 298.117 do not apply to Subarea 9.*” (emphasis added).

The terms of Section 51P-298.105 and its modified RPS are important here because the City references this section in its analysis as to why the RPS does not project from the residential properties in subarea 9 toward the 4217 Swiss Avenue property.

5. The City’s “official” interpretation violates black-letter rules of construction.

The City takes an interpretive approach that violates established controlling rules for interpreting statutes and ordinances. Notably, however, the City does agree that Dallas Development Code Section 51A-4.412 applies to the contiguous properties in

Subarea 9.

Prior to the Board of Adjustment hearing, an assistant city attorney wrote a letter to the Board of Adjustment setting out “a summary of key points” to be addressed “by City staff” at the Board of Adjustment hearing. In summarizing the “[r]eason for issuance of [the] building permit,” the letter begins by referencing PD 298’s Section 51P-298.109, and states that this section is “the general rule applicable to all subareas within PD 298.” BDA-238. Section 51P-298.109 **does not** state that it is the general rule nor does it state that it is applicable to “all subareas within PD 298. The recited analysis erroneously adds words and phrasing to the ordinance. *See San Antonio v. Berry*, 48 S.W. 496, 497 (Tex. 1898) (holding that meaning of ordinances should be determined from the words used). The words contained in this section do not require any additional words or phrasing to give them meaning.

The words in [Section 51P-298.109](#) expressly state: “A 1:3 residential proximity slope emanates from the property line of any property within Subarea 6 or any R(A), D(A), or TH(A) district adjacent to the Bryan Area SPD.” BDA-0247. Thus, by its clear, express terms, Section 51P-298.109 establishes a rule specific to “any property within Subarea 6” and to any R(A), D(A), or TH(A) district that is adjacent to the Bryan Area Special Purpose District. To say that it establishes a general rule or that it is applicable to *all subareas* adds verbiage not found in the section. Thus, the City’s recited analysis violates the fundamental rule that requires that any interpretation start with the language actually used. *See also Mills v. Brown*, 316 S.W.2d 720, 723 (Tex. 1958) (holding that the court has no right to add words to an ordinance).

Moreover, the City staff’s addition of such verbiage to [Section 51P-298.109](#) brings the City’s interpretation in conflict with [Section 51P-298.103\(b\)](#), which provides that “the definitions, interpretations, and other provisions of Chapter 51A apply to the Bryan

Area SPD unless expressly modified by these conditions.” See also Dallas Dev. Code § 51A-4.702(a)(6) (making Chapter 51A general rule except as varied by the express language of the PD). The City staff’s addition of its verbiage also brings the City’s interpretation in conflict with Section 51P-298.105, which states “Subarea 9 is subject to the regulations governing the R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR districts of Chapter 51A.” Thus, the introduction of language not found in the ordinance not only violates the black-letter rule of statutory interpretation to look to the text actually used, but it also creates internal conflict, thereby demonstrating that the words the City staff’s analysis adds are not consistent with the intended interpretation. By utilizing an interpretation that creates internal conflict, the City staff’s interpretation violates the black-letter rule that one should avoid interpretations that create such conflicts. *Lira v. Greater Houston German Shepherd Dog Rescue, Inc.*, 488 S.W.3d 300, 304 (Tex. 2016).

The City staff’s reported analysis then goes on to agree with Peak’s Addition’s analysis that Section 51P-298.105 provides that properties in subarea 9 are not subject to the RPS set out in section 51P-298.109, but that such properties *are subject to* Dallas Development Code Section 51A-4.412. BDA-239. After stating this, the City staff’s analysis then takes another unfortunate and erroneous turn when it offers that the RPS emanating from sites within subarea 9 “only affect other properties within subarea 9.” BDA-0239. The stated explanation returns to the City staff’s originally flawed analysis, stating that “[t]his is because RPS regulations for subarea 9 or the exception to 51P-298.109, making any regulations for subarea 9 specific to any and all properties *within* subarea 9.” BDA-0239 (emphasis in original). As noted above, since the City staff’s characterization of Section 51P-298.109 as a “general rule” “applicable to all subareas” and Section 51P-298.105 as an “exception” violates black-letter rules of construction and

creates inconsistencies, the repetition of those concepts here is no less erroneous. In addition, the analysis introduces a completely new concept into RPS theory that is foreign to the very definitions of RPS that *are expressly* incorporated into PD298.

As noted, the purpose of an RPS is to protect the property from which it emanates from out-of-scale developments built on contiguous or nearby properties. BDA-0036, 0045, 0099, 0171. To that end, in defining residential development slope, the Dallas Development Code defines the RPS as a plane projected upward and outward extending through the boundary line of the site of origination; and runs through the grade of the restricted building or structure. See Dallas Dev. Code § 51A-4.412(b). In this case, the slope is a 1:3 slope and goes to infinity. Dallas Dev. Code § 51A-4.412(c). The City staff's analysis proffers that the RPS emanates only from the site of origination and to other properties "within subarea 9." But there is no language in PD298 that expressly states this restriction that the City offered—as the City freely admitted at the Board of Adjustment hearing. It's completely made up.

As the Vice-chair of the Board of Adjustment observed, RPS in other places in the city emanates from the property line and projects across *all* neighboring properties. Accordingly, he asked where in the code does it provide that *this* particular RPS does *not* project in all directions from the property line. BDA-0068-0071. The assistant City attorney answered, "it's not specific language." BDA-0071. Instead, she fell back on the City staff's interpretation of Section 51P-298.109 as stating a "general rule" for all areas and Section 51P-298.105 as creating a "special exception" or "carve out." BDA-0071-0072.

Moreover, given that the construction of an ordinance is intended to give effect to legislative intent and purpose, it is notable that subarea 9 is the area consisting of the historic overlay district. One of the key, *expressed* purposes of such historic districts is

“to maintain a harmony between new and historic structures so that they will be **compatible** in **scale**, form, color, **proportion**, texture and material.” Dallas Dev. Code § 51A-4.501(a)(16) (emphasis added). Likewise, it is an express purpose of a PD to “protect[] contiguous land uses.” Dallas Dev. Code § 51A-4.702(a)(1). Using made-up rules to construe PD 298 so as to prevent an RPS from emanating outside of the historic district (subarea 9) runs against the purpose of protecting such districts from incompatible, out-of-scale, out-of-proportion new structures and it runs against the stated purpose of a PD.

VI. CONCLUSION AND PRAYER

The City staff’s interpretation of the inapplicability of the Residential Proximity Slope’s emanation into subarea 10 of PD298 interjects language not found in PD298 and admits that there is no language in PD298 that expressly precludes the RPS from projecting from subarea 9 into subarea 10. The City’s staff’s interpretation violates black-letter law for how ordinances are interpreted. The Board of Adjustment divided (4-1) vote to affirm the City staff was equally erroneous on this statutory interpretation question.

Accordingly, Peak’s Addition requests that the Court grant this motion for summary judgment, reverse the Dallas Board of Adjustment’s decision thereby making the permit issued in reliance upon the City staff’s interpretation void, and render judgment that the 1:3 Residential Proximity Slope in Dallas Development Code Section 51A-4.412 emanates from the residential properties in subarea 9 and projects to the southwest across subarea 10 and to infinity. Peak’s Addition requests such further and additional relief to which it has shown itself entitled.

Respectfully submitted,

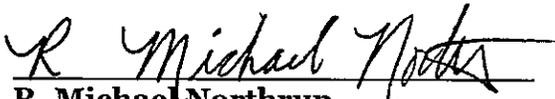
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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned certifies that on the 20th day of July, 2017, a true and correct copy of the foregoing document was delivered via electronic delivery to the counsel of record listed below.


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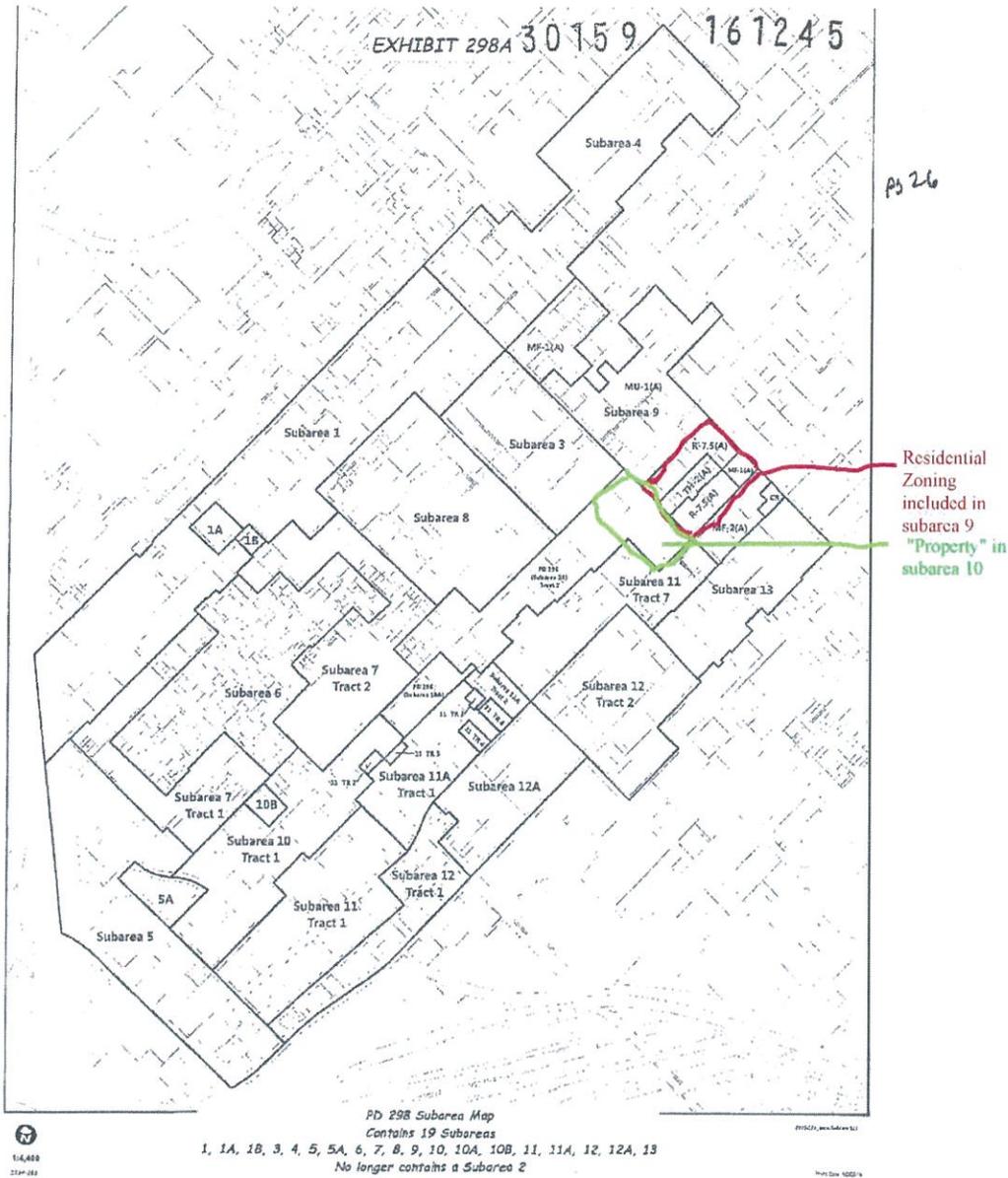
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Attach A

pg. 71

Appendix A-8

area. PD 298 designates all parts of the district with “subarea” designations. The designations of subareas allow for a clearer understanding of the allowable development and its conditions within those subareas.



At the appeal hearing before the Board, the Plaintiff argued that the building to be constructed on the Property (shown on the diagram above in subarea 10) was to be restricted in height because of the RPS. The City argued that the RPS did not apply to the Property because the RPS emanates from property lines in subarea 9 and only applies to properties within subarea

CITY'S AND BOARD OF ADJUSTMENT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

9. The City also argued that the RPS requirements in the Dallas Development Code would not apply to PD 298 unless such RPS requirements are explicitly listed within the PD ordinance, and in this case no RPS applies to subarea 10 of PD 298. In a 4 to 1 decision, the Board affirmed the City building official's decision.

In its motion for summary judgment, Plaintiff asserts that the Board abused its discretion by misinterpreting the RPS regulations applicable to the Property, which is located in subarea 10 of PD 298. The Plaintiff claims that the Board's decision rests upon an incorrect interpretation of the ordinance -- that the conditions in subarea 9 listed in PD 298 only apply within subarea 9. The City asserts that the Board did not abuse its discretion in interpreting the ordinance and upholding the building official's interpretation. The Board's decision is presumed to be valid and the Plaintiff has failed to meet its burden of showing the Board's action was illegal or an abuse of discretion. A board's decision is not rendered illegal because conflicting evidence was presented. The law on this point is clear: the RPS requirements applicable to subarea 9 (the residentially zoned property across from the Property) are not the same requirements applicable to a property within subarea 10 (the location of the Property).

This Court should deny the Plaintiff's motion for summary judgment.

**CITY'S EVIDENCE IN SUPPORT OF ITS RESPONSE
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This is an appeal of an administrative decision of the Board and this response is based on the record of the Board's action, which has previously been filed in this case and which is incorporated by reference. For the Court's convenience, excerpts from the record cited have been attached to this response.

UNDISPUTED FACTS

The following facts are undisputed:

1. On November 28, 2016, Plaintiff filed an application to appeal the issuance of a building permit for the Property because it “was made in error by the City official in that permits were granted which do not conform with residential proximity slope as established in PD 298 and Dallas Development Code.” COD-BDA-0274.
2. PD 298 contains 19 different subareas. COD-BDA-0261 and COD-BDA-0269.
3. The Property is located within “subarea 10” of PD 298. COD-BDA-0274.
4. The residentially zoned property across the street from the Property, which Plaintiff contends triggers the RPS, is located within “subarea 9” of PD 298. COD-BDA-0287.
5. Subarea 9 only contains properties zoned as different residential uses. COD-BDA-0287.
6. Section 51P-298.109 of the Dallas Development Code contains the conditions for the RPS within PD 298. COD-BDA-247.
7. Section 51P-298.105 of the Dallas Development Code contain the conditions applicable to properties within subarea 9 of PD 298. COD-BDA-0242.
8. The Board affirmed the building official’s decision on February 21, 2017. COD-BDA 0110.

STANDARD OF REVIEW

To succeed on a traditional motion for summary judgment on specific grounds, a movant must establish that there is no genuine issue of material fact so that the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991). If a movant carries its burden, the burden of proof shifts to the nonmovant to provide controverting summary judgment evidence. *Casso v. Brand*, 779 S.W.2d 551, 556 (Tex. 1989). The nonmovant must present a written response with evidence as to why the movant’s motion for summary judgment should be denied. Tex. R. Civ. P. 166a(c); *Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979).

A plaintiff's motion for summary judgment should be denied when the movant fails to prove as a matter of law all the elements of its cause of action. *See Clear Creek Basin Auth.*, 589 S.W.2d at 678. When the material facts are undisputed, a nonmovant may defeat a motion for summary judgment by establishing that the movant's legal position is unsound. *Pagosa Oil & Gas, L.L.C. v. Marrs & Smith Prtshp.*, 323 S.W.3d 203, 215 (Tex. App.—El Paso 2010, pet. denied).

A municipal board of adjustment's decision is reviewed for illegality under an abuse of discretion standard. *City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006). The Board's decision is presumed to be legal and the burden of establishing illegality rests on Plaintiff. *See Bd. of Adjustment for City of San Antonio v. Kennedy*, 410 S.W.3d 31, 34 (Tex. App.—San Antonio 2013, no pet.) (quoting *City of Alamo Heights v. Boyar*, 158 S.W.3d 545, 549 (Tex. App.—San Antonio 2005, no pet.)). To establish illegality, the Plaintiff must show a clear abuse of discretion by the Board. The Texas Supreme Court has explained that a district court sits "only as a court of review," reviewing only the legality of a zoning board of adjustment's order, and to establish that a board's order is illegal, a petitioner must present a "very clear showing of abuse of discretion." *Vanesko*, 189 S.W.3d at 771.

Plaintiff states in its motion that this Court may review the Board's construction and interpretation of the applicable ordinances because construction of an ordinance is a question of law. (Plaintiff's Motion at 7). When a trial court reviews whether a board abused its discretion, however, it should not place itself in the position of the board and substitute its decision for the board's. *City of San Angelo v. Boehme Bakery*, 190 S.W.2d 67, 70 (Tex. 1945). This is true even if the court concludes that the "overwhelming preponderance of the evidence is against the Board's decision." *Currey v. Kimple*, 577 S.W.2d 508, 512 (Tex. Civ. App.—Texarkana 1978), writ ref'd n.r.e.). Instead, the court must discern whether a lack of evidence or no evidence at all was

presented to board so that reasonable minds could not have reached the decision which the board reached. *Id.*

ARGUMENT AND AUTHORITIES

A. The Board is empowered to interpret the applicable ordinances.

Plaintiff argues the Board's decision is an abuse of discretion because it is not within the Board's discretion to interpret the law. (Plaintiff's Motion at 8). This explanation of the Board's authority is incorrect. A board of adjustment is a "quasi-judicial body [and] its orders should be upheld on any possible theory of the law, regardless of the reasons given by the board in rendering its decision." *Murmur Corp. v. Bd. of Adjustment of City of Dallas*, 718 S.W.2d 790, 799 (Tex. App.—Dallas 1986, writ ref'd n.r.e.). The district court cannot hold that the Board acted illegally or abused its discretion merely because it does not agree with the Board's decision. *Bd. of Adjustment of City of Corpus Christi v. Flores*, 860 S.W.2d 622, 627 (Tex. App.—Corpus Christi 1993, writ denied). "A board of adjustment must act within the strictures set by the legislature and the city council and may not stray outside its specifically granted authority." *City of San Antonio v. El Dorado Amusement Co.*, 195 S.W.3d 238, 250 (Tex. App.—San Antonio 2006, pet. denied). "A board of adjustment derives its power from both the statute and the city ordinance establishing it and defining its local function and powers." *Id.* The Board's authority to review an administrative official's decision is recited in Texas Local Government Code § 211.009(a)(1) and in the Dallas Development Code § 51A-3.102(d)(1). Such review includes reviewing the administrative official's application of an ordinance, even if the record reflects conflicting interpretations of the ordinance.

B. The record supports the Board's order.

Plaintiff argues in its motion that the general RPS provision in Chapter 51A of the Dallas Development Code, § 51A-4.412, applies and should limit the height of the Property to 36 feet. In

support of this argument, Plaintiff cites provisions of PD 298 that it claims incorporate the general RPS requirement, including sections 51P-298.103(b), 51P-298.105, and 51P-298.109. Yet Plaintiff fails to mention section 51P-298.110(a), the “maximum heights” provision of PD 298, which clearly establishes a maximum height of 100 feet for properties in subarea 10. And although Plaintiff cites section 51A-4.702(a)(8) of the code as support for its argument that the general RPS is incorporated into PD 298, it paraphrases instead of quotes that provision, thereby omitting three words that make it clear that the RPS in section 51A-4.412 is not, in fact, incorporated.

The record contains substantial evidence supporting the building official’s and the Board’s decisions. In deciding whether permits for the Property should be issued, the building official determined that conditions within PD 298 apply to the Property, and, specifically, that conditions for subarea 10 apply because of the development site’s location within subarea 10. COD-BDA-0032. Section 51P-298.110(a) of the Dallas Development Code lists the maximum height restrictions applicable to subarea 10 as 100 feet, unless an exception applies. COD-BDA-0247-0248. The exceptions are listed in Section 51P-298.107(b) and 51P-298-109. *Id.* Conditions in 51P-298.107(b), dealing with commercially compatible single family uses, do not apply to the Property. Plaintiff does not argue that 107(b) applies. Additionally, the RPS requirements in section 51P-298.109, titled “residential proximity slope,” do not apply to the Property, given its location in subarea 10. *Id.* In fact, both parties agree that section 51P-298.109 does not apply to the Property. Thus, the maximum height for buildings in subarea 10 is 100 feet, because no exceptions apply to subarea 10. The building official’s decision reflects this analysis, and the Board’s order affirms it.

The record also supports the decision that PD 298’s conditions for subarea 9 do not operate to limit the height of the Property as Plaintiff suggests. Subarea 9 of PD 298 has its own special conditions which are referenced in Section 51P-298.105. That section states that subarea 9 is

subject to regulations governing the R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR zoning districts of Chapter 51A. That makes sense, because subarea 9 is residential. Section 51P-298.105 also states that the conditions contained within 298.103 and 298.106 - 298.117 do not apply to subarea 9. COD-BDA-0242. These zoning districts -- R-7.5(A), TH-2(A), MF-2(A), MU-1, MU-1-D, and CR -- have their own RPS requirements under Dallas Development Code Chapter 51A providing that the "site of origination" emanates from the property lines of the properties zoned. Section 51P-298.105 does not specifically say that the RPS requirement in Chapter 51A is incorporated. Thus, the record supports the Board's decision that 298.105 only contains conditions applicable to properties developed within subarea 9. COD-BDA-0262-0263.

The Board did not abuse its discretion because its interpretation of the relevant code provisions was supported by substantial evidence presented to affirm the building official's decision. Subarea 9 is not subject to the general RPS regulations within PD 298. COD-BDA-0242. Instead, PD 298 operated to modify the general RPS in Chapter 51A. The Board thus agreed with the building official's decision that RPS emanating from property lines in subarea 9 only apply to properties within subarea 9.

As the Court in *Zamora v. City of Austin* stated, if the Board is presented with two alternative and acceptable interpretations of a code provision, and evidence supporting both, it does not abuse its discretion by agreeing with one interpretation. *Zamora v. City of Austin*, 03-02-00377-CV, 2002 WL 31769039, at *3 (Tex. App.—Austin Dec. 12, 2002, pet. denied). The abuse of discretion standard allows this court to analyze whether there was sufficient evidence to support the Board's decision. Here, the record shows the Board did not abuse its discretion.

C. The Board's interpretation of the applicable ordinances was legally correct and supported by the rules of statutory construction.

Though the Plaintiff argues that the City's interpretation is incorrect, a plain reading of the applicable ordinances supports the Board's interpretation here. Further, although review of the Board's analysis of a question of law is akin to *de novo* review, a reviewing district court still may not substitute its judgment for that of the board's. *Vanesko*, 189 S.W.3d at 772.

Two provisions of Chapter 51A of the Dallas Development Code support the Board's order. First, section 51A-4.408(a)(3) provides that the "maximum building height requirements in a planned development district are controlled by the planned development district regulations." Thus, the maximum height requirements in PD 298 would be controlled by PD 298's provisions. Second, section 51A-4.702(a)(8) provides that the "residential proximity slope defined in Section 51A-4.412 governs development in a PD *only* to the extent that it is *expressly* incorporated into the *height* regulations of the PD ordinance." The plain meaning of this provision is that, for the general RPS in Chapter 51A to apply within PD 298, there must have been specific language in the PD 298 ordinance incorporating it. There is no such express incorporation in PD 298. Plaintiff cited this provision in its brief at page 11, but omitted the three italicized words, and those three words make the meaning clear. This reading of the provision is consistent with the rule of construction that when a general statutory provision conflicts with a specific provision dealing with the same subject matter, the specific provision controls. *See GMC Superior Trucks, Inc. v. Irving Bank & Trust Co.*, 463 S.W.2d 274, 276 (Tex. Civ. App.—Waco 1971, no writ).

The City's interpretation of the applicable provisions of PD 298 is also consistent with the primary rules of statutory construction: to give effect to the legislative intent by enforcing the plain meaning of the text. Section 51P-298.103(b) states that "the definitions, interpretations, and other

provisions of Chapter 51A apply to the Bryan Area SPD *unless expressly modified by these conditions.*” (emphasis added). While Plaintiff argues that this provision means that the RPS in Chapter 51A is incorporated, the City’s interpretation is that the conditions in PD 298 do “expressly modify” the provisions in Chapter 51A, because PD 298 has its own residential proximity slope provision (§ 51P-298.109). Indeed, the whole point of the SPD is to place modified conditions specific to properties and development within that area. Thus, the City’s interpretation of this provision is harmony with, not in conflict with, the other provisions of PD 298 and Chapter 51A.

Section 51P-298.105 is titled “Subarea 9 Conditions” and states that subarea 9 is subject to certain zoning regulations in Chapter 51A. Again, the provision is silent with respect to the residential proximity slope – it is not specifically included. Plaintiff argues that this provision means that all such zoning regulations applicable to certain zoning categories, including the RPS, are “pulled in” to PD 298 through this provision. The City’s reading of the provision is that the plain meaning of the title and text demonstrate that it is meant to list conditions that apply only to properties within subarea 9. The Board agreed with that interpretation.

Section 51P-298.109 is the residential proximity slope provision for PD 298. By its own terms, it does not apply to subarea 9 or subarea 10 of the PD. It also does not *expressly* incorporate the RPS from Chapter 51A, which must mean, if § 51A-4.702(a)(8) is to be read in harmony with it, that the RPS in § 51A-4.412 does not apply. Plaintiff argues that this provision is simply a limitation on the general RPS in § 51A-4.412. But Plaintiff’s interpretation is contradictory to the purpose of a planned development, which is to create specific rules and conditions to apply to the area for which the PD was specifically created and enacted. The City’s interpretation allows all provisions to be read in harmony with each other.

Finally, § 51P-298.110(a), which Plaintiff does not discuss, provides the maximum height for subarea 10 of PD 298: 100 feet. If the general RPS was intended to apply to subarea 10, it would have been *expressly* incorporated into the *height* requirements in this provision, according to § 51A-4.702(a)(8). It was not.

The City's reading of the applicable Chapter 51A provisions, together with the applicable PD 298 provisions, is legally correct and provides support for the Board's order. Plaintiff has failed to demonstrate that the Board's interpretation of the ordinance was an abuse of discretion of discretion. Plaintiff's motion for summary judgment should therefore be denied.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the City requests that Plaintiff's Motion for Summary Judgment be denied and that the City be granted any further relief to which it be entitled.

Respectfully submitted,

CITY ATTORNEY OF THE CITY OF DALLAS
Larry E. Casto

/s/ Sonia T. Ahmed

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Telephone - (214) 670-3519
Telecopier - (214) 670-0622

ATTORNEYS FOR DEFENDANTS
CITY OF DALLAS AND BOARD OF
ADJUSTMENT FOR THE CITY OF DALLAS

CITY'S AND BOARD OF ADJUSTMENT'S RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

- Page 11

CERTIFICATE OF SERVICE

I certify that on August 15, 2017, a copy of the foregoing document was served in accordance with the Texas Rules of Civil Procedure upon the following counsel of record for the Plaintiff:

R. Michael Northrup
Cowles & Thompson, P.C.
901 Main Street, Suite 3900
Dallas, Texas 75202
Counsel for Plaintiff

/s/ Sonia T. Ahmed
SONIA T. AHMED

BDA 178-016
Attachment A
B. B4

Appendix A-9

CAUSE NO. DC-17-02532

PEAK'S ADDITION	§	IN THE DISTRICT COURT
HOME OWNER'S ASSOCIATION,	§	
Plaintiff,	§	
	§	
v.	§	134TH JUDICIAL DISTRICT
	§	
CITY OF DALLAS and BOARD OF	§	
ADJUSTMENT FOR THE CITY OF	§	
DALLAS,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

FINAL JUDGMENT

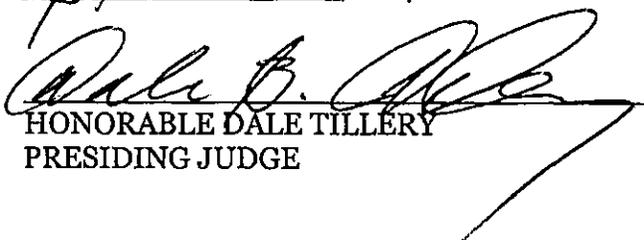
Before the Court is Plaintiff's Motion for Summary Judgment and Defendants' Motion for Summary Judgment. Having considered the Motions, the respective responses and replies, the arguments of counsel, the pleadings and briefs, and the summary judgment evidence, ~~the Court concludes that a residential proximity slope emanates from the residential properties in subarea 9 of PD 298 and projects to the southwest across subarea 10.~~

IT IS, THEREFORE, Ordered, Adjudged, and Decreed that Plaintiff's Motion for Summary Judgment is *Granted* and the decision of the Dallas Board of Adjustment upholding the interpretation of the building official is *Reversed*.

IT IS FURTHER Ordered that Defendants' Motion for Summary Judgment is *Denied*.

This judgment disposes of all parties and issues and is a final, appealable judgment.

Signed this 11 day of September, 2017.


HONORABLE DALE TILLERY
PRESIDING JUDGE

FINAL JUDGMENT

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Att. A
Pg. 86

Appendix A-10

000514-00054

PS. 87

1 Complete Items 1, 2, and 3.
 1 Print your name and address on the reverse so that we can return the card to you.
 Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 Mr. Patrick Barber
 Encore Enterprises
 5005 LBJ Fwy, #1200
 Dallas, TX 75244



9590 9402 2878 7069 4497 07

2 Article Number (Transfer from service label)
 7016 9370 0002 9480 1595 Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-8053

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 [Signature] 8/27

D. Is delivery address different from form 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation®
 - Signature Confirmation Restricted Delivery

USPS TRACKING#



9590 9402 2878 7069 4497 07



First-Class Mail ...
 Postage & Fees Paid
 USPS
 Permit No. G-10

United States Postal Service

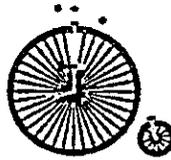
* Sender: Please print your name, address, and ZIP+4® in this box*

Peak's Addition HOA
 4706 Swiss Ave
 Dallas, TX 75204

Sent regular & certified mail
 1-712405

7016 1370 0002 1480 1595

BDA 078-016
Attach A
PS 88



EST. 1855

PEAK'S ADDITION
the original east dallas community

Encore Enterprises
5005 LBJ Freeway
Suite 1200
Dallas, TX 75244
ATTN: Mr. Patrick Barber

Dear Mr. Barber:

I am writing to you on behalf of the Peak's Addition Homeowner's Association. As you might be aware, the property that you are developing at 4217 Swiss Avenue borders a historic district. The Homeowner's Association has challenged the building permit that was issued by the City to you for the development because we believe the proposed height of your development is subject to the Residential Proximity slope found in Dallas Development Code § 51A-4.412. As you may also know, we initially challenged the City's position on whether the Residential Proximity Slope applies by filing an appeal to the Dallas Board of Adjustment. That appeal was heard on February 21st. However, after the Board of Adjustment sided with the City, the Homeowner's Association filed a further appeal by filing suit in state district court. That proceeding is still pending and awaiting an outcome.

We have noticed that construction is continuing on the property, and have concerns that perhaps the City has not informed you of this pending litigation. If the district court rules that the building official was not correct, you may be required to remove any structure that exceeds the residential proximity slope. In fact, the City of Dallas helped to establish this principle in *City of Dallas vs. Vanesko*, 189 S.W.3d 769 (Tex. 2006), which involved a residence that was built that exceeded the height restrictions for the zoning district. The property owner argued that the city could not require them to tear down the structure because the city inspectors themselves had approved the building plans. However, the Texas Supreme Court disagreed, since only the city council can authorize a zoning change and the mistaken interpretation of a building official cannot overrule the zoning ordinances passed by the official legislative body of the city. The City of Dallas takes the legal position that any permit that was issued in violation of the law is "void *ab initio* and no rights are created thereby." Therefore, if it is determined that the building permit issued to you was issued in error, the City will treat it as if it was never issued. As good neighbors, we want to be sure that you are aware of the pending litigation and the potential that the pending litigation might well impact the development you are continuing to build.

Please feel free to contact me in the event that you have questions.

Best regards,

James Anderson
President, Peak's Addition Homeowner's Association
4706 Swiss Avenue
Dallas, TX 75204

BDA178-016
ATTN A
PS. 89

Appendix A-11

STOP WORK ORDER

WORK PERFORMED ON THESE PREMISES IS IN VIOLATION
OF CHAPTER 52 OF THE DALLAS CITY CODE

ANY PERSON OR PERSONS PERFORMING CONSTRUCTION
RELATED ACTIVITIES WHILE THIS NOTICE IS IN EFFECT
COMMITTS AN OFFENSE PUNISHABLE BY A FINE NOT TO
EXCEED \$2000 EACH DAY

ADDRESS: 4217 Swiss



City of Dallas

FOR MORE INFORMATION CALL BUILDING INSPECTION:
PHONE: 214-948-4501

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178-
016
4H11
A
PJ
90

BDA-0178-016

Attach A

PS. 91

Appendix A-12



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Attch A
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November 15, 2017

Via email

Alison Ashmore
Christopher D. Kratovil
Dykema Cox Smith
1717 Main Street, Suite 4200
Dallas, Texas 75201

R. Michael Northrup
Cowles & Thompson
901 Main Street, Suite 3900
Dallas, Texas 75202

Re: *Peak's Addition Home Owner's Association v. City of Dallas*; No. DC-17-02532;
134th District Court of Dallas County, Texas; and
EMF Swiss Avenue, LLC v. Peak's Addition Home Owner's Association et al.; No.
05-17-01112-CV; Fifth Court of Appeals at Dallas

Dear Counsel:

The City of Dallas has received Judge Tillery's Order Setting Supersedeas Security Under TRAP 24.2(a)(3) and EMF Swiss Avenue, LLC's Notice of Cash Deposit in Lieu of Supersedeas Bond.

In accordance with the order and the notice of cash deposit, the City has removed the stop work order on the project at 4217 Swiss Avenue.

Very truly yours,

/s/ Stacy Jordan Rodriguez

Stacy Jordan Rodriguez

cc: Justin Roy

BDA-178-016

Attch A

A3 93

Appendix A-13

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Attach A
pg. 94

CAUSE NO. DC-17-02532

PEAK'S ADDITION HOME	§	IN THE DISTRICT COURT OF
OWNER'S ASSOCIATION,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
CITY OF DALLAS and BOARD OF	§	
ADJUSTMENT FOR THE CITY OF	§	
DALLAS	§	134th DISTRICT COURT

EMF SWISS AVENUE, LLC'S PETITION IN INTERVENTION

Pursuant to Texas Rule of Civil Procedure 60, EMF Swiss Avenue, LLC ("EMF" or "Intervenor") files this Original Petition in Intervention, seeking inclusion as a respondent and real party-in-interest in the above-styled and numbered cause and, in furtherance thereof, shows this Court as follows:

DISCOVERY CONTROL PLAN AND RULE 47 DISCLOSURE

1. Discovery in this lawsuit should be conducted in accordance with Level 3 and section 211.011 of the Texas Local Government Code.
2. Pursuant to Texas Rule of Civil Procedure 47, Intervenor hereby pleads that it seeks monetary relief of over \$1,000,000.00 and all other relief to which Intervenor may be entitled.

PARTIES

3. Intervenor is a Delaware limited liability company with its principal place of business in Dallas, Dallas County, Texas.
4. Peak's Addition Home Owner's Association ("Petitioner") is a Texas non-

profit corporation with its principal place of business in Dallas, Dallas County, Texas. It is being served with this Petition in Intervention through its attorney of record in accordance with Texas Rule of Civil Procedure 21a.

5. The City of Dallas (the "City") is a municipal corporation organized and existing under the laws of the State of Texas. It is being served with this Petition in Intervention through its attorney of record in accordance with Texas Rule of Civil Procedure 21a.

6. The Board of Adjustment for the City of Dallas (the "Board") is a duly established board of adjustment created under the laws of the State of Texas. It is being served with this Petition in Intervention through its attorney of record in accordance with Texas Rule of Civil Procedure 21a.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court because the amount in controversy and relief requested are within the jurisdictional limit of this Court. This Court has personal jurisdiction over all the parties because each is either a Texas resident or does business in the State of Texas.

8. Venue is proper in Dallas County, Texas because Dallas County is where all or a substantial part of the events or omissions giving rise to the claims made herein occurred. *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1).

FACTUAL AND PROCEDURAL BACKGROUND

9. Intervenor is the owner and developer of the parcel of land located at 4217 Swiss Avenue in Dallas, Dallas County, Texas (the "Property"). Intervenor is in the process of constructing a five-story, 253-unit multifamily development (the "Project") on the Property.

10. On or about November 21, 2016, the City issued multiple permits to Intervenor in connection with the Project. Petitioner is challenging the issuance of the permits because they do not require Intervenor to conform to residential proximity slopes ("RPS") that allegedly emanate from the neighboring properties located in Dallas Planned Development District 298 (PD 298).

11. The City's Director of Sustainable Development and Construction correctly concluded that no RPS applied to the Project or the Property and, thus, the permits issued to Intervenor do not require Intervenor to conform to RPS.

12. Petitioner appealed the issuance of the permits to the Board. After hearing Petitioner's appeal, the Board voted to uphold the decision of the Director of Sustainable Development and Construction with respect to the inapplicability of RPS. Petitioner then filed this proceeding against the City and the Board seeking a writ of certiorari and judicial review of the Board's decision under section 211.011 of the Texas Local Government Code.

INTERVENOR'S JUSTICIABLE INTEREST

13. Intervenor is the real party in interest to this proceeding because the legality of the Board's decision directly affects Intervenor's use of the Property to build the Project. If Petitioner's petition fails, then Intervenor may resume construction of the Project without fear of having its permits voided as requested by Petitioner. Conversely, if the Court reverses the Board's decision, then Intervenor could face significant additional administrative hurdles to complete construction of the Project on the Property, to the extent it is able to complete construction at all. Furthermore, entry of the relief requested by Petitioner would directly affect Intervenor and, thus, questions of law and fact common to Intervenor and to the Board will arise in this action. Thus, Intervenor has a justiciable interest in the outcome of this proceeding and hereby intervenes as a respondent to assert and protect its rights.

GENERAL DENIAL

14. Intervenor denies each and every, all and singular, the allegations set forth in Plaintiff's Original Petition and Petition for Writ of Certiorari, and demands strict proof thereof by a preponderance of the evidence.

SPECIFIC DENIAL AND DEFENSES

15. Intervenor denies that Petitioner is entitled to a writ of certiorari or that such writ should issue in this proceeding.

16. Intervenor denies that the Board abused its discretion with respect to the decision at issue or acted illegally or erroneously with respect to the decision at issue in this case.

17. Intervenor denies that the Board made a decision that was unconstitutional, illegal, unlawful, invalid, and/or not based on substantial evidence.

18. Intervenor denies that the Board acted with gross negligence, in bad faith, or with malice in making the decision at issue in this case.

WHEREFORE, PREMISES CONSIDERED, Intervenor respectfully requests the Court to (a) deny Petitioner's petition for a writ of certiorari; (b) order that Petitioner takes nothing by way of this proceeding; (c) award Intervenor its costs and expenses incurred in this proceeding, and (d) grant Intervenor such other and further relief to which it may be justly entitled.

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ATTORNEY A
Pg. 99

Dated September 8, 2017

Respectfully submitted,

/s/ Jonathan G. Rector

Jonathan G. Rector
Texas State Bar No. 24090347

ENCORE ENTERPRISES, INC.
5005 Lyndon B. Johnson Fwy
Suite 1200
Dallas, TX 75244
214.259.7000
214.259.7001 (Fax)
jrector@encore.bz

ATTORNEY FOR INTERVENOR EMF
SWISS AVENUE, LLC

BDA 178-016
Attachment A
Pg. 100

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2017, I served a true and correct copy of the foregoing document upon the following counsel of record in accordance with the Texas

Rules of Civil Procedure:

Sonia T. Ahmed
Christopher C. Gunter
Christopher J. Caso
DALLAS CITY ATTORNEY'S OFFICE
7DN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201

R. Michael Northrup
COWLES & THOMPSON, P.C.
901 Main Street, Suite 3900
Dallas, Texas 75202

/s/ Jonathan G. Rector
Jonathan G. Rector

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Attach A
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Appendix A-14

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Att A
ps. 102

CAUSE NO. DC-17-02532

PEAK'S ADDITION HOME
OWNER'S ASSOCIATION,
Plaintiff

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

DALLAS COUNTY, TEXAS

CITY OF DALLAS and BOARD OF
ADJUSTMENT FOR THE CITY OF
DALLAS

Defendant

134th DISTRICT COURT

**INTERVENOR'S REPLY IN SUPPORT OF ITS MOTION TO DETERMINE
SUPERSEDEAS SECURITY UNDER TRAP 24.2(a)(3)**

Intervenor and Real Party In Interest EMF Swiss Avenue, LLC ("EMF" or "Intervenor") files this Reply in Support of its Motion to Determine Supersedeas Security Under TRAP 24.2(a)(3), and in support thereof, respectfully states as follows:

INTRODUCTION

1. The HOA has fought bitterly and at great expense to win a Final Judgment that it now says, in its own words, "awards nothing." Plaintiff's Response in Opposition to Intervenor's Emergency Motion to Determine Supersedeas Security Under TRAP 24.2(a)(3) ("Response") at 7. If the HOA's interpretation of this Court's ruling was correct, then the HOA is essentially arguing that the Final Judgment constitutes an impermissible advisory opinion. The HOA also tries to defy the plain meaning of TRAP 24.2(a)(3) by suggesting that the Final Judgment is somehow a unique order that operates outside the Rule's bounds. As ample Texas case law shows, this is simply not so. The Final Judgment is one that is for something other than money or property and, therefore, TRAP 24.2(a)(3) applies. Additionally, the HOA failed to file a motion to strike EMF's intervention, and thus has waived its ability to challenge the intervention. EMF also has standing because the publically available documents attached to this Reply demonstrate that it is indeed the owner of record. Finally, the HOA makes the odd argument that EMF has "unclean hands" by not originally being a part of this case, and therefore

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IDVRILEY, CLIFF - 019956000999

EMF cannot now ask to continue the pre-judgment status quo. This argument is specious. EMF was not originally involved in this case because it was the HOA, as plaintiff, who chose not to include EMF nor at any point join EMF as a necessary party. It was also the HOA that failed at any time to seek injunctive relief to prevent or halt construction of the Project. The HOA, who failed to take those actions, cannot now claim EMF has unclean hands as a result of not being involved in the proceeding. There is simply no basis on which to deny the setting of supersedeas security required by TRAP 24.2(a)(3).

DISCUSSION

A. TRAP 24.2(a)(3) Is Absolutely Applicable and the Supersedeas Security Must Be Set.

2. Plaintiff appears to be taking the remarkable position that this Court's Final Judgment has no legal effect because it "awards nothing." But that interpretation would make the judgment an illegal advisory opinion. In its Response, Plaintiff argues to this Court that TRAP 24.2(a)(3) does not apply because the Final Judgment is not "for something." Plaintiff cannot stop reading the rule mid-sentence. The Rule clearly states that when a judgment is "*for something other than money or an interest in property*, the trial court must set the amount and type of security." This Court's Final Judgment reverse's the Board of Adjustment's decision, which is a judgment for something other than money or an interest in property. The proceeding subparts in TRAP 24.2(a) at (a)(1) and (a)(2) apply to money judgments and judgments for real or personal property, respectively. Rule 24.2(a)(3) applies to *other* judgments, such as this one. The plain language of the statute makes this clear, and robust Texas case law provides confirmation.

3. The HOA fails to cite any actual authority from any Texas court to support its shaky contention that TRAP 24.2(a)(3) does not apply to this Court's Final Judgment. Indeed,

the HOA fails to cite any authority at all for the bold proposition that there are categories of judgments that cannot be superseded on appeal. In its Response, the HOA states as follows: “Plaintiff submits that the type of judgment rendered in a case such as this where the appeal is taken under Local Government Code Chapter 211 is one excluded from TRAP 24. As the summary judgment briefing before the Court showed, this is a unique proceeding unlike any other in Texas.” This is a novel argument, and it is demonstrably wrong.

4. Texas case law patently shows that TRAP 24.2(a)(3) applies here. Texas courts have held, quite intuitively, that TRAP 24.2(a)(3) applies to a limitless assortment of judgments that do not fall into either the monetary or property categories covered by (a)(1) and (a)(2). For instance, in *Haedge v. Cent. Tex. Cattleman’s Ass’n*, the defendant argued that TRAP 24.2(a)(3) did not apply to a take-nothing judgment because “in such a judgment, there is neither a judgment debtor nor is there is anything to be suspended.” 2016 Tex. App. LEXIS 2311, *6-7 (Tex. App.—Amarillo March 3, 2016) *disp. on merits*, *Haedge v. Cent. Tex. Cattlemen’s Ass’n*, 2016 Tex. App. LEXIS 11092 (Tex. App.—Amarillo Oct. 2016, pet. denied). This argument sounds quite similar to the HOA’s. And the court decisively rejected it.

5. Appellants in the case filed suit to challenge the removal of their cattle from a certain property. *Id.* at *7. The court highlighted the fact that “the status quo as it existed immediately before the issuance of the judgment was that appellants’ cattle remained on the Ft. Hood property.” *Id.* This was critical because the “purpose of a supersedeas bond is to preserve this status quo during the pendency of the appeal.” *Id.* (internal citation omitted). If appellees in the case were permitted to enforce the judgment during the pendency of the appeal, it would effectively have the power to force the appellant to herd their cattle and remove them from the property. *Id.* This would come at great expense of time and money, and the avoidance of these expenses and the affirmation of the appellants’ rights to use the property were at the heart of

their appeal. *Id.* Accordingly, the court upheld the trial court’s setting of a supersedeas bond to suspend enforcement of its judgment during pendency of the appeal because “refusing to permit the judgment to be superseded would deny appellants their appeal by rendering it moot.” *Id.* at *7-8 (citing *In re Dallas Area Rapid Transit*, 967 S.W.2d at 360; *Mossman*, 440 S.W.3d at 839; *Hydroscience Techs., Inc.*, 358 S.W.3d at 761).

6. Just as in *Haedge*, Intervenor seeks to maintain the status quo during the pendency of its appeal, as is contemplated by TRAP 24.1 and 24.2. Just as allowing the cattle grazing on the property was the status quo in *Haedge*, in our case EMF’s continuing development of the Project was the status quo prior to this Court’s Final Judgment. Stopping development would have a disastrous impact on EMF’s financing relationship with HUD, the EB-5 visa recipients, the workers and their families, and greatly increase the time and expense of the Project—all of which is at the heart of EMF’s appeal. Therefore, EMF should be allowed to maintain the status quo—that is, continue construction—during the pendency of the appeal or otherwise EMF’s appeal would be “render[ed] moot.” *Id.* *Haedge* makes clear that when a judgment is neither for money or for real or personal property, such as a take-nothing judgment, the party prevailing is the judgment creditor, the party losing is the judgment debtor, and TRAP 24.2(a)(3) plainly applies. *See id.* Additional Texas cases agree. *See Hydroscience Techs., Inc. v. Hydroscience, Inc.*, 358 S.W.3d 759, 760-61 (Tex. App.—Dallas 2011, op. on motion) (allowing appellant to supersede judgment declaring appellee’s shareholder status under TRAP 24.2(a)(3)); *Delhi Gas Pipeline Corp. v. Hassell*, 730 S.W.2d 159, 161-62 (Tex. App.—Tyler 1987, orig. proceeding) (holding portion of judgment declaring future price for gas purchases was “other judgment” that could be superseded under predecessor to Rule 24.2(a)(3)); *see also El Caballero Ranch, Inc. v. Grace River Ranch, L.L.C.*, 2016 Tex. App. LEXIS 9180, *14-16

(Tex. App.—San Antonio, Aug. 24, 2016, no pet) (holding that TRAP 24.2(a)(3) applies to injunctions, and the party that is enjoined is the judgment debtor for supersedeas purposes).

7. Whereas the HOA has exactly no authority to support its novel position that TRAP 24.2(a)(3) doesn't apply here, EMF presents a body of case law showing that it unquestionably does. It appears that the HOA is simply asking this Court to make new law by declaring that some judgments mysteriously operate outside of TRAP 24.

8. Plaintiff is essentially stating that the Final Judgment had no legal effect. That cannot be the case as this Court would not issue advisory opinions. It is well-established that advisory opinions are improper and not allowed. *See Wilson v. Grievance Committee for State Bar Dist. No. 3-A*, 565 S.W.2d 361, 363 (Tex. App.—Austin 1978) (“Article V, § 8 of the Constitution of Texas does not empower courts to render advisory opinions”) (citing *United Services Life Insurance Co. v. Delaney*, *supra*; *Firemen's Insurance Co. of Newark, New Jersey v. Burch*, 442 S.W.2d 331 (Tex. 1968); *State Bar of Texas v. Glen Elmer Van Slyke, III*, 557 S.W.2d 363 (Tex. Civ. App. 1977, no writ). If the Final Judgment is “for nothing,” as the HOA suggests, then it is essentially a decision on “an abstract question of law [that doesn't] bind[] the parties”—that is, an advisory opinion. *Devon Energy Prod. Co., L.P. v. KCS Res., LLC*, 450 S.W.3d 203 (Tex. App.—Houston, 2014, pet. denied); *see also Webb v. Voga*, 316 S.W.3d 809 (Tex. App.—Dallas July 15, 2010, no pet.) (“An opinion is advisory when the judgment sought would not constitute specific relief to a litigant or affect legal relations.”) (internal citations omitted).

9. If the Final Judgment awarded nothing, as the HOA claims, then the HOA should not have any opposition to the judgment being superseded on appeal. But the Final Judgment had an effect, and that was to invalidate a permit, the consequence of which was a stop work order. However, EMF has a right to supersede the Final Judgment on appeal and the judgment

should not be effective and enforced until after EMF's appellate rights are exhausted. Therefore, the permit at issue should not be invalidated until after the appeal is exhausted. The HOA may not like the state of the law, but the fact remains that EMF simply has a right to suspend enforcement of the judgment during the pendency of appeal.

B. Intervenor Is a Party and Has Standing.

10. Little time need be devoted to the HOA's desperate attempt to argue that EMF lacks standing to appeal. As an initial matter, the HOA failed to file a motion to strike EMF's plea in intervention. Therefore, it has waived its challenge to EMF's intervention. *See In re J.B.*, 2010 Tex. App. LEXIS 7127, *7 (Tex. App.—Dallas Aug. 31, 2010, no pet. h.) (“Lack of a justiciable interest to intervene must be raised by a motion to strike or the defense is waived.”); *Helton v. Kimbell*, 621 S.W.2d 675, 678, (Tex. App.—Fort Worth September 17, 1981 (“Appellants, by making no motion to strike the intervention, waived their right to complain of it.”) (internal citation omitted).

11. The HOA then suggests that EMF is not actually the owner of the Property, which is a curious argument as the City of Dallas doesn't oppose EMF's Motion but certainly would were EMF not actually the record owner of the Property. Nonetheless, public records, of which this Court may take judicial notice,¹ conclusively show that EMF owns the Property. The Dallas Central Appraisal District records show that “Borderplex Swiss Avenue, LLC” is the owner of the Property. A true and correct copy of a screenshot of the Dallas Central Appraisal District website is attached hereto as Exhibit A. Likewise, the deed records on file with Dallas County that are referenced by the HOA show that Borderplex Swiss Avenue, LLC is the owner of record since Dec. 16, 2015. *See* Exhibit B to Response. Borderplex Swiss Avenue, LLC changed its

¹ *Johnson v. County of Dallas*, 2001 Tex. App. LEXIS 7535, *3, 2001 WL 1382500 (Tex. App.—Dallas Nov. 8, 2001, no pet.) (upholding trial court's decision to take judicial notice of public records identifying owner of property).

name to EMF Swiss Avenue, LLC on July 26, 2016, as shown by the Certificate of Amendment to the Certificate of Formation of Borderplex Swiss Avenue, LLC, filed with the Delaware Secretary of State's Office on July 26, 2016, a true and correct copy of which is attached hereto as **Exhibit B**.² Thus, a clear line of ownership can be demonstrated through simple resort to publically available documents. EMF undoubtedly has standing in this proceeding.

C. Maintaining the Status Quo Is Indeed Continuation of Construction.

12. The HOA's curious "unclean hands" argument has no basis in the facts or the law. It was the HOA's choice not to join EMF as a party. It was the HOA's choice not to make EMF aware that its rights would be affected by an adverse summary judgment ruling. It was the HOA's choice not to seek an injunction or at any time request any relief—either against the City or against EMF—that would have the effect of stopping construction. EMF appeared at the summary judgment hearing of its own initiative. It then filed a plea in intervention and asked to be heard by the Court. Its day in court was denied, but it cannot be denied its day at the court of appeals. Each dollar EMF invests in construction is at its own risk. Plaintiff did not seek injunctive relief and has no right or ability to stop EMF from maintaining the status quo during the pendency of its appeal.

D. EMF's Remedy Is a Direct Appeal during Which It Has a Right for the Judgment to Be Superseded Under TRAP 24.1.

13. The HOA also claims in its Response that there is some unidentified "adequate remedy at law" and that "Intervenor should be required to exhaust those administrative remedies." The HOA does not identify any section in Local Government Code Chapter 211 that would require EMF to initiate some nebulous administrative process as a pre-requisite to appealing this Court's Final Judgment, nor could it do so. EMF's remedy at law is to appeal the

² EMF requests that the Court take judicial notice of the facts contained in the documents attached as Exhibits A and B.

Final Judgment to the Dallas Court of Appeals. This was acknowledged at the hearing on September 11, 2017 when this Court asked the City whether EMF could appeal and the City stated that EMF could. There was no contradiction at that time to EMF's right to appeal. EMF's right to suspend the judgment pending appeal pursuant to TRAP 24.1 is at the very heart of its appellate rights. So that EMF's appeal is not rendered moot, this Court must set aside the security and allow the parties to continue on appeal with the status quo maintained.

Respectfully submitted,

/s/ Christopher D. Kratovil

Christopher D. Kratovil
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 Alison R. Ashmore
 State Bar No. 24059400
 aashmore@dykema.com
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 criley@dykema.com
 State Bar No. 24094915
DYKEMA COX SMITH
 1717 Main Street, Suite 4200
 Dallas, Texas 75201
 (214) 462-6400
 (214) 462-6401 (fax)

**ATTORNEYS FOR INTERVENOR
 EMF SWISS AVENUE, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2017, the undersigned electronically filed the foregoing using the Court's CM/ECF system which will send notice of electronic filing to all counsel of record.

/s/ Alison R. Ashmore

Alison R. Ashmore

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Appendix A-15

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City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 167-133

Data Relative to Subject Property: Date: September 27, 2017

Location address: 4217 Swiss Avenue Zoning District: PD 298 (Sub.10)

Lot No.: 1B Block No.: 10/740 Acreage: 2.5361 Census Tract: 15.04

Street Frontage (in Feet): 1) 35' 2) 440.21 3) 217.67 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): EMF Swiss Avenue, LLC, f/k/a Borderplex Swiss Avenue, LLC

Applicant: Jonathan G. Rector, Encore Enterprises, Inc. Telephone: 214-259-7000

Mailing Address: 5005 LBJ Freeway, Suite 1200, Dallas, Texas Zip Code: 75244

E-mail Address: jrector@encore.bz

Represented by: Brad Williams, Winstead PC Telephone: 214-745-5264

Mailing Address: 2728 N. Harwood St., Suite 500, Dallas, Texas Zip Code: 75201

E-mail Address: bwilliams@winstead.com

Affirm that an appeal has been made for a Variance __, or Special Exception __, of _____
Appeal the decision of an administrative official to issue a stop work order (Exhibit A) on
September 14, 2017, for the Subject Property.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas
Development Code, to grant the described appeal for the following reason:

The stop work order (Exhibit A) was issued in error because the work is being conducted in
accordance with a lawfully issued building permit. The Board has previously upheld the building
official's issuance of a building permit on this property. This appeal is NOT an appeal of that
prior Board decision.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a
permit must be applied for within 180 days of the date of the final action of the Board, unless the Board
specifically grants a longer period.

Affidavit

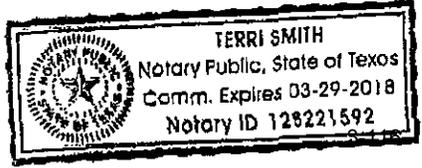
Before me the undersigned on this day personally appeared Jonathan G. Rector
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best
knowledge and that he/she is the owner/or principal/or authorized representative of the subject
property.

Respectfully submitted: [Signature]
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 27 day of September, 2017

(Rev. 08-01-11)



[Signature]
Notary Public in and for Dallas County, Texas

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AFFIDAVIT

Appeal number: BDA 167-133

I, EMF Swiss Avenue, LLC, f/k/a Borderplex Swiss Avenue, LLC, Owner of the subject property
(Owner or "Grantee" of property as it appears on the Warranty Deed)

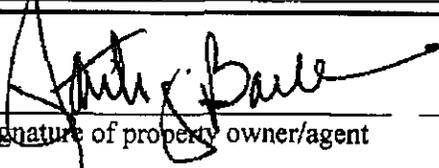
at: 4217 Swiss Avenue
(Address of property as stated on application)

Authorize: Jonathan G. Rector, Encore Enterprises, Inc.
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Appeal the decision of an administrative official to issue a stop work order for the Subject Property on September 14, 2017.

<u>EMF Swiss Avenue, LLC*</u>		<u>9/21/17</u>
Print name of property owner/agent	Signature of property owner/agent	Date

Before me, the undersigned, on this day personally appeared Patrick J. Barber

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 27 day of September, 2017

*By: EMF Swiss Avenue, LP
 Its: Sole Member
 By: EMF Swiss Avenue GP, LLC
 Its: General Partner
 By: Encore Properties, Ltd
 Its: Sole Member
 By: Patrick J. Barber
 Title: Director

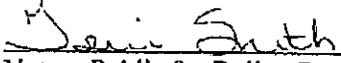

 Notary Public for Dallas County, Texas
 Commission expires on 3/29/18



Exhibit A

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Attach A

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STOP WORK ORDER

WORK PERFORMED ON THESE PREMISES IS IN VIOLATION
OF CHAPTER 52 OF THE DALLAS CITY CODE

ANY PERSON OR PERSONS PERFORMING CONSTRUCTION
RELATED ACTIVITIES WHILE THIS NOTICE IS IN EFFECT
COMMITTS AN OFFENSE PUNISHABLE BY A FINE NOT TO
EXCEED \$2000 EACH DAY



City of Dallas

ADDRESS: 4217 Swiss

FOR MORE INFORMATION CALL BUILDING INSPECTION:
PHONE: 214-948-4501

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Appendix A-16

Attach A

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CERTIFICATE OF CONVERSION
OF
CONVERTING A FOREIGN ENTITY TO A
TEXAS FILING ENTITY

FILED
In the Office of the
Secretary of State of Texas

JUN 03 2013

Corporations Section

1. The name of the *converting* corporation is: Encore Enterprises, Inc.
2. The jurisdiction of formation of the *converting* corporation is Mississippi. The Plan of Conversion has been approved as required by the laws of Mississippi, the converting entity's jurisdiction of formation and governing documents.
3. The date of formation of the *converting* corporation is 9/17/1999.
4. The name of the *converted* corporation is: Encore Enterprises, Inc.
5. The jurisdiction of formation of the *converted* corporation is Texas.
6. This document becomes effective when the document is accepted and filed by the Secretary of State of Texas.
7. Attached hereto is a Certificate of Existence of Encore Enterprises, Inc. from the State of Texas as an authorized foreign entity.
8. A signed Plan of Conversion is on file at the principal place of business of the *converting* entity, and the address of the principal place of business of the converting entity is 5005 LBJ Freeway, Suite 1200, Dallas, TX 75244.
9. A signed Plan of Conversion will be on file after the conversion at the principal place of business of the converted entity, and the address of the converted entity's principal place of business is 5005 LBJ Freeway, Suite 1200, Dallas, TX 75244.
10. Upon written request, a copy of the Plan of Conversion will be provided to any owner or member of the converting or converted entity by the converting entity prior to the conversion and the converted entity after the conversion.
11. The converted entity is liable for payment of the converting entity's franchise taxes.
12. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. The undersigned certifies that the statements contained herein are true and correct, and that the person signing is authorized under the provisions of the Business Organizations Code to execute the filing instrument.

Date 5/22/13

Encore Enterprises, Inc.

By: Alan L. Murray
Signature of authorized representative
Alan L. Murray, Assistant Secretary

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Form 201 (Revised 05/11) Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512/463-5709 Filing Fee: \$300	 Certificate of Formation For-Profit Corporation	This space reserved for office use. <div style="text-align: center;"> FILED In the Office of the Secretary of State of Texas JUN 03 2013 Corporations Section </div>
--	---	---

Article 1 – Entity Name and Type

The filing entity being formed is a for-profit corporation. The name of the entity is:

Encore Enterprises, Inc.

The name must contain the word "corporation," "company," "incorporated," "limited" or an abbreviation of one of these terms.

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Bharat	H	Sangani	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

5005 LBJ Freeway, Suite 1200	Dallas	TX	75244	
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	

Article 3 – Directors

(A minimum of 1 director is required.)

The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified are as follows:

Director:					
Bharat	H	Sangani			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>		
5005 LBJ Freeway, Suite 1200	Dallas	TX	75244	USA	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>	

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Director 2				
Patrick	J	Barber		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
5005 LBJ Freeway, Suite 1200	Dallas	TX	75244	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
Alan	L	Murray		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
5005 LBJ Freeway, Suite 1200	Dallas	TX	75244	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Article 4 – Authorized Shares

(Provide the number of shares in the space below, then select option A or option B. do not select both.)

The total number of shares the corporation is authorized to issue is: 1,000

A. The par value of each of the authorized shares is: \$1

OR

B. The shares shall have no par value.

If the shares are to be divided into classes, you must set forth the designation of each class, the number of shares of each class, the par value (or statement of no par value), and the preferences, limitations, and relative rights of each class in the space provided for supplemental information on this form.

Article 5 – Purpose

The purpose for which the corporation is formed is for the transaction of any and all lawful business for which a for-profit corporation may be organized under the Texas Business Organizations Code.

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

The entity is being formed pursuant to a plan of conversion and the converting (prior) entity's name was Encore Enterprises, Inc., 5005 LBJ Freeway, Suite 1200, Dallas, TX 75244. This entity was a corporation, formed in the State of Mississippi on 9/17/1999

Attachment A
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Organizer

The name and address of the organizer:

Alan L. Murray

Name

5005 LBJ Freeway, Suite 1200

Dallas

TX

75244

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

[Empty rectangular box for event or fact]

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 5/22/13

Alan L. Murray

Signature of organizer

Alan L. Murray

Printed or typed name of organizer

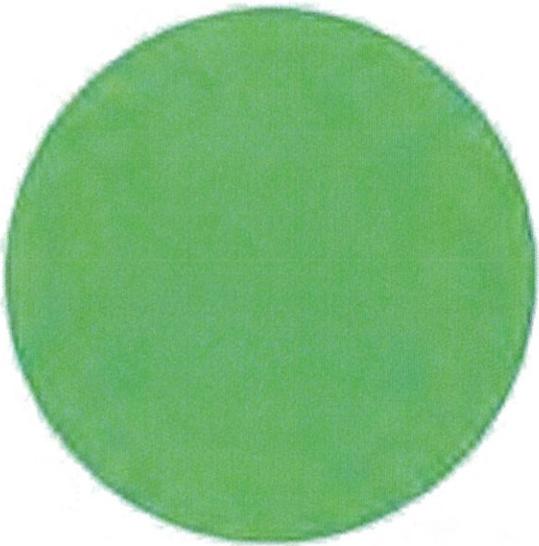
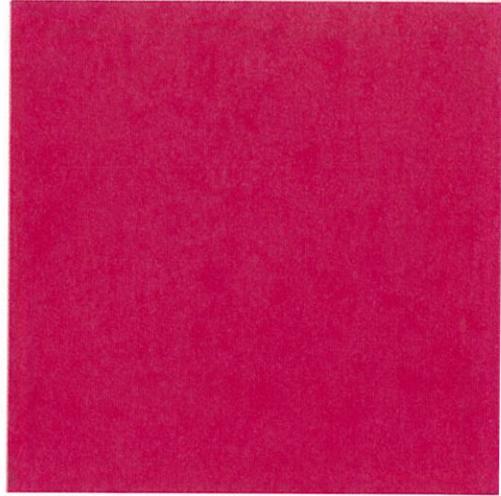
BDA 178-016

Attach A

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Appendix B

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Long, Steve

From: Villegas, Lilia
Sent: Friday, February 09, 2018 4:03 PM
To: Long, Steve
Cc: Roy, Justin; Northrup, Mike; Syed, Sonia
Subject: City Staff's Letter Brief in Appeal RE: BDA 178-016
Attachments: City Staff's Ltr in Appeal BDA 178-016.pdf

PS 1

Good afternoon,

Please see attached hereto the City Staff's Letter Brief in the Appeal Regarding Lifting of Stop Work Order Issued for 4217 Swiss Avenue – BDA 178-016.

Should you have any questions, please call our office. Thank you.



Lilia Villegas
Paralegal
 General Litigation Section
 City of Dallas
 Dallas City Attorney's Office
 1500 Marilla St., Suite 7DN
 Dallas, TX 75201
 O: 214-670-7801 | F: 214-670-0622
lilia.villegas@dallascityhall.com

Please be advised that this e-mail is subject to being disclosed pursuant to a request for public information under the Texas Public Information Act.

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BDA-178-016

Attachment B

P52

February 9, 2018

Via Email to BDA Secretary

Board of Adjustment, Panel A
1500 Marilla St., 5BN
Dallas, Texas 75201

Re: City Staff's Letter Brief in the Appeal Regarding Lifting of Stop Work Order
Issued for 4217 Swiss Avenue – BDA 178-016

Dear Board Members:

Below is a summary of the key points that will be addressed by City staff in response to Peak's Addition Homeowner's Association's ("Peak's HOA") appeal of the lifting of the stop work order issued at 4217 Swiss Avenue.

1. Background

Since this Panel last heard a matter regarding this construction site, the parties have engaged in a considerable amount of litigation. City staff, therefore, offers the following timeline so that the Panel can more easily understand the events leading to this appeal.

- On November 28, 2016, Peak's HOA filed an application to appeal the issuance of building permits for a site located at 4217 Swiss Avenue, Dallas, Texas (Exhibit A). City of Dallas Board of Adjustment Panel A ("Panel A") affirmed the Building Official's decision to issue permits (Exhibit B).
- On March 3, 2017, pursuant to § 211.011 of the Texas Local Government Code, Peak's HOA appealed Panel A's decision to state district court ("trial court") (Exhibit C).
- On September 11, 2017, the trial court granted summary judgment for Peak's HOA and reversed Panel A's decision (Exhibit D). EMF Swiss Avenue, LLC ("EMF"), the project's developer, had intervened in the lawsuit before the final judgment was issued.
- On September 14, 2017, as a result of the trial court's judgment, the City of Dallas Building Official issued a stop work order to halt all construction on the building.

Board of Adjustment, Panel A
February 9, 2018
Page 2

- EMF appealed the trial court's judgment to the Fifth District Court of Appeals and that appeal is pending.
- The trial court initially declined to set supersedeas security. After EMF filed a motion in the appellate court, that court ordered the trial court to set supersedeas security.
- On November 14, 2017, the trial court set supersedeas security, which EMF tendered into the court registry (Exhibit E). As a result of that order, the City lifted the stop work order.

2. Argument

A supersedeas bond suspends the enforcement of the trial court's decision when an appeal is pending. Tex. R. App. P. 24.1. The court of appeals in this case noted that "the purpose of supersedeas is to preserve the status quo of the matters in litigation as they existed before the issuance of the judgment from which an appeal is taken" *quoting Devine v. Devine*, No. 07-15-00126-CV, 2015 WL 2437949, at *2 (Tex. App.—Amarillo May 20, 2015, no pet.) (Exhibit F at 3).

The City lifted the stop work order because the trial judge ordered that supersedeas security be set, and EMF posted the required amount of security. When the supersedeas security was posted, the trial court's judgment was superseded and enforcement of the judgment was suspended. Tex. R. App. P. 24.1(a), (f). The status quo that existed *prior* to the issuance of the trial court's judgement was that the permits were valid and construction was ongoing. The law presumes that the City will follow court orders. *Howell v. Texas Workers' Compensation Com'n*, 143 S.W.3d 416, 433 (Tex. App.—Austin 2004).

Peak's HOA now appeals the Building Official's decision to lift the stop work order. If this Panel overturns the Building Official's decision, the Panel would be asking the Building Official to act in violation of the rules of the trial court's orders, the rules of appellate procedure, and case law. Sections 211.010 and 211.011 of the Texas Local Government Code grant the state district court jurisdiction to review Board of Adjustment decisions; there is no authority that allows the Board of Adjustment to review state district court decisions.

3. Relief Requested

The Building Official's decision to lift the stop work order at 4217 Swiss Avenue was proper based the trial court and court of appeals orders. Accordingly, the City requests that the Board of Adjustment affirm the Building Official's decision.

Board of Adjustment, Panel A
February 9, 2018
Page 3

BDA 178-016
Attach B
p54

Very truly yours,

/s/ Sonia T. Ahmed
Assistant City Attorney

Texas Bar No. 24082605
sonia.syed@dallascityhall.com
(214) 670-3950

cc: *Via e-mail*
Mike Northrup
mnorthrup@cowlesthompson.com

BDA 178-016
Attach B
A PS 5



APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 167-014

Data Relative to Subject Property:

Date: NOVEMBER 28, 2016

Location address: 4217 SWISS AVENUE Zoning District: PD298 (Suba 10)

Lot No.: 10 Block No.: 101740 Acreage: 2.5361 Census Tract: 15.04

Street Frontage (in Feet): 1) 35' 154.53 2) 452' 640.31 3) 217.67 4) _____ 5) _____ SE27

To the Honorable Board of Adjustment:

Owner of Property (per Warranty Deed): BORDER PLEX SWISS ~~KE~~ AVENUE, LLC

Applicant: JIM ANDERSON / PEAK'S ADDITION HOA Telephone: 214-620-7870

Mailing Address: 4706 SWISS AVENUE, Zip Code: 75204

E-mail Address: jimandersonpreservation@gmail.com

Represented by: N/A Telephone: _____

Mailing Address: _____ Zip Code: _____

E-mail Address: _____

Affirm that an appeal has been made for a Variance, or Special Exception, of Appeal decision of an administrative official in the issuance of a building permit

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Issuance of building permit was made in error by city official in that permits were granted which do not conform with residential proximity slope as established in PD 298 and Dallas Development Code (MNH)

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared JIM ANDERSON (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

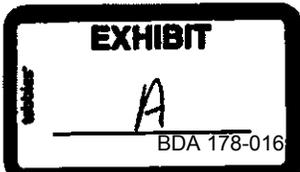
Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 28 day of NOVEMBER, 2016

(Rev. 08-01-11)



Notary Public in and for Dallas County, Texas



COD-BDA-0284

MEMORANDUM OF ACTION TAKEN BY THE BOARD OF ADJUSTMENT

Date of Hearing Feb. 21, 2017

Appeal was--Granted OR Denied

Remarks Affirm the Administrative Official's decision and deny the appeal.

Chairman [Signature]

Building Official's Report

I hereby certify that Jim Anderson

did submit a request to appeal the decision of an administrative official at 4217 Swiss Avenue

BDA167-014. Application of Jim Anderson representing the Peak's Addition HOA to appeal the decision of an administrative official at 4217 Swiss Avenue. This property is more fully described as Lot 1B, Block 10/740, and is zoned PD-298 (Subarea 10). The applicant proposes to appeal the decision of an administrative official in the issuance of a building permit.

BOARD OF ADJUSTMENT DECISION FILED IN THE OFFICE OF THE BOARD OF ADJUSTMENT THIS THE 22 DAY OF

February, 20 17

[Signature] ADMINISTRATOR

Sincerely,

Philip Sikes, Building Official

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February 27, 2017

Jim Anderson
4706 Swiss Avenue
Dallas, TX 75204

Re: BDA167-014(SL), Property at 4217 Swiss Avenue

Dear Mr. Anderson:

The Board of Adjustment Panel A, at its public hearing held on Tuesday, February 21, 2017 took the following actions:

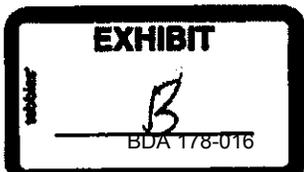
1. denied your request to reimburse the filing fee submitted in conjunction with your request to appeal the decision of an administrative official; and
2. affirmed the decision of the administrative official and denied your request without prejudice.

Should you have any further questions regarding the Board's action, please contact me at (214) 670-4666.

A handwritten signature in cursive script that reads 'Steve Long'.

Steve Long, Board Administrator
Board of Adjustment
Sustainable Development and Construction

c: Ben Collins, Code Enforcement, 3112 Canton, Room 100
Todd Duerksen, Bldg. Inspection, 320 E. Jefferson #105



existing under the laws of the State of Texas. THE CITY OF DALLAS may be served by serving its MAYOR, MIKE RAWLINGS, DALLAS CITY HALL, 1500 MARILLA, ROOM 5EN, DALLAS, TEXAS 75201.

1.3. Defendant Board of Adjustment is a duly established board of adjustment created under the laws of the State of Texas. THE BOARD OF ADJUSTMENT may be served through its SECRETARY, TRENA LAW, DALLAS CITY HALL, 1500 MARILLA, ROOM 5BN, DALLAS, TEXAS 75201.

2.

JURISDICTION

2.1. This Court has subject matter jurisdiction because this action is an appeal and a petition for writ of certiorari pursuant to Texas Local Government Code § 211.011(a).

2.2. Venue is proper in Dallas County, Texas because the cause of action occurred in Dallas County and the cause of action involves land located in Dallas County.

3.

DISCOVERY CONTROL PLAN

3.1. Discovery in this case is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff seeks at least \$100,000 and non-monetary relief.

4.

FACTS

4.1. This appeal relates to a challenge brought by Peak's Addition Home Owner's

Association to the decision of City of Dallas Board of Adjustment to uphold a decision of the city building official that a proximity slope would not be applied to property located at 4217 Swiss Avenue in Dallas, Texas, which is located within the boundaries of the Peak's Addition Home Owner's Association and located within Dallas Planned Development District 298 (PD 298).

4.2. On or about April 22, 2016, members of the Peak's Addition Home Owner's Association met with Dallas City Councilman Adam Medrano and a City of Dallas Assistant Building Official regarding construction that was planned for 4217 Swiss Avenue in Dallas, Texas, in subdistrict 10 of PD 298. At that time, the Assistant Building Official advised those present that a residential proximity slope applied to the planned construction site such that the maximum height of the proposed structure could not exceed approximately 26 feet.

4.3. Subsequently, Peak's Addition Home Owner's Association learned that the City of Dallas Director of Sustainable Development and Construction, after talking with representatives of Encore Enterprises—the owner of the subject property—reversed the earlier decision of the building official and concluded that no residential proximity slope applied to the planned construction site such that the height of the proposed structure could reach 62 feet or five stories.

4.4. On or about November 21, 2016, the City of Dallas issued multiple permits to Encore Enterprises in connection with the proposed construction at 4217 Swiss Avenue in Dallas Texas. The Dallas Development Code, Section 51A-4.703(a)(2) allows any aggrieved person to appeal a decision of an administrative official to the board

when that decision concerns issues within the jurisdiction of the board. *See also* TEX. LOC. GOV'T CODE § 211.010(a)(1). Peak's Addition Home Owner's Association timely filed an appeal to the Dallas Board of Adjustment from the issuance of these permits because the permits did not require the applicant to conform to residential proximity slopes emanating from the neighboring properties located in PD 298.

4.5. The Dallas Development Code gives the Dallas Board of Adjustment the power to hear and decide appeals from decisions of administrative officials made in the enforcement of the zoning ordinances of the city, and to interpret the intent of the zoning district map when uncertainty exists because the actual physical features differ from those indicated on the zoning district map and when the rules set forth in the zoning district boundary regulations do not apply. Dallas Dev. Code § 51A-3.102(d); *See also* TEX. LOC. GOV'T CODE § 211.009(a)(1). Pursuant to Section 51A-3.102(d), Panel A of the Dallas Board of Adjustment heard the appeal of Peak's Addition Home Owner's Association on February 21, 2017. In review of a decision of the administrative official, the board has the same authority as an administrative official and it may reverse or affirm, in whole or in part, or modify the administrative official's decision or determination from which an appeal is taken and make the correct decision or determination. TEX. LOC. GOV'T CODE § 211.009(b). In its review of the administrative official's decision, the Board of Adjustment voted to uphold the decision of the Director of Sustainable Development and Construction with respect to the inapplicability of the residential proximity slope.

4.6. While a board of adjustment may uphold the decision of an administrative

official, it must do so in accordance with the rules and standards established to promote compliance with the intent of the subject ordinance. In its review of an administrative official's decision, the Board is required to make "the correct" decision or determination. TEX. LOC. GOV'T CODE §211.009(b).

4.7. Texas Local Government Code Section 211.011 allows any person aggrieved by a decision of the Board of Adjustment to appeal that decision to a district court. Peak's Addition Home Owner's Association is aggrieved and does hereby appeal and asserts that the decision of the Board of Adjustment is illegal in that it renders an incorrect interpretation and application of the residential proximity slope. The Board of Adjustment in this case failed to make the "correct" decision or determination. In particular and without limitation, the Board reached the astounding conclusion that a city-wide residential proximity slope, i.e., Dallas Development Code § 51A-4.412, does not apply and project upward and outward "from every site of origination" to an infinite extent. Plaintiff submits that the Board's conclusion was erroneous and illegal in part and in whole. Plaintiff requests that this Court reverse the decision of the Board of Adjustment and render judgment that the 3-to-1 proximity slope found in Dallas Development Code Section 51A-4.412 applies and projects upward and outward from subtract 9 of PD 298 and to an infinite extent such that it extends into subtract 10 of PD 298.

4.8. As a result of the illegal act of the Board of Adjustment, Plaintiff's member/constituents' property values have been diminished.

5.

WRIT OF CERTIORARI

5.1. Plaintiff realleges and incorporates paragraphs 1.1 through 4.8 above as though fully set forth herein.

5.2. Pursuant to § 211.011 of the Texas Local Government Code, Plaintiff filed a petition for writ of certiorari in order to appeal the Board of Adjustment's decision of February 21, 2017.

5.3. All conditions precedent to granting the writ have occurred.

6.
DUE PROCESS

6.1. Plaintiff realleges and incorporates paragraphs 1.1 through 5.3 above as though fully set forth herein.

6.2. The City's and the Board of Adjustment's unfettered, arbitrary, capricious and unreasonable actions and decisions violate the due process clause of the Texas Constitution, Article I, Section 19. The portions of the Dallas Development Code and PD 298 pertinent to this case have clear and attainable standards that the BOA ignored and violated. As such, Plaintiff has not been afforded due process under the Texas Constitution.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court order a writ of certiorari to issue herein to the BOA of the City of Dallas, Texas and the City of Dallas, Texas; that such writ order a review of the decision of the Board of Adjustment and prescribe the time within which return must be made and service upon the undersigned attorneys; that such writ direct the Board of Adjustment to return certified or sworn copies of all the original papers acted upon by it in reaching

its decision, together with transcripts of the testimony and proceedings received at the February 21, 2017 hearing; that upon hearing, the Court enter judgment reversing the Board of Adjustment and declaring its decision void; and grant Plaintiff such other and further relief at law or in equity to which it may show itself justly entitled.

Respectfully submitted,

By:



R. Michael Northrup
State Bar No. 15103250

COWLES & THOMPSON, P.C.
901 Main Street, Suite 3900
Dallas, Texas 75202
(214) 672-2000 (Telephone)
(214) 672-2020 (Telecopier)
mnorthrup@cowlesthompson.com

**ATTORNEYS FOR PLAINTIFF,
PEAK'S ADDITION HOMEOWNER'S
ASSOCIATION**

VERIFICATION

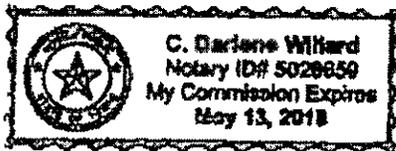
State of Texas §
 §
County of Dallas §

BEFORE ME, the undersigned notary public, on this day personally appeared Jim Anderson, and upon his oath stated that he has read the foregoing petition and that he has personal knowledge of the facts stated, and that the facts stated therein are true and correct.



Jim Anderson

SUBSCRIBED AND SWORN BEFORE ME on March 2, 2017, to certify which witness my hand and official seal.





Notary Public In and For the State of Texas

CAUSE NO. DC-17-02532

PEAK'S ADDITION
HOME OWNER'S ASSOCIATION,
Plaintiff,

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

134TH JUDICIAL DISTRICT

CITY OF DALLAS and BOARD OF
ADJUSTMENT FOR THE CITY OF
DALLAS,
Defendants.

DALLAS COUNTY, TEXAS

FINAL JUDGMENT

Before the Court is Plaintiff's Motion for Summary Judgment and Defendants' Motion for Summary Judgment. Having considered the Motions, the respective responses and replies, the arguments of counsel, the pleadings and briefs, and the summary judgment evidence, ~~the Court concludes that a residential proximity slope emanates from the residential properties in subarea 9 of PD 298 and projects to the southwest across subarea 10.~~

IT IS, THEREFORE, Ordered, Adjudged, and Decreed that Plaintiff's Motion for Summary Judgment is *Granted* and the decision of the Dallas Board of Adjustment upholding the interpretation of the building official is *Reversed*.

IT IS FURTHER Ordered that Defendants' Motion for Summary Judgment is *Denied*.

This judgment disposes of all parties and issues and is a final, appealable judgment.

Signed this 11 day of September, 2017.


HONORABLE DALE TILLERY
PRESIDING JUDGE



FINAL JUDGMENT
1544292.1

CAUSE NO. DC-17-02532

**PEAK'S ADDITION HOME OWNER'S
ASSOCIATION,
PLAINTIFF(S),**

IN THE DISTRICT COURT

134TH JUDICIAL DISTRICT

VS.

**CITY OF DALLAS; BOARD OF
ADJUSTMENT FOR THE CITY OF
DALLAS,**

DEFENDANT(S).

DALLAS COUNTY, TEXAS

ORDER SETTING SUPERSEDEAS SECURITY UNDER TRAP 24.2(a)(3)

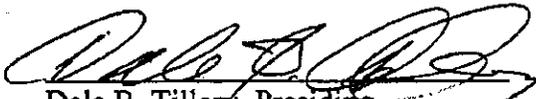
On the 14th day of November, 2017, the Court heard Intervenor EMF Swiss Avenue, LLC's ("EMF" or "Intervenor") Emergency Motion to Determine Supersedeas Security Under TRAP 24.2(a)(3) ("Motion to Set Security").

After considering the motion and the evidence filed in support of the motion, any response filed, and arguments of counsel, and consistent with the November 7, 2017 Opinion and Order of the Dallas Court of Appeals in this matter, the Court is of the opinion that the Motion to Set Security should be **GRANTED**.

It is therefore **ORDERED** that that the Final Judgment entered by this Court on September 11, 2017 is and shall be superseded, as provided in Texas Rules of Appellate Procedure 24.1 and 24.2, by Intervenor EMF Swiss Avenue, LLC filing with the Clerk a supersedeas bond or making a cash deposit in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), which adequately protects the judgment creditor against loss or damages that the appeal might cause.

All relief not expressly granted is hereby denied.

SIGNED on November 14, 2017.


Dale B. Tillery, Presiding
Judge, 134th Judicial District Court



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Granted and Opinion Filed November 7, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01112-CV

EMF SWISS AVENUE, LLC, Appellant
V.

**PEAK'S ADDITION HOME OWNER'S ASSOCIATION, CITY OF DALLAS AND
BOARD OF ADJUSTMENT FOR THE CITY OF DALLAS, Appellee**

On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-02532

MEMORANDUM OPINION

Before Chief Justice Wright and Justices Francis and Stoddart
Opinion by Chief Justice Wright

Before the Court is appellant EMF Swiss Avenue, LLC's ("EMF") amended emergency motion for review of the trial court's denial of EMF's motion to set supersedeas security. The underlying proceeding involved appellee Peak's Addition Homeowner's Association's ("HOA") appeal of the Dallas Board of Adjustment's determination that a building permit was properly issued for construction on property owned by EMF. The judgment at issue is declaratory in nature. Specifically, the judgment grants summary judgment for the HOA and reverses the Dallas Board of Adjustment's decision upholding the building official's decision to issue a building permit. The issue before us is whether that judgment constitutes a judgment for something other than money or an interest in real property such that the trial court was required to set security pursuant to rule of appellate procedure 24.2(a)(3). We agree with EMF that rule

EXHIBIT

F

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24.2(a)(3) applies to this judgment and required the trial court to set security in accordance with that rule. We grant the motion and remand the issue of security to the trial court for hearing and issuance of a written order setting security within the parameters of rule 24.2(a)(3).

Background

EMF is a developer in the process of constructing a five-story, 253-unit multifamily development on a property in Dallas. The construction was approved through the City of Dallas permitting process. EMF began work and, after more than one year of work on the project, EMF has spent more than \$13 million on construction. The HOA challenged the issuance of the permits through the City of Dallas administrative process because the permits do not require EMF to conform to a Dallas ordinance limiting building to two stories (26 feet) in height. The HOA appealed the issuance of the permits to the Dallas Board of Adjustment, and the Board upheld the Director's decision. The HOA then appealed to the district court, with the City and the Board as respondents/defendants. EMF intervened.

The trial court granted the HOA's motion for summary judgment and entered a judgment that reversed the Board's decision. The September 11, 2017 judgment states that "the decision of the Dallas Board of Adjustment upholding the interpretation of the building official is *Reversed.*" (emphasis in original). On September 14, 2017, the City issued a "Stop Work" order to halt all construction on the project. EMF filed an emergency motion to stay enforcement of the judgment, which the trial court denied. EMF then appealed the judgment and filed a motion to determine supersedeas security in the trial court. The trial court denied the motion to determine supersedeas security without explanation.

EMF now seeks this Court's review of the denial of supersedeas under Rule 24.4 and argues that the trial court was required under Rule 24.2(a)(3) to either set the amount and type of security required to suspend enforcement or order the amount and type of security required for

the HOA to post to prevent suspension of enforcement of the judgment. Following this Court's request, the HOA, the City of Dallas, and the Board of Adjustment filed responses to the motion, and EMF filed a reply brief. The HOA maintains that the judgment may not be superseded because it is not subject to execution, is not a judgment "for something" as required by the rules, and, as such, EMF is not a judgment debtor. The City and the Board do not affirmatively state that the trial court abused its discretion. They do, however, concur in EMF's contention that all civil judgments can be superseded unless excepted by statute and that Chapter 211 of the Texas Local Government Code does not preclude a court from setting a bond.

Applicable Law

Unless the law or the rules of appellate procedure provide otherwise, a judgment may be superseded and enforcement of the judgment suspended pending appeal. TEX. R. APP. P. 24.1(a). The purpose of supersedeas is to preserve the status quo of the matters in litigation as they existed before the issuance of the judgment from which an appeal is taken. *Devine v. Devine*, No. 07-15-00126-CV, 2015 WL 2437949, at *2 (Tex. App.—Amarillo May 20, 2015, no pet.) (citing *Smith v. Tex. Farmers Ins. Co.*, 82 S.W.3d 580, 585 (Tex. App.—San Antonio 2002, pet. denied)). Rule 24.1 sets out the requirements for suspending enforcement of a judgment pending appeal in civil cases. TEX. R. APP. P. 24.1. A supersedeas bond must be in the amount required by rule 24.2. TEX. R. APP. P. 24.1(b)(1)(A). Under Rule 24.2, the amount of the bond depends on the type of judgment. TEX. R. APP. P. 24.2(a). When the judgment is "for something other than money or an interest in real property," the security must adequately protect the judgment creditor against loss or damage that the appeal might cause. TEX. R. APP. P. 24.2(a)(3).

If rule 24.2(a)(3) applies, the trial court may decline to permit the judgment to be superseded only if the judgment creditor posts security ordered in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment

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creditor if the appellate court reverses. TEX. R. APP. P. 24.2(a)(3); *Klein Ind. Sch. Dist. v. Fourteenth Court of Appeals*, 720 S.W.2d 87, 88 (Tex. 1986). Rule 24.2(a)(3) is routinely applied to judgments that are declaratory or injunctive in nature. *E.g.*, *In re State Bd. for Educator Certification*, 452 S.W.3d 802, 803 (Tex. 2014) (Rule 24.2(a)(3) applied to permanent injunction prohibiting Board from revoking or treating as revoked teacher's certification); *El Caballero Ranch, Inc. v. Grace River Ranch, L.L.C.*, No. 04-16-00298-CV, 2016 WL 4444400, at *5 (Tex. App.—San Antonio Aug. 24, 2016, no pet.) (Rule 24.2(a)(3) applied to final judgment declaring a valid, express easement); *Orix Capital Markets, LLC v. La Villita Motor Inns*, No. 04-09-00573-CV, 2010 WL 307885, at *1 (Tex. App.—San Antonio Jan. 27, 2010, pet. denied) (Rule 24.2(a)(3) applied to judgment that is primarily declaratory in nature); *Klein*, 720 S.W.2d at 88 (stating because disputed portion of judgment is injunction, judgment debtor's entitlement to supersedeas is controlled by subsection pertaining to "other" judgments) (orig. proceeding).

Rule 24.4 allows this Court to review the trial court's decision not to permit suspension of enforcement, and permits us to increase or decrease the amount of the bond, require other changes to the order, or remand to the trial court for entry of findings of fact or taking of evidence. TEX. R. APP. P. 24.4. This Court reviews a trial court's ruling under rule 24.2(a)(3) for an abuse of discretion. *Hydroscience Techs., Inc. v. Hydroscience, Inc.*, 358 S.W.3d 759, 760–61 (Tex. App.—Dallas 2011, no pet.). (citing TEX. R. APP. P. 24.4(a)(5) and *EnviroPower, L.L.C. v. Bear, Stearns & Co.*, 265 S.W.3d 1, 2 (Tex. App.—Houston [1st Dist.] 2008, pet. denied)).

Discussion

We disagree with the HOA's contention that the judgment may not be superseded because it presents nothing on which the HOA can execute and is not a judgment "for

something.” Rule 24.2(a)(3) applies to this judgment because the judgment is not for money and is not for an interest in property. Rather, the judgment is declaratory and injunctive in nature because it declares that the Board’s decision was incorrect and, in effect, declares the permit invalid.

The Amarillo court of appeals’ opinion in *Haedge v. Central Texas Cattlemen’s Association* is instructive. In *Haedge*, the court of appeals determined that a judgment that affirmed a private association’s decision stripping certain shareholders of their shares and accompanying right to graze heads of cattle on certain land could be superseded and the amount of security was to be determined under rule 24.2(a)(3). *Haedge v. Cent. Texas Cattlemen’s Ass’n*, No. 07-15-00368-CV, 2016 WL 836084, at *1 (Tex. App.—Amarillo Mar. 3, 2016, no pet.). Shareholders in the Central Texas Cattlemen’s Association (CTCA) possess a right to graze 1.6 head of cattle per share on the U.S. Army facility at Ft. Hood, Texas. *Id.* The CTCA Board of Directors terminated appellants’ memberships in CTCA and cancelled their shares following allegation that appellants violated CTCA rules and bylaws. *Id.* The appellants sued the CTCA Board, and during the litigation, sought a temporary restraining order to allow them to continue to graze their cattle on the Ft. Hood property. *Id.* The trial court granted the TRO and set a bond for the order at \$2,500, which appellants deposited into the registry of the court. *Id.* Appellants lost at trial, a take nothing judgment was rendered against them, and they appealed. *Id.* At the hearing on appellants’ motion to set security, they presented evidence that it would cost them \$66,200 per year to graze their cattle on alternative pastures. *Id.* CTCA’s evidence was consistent with the \$66,200 per year valuation. *Id.* The trial court ordered that the judgment would be suspended by carrying forward the \$2,500 bond previously posted. *Id.*

CTCA sought appellate review of the trial court’s order setting bond. *Id.* The Amarillo court of appeals rejected CTCA’s argument that a take nothing judgment could not be

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superseded. *Id.* at *3. The court noted that “[t]he purpose of supersedeas is to preserve the status quo of the matters in litigation as they existed before the issuance of the judgment from which an appeal is taken.” *Id.* at *2 (citing *Smith v. Tex. Farmers Ins. Co.*, 82 S.W.3d 580, 585 (Tex. App.—San Antonio 2002, pet. denied). The court also determined that, although the issues in the case involved the rights to use property for grazing, appellants’ suit did not directly seek an interest in real property. *Haedge*, 2016 WL 836084, at *3. Rather, appellants filed suit “seeking a judicial order invalidating the CTCA’s Board’s decision to terminate their memberships and to cancel their shares.” *Id.* The court held that the judgment entered was for something other than money or an interest in real property and the trial court was, therefore, required to set the amount and type of security and to do so pursuant to Rule 24.2(a)(3). *Id.* Because the parties agreed that the value of appellants’ use of the property was approximately \$66,200 per year, the court held that \$66,200 per year for the anticipated duration of the appeal was the amount necessary to adequately protect CTCA against loss or damage that the current appeal might cause. *Id.* at * 3–4 (citing rule 24.2(a)(3)).

The judgment at issue here reverses the Board’s decision approving the building permit and is, thus, analogous to the judgment in *Haedge*, which affirmed the CTCA Board’s decision to terminate appellants’ membership and cancel their shares. The *Haedge* court held that the judgment entered was for something other than money or an interest in real property and the trial court was, therefore, required to set the amount and type of security and to do so pursuant to Rule 24.2(a)(3). The same is true here. [The judgment reversed the Board’s decision and, as a result, declared the building permit improper. That judgment, like the *Haedge* judgment, adversely affected the property rights of appellants and should be permitted to be superseded under Rule 24.2(a)(3).]

We also disagree with the HOA's contention that EMF is not a judgment debtor. EMF owns the property at issue, and the HOA did not object to or move to strike EMF's intervention. The underlying proceeding was brought under Chapter 211 of the local government code. A person "aggrieved by a decision of the board" may appeal that decision to the district court, county court, or county court at law. TEX. LOC. GOV'T CODE ANN. § 211.011(a)(1). The decision on appeal is then appealable to an intermediate court of appeals. See *Wende v. Bd. of Adjustment of City of San Antonio*, 27 S.W.3d 162, 167 (Tex. App.—San Antonio 2000), *rev'd on other grounds*, 92 S.W.3d 424 (Tex. 2002) (aggrieved party has standing to appeal the board's decision and to appeal the decision of the district court). Chapter 211 does not define "aggrieved party" or "person aggrieved." Black's Law Dictionary define "aggrieved party" as:

A party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment.

Aggrieved Party, BLACK'S LAW DICTIONARY (10th ed. 2014).

EMF, as the property owner, is an aggrieved party to the district court's judgment because its rights have been adversely affected by the judgment. As an aggrieved party, EMF has a right to appeal the judgment and, as the party adversely affected by the judgment, is the judgment debtor for purposes of rule 24.2(a)(3). Moreover, if the term "judgment debtor" was intended to be limited to a party who must pay a money judgment or turnover an interest in real property, that term would not be included in a rule that applies only to judgments that are not monetary and not for an interest in property.

Having determined that rule 24.2(a)(3) applies to the judgment, we next decide whether the trial court abused its discretion by denying EMF's motion to set security. "A trial court's discretion under Rule 24.2(a)(3) does not extend to denying a party its appeal." *Hydroscience Techs.*, 358 S.W.3d at 761 (citing *In re Dallas Area Rapid Transit*, 967 S.W.2d 358, 360 (Tex.

1998) (orig. proceeding) (per curiam)). Moreover, the rule does not permit the trial court to deny any security at all. The plain language of the rule allows the trial court “to decline to permit the judgment to be superseded.” TEX. R. APP. P. 24.2(a)(3). But denying security altogether is not an unfettered right. Rather, the trial court may decline to permit the judgment to be superseded in only one circumstance—“if the judgment creditor posts security ordered by the court” to protect the appealing party from loss or damaged caused by enforcement of the judgment during the appeal. TEX. R. APP. P. 24.2(a)(3) (emphasis added).

The rule unambiguously protects both parties to the judgment. If the trial court decides to allow suspension of the judgment during the appeal, then the court “must set the amount and type of security that the judgment debtor must post” and that security “must adequately protect the judgment creditor against loss or damage that the appeal might cause.” *Id.* If, on the other hand, the trial court decides the judgment should not be superseded during the appeal, then the trial court must order the judgment creditor to post security “in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper.” TEX. R. APP. P. 24.2(a)(3). Here, the trial court refused to set security for EMF to post and declined to allow the judgment to be superseded. On the other hand, the trial court did not require the HOA to post security to protect EMF during the appeal. That was an abuse of discretion.

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Accordingly, we grant EMF's motion, vacate the trial court's September 22, 2017 order denying EMF's motion to set supersedeas security, and remand the issue of security to the trial court for hearing and entry of a written order setting security within the parameters of rule 24.2(a)(3). *See* TEX. R. APP. P. 24.2(a)(3), 24.4.

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

171112F.P05



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 178-016

Data Relative to Subject Property:

Date: November 29, 2017

Location address: 4217 Swiss Avenue

Zoning District: PD298(Subd. 10)

Lot No.: 1A Block No.: 10/740 Acreage: 2.5361 Census Tract: 15.04

Street Frontage (in Feet): 1) 35' 2) 452' 3) 217.67 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Borderplex Swiss Avenue, LLC

Applicant: Mike Northrup / Peak's Addition HOA Telephone: 214-672-2000

Mailing Address: Cowles & Thompson, 901 Main Street, Ste 3900 Zip Code: 75202

E-mail Address: MNORTHROP@COWLESTHOMPSON.COM

Represented by: Mike Northrup Telephone: _____

Mailing Address: _____ Zip Code: _____

E-mail Address: _____

Affirm that an appeal has been made for a Variance __, or Special Exception __, of Appeal decision of Administrative Official to lift a "stop work" order relating to building permit 1512041028 issued to Encore Enterprises

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Peak's Addition HOA appealed the issuance of permit 1512041028 to the Board of Adjustment and then to state district court. The district court's judgment reversed the Board of Adjustment's decision to uphold the building official. The permit issued to Encore Enterprises is not valid.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

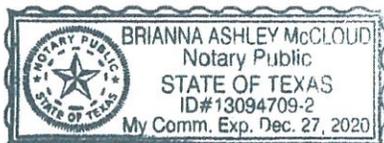
Affidavit

Before me the undersigned on this day personally appeared Roy Michael Northrup (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: Roy Michael Northrup (Affiant/Applicant's signature)

Subscribed and sworn to before me this 29 day of NOVEMBER, 2017



Brianna Ashley McCLOUD Notary Public in and for Dallas County, Texas

(Rev. 08-01-11)

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that Mike Northrup

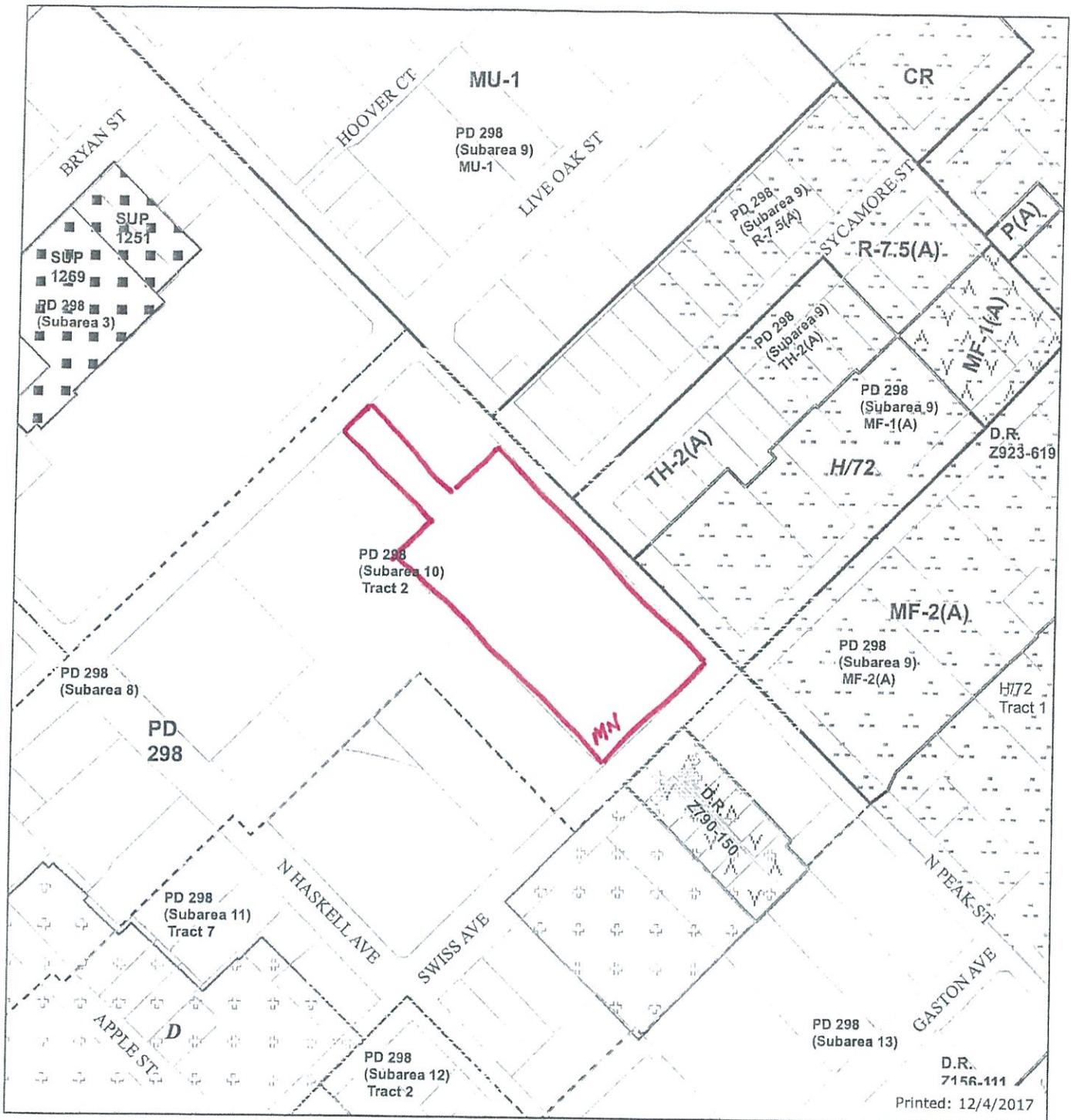
did submit a request to appeal the decision of the administrative official in removing a stop work order.

at 4217 Swiss Avenue

BDA178-016. Application of Mike Northrup to appeal the decision of the administrative official in removing a stop work order at 4217 Swiss Ave. This property is more fully described as Lot 1A, Block 10/740, and is zoned PD-298 (Subdistrict 10), which the applicant proposes to appeal the decision of an administrative official.

Sincerely,

Philip Sikes
Philip Sikes, Building Official



Printed: 12/4/2017

Legend

- | | | | |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits | railroad | Dry Overlay | CD Subdistricts |
| School | Certified Parcels | D | PD Subdistricts |
| Floodplain | Base Zoning | D-1 | PDS Subdistricts |
| 100 Year Flood Zone | PD193 Oak Lawn | CP | NSO Subdistricts |
| Mill's Creek | Dallas Environmental Corridors | SP | NSO_Overlay |
| Peak's Branch | SPSP Overlay | MD Overlay | Escarpment Overlay |
| X Protected by Levee | Deed Restrictions | Historic Subdistricts | Parking Management Overlay |
| Parks | SUP | Historic Overlay | Shop Front Overlay |
| | | Height Map Overlay | |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



1:2,400



CITY OF DALLAS

December 13, 2017

Via Email

Mr. Michael Northrup
Cowles & Thompson
901 Main Street, Suite 3900
Dallas, Texas 75202-3793

Re: *Board of Adjustment Appeal Number BDA178-016*

Dear Mr. Northrup:

On behalf of Peak's Addition Homeowner's Association (the "HOA"), you requested that the City reinstate the stop work order on the construction project at 4217 Swiss Avenue (the "Property"). The City is not going to reinstate the stop work as requested because the Trial Court entered an order allowing for supersedeas security as to the Final Judgment. This allows for the construction on the Property to continue.

Neither section 211.010(c) of the Local Government Code nor its Dallas City Code equivalent, section 51A-4.703(b)(1), allow for the reinstatement of the stop work order. Section 211.010(c) specifically states that the HOA's appeal to the Board of Adjustment "stays all proceedings in furtherance of the action . . ." Similarly, section 51A-4.703(b)(1) states that the appeal "stays all enforcement proceedings involving the action appealed . . ." These specific passages are contemplating actions by the City to enforce the action of the City the HOA appealed or the lifting of the stop work order. An example of such "enforcement proceedings" are notices of violation or citations being issued to enforce the lifting of the stop work order. Since such actions are not required and this is not the type of relief you are requesting, the City cannot grant your request.

Please be advised not to contact City staff regarding this matter. All correspondence should be between us.

If you have any questions or comments please contact me at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Justin H. Roy". The signature is stylized with a large initial 'J' and a circular flourish at the end.

Justin Roy

Hold Object Edit

Hold

 4217 SWISS AVE Created on: 2017-09-28 00:00:00
SWO posted 9/14/17

Effective Start Date: Sep 28, 2017

Effective End Date: Nov 15, 2017

Details

CreatedByUserName	Megan Wimer
Description	SWO posted 9/14/17
Hold CO	N
Last Update By	Joel Cruce
Remove Hold	Y
Remove Reason	Stop work order removed per Phil Sikes 11-15-17 ←
Tender Restriction Check	N
Tender Restriction Credit Card	N
Trade Types	

Details



Address (Removed Hold): Building
4217 SWISS AVE



Tax Parcel (Removed Hold) IND: Historical 4217 SWISS AVE Mapsco:46-E, 46-A
000740001001A0000



Tax Parcel (Removed Hold) IND: 4217 SWISS AVE Mapsco:46-A, 46-E
000740001001A0000

Trade Types



November 15, 2017

Via email

Alison Ashmore
Christopher D. Kratovil
Dykema Cox Smith
1717 Main Street, Suite 4200
Dallas, Texas 75201

R. Michael Northrup
Cowles & Thompson
901 Main Street, Suite 3900
Dallas, Texas 75202

Re: *Peak's Addition Home Owner's Association v. City of Dallas*; No. DC-17-02532;
134th District Court of Dallas County, Texas; and
EMF Swiss Avenue, LLC v. Peak's Addition Home Owner's Association et al.; No.
05-17-01112-CV; Fifth Court of Appeals at Dallas

Dear Counsel:

The City of Dallas has received Judge Tillery's Order Setting Supersedeas Security Under TRAP 24.2(a)(3) and EMF Swiss Avenue, LLC's Notice of Cash Deposit in Lieu of Supersedeas Bond.

In accordance with the order and the notice of cash deposit, the City has removed the stop work order on the project at 4217 Swiss Avenue.

Very truly yours,

/s/ Stacy Jordan Rodriguez

Stacy Jordan Rodriguez

cc: Justin Roy



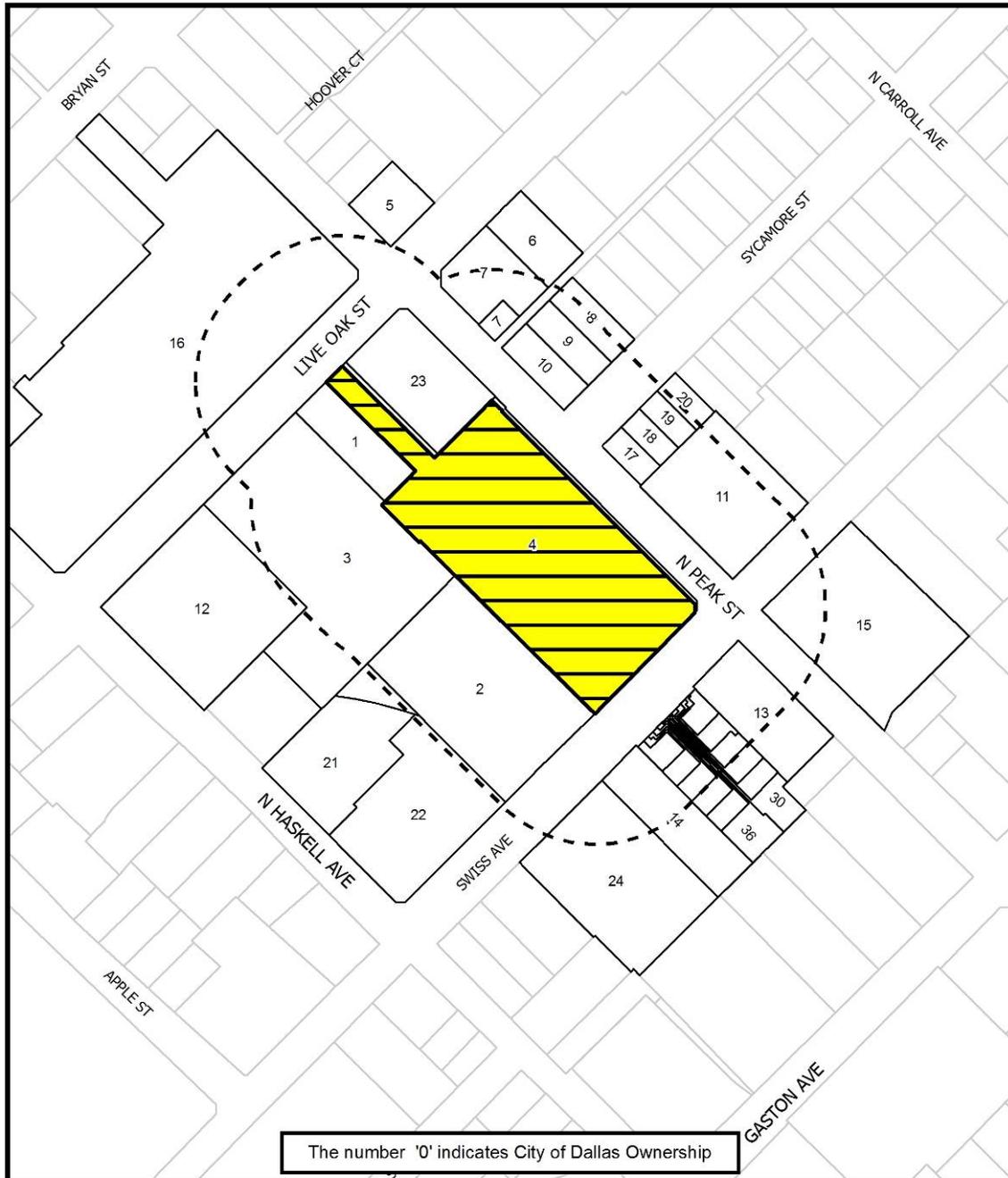
CITY OF DALLAS

Outline of Procedure for Appeals from Decisions of an Administrative Official

An appeal of an administrative official's decision may have very structured procedures that resemble a court hearing, or it may have more informal procedures that resemble a typical case brought before the Board of Adjustment. The parties can decide how they want to present their case. This document accounts for both scenarios. Please note that although there are time limits listed in this outline, the presiding officer reserves the right to alter these time limitations to promote fairness and efficiency.

- I. Explanation of the procedures by the presiding officer
- II. Swearing in of all persons who will testify in the case
- III. Applicant's case: 20 minute limit
 - a. This may resemble a typical Board case where the applicant merely presents his argument to the Board. It may also resemble a court hearing where the applicant gives an opening statement, calls witnesses, and offers evidence.
 - b. If the applicant calls a witness, the administrative official is able to cross examine the witness.
 - c. The applicant may conduct a redirect of his witness.
 - d. The applicant may submit documents to the Board Secretary as long as they comply with the documentary evidence rules set forth in the Board's Rules of Procedures.
 - e. The Board may ask questions at any time. Board member questions will not count towards the time limitation.
- IV. The Administrative Official's case: 20 minute limit
 - a. This may resemble a typical Board case where the administrative official presents his argument to the Board. It may also resemble a court hearing where the administrative official gives an opening statement, calls witnesses, and offers evidence.

- b. If the administrative official calls a witness, the applicant is able to cross examine the witness.
 - c. The administrative official may conduct a redirect of his witness.
 - d. The administrative official may submit documents to the Board Secretary as long as they comply with the documentary evidence rules set forth in the Board's Rules of Procedures.
 - e. The Board may ask questions at any time. Board member questions will not count towards the time limitation.
- V. Rebuttal by the applicant (optional): 3 minutes
- VI. Closing Statements
- a. Applicant's closing statement (optional): 3 minutes
 - b. The administrative official's closing statement (optional): 3 minutes
- VII. Move and second to either affirm, reverse, or amend the administrative official's decision.
- VIII. Open discussion of the case by Board members
- IX. Voting: Four concurring votes are required to reverse or amend the administrative official's decision.



 1:2,400	<h2 style="text-align: center;">NOTIFICATION</h2> <table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">200'</td> <td>AREA OF NOTIFICATION</td> </tr> <tr> <td style="text-align: center;">36</td> <td>NUMBER OF PROPERTY OWNERS NOTIFIED</td> </tr> </table>	200'	AREA OF NOTIFICATION	36	NUMBER OF PROPERTY OWNERS NOTIFIED	Case no: BDA178-016 Date: 1/10/2018
200'	AREA OF NOTIFICATION					
36	NUMBER OF PROPERTY OWNERS NOTIFIED					

Notification List of Property Owners

BDA178-016

36 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	4208 LIVE OAK ST	BILLINGSLY L B INVESTMENT
2	4125 SWISS AVE	4125 SWISS LLC
3	4200 LIVE OAK ST	ERETZ DALLAS PPTIES LLC
4	4217 SWISS AVE	BORDERPLEX SWISS AVENUE LLC
5	4311 LIVE OAK ST	LIVE OAK PEAK DC PPTY LLC
6	4308 LIVE OAK ST	TAMEZ ALBERTO D TR &
7	4304 LIVE OAK ST	HASKELL LEMMON PTNRS LTD &
8	4309 SYCAMORE ST	MENDEZ MARIA CLARA & LUIS MANUEL
9	4305 SYCAMORE ST	BRANNON REVEREND LEONALD
10	4301 SYCAMORE ST	CANADY REVOCABLE TR
11	4303 SWISS AVE	SCHULLE D GENE &
12	4100 LIVE OAK ST	4100 LIVE OAK LLC
13	4224 SWISS AVE	SWISS MEDICAL BULDING LLC
14	4206 SWISS AVE	GRBK FRISCO LLC
15	1000 N PEAK ST	HETRICK DENNIS W &
16	4207 LIVE OAK ST	EGW LIVE OAK INVESTMENT LP
17	4304 SYCAMORE ST	PHASOUNNABANE BOUANGEUN &
18	4308 SYCAMORE ST	XAYPANYA SOUVANH &
19	4312 SYCAMORE ST	ZAMORA EDUVIGUES
20	4316 SYCAMORE ST	WILLIAMMEE KELLY M
21	4103 SWISS AVE	CSRA KAY DALLAS MOB DST
22	4103 SWISS AVE	JBGL CHATEAU LLC
23	4262 LIVE OAK ST	SWISS AVENUE BANK
24	4121 GASTON AVE	GASTON SHOPPING CENTER LLC
25	4214 SWISS AVE	MORGAN SCOTT
26	4214 SWISS AVE	CATRON RICHARD A

01/10/2018

Label #	Address	Owner
27	4214 SWISS AVE	HERNANDEZ DANIELLE
28	4214 SWISS AVE	KONERSMAN WILLIAM EDMUND
29	4214 SWISS AVE	BOYLES THOMAS A JR
30	4214 SWISS AVE	CUNNINGHAM ANITA R
31	4214 SWISS AVE	GIUSTA CAROLINA FABIANA
32	4214 SWISS AVE	PHILLIPS MATTHEW
33	4214 SWISS AVE	HASSAN TAIMUR &
34	4214 SWISS AVE	TATUM HEATHER
35	4214 SWISS AVE	ROWELL JAMES P
36	4214 SWISS AVE	WOOD DAVE H &

FILE NUMBER: BDA178-022(SL)

BUILDING OFFICIAL'S REPORT: Application of Ray Quintanilla, represented by Kori Haug, for a special exception to the landscape regulations at 4711 Maple Avenue. This property is more fully described as Lot 1B, Block 6/2289, and is zoned PD 193 (GR), which requires mandatory landscaping. The applicant proposes to construct and or maintain structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 4711 Maple Avenue

APPLICANT: Ray Quintanilla,
Represented by Kori Haug

REQUEST:

A request for a special exception to the landscape regulations is made to increase nonpermeable coverage (additional new surface parking lot) on the subject site that is in part developed with a vacant 1970's nonresidential structure and in part undeveloped, and not fully provide required landscaping, more specifically, to not fully provide street trees in the required location, sidewalks at the required widths, screening of the existing parking lot, and landscape site area. (The applicant intends to redevelop the site with a restaurant/bar/market type use – Maple Street Food Hall and Bar).

STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REQUIREMENTS IN OAK LAWN:

Section 51P-193-126(a)(4) of the Dallas City Code specifies that the board may grant a special exception to the landscaping requirements of this section if, in the opinion of the Board, the special exception will not compromise the spirit and intent of this section. When feasible, the Board shall require that the applicant submit and that the property comply with a landscape plan as a condition to granting the special exception.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted revised landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because the screening of off-street parking and street tree planting that the plan provides does not compromise the spirit and intent of the landscape regulations.

BACKGROUND INFORMATION:

<u>Site:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>North:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>South:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>East:</u>	PD 193 (GR) (Planned Development, General Retail)
<u>West:</u>	PD 193 (GR) (Planned Development, General Retail)

Land Use:

The subject site is in part developed with a vacant 1970's nonresidential structure and in part undeveloped. The areas to the north, east, south, and west are developed with commercial/retail uses; and the area to the west is developed with multifamily 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 landscape regulations focuses on increasing nonpermeable coverage (additional new surface parking lot) on the subject site that is in part developed with a vacant 1970's nonresidential structure and in part undeveloped, and not fully providing required landscaping, more specifically, to not fully provide street trees in the required location, sidewalks at the required widths, screening of the existing parking lot, and landscape site area. (The applicant intends to redevelop the site with a restaurant/bar/market type use – Maple Street Food Hall and Bar).
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B). The Chief Arborist states the applicant is requesting a special exception to the landscape regulations of PD 193 (GR) related to the construction of new parking for an existing structure which requires landscaping to standards for GR districts – landscaping that includes landscape site area, street trees, sidewalks, and screening of off-street parking.

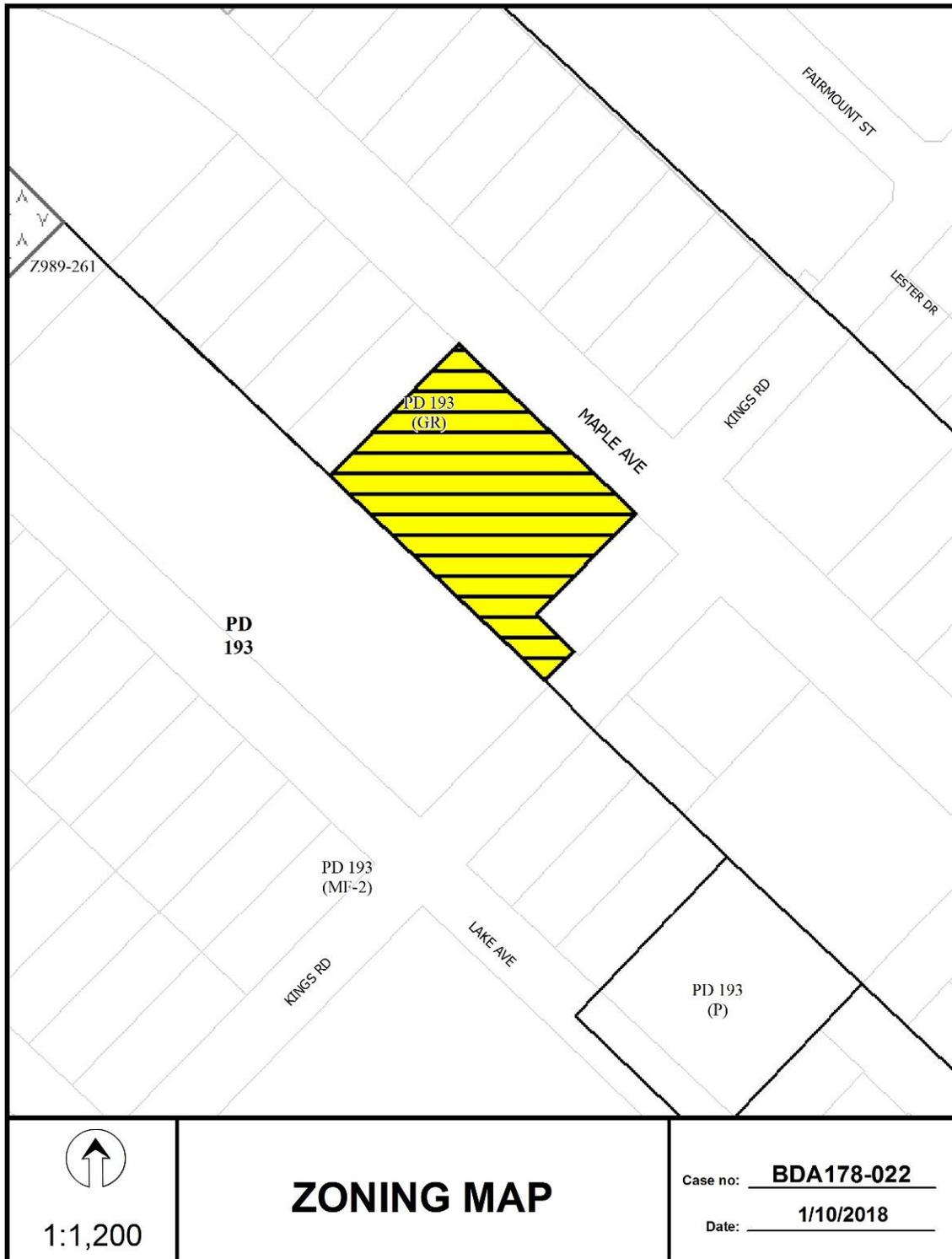
- The City of Dallas Chief Arborist’s memo states that an alternative landscape plan is submitted which provides for all 11 street trees along Maple Avenue and the mandatory screening of off-street parking for the new parking lot, and that narrow landscape areas are included within the parking lot and on the northern edge of the property.
- The Chief Arborist’s memo states the alternate landscape plan is deficient in the following:
 1. Street trees are required 2.5’-5’ from back of curb. Trees are placed further from the street and between the sidewalk and property boundary.
 2. Sidewalks are required to be 6’ wide for commercial uses. The existing sidewalks are measured at 4’ wide.
 3. Screening of off-street parking is provided for the new parking lot areas but not for the existing parking lot.
 4. Landscape site area: 10% required, provides 6.6%. Extensive parking and vehicle maneuvering area demands restrict the expansion of landscape areas.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because the screening of off-street parking and street tree planting that the plan provides does not compromise the spirit and intent of the landscape regulations.
- The applicant has the burden of proof in establishing the following:
 - The special exception (where a revised alternate landscape plan has been submitted that is deficient in meeting the landscape site area, street trees, sidewalks, and screening of off-street parking requirements of the PD 193 landscape requirements) will not compromise the spirit and intent of Section 51P-193-126: Landscape, streetscape, screening, and fencing standards”.
- If the Board were to grant this request and impose the submitted revised alternate landscape plan as a condition, the site would be granted exception from full compliance to landscape site area, street trees, sidewalks, and screening of off-street parking of the PD 193 landscape requirements of the Oak Lawn PD 193 landscape ordinance.

Timeline:

December 13, 2017: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

January 5, 2018: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- January 5, 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 January 31st deadline to submit additional evidence for staff to factor into their analysis; and the February 9th 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.
- January 29, 2018: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- February 6, 2018: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February hearings. Review team members in attendance included: the Assistant Director of Sustainable Development and Construction, the Assistant Building Official, the Board of Adjustment Chief Planner/Board Administrator, the Sustainable Development and Construction Development Code Amendment Chief Planner, the Sustainable Development and Construction Department Senior Planners, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Sustainable Development and Construction Project Engineer, the City of Dallas Chief Arborist, and the Assistant City Attorney to the Board.
- February 8, 2018: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment B).





1:1,200

AERIAL MAP

Case no: BDA178-022

Date: 1/10/2018

Memorandum



Date February 8, 2018
To Steve Long, Board Administrator
Subject BDA #178-022 4711 Maple Avenue - Arborist report

Request

The applicant is requesting a special exception to the landscape regulations of PD 193(GR).

Provision

The construction of new parking for an existing structure requires landscaping to standards for GR districts, which includes landscape site area, street trees, sidewalks, and screening of off-street parking. An alternative landscape plan is submitted which provides for all 11 street trees along Maple Avenue and the mandatory screening of off-street parking for the new parking lot. Narrow landscape areas are included within the parking lot and on the northern edge of the property.

Deficiency

The alternative landscape plan is deficient in the following requirements:

- Street trees are required 2.5'-5' from back of curb. Trees are placed further from the street and between the sidewalk and property boundary.
- Sidewalks are required to be 6' wide for commercial uses. The existing sidewalks are measured at 4' wide.
- Screening of off-street parking is provided for the new parking lot areas but not for the existing parking lot.
- Landscape site area: 10% required, provides 6.6%. Extensive parking and vehicle maneuvering area demands restrict the expansion of landscape areas.

Recommendation

The chief arborist recommends approval of the alternate landscape plan because the screening of off-street parking and street tree planting provides that the plan does not compromise the spirit and intent of the landscape regulations.

Philip Erwin
Chief Arborist
Building Inspection



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA/178-022

Data Relative to Subject Property:

Date: 12/13/2017

Location address: 4711 Maple Avenue Zoning District: PD 193 (GR)

Lot No.: 1B Block No.: 6/2289 Acreage: 1.24 Census Tract: 4.01

Street Frontage (in Feet): 1) 349.6 2) 34 3) 4) 5)

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Quintanilla Technologies

Applicant: Ray Quintanilla Telephone: 214 773 6783

Mailing Address: 4739 maple Ave Dallas Zip Code: 75219

E-mail Address: rquinta433@gmail.com

Represented by: Kori Haug Telephone: 214-865-7192

Mailing Address: 4245 N. Central Expy, Suite 501 Dallas, TX Zip Code: 75205

E-mail Address: khaug@bellefirma.com

Affirm that an appeal has been made for a Variance, or Special Exception X, of Approval of an alternative landscape plan.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Due to the hardship of redeveloping an existing 8,405 s.f. building with an existing parking lot and existing 4' sidewalk (installed by the City and located 4' from the back of street curb), we are asking for a Special Exception for the following landscape requirements of PD 193, subdistrict GR: site landscape area, front yard landscape area, sidewalk width and location, tree planting zone width and location and parking lot screen in front of the existing building. Additional lots are being replatted with the existing lot to form a larger lot. To meet parking requirements, these added lots must be mostly paved area, leaving little room for required landscape area.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

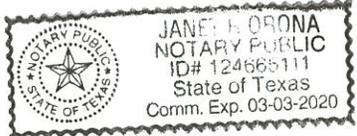
Before me the undersigned on this day personally appeared Ray Quintanilla (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 13 day of December, 2017

(Rev. 08-01-11)



[Signature] Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that Ray Quintanilla
represented by Kori Haug
did submit a request for a special exception to the landscaping regulations
at 4711 Maple Avenue

BDA178-022. Application of Ray Quintanilla represented by Kori Haug for a special exception to the landscaping regulations at 4711 Maple Ave. This property is more fully described as Lot 1B, Block 6/2289, and is zoned PD-193 (GR), which requires mandatory landscaping. The applicant proposes to construct a nonresidential structure and provide an alternate landscape plan, which will require a special exception to the landscape regulation

Sincerely,

Philip Sikes
Philip Sikes, Building Official



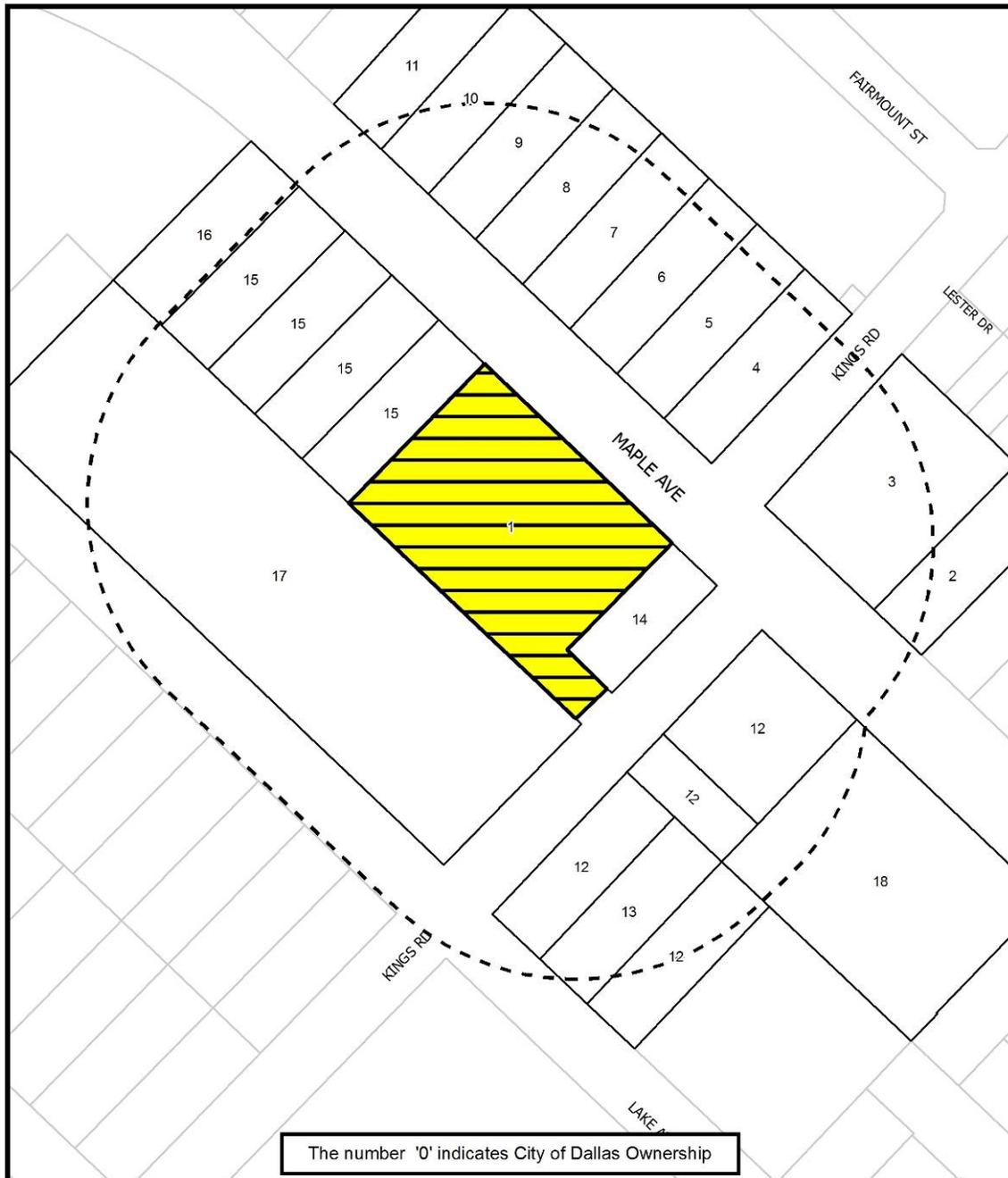
QUINTANILLA'S
SUBD. NO. 2

FILED 5-6-77

2289/6

LAKE

2292/9



 1:1,200	NOTIFICATION		Case no: BDA178-022
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">18</div> NUMBER OF PROPERTY OWNERS NOTIFIED	Date: 1/10/2018	

Notification List of Property Owners

BDA178-022

18 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	4711 MAPLE AVE	QUINTANILLA TECHNOLOGIES INC
2	4630 MAPLE AVE	AREVALO RUBEN & RAQUEL
3	4636 MAPLE AVE	A & S MAPLE LLC
4	4700 MAPLE AVE	SBDAC LLC
5	4706 MAPLE AVE	HOOKS & MCGANNON LLC
6	4710 MAPLE AVE	CUCOVATZ PAUL CHARLES JR
7	4714 MAPLE AVE	AVILA OCTAVIO
8	4718 MAPLE AVE	MAPLE AVE ECONOMIC DEV CORP OF DALLAS
9	4722 MAPLE AVE	CUCOVATZ MARY LOUISE
10	4724 MAPLE AVE	QUINTANILLA JOE
11	4730 MAPLE AVE	QUINTANILLA TECHNOLOGIES INC
12	4631 MAPLE AVE	OJEDA BEN B LP
13	4630 LAKE AVE	OJEDA DAVID
14	4703 MAPLE AVE	NGO BINH T &
15	4723 MAPLE AVE	QUINTANILLA TECHNOLOGIES INC
16	4739 MAPLE AVE	QUINTANILLA TECHNOLOGIES
17	4710 LAKE AVE	4710 LAKE LLC &
18	4617 MAPLE AVE	OJEDA BEN B LTD PS