

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL COUNCIL CHAMBERS  
WEDNESDAY, JANUARY 18, 2017**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Lorlee Bartos, alternate member and Gary Sibley, alternate member

MEMBERS ABSENT FROM BRIEFING: Wini Cannon, regular member

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Joe Carreon, regular member, Lorlee Bartos, alternate member and Gary Sibley, alternate member

MEMBERS ABSENT FROM HEARING: Wini Cannon, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Kanesia Williams, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

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**11:37 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **January 18, 2017 docket.**

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**1:04 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B November 16, 2016, 2016 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: JANUARY 18, 2017**

**MOTION:** None

The minutes were approved.

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**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA156-083(SL)

**REQUEST:** To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B’s favorable action on a request for a special exception to the to the Flora Street height restrictions granted (with conditions) on August 17, 2016.

**LOCATION:** 901 Pearl Street

**APPLICANT:** Maxwell Fisher

**STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:**

- The Dallas Development Code states:
  - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted (by the Board of Adjustment) an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:  
 A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the

property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

**Timeline:**

August 17, 2016: The Board of Adjustment Panel B granted a request for a special exception to the Flora Street building height requirements of 11' and imposed the following conditions: 1) Compliance with submitted development plan, and the submitted building elevations is required; and 2) The portion of the building exceeding the maximum height permitted is occupied exclusively by multiple-family uses.

The case report stated that this request was made to construct and maintain an approximately 600,000 square foot, 40-story mixed use structure/development (multifamily and retail) on a on a site developed as a surface parking lot, part of which would not fully comply with PD 145 height restrictions on Flora Street which restricts the maximum building height within the Flora Street frontage area to the height of any portion of a structure must be equal to or less than the shortest distance from the vertical plan extending through the Flora Street centerline. (See Attachment A for documents related to this application).

December 5, 2016: The applicant sent a letter to the Board Administrator requesting an extension of the time period in which to make application for a building permit or certificate of occupancy (see Attachment B).

December 6, 2016: The Board Administrator emailed the applicant acknowledging his request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the August 17<sup>th</sup> favorable action (see Attachment C). The applicant was emailed the following additional information:

- an attachment that provided the public hearing date of the request; and 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;
- an attachment of materials related to BDA156-083; and
- The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

**BOARD OF ADJUSTMENT ACTION    **JANUARY 18, 2017****

**APPEARING IN FAVOR:**                    Maxwell Fisher, 900 Jackson St., Dallas, TX

**APPEARING IN OPPOSITION:**    No one

**MOTION:**    **Sibley**

I move that the Board of Adjustment extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B's favorable action on a request for a special exception to the to the Flora Street height restrictions granted (with conditions) on August 17, 2016.

**SECONDED: Carreon**

**AYES:** 4 – Hounsel, Carreon, Bartos, Sibley

**NAYS:** 0

**MOTION PASSED** 4 – 0 (unanimously)

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**FILE NUMBER:** BDA167-001(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Pete Frey, represented by Paul Coggins, for a special exception to the landscape regulations at 4004 Lemmon Avenue. This property is more fully described as Lot 1A, Block D/1056, and is zoned PD 193 (GR), 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:** 4004 Lemmon Avenue

**APPLICANT:** Pete Frey  
Represented by Paul Coggins

**REQUEST:**

A request for a special exception to the landscape regulations is made to maintain an existing structure/automobile service use (Take 5 Oil Change) on a site, and not fully provide required landscaping.

**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 conditions:

1. Compliance with the submitted alternate landscape plan is required.
2. An automatic irrigation system must be installed and maintained on the subject site.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request because the applicant has reasonably demonstrated the proposed alternate landscape plan does not compromise the spirit and intent of the PD 193 landscape requirements for GR districts.
- In this case, the Chief Arborist notes among other things how the alternative landscape plan identifies: 1) new unspecified evergreen shrubs at the required height and spacing, and a screening fence, to be installed adjacent to the surface parking locations on the property, and 2) new trees based on the availability of space for visibility triangles for driveways and the street corner.

**BACKGROUND INFORMATION:**

Site: PD 193 (GR) (Planned Development, General Retail)  
North: PD 193 (MF-2) (Planned Development, Multifamily)  
South: PD 193 (GR) (Planned Development, General Retail)  
East: PD 193 (GR) (Planned Development, General Retail)  
West: PD 193 (GR) (Planned Development, General Retail)

**Land Use:**

The subject site is developed with an automobile service structure/use (Take 5 Oil Change) that according to a City of Dallas Arborist has been on the property since 1987. The area to the north is developed with residential use; the area to the east is undeveloped; and the areas to the south and west are developed with retail 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 maintaining an existing structure/automobile service use (Take 5 Oil Change) on a site, and not fully providing required landscaping.
- More specifically, according to the City of Dallas Chief Arborist, the applicant seeks a special exception to the landscape requirements related to street trees, sidewalks, and irrigation.
- A City of Dallas Arborist emailed in Board Administrator information about this property in November of 2016. The City Arborist stated that the property originally came to his attention as a Code Compliance case in July of 2015 - a citizen complaint about missing street trees and landscaping. The old building was demolished in 1987 and the new one constructed that same year. As PD 193 came into being in February, 1985, the new building would have triggered a landscape review and inspection under PD 193 regulations at that time. There was an approved landscape plan in City archives, but the sidewalk location was very unclear on the drawing and the inspector (whomever that was) may not have even known to check for its location and width, as per the ordinance. The existing

sidewalks on the property do not currently meet code for location and would either need to be replaced or if kept, it will force the placement of their three street trees along the Throckmorton frontage back behind it which are not code compliant.

- 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 A). The memo states how this request is triggered the enforcement of compliance with requirements of PD 193 zoning regulations.
- The Chief Arborist's memo states the following with regard to deficiencies:
  - Street trees – Minimum of 3 required and provided; required from 2.5' – 5' from back of curb but provided at 10' from back of curb (193.126(b)(5)).
  - Sidewalks – Minimum of 6 feet width and between 5' – 12' from back of curb required, but provided existing 4 feet sidewalk between 2.5' and 6,5' from back of curb (193.126(b)(4)).
  - All required landscaping must be irrigated and drained by automatic irrigation and permanent drainage systems installed to comply with industry standards. An irrigation system was not located on site during review, or indicated on the plan (193.126(b)(2)).
- The Chief Arborist's memo lists the following factors for consideration:
  - The structure was built in 1987 after the PD 193 special purpose district was formed.
  - Recent investigations into landscape compliance issues in the area discovered the property to not be in compliance with mandatory landscape requirements imposed with the 1987 construction of the site. The installed sidewalk location in the right-of-way does not conform to PD 193 standards for new construction.
  - The plan identifies new unspecified evergreen shrubs at the required height and spacing, and a screening fence, to be installed adjacent to the surface parking locations on the property. Other existing shrubs along the Throckmorton and Lemmon frontages do not screen for parking spaces. New trees are provided based on the availability of space for visibility triangles for driveways and the street corner. The location of the existing sidewalk prohibits the planting of the trees within the required distance from back of curb. The groundcover border will provide an additional decorative edge.
- The City of Dallas Chief Arborist recommends approval of this request, subject to the applicant complying with the submitted alternate landscape plan and the added condition that an automatic irrigation system for the continued maintenance of landscaping be provided because the applicant has reasonably demonstrated the proposed alternate landscape plan does not compromise the spirit and intent of the PD 193 landscape requirements for GR districts.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where the applicant seeks a special exception to the landscape requirements related to street trees, sidewalks, and irrigation) 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 alternate landscape plan and that an automatic irrigation system are required as conditions, the site would be granted exception from full compliance to street tree and sidewalk requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

October 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.

December 7, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

December 7, 2016: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the December 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction 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 were submitted in conjunction with this application.

January 9, 2017: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION    **JANUARY 18, 2017****

**APPEARING IN FAVOR:**            No one

**APPEARING IN OPPOSITION:**    No one

**MOTION: Sibley**

I move to grant that the Board of Adjustment grant application **BDA 156-001(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required; and
- An automatic irrigation system must be installed and maintained on the subject site.

**SECONDED: Carreon**

**AYES:** 4 – Hounsel, Carreon, Bartos, Sibley

**NAYS:** 0

**MOTION PASSED** 4 – 0 (unanimously)

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**FILE NUMBER:** BDA167-003(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Darren Aschaffenburg for special exceptions to the fence standards at 9520 Hathaway Street. This property is more fully described as Lot 7A, Block 7/5597, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a fence panel with a surface area that is less than 50 percent open be located a minimum of 5 feet from the front lot line. The applicant proposes to construct and maintain a 10 foot high fence in a required front yard, which will require a 6 foot special exception to the fence standards, and to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence standards.

**LOCATION:** 9520 Hathaway Street

**APPLICANT:** Darren Aschaffenburg

**REQUESTS:**

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

- 1) A special exception of to the fence standards of 6’ is made to construct and maintain a fence higher than 4’ in height (a 6’ high solid masonry fence with stucco finish with an approximately 7’ high masonry columns with stucco finish, a 10’ high wood gate with 9’ 8” high masonry columns with stucco finish flanked by 7’ high solid masonry entry gate wing walls with stucco finish) in the front yard setback;
- 2) A special exception to the fence standards is made to construct and maintain the aforementioned fence with fence panels with surface areas that are less than 50 percent open (solid masonry fence with stucco finish) located approximately 3’ from the front lot line (or less than 5’ from the front lot line).

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

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

## **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-1ac(A) (Single family district 1 acre)
<u>North:</u>	R-1ac(A) (Single family district 1 acre)
<u>South:</u>	R-1ac(A) (Single family district 1 acre)
<u>East:</u>	R-1ac(A) (Single family district 1 acre)
<u>West:</u>	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, and west are developed with single family uses; and the area to the east is the Dallas North Tollway.

### **Zoning/BDA History:**

1. BDA056-012, Property located at 9520 Hathaway Street (the subject site)  
On November 16, 2005, the Board of Adjustment Panel B granted a request for special exception to the fence height regulations of 6', and imposed the following condition to the request: Compliance with the submitted revised site plan and revised elevation plan is required.  
The case report stated that the requests were made in conjunction with maintaining a 6' high chain link fence with approximately 5.5' – 6' high entry wing walls with 6' high columns and a 10' high arched wood vehicular gate with 7' high entry columns on a site developed with a single family home.
2. BDA156-119, Property located at 5600 Park Lane (the lot immediately north of the subject  
On November 16, 2016, the Board of Adjustment Panel B granted requests for special exceptions to the fence standards

site)

and imposed the following condition to the request: Compliance with the submitted site plan and elevation plan is required.

The case report stated that the requests were made to complete and maintain a fence higher than 4' in height in the Park Lane front yard setback (an 8' high solid stone fence with an approximately 7' high gate) and in the Hathaway Street front yard setback (an entry feature with solid stone wing walls ranging from 4' – 6' in height); and complete and maintain fence panels with surface areas that are less than 50 percent open (solid stone fences/wing walls) located about 2' from the Park Lane and Hathaway Street front lot lines (or less than 5' from these front lot lines).

3. BDA 88-129, 9446 Hathaway Street (the lot immediately south of the subject site)

On December 13, 1988, the Board of Adjustment granted a request to the fence height special regulations of 11'. The board imposed the following condition with this request: "That the fence shall be built in accordance to the site plan and fence elevation plan submitted." The case report does not specify the features of the proposal.

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

- These requests for special exceptions to the fence standards focus on a site developed with a single family home and constructing and maintaining a 6' high solid masonry fence with stucco finish with an approximately 7' high masonry columns with stucco finish, a 10' high wood gate with 9' 8" high masonry columns with stucco finish flanked by 7' high solid masonry entry gate wing walls with stucco finish; and constructing and maintaining fence panels with surface areas that are less than 50 percent open (solid masonry fence with stucco finish) located approximately 3' from the front lot line (or less than 5' from this front lot line).
- The subject site is zoned R-1ac(A).
- Note the following with regard to the request for special exception to the fence standards pertaining to the **height** of the proposed fence in the front yard setback:
  - 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 elevation of the proposal in the front yard setback with notations indicating that the proposal reaches a maximum height of 10'.
  - The following additional information was gleaned from the submitted site plan:

- The proposal over 4' in height is represented as being approximately 240' in length parallel the street.
  - The proposal is represented as being located approximately 3' from front property line or approximately 19' from the pavement line. (The gate proposal is represented as being located approximately 12' from front property line or approximately 28' from the pavement line).
- Note the following with regard to the request for special exception to the fence standards pertaining to the **location and materials** of the proposed fence:
  - The Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line. (This does not apply to retaining walls).
  - With regard to the special exceptions to the fence standards pertaining to the location and materials of the proposed fences, the applicant has submitted a site plan and elevation of the fence panels with surface areas that are less than 50 percent open (solid masonry with stucco finish) located approximately 3' from the front lot line or less than 5' from this front lot line.
  - The following additional information was gleaned from the submitted site plan:
    - The fence panel with a surface area less than 50 percent open located less than 5' from the front lot line is a 6' high solid masonry fence with stucco finish an 8' high solid stone fence with an approximately 7' high gate that is represented as being approximately 240' in length parallel to the street, and as being located on the approximately 3' from the front property line or approximately 19' from the pavement line.
- No single family lot fronts the proposed fence. The lots immediately west of the site have side yards along Hathaway Street, and front yards on Park Lane and Kemper Court.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence being constructed that appeared to be above 4' in height, of solid material less than 5' from the front lot line, and located in a front yard setback. This fence is located immediately north and appears to be a result of a granted fence height special exception in 2016 (BDA156-119).
- As of January 6, 2017, 4 letters have been submitted in support of the request, and no letters have been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to height over 4' in the front yard setback and materials/height/location of the proposed fence will not adversely affect neighboring property.
- Granting these special exceptions with a condition imposed that the applicant complies with the submitted site plan and elevation would require the proposal exceeding 4' in height in the front yard setbacks and with fence panels with surface areas less than 50 percent open located less than 5' from the front lot lines to be constructed maintained in the location and of the heights and materials as shown on these documents.

**Timeline:**

October 19, 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.

December 7, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. 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."

December 7, 2016: 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 December 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction 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 were submitted in conjunction with this application.

January 4, 2017: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

### **BOARD OF ADJUSTMENT ACTION    JANUARY 18, 2017**

**APPEARING IN FAVOR:**            Darren Aschaffenburg,

**APPEARING IN OPPOSITION:**    No one

**MOTION:**    **Carreon**

I move that the Board of Adjustment, in Appeal No. **BDA 167-003**, on application of Darren Aschaffenburg, **grant** the request of this applicant to construct and maintain a

10-foot tall fence with fence panels with surface areas that are less than 50 percent open located approximately three feet from the front lot line on the property as special exceptions to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that these special exceptions will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Bartos**

**AYES:** 4 – Hounsel, Carreon, Bartos, Sibley

**NAYS:** 0

**MOTION PASSED** 4 – 0 (unanimously)

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**FILE NUMBER:** BDA167-008(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Ryan Bellomy, represented by Robert R. Harris, for a special exception to the landscape regulations at 4407 W. Lovers Lane. This property is more fully described as Lot 1A, Block E/4975, and is zoned PD 326, Area A, which requires mandatory landscaping. The applicant proposes to construct and maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 4407 W. Lovers Lane

**APPLICANT:** Ryan Bellomy  
Represented by Robert R. Harris

**REQUEST:**

A special exception to the landscape regulations is made to construct and maintain an office use/structure on a site currently undeveloped, and not fully meet the landscape regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property;
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the Board shall consider the following factors:

- the extent to which there is residential adjacency;
- the topography of the site;
- the extent to which landscaping exists for which no credit is given under this article; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist recommends approval of the request because strict compliance with the requirements of this article will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property. More specifically, the only way in which the alternate plan is deficient is on the western portion of the property where a 5' wide perimeter landscape buffer strip as opposed to 10' wide strip. However, the submitted alternate landscape plan provides an 8' high masonry wall to separate the use on the site from the residences to the north, and meets all other landscape requirements per Article X and PD 326, including screening of off-street parking and foundation planting.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 326 (Area A) (Planned Development)  
North: R-10(A) (Single family residential 10,000 square feet)  
South: PD 326 (Area C) (Planned Development)  
East: PD 326 (Area B) (Planned Development)  
West: PD 326 (Area A) (Planned Development)

**Land Use:**

The subject site is undeveloped. The area to the north is developed with single family uses; the area to the east is developed with retail use; and the areas to the south and west are developed with office uses.

**Zoning/BDA History:**

1. BDA156-036, Property at 4407 W. Lovers Lane (the subject site) On April 20, 2016, the Board of Adjustment Panel B 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 construct and maintain an office use/structure on a site currently undeveloped, and not fully meet the landscape regulations. (Note that the Board of Adjustment Panel B granted the applicant's request to waive the two year time limitation to refile a new application on this site on October 19, 2016).

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

- This request focuses constructing and maintaining an office use/structure on a site currently undeveloped, and not fully meeting the landscape regulations, more specifically not fully providing the required 10' wide perimeter landscape buffer strip on the western portion of the subject site.
- The subject site is zoned PD 326 which states that landscaping must be provided on all property in accordance with Article X, "Landscape Regulations," when an application is made for a building permit for construction work that: 1) increases by more than 10 percent the floor area of any structure; 2) increases the number of stories of any structure on a lot; or 3) increases the number of structures on the lot.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states how this request is triggered by a new construction.
- The Chief Arborist's memo states the following with regard to deficiencies:
  - The mandatory perimeter landscape buffer strip (10.125(b)(1)) for residential adjacency is designed to be 5 feet wide on the western portion of the property where 10 feet is required by Article X. Plant groups (10.125(b)(7)), required to be 1 large tree per 50 linear feet of adjacency, include small trees based on the reduced planting area where large trees are required.
- The Chief Arborist's memo lists the following factors for consideration:
  1. All other landscape requirements per Article X and PD 326 are met, including screening of off-street parking and foundation planting. PD 326 requires one tree per 40 feet of street frontage when parking is included in the front yard.
  2. An 8' tall masonry wall separates the use from the residences to the north.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because strict compliance with the requirements of this article will unreasonably burden the use of the property, and the special exception will not adversely affect neighboring property.
- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property; and the special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted landscape plan as a condition to the request, the site would be provided exception from full compliance with the required perimeter landscape buffer strip on the subject site.

**Timeline:**

September 23, 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.

December 7, 2016: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B. 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.”

December 7, 2016: 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 December 28<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the January 6<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

January 3, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the January public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the Sustainable Development and Construction 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 were submitted in conjunction with this application.

January 9, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION    **JANUARY 18, 2017****

**APPEARING IN FAVOR:**                      No one

**APPEARING IN OPPOSITION:**    No one

**MOTION:**    **Sibley**

I move to grant that the Board of Adjustment grant application **BDA 156-008(SL)** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted alternate landscape plan is required.

**SECONDED: Carreon**

**AYES:** 4 – Hounsel, Carreon, Bartos, Sibley

**NAYS:** 0

**MOTION PASSED** 4 – 0 (unanimously)

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**MOTION:**

I move to adjourn this meeting.

**SECONDED: Carreon**

**AYES:** 4 – Hounsel, Carreon, Bartos, Sibley

**NAYS:** 0

**MOTION PASSED** 4 – 0 (unanimously)

**1:25 P.M.** Board Meeting adjourned for **January 18, 2017**

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
BOARD ADMINISTRATOR

\_\_\_\_\_  
BOARD SECRETARY

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