

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
MONDAY, MARCH 20, 2017**

MEMBERS PRESENT AT BRIEFING: Bruce Richardson, Chair, Marla Beikman, regular member, Phil Foster, regular member, Cheri Gambow, regular member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: Alex Winslow, regular member

MEMBERS PRESENT AT HEARING: Bruce Richardson, Chair, Marla Beikman, regular member, Phil Foster, regular member, Cheri Gambow, regular member, and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: Alex Winslow, regular member

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

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

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**11:10 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **March 20, 2017** docket.

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**1:07 P.M.**

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

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C, February 23, 2017 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2017**

MOTION: None

The minutes were approved without a formal vote.

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**FILE NUMBER:** BDA167-024(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Maria Hicks, represented by Michael Dailey, for a special exception to the landscape regulations at 5505 Belt Line Road. This property is more fully described as Lot 1C, Block A/8222, and is zoned PD-114, 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:** 5505 Belt Line Road

**APPLICANT:** Maria Hicks  
Represented by Michael Dailey

**REQUEST:**

A special exception to the landscape regulations is made to maintain an existing restaurant use/structure (Mesero), 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 concluding that strict compliance with the requirements of Article X for street trees will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property. The Chief Arborist concluded that landscaping on the plan is designed and implemented to provide a visual appeal to the property to meet with a specific southwest-style theme; that the Texas sage along the property boundary provides a buffering element along the street which did not exist previously; and that the parkway has been heavily utilized for public utilities.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 114 (Planned Development)  
North: PD 26 (Planned Development)  
South: R-16(A) (Single family residential, 16,000 square feet)  
East: PD 26 (Planned Development)  
West: PD 114 (Planned Development)

**Land Use:**

The subject site is developed with a restaurant use/structure (Mesero). The areas to the north and east are developed with a country club use (Prestonwood Country Club); the area to the south is developed with single family uses; and the area to the west is developed with office 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 restaurant use/structure (Mesero), and not fully meeting the landscape regulations, more specifically not fully providing the street tree, parking lot tree, and foundation planting strip requirements on the subject site.
- The subject site is zoned PD 114 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:
  1. The Article X requires 8 street trees (large trees) for 396 feet of street frontage. The proposed plan provides for no street trees within 30 feet of the street curb (Section 51A-10.125(b)(4)).
  2. The parking lot tree requirement for all required parking spaces to be within 120 feet of a large canopy tree is not met, with 6 spaces not within distance. Although the windmill fan palm trees are considered by the arborist office to meet the technical requirements for a large canopy tree, based on ordinance, for height (typically exceeds 30 feet at maturity) and canopy (branches above 6 feet) definitions, the provided 9 square feet planting areas do not meet the required minimum 25 square feet of soil area for large trees, or 16 square feet for small trees, for required landscaping (Section 51A-10.125(b)(5)). Unless the landscape architect can certify to this office the alternative soil depths and dimensions are sufficient to support the growth of the plant, an allowance would need to be given for consideration of these large trees growing in a reduced soil area to be considered as required landscaping (Section 51A-10.104).
  3. A foundation planting strip design standard is required to have large shrubs (normally reaching a height of six feet or more at maturity) along a minimum of 50% of the foundation of the building facing the street. The plan is modified to provide a broad mixture of water-wise plant materials (shrubs and grasses) to provide a specific design (Section 51A-10.126(g)).
- The Chief Arborist's memo lists the following factors for consideration:
  1. All The building permit for this project was issued in June 2015 with landscape plans which showed compliance with Article X requirements. However, this did place large trees in proximity to overhead utilities. The original plan identified design standards of 1) foundation planting and 2) enhanced pedestrian walkways. The amended plan before the board has adjusted for grasses and

shrubs as foundation planting, and has reduced the enhanced pedestrian walkway from the minimum requirements. The screening of off-street parking with Texas sage is now considered a design standard which replaces the reduced enhanced pedestrian walkway.

2. PD 114, Phase I, requires Article X landscape regulations which have amended requirements for building projects which add over 10,000 square feet of floor area. This project only added 5,182 square feet of floor area. Therefore, only standard Article X requirements apply. The PD 114 provisions for large projects do provide a condition, when applicable, that the building official may approve small trees to substitute for large canopy trees where a utility conflict exists.
  3. City records affirm an underground storm water line system is in proximity to the 10-foot space adjacent to the Belt Line street curb, but the exact pipe alignment, in relation to the parkway green space, is not determined. Engineering Services has stated small trees are acceptable in proximity to a storm water line if not planted directly over it. A water distribution line is in the area but appears to be under street pavement. But further research by utility locators indicates an underground gas line is centered within the parkway between the property line and the curb. Overhead electric and utility lines are within twenty to thirty feet of the curb which leaves an area of potential application for only small trees. A screening row of Texas sage shrubs have been planted which fill in along the property line.
  4. All other landscape requirements of Article X are in compliance.
- The City of Dallas Chief Arborist recommends approval of the alternate landscape plan because he believes that strict compliance with the requirements of Article X for street trees will unreasonably burden the use of the property. The Chief Arborist believes the special exception will not adversely affect neighboring property. Landscaping on the plan is designed and implemented to provide a visual appeal to the property to meet with a specific southwest-style theme. The Chief Arborist notes that the Texas sage along the property boundary provides a buffering element along the street which did not exist previously; and the parkway has been heavily utilized for public utilities. If the board determines other landscape elements for the street front are needed, the Chief Arborist recommends that only small trees should be considered in the parkway and only if they can be demonstrated to be centered at least 5 feet from an underground gas or water distribution utility.
  - 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 street tree, parking lot tree, and foundation planting strip requirements on the subject site.

**Timeline:**

January 18, 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.

February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 15, 2017: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the 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.

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

### **BOARD OF ADJUSTMENT ACTION: MARCH 20, 2017**

**APPEARING IN FAVOR:** Trey Dyer, 5495 Belt Line Rd., Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Bartos

I move that the Board of Adjustment, in Appeal No. **BDA 167-024**, on application of Maria Hicks, represented by Michael Dailey, **grant** the request of this applicant for a special exception to the landscaping requirements contained in PD 114, because our evaluation of the property, the testimony presented to us, and the facts that we have

determined show that this special exception will not compromise the spirit and intent of Section 51P-114.107 of the Dallas Development Code. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.

**SECONDED: Beikman**

**AYES:** 5 – Richardson, Beikman, Foster, Gambow, Bartos

**NAYS:** 0

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

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**FILE NUMBER:** BDA167-026(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Newell E. Boughton, represented by Donald Reichert, for a special exception to the off-street parking regulations at 4827 Don Drive. This property is more fully described as Lot 30, Block D/6364, and is zoned IR, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for a vehicle or engine repair or maintenance use, and provide 5 of the required 6 off-street parking spaces, which will require a 1 space special exception to the off-street parking regulations.

**LOCATION:** 4827 Don Drive

**APPLICANT:** Newell E. Boughton  
Represented by Donald Reichert

**REQUEST:**

A request for a special exception to the off-street parking regulations of 1 space is made to lease and maintain an existing approximately 2,800 square foot one-story structure on the subject site with a “vehicle or engine repair or maintenance” use, and provide 5 (or 83 percent) of the 6 required off-street parking spaces.

**STANDARD FOR A SPECIAL EXCEPTION TO THE OFF-STREET PARKING REGULATIONS:**

- 1) The Board of Adjustment may grant a special exception to authorize a reduction in the number of off-street parking spaces required under this article if the board finds, after a public hearing, that the parking demand generated by the use does not warrant the number of off-street parking spaces required, and the special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets. The maximum reduction authorized by this section is 25 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the commercial amusement (inside) use and the industrial (inside) use, the maximum reduction authorized by this section is 75 percent or one space, whichever is

greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). For the office use, the maximum reduction authorized by this section is 35 percent or one space, whichever is greater, minus the number of parking spaces currently not provided due to delta credits, as defined in Section 51A-4.704(b)(4)(A). Applicants may seek a special exception to the parking requirements under this section and an administrative parking reduction under Section 51A-4.313. The greater reduction will apply, but the reduction may not be combined.

- 2) In determining whether to grant a special exception, the board shall consider the following factors:
  - (A) The extent to which the parking spaces provided will be remote, shared, or packed parking.
  - (B) The parking demand and trip generation characteristics of all uses for which the special exception is requested.
  - (C) Whether or not the subject property or any property in the general area is part of a modified delta overlay district.
  - (D) The current and probable future capacities of adjacent and nearby streets based on the city's thoroughfare plan.
  - (E) The availability of public transit and the likelihood of its use.
  - (F) The feasibility of parking mitigation measures and the likelihood of their effectiveness.
- 3) In granting a special exception, the board shall specify the uses to which the special exception applies. A special exception granted by the board for a particular use automatically and immediately terminates if and when that use is changed or discontinued.
- 4) In granting a special exception, the board may:
  - (A) Establish a termination date for the special exception or; otherwise provide for the reassessment of conditions after a specified period of time;
  - (B) Impose restrictions on access to or from the subject property; or
  - (C) Impose any other reasonable conditions that would have the effect of improving traffic safety or lessening congestion on the streets.
- 5) The board shall not grant a special exception to reduce the number of off-street parking spaces required in an ordinance granting or amending a specific use permit.
- 6) The board shall not grant a special exception to reduce the number of off-street parking spaces expressly required in the text or development plan of an ordinance establishing or amending regulations governing a specific planned development district. This prohibition does not apply when:
  - (A) the ordinance does not expressly specify a minimum number of spaces, but instead simply makes references to the existing off-street parking regulations in Chapter 51 or this chapter; or
  - (B) the regulations governing that specific district expressly authorize the board to grant the special exception.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:



- The special exception of 1 space shall automatically and immediately terminate if and when the “vehicle or engine repair or maintenance” use is changed or discontinued.

Rationale:

- The Sustainable Development Department Assistant Director of Engineering indicated that he has no objections to the applicant’s request – that parking demand generated by this use does not warrant the number of off-street parking spaces required, and this special exception would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: IR (Industrial/research)  
North: IR (Industrial/research)  
South: IR (Industrial/research)  
East: IR (Industrial/research)  
West: IR (Industrial/research)

**Land Use:**

The subject site is developed with an existing one-story structure that has approximately 3,900 square feet of floor area that appears to be used as some type of commercial use. The areas to the north, south, east, and west are developed with commercial 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 off-street parking regulations of 1 space focuses on leasing and maintaining an existing approximately 2,800 square foot one-story structure on the subject site with a “vehicle or engine repair or maintenance” use, and providing 5 (or 83 percent) of the 6 required off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirement:
  - “Vehicle or engine repair or maintenance” use: One space per 500 square feet of floor area; a minimum of 5 spaces is required. Parking spaces that are used to repair vehicles and located in a structure are not counted in determining the required parking. If more than 10 spaces are required for this use, handicapped parking must be provided pursuant to Section 51A-4.305.

- However, the Building Inspection Senior Plans Examiner/Development Code Specialist emailed the Board Administrator the following:
  - While the Dallas Development Code, Chapter 51A land use codes state that in general, "If more than ten off-street parking spaces are required for this use, handicapped parking must be provided pursuant to Section 51A-4.305", the reference to Section 51A-4.305 requires full compliance with all Federal and State laws and regulations. Full compliance with the Texas Accessibility Standard (TAS) requires a minimum of one handicapped parking space for every 25 parking spaces provided for any use regardless of the minimum number of parking spaces that are required per the Dallas Development Code Chapter 51A land use codes, and requires that the first handicapped parking space provided, and every eighth handicapped space thereafter, be a van accessible handicapped parking space. A van accessible handicapped parking space differs from a non-van accessible handicapped parking space by providing a larger loading area to accommodate a van mounted wheelchair lift.
  - To say that the code only requires handicapped parking if more than 10 spaces are required is incorrect as it conflicts with the following portion of the code that requires full compliance with all Federal and State laws and regulations. The proposed land use of the subject property per the Dallas Development Code requires a minimum of 6 parking spaces be provided. The Texas Accessibility Standard requires that if only 6 parking spaces are provided, that one of those six parking spaces must be a van accessible handicapped parking space.
  - If an applicant were to propose a land use that per the Dallas Development Code Chapter 51A land use codes required him to provide only one parking space, and if the applicant elected to provide only one parking space, that one provided parking space would be required by the Texas Accessibility Standard to be a van accessible handicapped parking space. And if the applicant were not authorized to park in a handicapped parking space, he would then need to provide an additional non-handicapped parking space for his non-handicapped personal use.
- The Development Department Assistant Director of Engineering submitted a review comment sheet marked "Has no objections".
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the "vehicle or engine repair or maintenance" use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 1 space (or a 17 percent reduction of the required off-street parking) would not create a traffic hazard or increase traffic congestion on adjacent and nearby streets.
- If the Board were to grant this request, and impose the condition that the special exception of 1 space shall automatically and immediately terminate if and when the "vehicle or engine repair or maintenance" is changed or discontinued, the applicant would be allowed to lease and maintain the structure on the site with this specific use ("vehicle or engine repair or maintenance") with the specified square footage, and provide 5 of the 6 code required off-street parking spaces.

**Timeline:**

December 9, 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.

February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 15, 2017: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the 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.

March 9, 2017: The Sustainable Development Department Assistant Director of Engineering submitted a review comment sheet marked "Has no objections".

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2017**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Beikman**

I move to grant that the Board of Adjustment grant application **BDA 167-026(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:

- The special exception of 1 space shall automatically and immediately terminate if and when the “vehicle or engine repair or maintenance” use is changed or discontinued.

**SECONDED:** Foster

**AYES:** 5 – Richardson, Beikman, Foster, Gambow, Bartos

**NAYS:** 0

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

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**FILE NUMBER:** BDA167-037(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Benjamin Leal, represented by Rick Guerrero, for a variance to the front yard setback regulations at 4942 Gurley Avenue. This property is more fully described as Lot 22, Block 18/1242, and is zoned D(A), which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 7 foot front yard setback measured at the foundation (with a maximum 18 inch roof eave), which will require an 18 foot variance to the front yard setback regulations.

**LOCATION:** 4942 Gurley Avenue

**APPLICANT:** Benjamin Leal  
Represented by Rick Guerrero

**REQUEST:**

A request for a variance to the front yard setback regulations of 18’ is made to construct and/or maintain a single family structure, part of which would be located 7’ from the site’s front property line (with a maximum 18 inch roof eave) or 18’ into the 25’ front yard setback along Barry Avenue.

**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:**

Approval of the request, subject to the following condition:

- Compliance with the submitted revised site plan is required.

Rationale:

- Staff has concluded that the variance should be granted because the subject site is unique and different from other lots in the D(A) Duplex District by being of a restrictive area (in developable proportion to surrounding properties). If all required setbacks are taken in the current state, the developable area would measure 110' by 20', or 2,250 square feet. Lots in the area with this zoning designation typically have 110' by 38', or 4,180 square feet of developable area to maneuver. Furthermore, the applicant has substantiated how these features preclude the lot from being developed in a manner commensurate with the development upon other parcels of land with the same D(A) zoning. The applicant submitted a list of 10 other properties in the zoning district where the average living area is approximately 1,336 square feet, one of which is a corner lot, but all of a more traditional style and proportion.
- Additionally, staff has concluded that the variance should be granted because the subject site has two front yards, each with a 25' front yard setback, further encumbering the commensurate use of the subject land area.

**BACKGROUND INFORMATION:**

**Zoning:**

<u>Site:</u>	D(A) Duplex District
<u>Northwest:</u>	D(A) Duplex District
<u>Northeast:</u>	D(A) Duplex District
<u>Southeast:</u>	D(A) Duplex District
<u>Southwest:</u>	D(A) Duplex District

**Land Use:**

The subject site is currently undeveloped. Properties to the northeast and southeast are developed with single-family homes. Properties to the northwest and southwest are undeveloped.

**Zoning/BDA History:**

No recent history.

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

- This request focuses on constructing/maintaining a single family structure, part of which would be located 7' from the site's front property line (with a maximum 18 inch roof eave) or 18' into the 25' front yard setback along Barry Avenue.
- The subject site is flat, rectangular in shape (145' x 50'), and according to the submitted application is 0.166 acres (or approximately 7,250 square feet) in area.
- The site is zoned D(A) Duplex District, where lots are required to be a minimum of 6,000 square feet for residential uses.
- The applicant wishes to construct and maintain a 1,254 square foot single-family structure on a site that is undeveloped, located at the southeast corner of Gurley Avenue and Barry Avenue.
- Lots zoned a D(A) Duplex District are required to provide a minimum front yard setback of 25'. A corner lot with two frontages of unequal distance is allowed to use the longer frontage as a side yard, subject to established lot development within the block. A home immediately southeast has sole frontage on Barry Avenue (the longer frontage side); therefore, the subject property has two required front yards.
- According to measurements taken from Google Earth, combined with photos taken during a site visit conducted by staff, the home to the southeast which is triggering block continuity for established development is located approximately 5-10' from the front property line along Barry Avenue. Since Barry Avenue is the sole street frontage for this property, if they were ever to reconstruct at this site, they would be required to comply with the existing zoning and provide the required front yard. The lot is currently zoned a D(A) Duplex District and requires a 25' front yard setback. For this reason, the subject site is required to treat Barry Avenue frontage as a front yard and comply with the required 25' front yard setback.
- The site plan submitted with this request identifies how the applicant would like to provide a 7' front yard along Barry Avenue, as measured from the foundation.
- Lots of this size in a D(A) Duplex District with one front yard generally have approximately 4,180 square feet of developable area remaining, or 110' by 38'. With the added front yard requirement, the subject site has approximately 2,250 square feet of developable area, or 110' by 20'. In evidence submitted by the applicant on March 7<sup>th</sup>, the style of home would be severely limited by the odd proportion of developable area under existing conditions.
- Additional evidence submitted by the applicant indicates that a survey of surrounding properties in the area found the average home size to be approximately 1,336 square feet, including a few corner properties. The typical style of homes were not narrow "shotgun style", as would be required for the subject site.
- Finally, the evidence also noted that community meetings and surveys led the applicant to understand that residents of the area would prefer future redevelopment

of properties in the neighborhood to adhere to certain design elements. The style of home they are seeking to construct is a product of what that interpretation.

- 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 D(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 D(A) zoning classification.
- If the board were to grant the variance request, and impose the submitted revised 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 7’ from the site’s front property line along Barry Avenue (or 18’ into the 25’ front yard setback).

**Timeline:**

- January 31, 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.
- February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- March 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 March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis (extended to March 7<sup>th</sup>); and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 7, 2017: The applicant submitted new evidence, provided in “Attachment A.”

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the 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.

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2017**

**APPEARING IN FAVOR:** Gerald Carlton, 24 Lakeside Park, Dallas, TX

**APPEARING IN OPPOSITION:** Shawn Busari, 4906 Gurley, Dallas, TX

**MOTION: Beikman**

I move that the Board of Adjustment, in Appeal No. **BDA 167-037**, on application of Benjamin Leal, represented by Richard Guerrero, **grant** the 18-foot variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised site plan is required.

**SECONDED: Bartos**

**AYES: 4 – Richardson, Beikman, Gambow, Bartos**

**NAYS: 1 – Foster**

**MOTION PASSED: 4 – 1**

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**FILE NUMBER: BDA167-027(SL)**

**BUILDING OFFICIAL’S REPORT:** Application of Cyrus Zadeh for a special exception to the tree preservation regulations at 14709 Seagoville Road. This property is more fully described as an unplatted 39.687 acre tract in Block 8823 and Block 8824, and is zoned R-7.5(A), which requires mandatory tree mitigation. The applicant proposes to construct and maintain a single family residential development and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

**LOCATION: 14709 Seagoville Road**



**APPLICANT:** Cyrus Zadeh

**REQUEST:**

A special exception to the tree preservation regulations is made to develop the undeveloped subject site with a residential subdivision, and not fully meet the tree preservation 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:**

Denial

Rationale:

- Staff concurs with the Chief Arborist and recommends denial of the request in that the applicant had not substantiated how strict compliance with the requirements of the tree preservation regulations would unreasonably burden the use of the property; and how the special exception would not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) (Single family residential, 7,500 square feet)  
North: R-10(A) (Single family residential, 10,000 square feet)

South: R-7.5(A) (Single family residential, 7,500 square feet)  
East: R-10(A) (Single family residential, 10,000 square feet)  
West: R-10(A) (Single family residential, 10,000 square feet)

**Land Use:**

The approximately 40 acre subject site is undeveloped. The area to the north appears to be largely undeveloped, and the areas to the east, south, and west appear to be developed with single family uses.

**Zoning/BDA History:**

1. BDA989-278, Property at 14709 Seagoville Road (the subject site)

On September 20, 1999, the Board of Adjustment Panel C granted a request for a special exception to the tree preservation regulations, and imposed the following conditions: 1) the building official may grant a project-wide tree removal permit prior to the issuance of building permits. The permit may not be issued prior to the execution of private development contracts with the Private Development division of Public Works and/or Dallas Water Utilities for the construction of the rights of way and utilities; 2) as an alternate method of protected tree mitigation, a 6.39 acre tract shall be platted as a conservation easement in accordance with Section 51A-8.511. No other designations or easements may be placed on that tract (such as drainage easement). The conservation easement contains approximately 5900 caliper inches of protected trees; 3) The developer shall plant four 3" caliper trees from the approved replaced tree list per Article X on 100 lots in the development. These trees shall be planted within 36 months of the Board's favorable action. The lots listed below are exempt from this requirement; and 4) the developer shall save 25 percent of the total protected trees (8000") located at Block 1/8823, Lots 11-12, Block 2/8823, Lot 18, Block 1/8824, Lots 22-28, Block 2/8824, Lots 1-11, Block 3/8834, Lots 11-20.

The case report stated that the application was made in conjunction with developing a

132 lot subdivision on an approximately 40 acre site with approximately 15,000 caliper inches of protected trees.

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

- This request for a special exception to the tree preservation regulations focuses on developing the undeveloped subject site with a residential subdivision, and not fully meeting the tree preservation regulations.
- The Dallas Development Code requires full compliance with the landscape and tree preservation regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- 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 of a residential subdivision with the removal of protected trees for development.
- The Chief Arborist's memo states the following with regard to deficiencies:
  1. The applicant is preparing to develop a 39.7 acre area with a Community Unit Development subdivision with 127 residential lots and 7.43 acres of 'open space.' Based on new analysis by the applicant, of tree survey data from 1999, it is estimated the tree removal request is for 8,069 diameter inches of protected trees. The proposal is to plant 2,032 inches (25.2% of inches removed) of new trees in required landscaping, and to preserve 8,314 inches of protected trees in two conservation easements.
  2. Regarding the conservation easements, an owner may currently apply a conservation easement under Article X provisions. However, since the proposed easement area is less than 25% of the 'tree removal property', it would qualify for no more than 50% of the total required replacement inches, or 4,034 inches, by their given data. There would remain a deficiency of 2,003 inches after the planted 2,032 inches on residential lots. Therefore, additional means of tree mitigation will still be required.
- The Chief Arborist's memo states the following with regard to the property:
  - The Hidden Valley Addition layout ('Exhibit III') is still conceptual and locations and dimensions may be considered subject to some possible amendment.
  - Through our site assessment, the tree survey data can only be regarded partially factual in that any tree growth since the 1999 arborist-approved tree survey is not fully accounted for with statistical annual growth projections of the trees on the property. In the arborist's opinion, an existing survey may be acceptable when a proper sample of the trees in different sections of the property have been taken to estimate the annual growth periods for the number of years since the initial survey. This would give us a statistical accuracy for 2017 estimates greater than the original 1999 numbers. This relevancy is more important in the thick grove of

- older post oaks which are in the east side of the property, north of the Edd Road projected alignment. In that no full tree survey has been provided within the last five years, the level of confidence in actual tree numbers is significantly reduced.
- The property is situated with different forest types including mixed hardwoods with mostly hackberries (not protected) to the west and south, and a large area of an open field with mixed hardwoods and maturing juniper trees (some protected and some not) scattered throughout the bulk of the remaining property. The greatest level of tree mitigation potential is in the 8-acre rectangle of primarily thick post oak stand in the northeast quadrant of the property. This stand has grown mostly unabated for an unknown time which likely precedes homesteading of the area.
  - The proposed Edd Road extension into the east end of the development, which would split the conservation easements, is required due to thoroughfare plan requirements.
  - The Chief Arborist's memo states the following with regard to current regulations:
    - Article X requires 'if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with' Section 51A-10.134 for quantity, species, location, size, and timing. Further, 'if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot ...(the 'tree removal property'), the responsible party shall comply with one or more' of the requirements of Section 51A-10.135. Beyond these measures, an applicant may request a special exception to these regulations (Sec 51A-10.110) citing that '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', and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission, or city council.'
  - The Chief Arborist's memo states the following with regard to request:
    - The property owner requested on the application a special exception to Sec. 51A-10.134(5) for "an extension to the time period in which to mitigate approximately 6500 caliper inches of protected trees to be removed on the site" by Article X standards. There was no proposed time period given on the application.
    - A letter addressed to me by Mr. Jon Kroehler, PE, dated January 26, 2017, stated the applicant proposes the following mitigation methods:
      - "7.43 acre of the site will remain in their natural condition and will be designated as a conservation easement." It indicated this will preserve approximately 55% of protected trees on the property.
      - Plant "four 4-inch caliper trees on each of the 127 residential lots resulting in an approximate addition of 15% of trees to the site."
    - This would involve removal of "approximately 40% of existing trees from the site." There was no time period for completion of this request given.
    - On February 27, 2017, I received from the applicant a spreadsheet of tree mitigation numbers (which are represented in this memo), and tree mitigation exhibits, including the 1999 tree survey breakdown data and the Exhibit III

Hidden Valley Addition layout. This data, if accepted, would amend the minimum amount of inches in the removal request from 6,500 inches (as shown on the application) to 8,069 inches (as shown in the '1999 tree survey breakdown').

- The City of Dallas Chief Arborist recommends denial of the submitted proposal, as written. The applicant has not demonstrated that strict compliance with the Article X regulations for tree preservation will unreasonably burden the use of the property, and that the special exception would not adversely affect neighboring property. The Chief Arborist states that the provided information in the application is insufficient, and not represented in a manner, for him to provide a reliable recommendation to the board. The Chief Arborist states that: the application states a time extension request but provides no measure; the application provides a mitigation request measure (6500") and also percentage of trees, but may be subject to change (8,069"); and related plan materials should be made ready as exhibits as they relate to a board approval document. The data is conflicting and inconclusive as to what indicates 1999 data and what has been projected for current estimates of protected tree inches in the request.

### **Timeline:**

December 20, 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.

February 15, 2017: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C. 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."

February 15, 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 March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the 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.

March 13, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2017**

**APPEARING IN FAVOR:** Jon Kroehler, 4704 Waterford Dr., Ft. Worth, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:**

I move that the Board of Adjustment, in Appeal No. **BDA 167-027**, on application of Camden Homes, represented by Cyrus Zadeh, **deny** the special exception to the landscape requirements requested by this applicant **without prejudice**, because our evaluation of the property and testimony shows that **we have insufficient evidence at this time.**

**SECONDED:** Foster

**AYES:** 5 – Richardson, Beikman, Foster, Gambow, Bartos

**NAYS:** 0

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

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**FILE NUMBER:** BDA167-036(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Beth Greeson, represented by Wade Peterson, for a special exception to the tree preservation regulations at 6524 Alpha Road (aka: 6625 Alpha Road). This property is more fully described as an 84.991 acre parcel in Block 7432 and a 76.16 acre parcel in Block 7421, and is zoned R-1/2ac(A), which requires mandatory tree mitigation. The applicant proposes to construct and maintain a nonresidential use and provide an alternate tree mitigation plan, which will require a special exception to the tree preservation regulations.

**LOCATION:** 6524 Alpha Road (aka: 6625 Alpha Road)

**APPLICANT:** Beth Greeson  
Represented by Wade Peterson

**REQUEST:**

A special exception to the tree preservation regulations is made to remove and/or replace protected trees on a site currently developed with a private country club use (Northwood Club), and not fully meet the tree preservation 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:**

Denial

Rationale:

- Staff concurs with the Chief Arborist and recommends denial of the request in that the applicant had not substantiated how strict compliance with the requirements of the tree preservation regulations would unreasonably burden the use of the property; and how the special exception would not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1/2ac(A)(SUP 123) (Single family residential, ½ acre)  
North: R-1/2ac (A) (Single family residential, ½ acre)  
South: PD 78 (Planned Development)

East: R-1/2ac(A) (Single family residential, ½ acre)  
West: R-16(A) (Single family residential, 16,000 square feet)

**Land Use:**

The approximately 161 acre subject site is developed with a private country club use (Northwood Club). The areas to the north, east, south, and west appear to be developed mainly 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:**

- This request for a special exception to the tree preservation regulations focuses removing and/or replacing protected trees on a site currently developed with a private country club use (Northwood Club), and not fully meeting the tree preservation regulations.
- The Dallas Development Code requires full compliance with the landscape and tree preservation regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot, or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment B). The memo states how this request is triggered by completing golf course renovations, where the Northwood Golf Club has removed, with permit, 105 protected trees for a total of 2,578 diameter inches required to be replaced.
- The Chief Arborist's memo states the following with regard to deficiencies:
  1. Per Article X Landscape and Tree Preservation Regulations Sec. 51A-10.134, "The total caliper of replacement trees must equal or exceed the total caliper of the protected trees removed or seriously injured." There is no reference in this application to the number of inches of protected trees for which mitigation credit is requested. The numbers are stated from permit application and data previously provided to the arborist office by the applicant.
  2. The applicant is removing 2,578 inches required to be mitigated and proposing to provide 0 replacement inches nor to comply through alternative methods of tree placement provided in Sec. 51A-10.135.
- The Chief Arborist's memo lists the following factors for consideration:
  1. The Northwood Country Club is a well-established facility containing a mature urban forest covering much of the property, with a significant amount of it south of Alpha Road which existed since before it opened in 1946. The trees are an



important part of the function of the property and are managed to sustain the economic, aesthetic, and ecological purposes of the golf course and its other functions.

2. The property is 156.79 acres which held 2,053 trees by a recent survey. This number is also represented by a measured 3,517,035 square feet of tree canopy coverage. Tree canopy coverage means the total horizontal spread of tree canopy projected over the land below it. The tree canopy coverage calculation is an alternative method of determining the statistic of trees on a property other than measuring tree stem diameters. This is not a standard used in the City of Dallas for tree mitigation assessment. The use of tree canopy coverage is addressed in ForwardDallas as a means of potentially establishing tree canopy cover goals and as a management tool for the city.
  3. Of the 2,053 trees, a minimum of 105 trees (about 5.1% of the total) were legally removed, accounting for a removed tree canopy of 179,865 square feet. The applicant states this to be a 2.6% reduction, but my calculations measure to a 5.1% reduction. The average tree canopy cover per tree is 1,713 square feet.
- The Chief Arborist's memo states the following with regard to current regulations:
    - Article X requires 'if a tree removal application is approved, one or more healthy replacement trees must be planted in accordance with' Section 51A-10.134 for quantity, species, location, size, and timing. Further, 'if the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot ...(the 'tree removal property'), the responsible party shall comply with one or more' of the requirements of Section 51A-10.135. Beyond these measures, an applicant may request a special exception to these regulations (Sec 51A-10.110) citing that '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', and the requirements are not imposed by a site-specific landscape plan approved by the city plan commission, or city council.' The Chief Arborist has confirmed through the applicant that no trees or landscaping under an approved landscape plan is affected by this tree mitigation request.
  - The Chief Arborist's memo states the following with regard to request:
    - The applicant states "the current golf course has 51.5% canopy coverage and would like ....ability to reduce the canopy coverage up to 40% coverage, where necessary. The current tree removal plan calls for a reduction to 48.9%."
    - On February 20, 2017, Mr. Wade Peterson wrote to the board "the applicant is seeking relief from Sec. 51A-10.134 'Replacement of Removed or Seriously Injured Trees' related to inch for inch replacement." He further stated "since the Applicant has proposed improvements that leave the property well in excess of target canopy coverage,..., a waiver of tree mitigation is being requested."
    - In this letter, Mr. Peterson states "the Applicant is proposing that they be allowed (in lieu of inch-per-inch mitigation) to meet the proposed new Article X ordinance currently being proposed. The proposed new ordinance targets a percent canopy coverage based on the zoning of the site." As stated on the 'Alternative

Mitigation Plan’, ‘since the site will still maintain well in excess of minimum proposed requirements, no mitigation is requested.’

- The City of Dallas Chief Arborist recommends denial of the submitted proposal, as written. The Chief Arborist concludes that the applicant had not substantiated how strict compliance with the requirements of the landscape regulations would unreasonably burden the use of the property; and how the special exception would not adversely affect neighboring property. Among other things, the applicant had not substantiated how the tree canopy coverage percentage measurement should factor as a full waiver of tree mitigation of 2,578 inches of protected trees, and not as a reduction of tree mitigation inches by requiring a partial planting based on the number of trees removed (105), or by other equivalency. The applicant did not conclude if the coverage reduction should occur for tree removal for the current project only, or if it should be extended to future tree removal. The application made this unclear. The Chief Arborist believes the tree canopy cover percentage control for a urban forest management tool (particularly for heavily-wooded golf courses) is reasonable, and should be considered positively when determining the requirements for tree replacement on the site and if the tree mitigation requirements should be significantly reduced. When the trees are an integral part of the use of a facility, the reduction, maintenance, and addition of trees is a fundamental part of the function and cost of sustaining the facility safely, and it may be reasonable to apply this mitigation into the cost of that process to sustaining the property’s tree cover.
- If the board chooses to approve this request, the Chief Arborist recommends the following condition be considered: The tree mitigation waiver (or reduction) is applied on the golf course only and for protected trees removed under tree removal applications issued prior to the hearing date, and to not exceed 2,578 inches of removed or seriously injured trees.

**Timeline:**

January 26, 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.

February 15, 2017: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.

February 15, 2017: The Board Administrator emailed the applicant’s representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the March 1<sup>st</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 10<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

February 20, 2017: The applicant's representative submitted additional documentation on this application to the Board Administrator beyond what was submitted with the original application (see Attachment A).

March 7, 2017: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included: the Sustainable Development and Construction Assistant Director, the 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.

March 13, 2017: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: MARCH 20, 2017**

APPEARING IN FAVOR: Wade Peterson, 7447 Ramber Road, Dallas, TX  
Kevin Carpenter, 1994 Dowelling Dr, Frisco, TX  
Kyle Downs, 104 Horizon View CT., Norman, OK

APPEARING IN OPPOSITION:

MOTION: **Bartos**

I move that the Board of Adjustment in Appeal No. **BDA 167-036**, hold this matter under advisement until **April 17, 2017**.

SECONDED: **Foster**

AYES: 4 – Richardson, Foster, Gambow, Bartos

NAYS: 1 - Beikman

MOTION PASSED: 4 – 1

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**MOTION: Richardson**

I move to adjourn this meeting.

**SECONDED: Foster**

**AYES: 5 – Richardson, Beikman, Foster, Gambow, Bartos**

**NAYS: 0 -**

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

**3:12 P. M. - Board Meeting adjourned for **March 20, 2017****

\_\_\_\_\_  
CHAIRPERSON

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

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BOARD SECRETARY

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