

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
WEDNESDAY, APRIL 20, 2016**

MEMBERS PRESENT AT BRIEFING: Scott Hounsel, Vice-Chair, Larry Brannon, regular member, Alex Winslow, regular member, Wini Cannon, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Larry Brannon, regular member, Wini Cannon, regular member and Lorlee Bartos, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Mary McCollough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Clay Buehrle, Engineering, David Lam, Engineering, Chief Arborist, Donna Moorman, Chief Planner, Neva Dean, Interim Asst. Director and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Bert Vandenberg, Asst. City Attorney, Mary McCollough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Clay Buehrle, Engineering, David Lam, Engineering, Chief Arborist, Donna Moorman, Chief Planner, and Trena Law, Board Secretary

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**11:01 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **April 20, 2016 docket.**

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**1:05 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 March 23, 2016 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: APRIL 20, 2016**

MOTION: None

The minutes were approved.

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**FILE NUMBER:** BDA156-028(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Jerry Dieker, represented by Steve Gibson, for special exceptions to the landscape and alley access restriction regulations, and a variance to the off-street parking screening regulations at 1212 Tavaros Avenue. This property is more fully described as Lot 1, Block B/5284, and is zoned CR, which requires mandatory landscaping, restricts residential alley access, and requires screening of off-street parking. 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, with alley access where a person may use a public alley or access easement that abuts or is in an R(A) district for the purpose of delivering or receiving any goods or services to or from a nonresidential use in a nonresidential district between the hours of 10 p.m. and 7 a.m., which will require a special exception to residential alley access restriction regulations, and omit the screening required to separate the parking area from a contiguous residential use or vacant lot if either is in an R(A) district and the parking area serves a nonresidential use, which will require a variance to the off-street parking regulations.

**LOCATION:** 1212 Tavaros Avenue

**APPLICANT:** Jerry Dieker  
Represented by Steve Gibson

**REQUESTS:**

The following requests are made on a site that is undeveloped:

1. A special exception to the landscape regulations is made to construct and maintain an approximately 1,600 square foot office use/structure on the lot, and not fully provide required landscaping;
2. A special exception to the alley access restriction regulations is made to construct and maintain the aforementioned office use/structure on the lot, and not fully meet the residential ally access restrictions for residential uses regulations, more specifically allowing the delivery and receiving of goods and services to and from the proposed office use on the site from the alley into the site from Tavaros Avenue that is adjacent to R-7.5(A) zoning to the south and used as surface parking lot between the hours of 10 p.m. and 7 a.m.; and
3. A variance to the off-street parking regulations, more specifically the screening provisions for off-street parking, is made to construct and maintain the aforementioned office use/structure on the lot, and not fully meet the screening for off-street parking regulations.

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

The board of adjustment 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.

**STANDARD FOR A SPECIAL EXCEPTION TO THE RESIDENTIAL ALLEY ACCESS RESTRICTIONS FOR NONRESIDENTIAL USES REGULATIONS:**

The board of adjustment may grant a special exception to the alley access restriction if the board finds, based on evidence presented at a public hearing, that strict compliance with the restriction would result in the material and substantial impairment of access to the property as a whole. In determining whether access would be materially and substantially impaired, the board shall consider the following factors:

- (A) The extent to which access to the restricted alley between the hours of 10 p.m. and 7 a.m. is essential to the normal operation of the use or uses to which the special exception would apply.

- (B) The extent to which the property as a whole has reasonable access to other public streets, alleys, or access easements in addition to the restricted alley.
- (C) The extent to which strict compliance with the alley access restriction will necessarily have the effect of substantially reducing the market value of the property.

In granting a special exception under this subsection, the board shall:

- (A) specify the use or uses to which the special exception applies; and
- (B) establish a termination date for the special exception, which may not be later than five years after the date of the board's decision.

In granting a special exception under this subsection, the board may:

- (A) authorize alley access only during certain hours; or
- (B) impose any other reasonable condition that would further the purpose and intent of the alley access restriction.

Notwithstanding any of the above, a special exception granted by the board under this subsection for a particular use automatically and immediately terminates if and when that use is changed or discontinued.

### **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 (landscape special exception):**

Denial

Rationale:

- The Chief Arborist had recommended denial of the request, specifically stating that if authority is given to provide the ingress and egress to the property through the alley, it is demonstrated by the submitted landscape plan the property does have sufficient landscape area, with adjacent parkway space, to meet the minimum planting conditions for the required landscaping.
- Staff had concluded that the applicant had not substantiated how strict compliance with the requirements of this article will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION (alley access restriction special exception):**

Approval, subject to the following conditions:

1. The special exception applies and is limited to an office use on the subject site, and shall automatically and immediately terminate if and when the office use on the site is changed or discontinued.
2. This special exception shall terminate on April 20, 2021.

Rationale:

- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

**STAFF RECOMMENDATION (screening of off-street parking variance):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff had concluded that the subject site is unique and different given its restrictive area of only approximately 5,000 square feet in area and 40’ in width. The physical site constraint of the subject site precludes the applicant from developing it in a manner commensurate with the development of other parcels of land in the same CR zoning district that are typically larger in size.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR (Community Retail)  
North: MF-1(A) (Multifamily residential)  
South: R-7.5(A) (Single family residential 7,500-square feet)  
East: CR (Community Retail) and R-7.5(A) (Single family residential 7,500-square feet)  
West: CR (Community Retail) and R-7.5(A) (Single family residential 7,500-square feet)

**Land Use:**

The subject site is undeveloped. The area to the north is developed with a general merchandise or food store and a multifamily complex. The area to the east is developed with auto service centers and personal service/retail uses. The area to the south is developed with parking lots, a church, and single family residential uses. The area to the west is developed with office uses, an auto service center, and undeveloped land.

**Zoning/BDA History:**

1. BDA145-093, Property at 1212 Tavaros Avenue ( the subject site)      On September 23, 2015, the Board of Adjustment Panel B granted a request to variance to the side yard setback regulations

of 10 feet. The board imposed the following conditions: compliance with the submitted site plan/elevation is required.

The case report stated that the request was made to construct and maintain a  $\pm 1,620$ -square feet, nonresidential structure, part of which is located 10' into the 20' side yard setback at the southern border of the property.

**GENERAL FACTS/STAFF ANALYSIS (landscape special exception):**

- This request focuses on developing the site with an office use/structure and not fully meeting the landscape regulations, more specifically not providing under current conditions where vehicular alley access to the property is prohibited not enough permeable coverage in the required buffer strip, and the required number of trees, mandatory buffer plant materials, and design standards.
- The Dallas Development Code requires full compliance with the landscape 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.
- The Chief Arborist's memo lists the following factors for consideration:
  1. Under Article X, a perimeter landscape buffer strip must be provided along the entire length of the perimeter of the lot where a residential adjacency exists, exclusive of driveways and accessways at points of ingress and egress to and from the lot. The buffer strip must be at least 10 feet wide, except that any portion of the buffer strip in the front yard and adjacent to the side lot line need not exceed 10 percent of the lot width. On this property, shown as driveway, this side area of the front yard would be a minimum of 4 feet in width based on the 40' width of the lot.
  2. If it is determined by administrative action, the vehicular access may be provided via the alley, driveways will be considered as points of ingress and egress, and that nonpermeable area on the property will be excluded from the perimeter landscape buffer strip requirement.
  3. The plan identifies a large tree at the rear of the property is on the adjacent lot and abutting an existing structure. A minimal area of permeable area is to be retained around the tree on this building site. The area must be kept permeable for the duration of the life of the tree.
  4. Two new street trees are provided along Tavaros Avenue. The area is restrictive in space, but appear to have the minimum soil area requirements for the trees. The trees must meet the minimum planting requirements of Article X and be planted not closer than two and one-half feet to the pavement.

- The City of Dallas Chief Arborist recommends denial of the proposed alternative landscape plan because he does not believe that strict compliance with the requirements of this article will unreasonably burden the use of the property. If authority is given to provide the ingress and egress to the property through the alley, it is demonstrated by this plan the property does have sufficient landscape area, with adjacent parkway space, to meet the minimum planting conditions for the required landscaping. In making proper species selection and wise use of the very limited landscape area, the Chief Arborist believes the site can accommodate 2 street trees, 4 site trees, screening of off-street parking (either by shrub or screening fence), and the foundation planting. The 10-foot wide perimeter buffer strip can provide for a combination of large trees and large shrubs, and/or small trees, to meet compliance with the required buffer plant materials. The Chief Arborist states that if the Board chooses to support the plan, he recommends compliance with the alternative landscape plan is required with condition of full compliance with the General Division (10.100) of Article X.
- 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 providing the required amount of permeable coverage in the required buffer strip, number of trees, mandatory buffer plant materials, and design standards on the subject site.

**GENERAL FACTS/STAFF ANALYSIS (alley access restriction special exception):**

- This request focuses on developing the site with an office use/structure and not fully meeting the residential ally access restrictions for residential uses regulations, more specifically, allowing the delivery and receiving of goods and services to and from the proposed office use on the site from the alley into the site from Tavaros Avenue that is adjacent to R-7.5(A) zoning to the south and used as surface parking lot between the hours of 10 p.m. and 7 a.m..
- The Dallas Development Code provides the following provisions regarding residential alley access restrictions for nonresidential uses:
  1. The following residential alley access restrictions are established in order to promote safety and protect the public from disturbances that interfere with the quiet enjoyment of residential properties. Between the hours of 10 p.m. and 7 a.m., no person may use a public alley or access easement that abuts or is in an R, R(A), D, D(A), TH, TH(A), or CH district for the purpose of delivering or receiving any goods or services to or from a nonresidential use in a nonresidential district. It is a defense to prosecution under this paragraph that the person is:
    - (A) a governmental entity;
    - (B) a communications or utility company, whether publicly or privately owned; or
    - (C) the operator of an authorized emergency vehicle as defined in Section 541.201 of the Texas Transportation Code.

- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”
- The applicant has the burden of proof in establishing the following:
  - that strict compliance with the restriction would result in the material and substantial impairment of access to the property as a whole.
- If the Board were to grant this request and impose the previously mentioned staff suggested conditions, the applicant could develop the site with the proposed office use and be allowed the delivery and receiving of goods and services to and from it on the site from the alley into the site from Tavaros Avenue that is adjacent to R-7.5(A) zoning to the south and used as surface parking lot between the hours of 10 p.m. and 7 a.m.

**GENERAL FACTS/STAFF ANALYSIS (screening of off-street parking variance):**

- This request focuses on constructing and maintaining an office use/structure and not fully meeting the off-street parking regulations, more specifically, the provisions related to the screening provisions for off-street parking.
- The Dallas Development Code states the following related to the screening of off-street parking:
  - (1) The owner of off-street parking must provide screening to separate the parking area from:
    - (A) a contiguous residential use or vacant lot if either is in an A, A(A), R, R(A), D, D(A), TH, TH(A), CH, MF, MF(A), MH, or MH(A) district and the parking area serves a nonresidential use; or
    - (B) a contiguous single family or duplex use or a vacant lot if any of these are in an R, R(A), D, D(A), TH, TH(A), or CH district and the parking area serves a multifamily use.
  - (2) If an alley separates a parking area from another use, the use is considered contiguous to the parking area. If a street separates a parking area from another use, the use is not considered contiguous to the parking area.
- The Dallas Development Code states that the screening for off-street parking required under Subsection (f)(1) must be a brick, stone, or concrete masonry, stucco, concrete, or wood wall or fence that is not less than six feet in height. The wall or fence may not have more than ten square inches of open area for each square foot of surface area, and may not contain any openings or gates for vehicular access. The owner of off-street parking must maintain the screening in compliance with these standards.
- The applicant has submitted a site plan that indicates no screening to be provided between the off-street parking on the site and the property to the south across an alley zoned R-7.5(A) and used as a surface parking lot.
- According to DCAD records, there are “no improvements” for property addressed at 1212 Tavaros Avenue.
- The subject site is rectangular in shape (40'x 125'), 0.115 acres (or approximately 5,000 square feet) in area, and flat.
- Most lots in CR Community Retail Districts have one 15' front yard setback and, when not adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district, no minimum side or rear yard setbacks. When a lot is adjacent to or directly across from the above-referenced zoning districts, the

minimum side yard and/or rear yard setback is 20'. This site has one 15' front yard setback, one 20' side yard setback at the property's southern border because it is directly across an alley from an R-7.5(A) zoning district, no minimum side yard setback towards the northern border of the property, and no minimum rear yard setback.

- Staff had noted at the time a request for a variance to the side yard setback regulations was made (and granted by the Board) in September of 2015, that the 40' wide subject site has approximately 20' of developable width available once a 20' side yard setback is accounted for on the south and a 0' side yard setback is accounted for on the north. If the lot were more typical to others in the same zoning district with no minimum side yard setbacks, the 40' wide site would have 40' of developable width.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR 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 CR zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the applicant could develop the site with the office use with no screening to be provided between the off-street parking on the site and the property to the south across an alley zoned R-7.5(A) and used as a surface parking lot.

### **Timeline:**

January 29, 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.

March 15, 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."

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;

- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

April 8, 2016: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: APRIL 20, 2016**

APPEARING IN FAVOR: Zoe Ezzell, 507 Durango, Irving, TX

APPEARING IN OPPOSITION: No one

**MOTION #1: Cannon**

I move that the Board of Adjustment, in Appeal No. **BDA 156-028**, on application of Jerry Dieker, **deny** the special exception to the landscape regulations **without prejudice**, because our evaluation of the property and testimony shows that strict compliance with the requirements will not unreasonably burden the use of the property and the special exception will adversely affect neighboring property.

**SECONDED: Hounsel**

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Bartos

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**MOTION #2: Cannon**

I move that the Board of Adjustment, in request No. **BDA 156-028**, on application of Jerry Dieker, **grant** the special exception to the parking regulations in the Dallas Development Code which restrict residential alley access between the hours of 10 p.m. and 7 a.m. because our evaluation of the property and testimony shows that strict compliance with the restriction would result in the material and substantial impairment of access to the property as a whole. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception applies and is limited to an office use on the subject site, and shall automatically and immediately terminate if and when the office use on the site is changed or discontinued.
- The special exception shall terminate on **April 20, 2021**.

**SECONDED: Hounsel**

**AYES:** 5 –Hounsel, Brannon, Winslow, Cannon, Bartos

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

**MOTION #3: Cannon**

I move that the Board of Adjustment, in request No. **BDA 156-028**, on application of Jerry Dieker, **deny** the variance to the off-street parking regulations requiring screening to separate a non-residential use parking area from a contiguous residential use or vacant lot in an R(A) district **without prejudice** 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 not result in unnecessary hardship to this applicant.

**SECONDED: Hounsel**

**AYES:** 1 – Cannon

**NAYS:** 4 – Hounsel, Brannon, Winslow, Bartos

**MOTION FAILED** 1 – 4

**MOTION #4: Winslow**

I move that the Board of Adjustment, in request No. **BDA 156-028**, on application of Jerry Dieker, **grant** a variance to the off-street parking regulations requiring screening to separate a non-residential use parking area from a contiguous residential use or vacant lot in an R(A) district because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan is required.

**SECONDED: Brannon**

**AYES:** 4 –Hounsel, Brannon, Winslow, Bartos

**NAYS:** 1 – Cannon

**MOTION PASSED** 4 – 1

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**FILE NUMBER:** BDA156-030(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Christian Patterson, represented by Tim Clyde, for special exceptions to the visual obstruction regulations at 5401 Miller Avenue. This property is more fully described as Lot 30, Block 11/1936, and is zoned CD-15, which requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to locate and maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

**LOCATION:** 5401 Miller Avenue

**APPLICANT:** Christian Patterson  
Represented by Tim Clyde

**REQUESTS:**

Requests for special exceptions to the visual obstruction regulations are made to construct and maintain an 8’ high solid wood fence and swinging gate in in the 20’ visibility triangles on both sides of the driveway into the site from Glencoe Avenue on a site being developed with a single family use.

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

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer recommended that these requests be denied commenting “The proposed gate and fence encroaching into the visibility triangle creates a safety hazard to pedestrians and vehicular traffic.”
- The applicant had not substantiated how the location of an 8’ high solid wood fence and swinging gate in in the 20’ visibility triangles on both sides of the driveway into the site from Glencoe Avenue does not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

## **Zoning:**

<u>Site:</u>	CD 15 (Conservation District)
<u>North:</u>	CD 15 (Conservation District)
<u>South:</u>	CD 15 (Conservation District)
<u>East:</u>	CD 15 (Conservation District)
<u>West:</u>	CD 15 (Conservation District)

## **Land Use:**

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

## **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

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

- These requests focus on constructing and maintaining an 8' high solid wood fence in the 20' visibility triangles on both sides of the driveway into the site from Glencoe Avenue, and a sliding 8' high wood gate in the 20' visibility triangle on the southern side of the driveway into the site from Glencoe Avenue on a site being developed with a single family use.
- The property is located in CD 15 that states that except as otherwise provided, the development standards of the R-7.5(A) Single Family District apply to this district. CD 15 does not make specific provisions related to visual obstruction regulations.
- The Dallas Development Code states the following: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections, and 20 foot visibility triangles at drive approaches and at alleys on properties zoned single family); and
  - between two and a half and eight feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).
- A site plan/elevation has been submitted indicating portions of the fence located in the 20' visibility triangles on both sides of the driveway into the site from Glencoe Avenue, and the sliding gate located in the 20' visibility triangle on the southern side of the driveway into the site from Glencoe Avenue.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting "The proposed gate and fence encroaching within the visibility triangle creates a safety hazard to pedestrians and vehicular traffic."
- The applicant has the burden of proof in establishing how granting the requests for special exceptions to the visual obstruction regulations to construct and maintain an 8' high solid wood fence in the 20' visibility triangles on both sides of the driveway

into the site from Glencoe Avenue, and a sliding 8' high wood gate in the 20' visibility triangle on the southern side of the driveway into the site from Glencoe Avenue does not constitute a traffic hazard.

- Granting these requests with a condition imposed that the applicant complies with the submitted site plan/elevation would limit the items located in the 20' drive approach visibility triangles into the site from Glencoe Avenue to what is shown on this document – an 8' high solid wood fence/sliding gate.

### **Timeline:**

February 17, 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official's report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" commenting: The proposed gate and fence encroaching within the visibility triangle creates a safety hazard to pedestrians and vehicular traffic."

**BOARD OF ADJUSTMENT ACTION: APRIL 20, 2016**

**APPEARING IN FAVOR:** Tim Clyde, 5401 Miller Ave, Dallas, TX

**APPEARING IN OPPOSITION:** No one

**MOTION:** Cannon

I move that the Board of Adjustment, in Appeal No. **BDA 156-030**, on application of Christian Patterson, **grant** the request of this applicant to maintain items in a visibility triangle as a special exception to the visual obstruction regulations contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that granting this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED:** Winslow

**AYES:** 2 – Cannon, Winslow

**NAYS:** 3 – Hounsel, Brannon, Bartos

**MOTION FAILED 2 – 3**

**MOTION:** Hounsel

I move that the Board of Adjustment, in Appeal No. **BDA 156-030**, on application of Christian Patterson, **deny** the special exception requested by this applicant **without prejudice**, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

**SECONDED:** Brannon

**AYES:** 3 –Hounsel, Brannon, Bartos

**NAYS:** 2 – Cannon, Winslow

**MOTION PASSED 3 – 2**

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**FILE NUMBER:** BDA156-036(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Santos T. Martinez 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:** Santos T. Martinez

**April 20, 2016 Public Hearing Notes:**

- The applicant submitted a revised landscape plan to the Board at the public hearing.
- The City of Dallas Chief Arborist indicated that he supported the request given the submittal of the revised landscape plan.

**REQUEST:**

A special exception to the landscape regulations is made to construct and maintain an office use/structure (DSF Capital) 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:**

Denial

Rationale:

- The Chief Arborist had recommended denial of the request, specifically stating that a proposed tall retaining wall centered within the already restricted Lover's Lane landscape area would negatively impact available tree planting and screening plant areas. The combined impact of a reduced perimeter buffer strip and reduced ability to sustain large trees in the street planting strip cannot be supported by staff.
- Staff had concluded that the applicant had not substantiated how strict compliance with the requirements of this article will unreasonably burden the use of the property; and that the special exception will not adversely affect neighboring property.

**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:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

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

- This request focuses constructing and maintaining an office use/structure (DSF Capital) on a site currently undeveloped, and not fully meeting the landscape regulations, more specifically not providing the required perimeter landscape buffer strips and number of associate buffer plant materials.
- 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 lists the following factors for consideration:
  1. The re-platted building site abuts private property in two residential zoning districts: R-10(A) and R-7.5(A).
  2. BUFFER STRIP:
    - Under Article X, a perimeter landscape buffer strip must be provided along the entire length of the perimeter of the lot where a residential adjacency exists, exclusive of driveways and accessways at points of ingress and egress to and from the lot. The buffer strip must be at least 10 feet wide, except that: A) any portion of the buffer strip adjacent to public street frontage need not exceed 10 percent of the lot depth, and B) any portion of the buffer strip in the front yard and adjacent to the side lot line need not exceed 10 percent of the lot width.

- The revised proposed plan provides for a reduced 5-foot wide perimeter landscape buffer strip for the side yard from Taos Road, and also a 5-foot wide strip for the side yard from Elsby Avenue. There is no perimeter landscape buffer strip in the rear yard adjacent to the R-10(A) zoning district.
- A review of engineering plans for this project identifies a 'proposed 10' storm sewer easement' in proximity to the required perimeter landscape buffer strip.
- The area is also compromised by the proposed driveway and a dumpster enclosure. The driveway fully encircles the proposed structure.
- PD 326 has a mandatory screening requirement for 'screening walls' to be composed of solid masonry, stucco, or wood, or a combination of masonry, stucco, and wood. The walls are required to be eight feet in height when the area is adjacent to a single family district. As of this memorandum, no plan has been provided by the applicant to confirm the proposed wall materials.

### 3. BUFFER PLANT MATERIALS:

- If a fence with a buffer strip is required along any part of the perimeter of a lot, the buffer strip must contain either one large canopy tree or two large non-canopy trees at a minimum average density of one large canopy tree or two large non-canopy trees for each 50 linear feet of the buffer strip, with new trees spaced no less than 25 feet apart.
- The entire adjacency frontage is approximately 460 feet in length which would require a minimum of 9 buffer plant groups (9 large canopy trees) for Article X compliance. The revised proposed plan shows three new live oaks. Six Texas redbuds, classified by the Texas Extension office as a small tree (growing 15-20' in height), would not be listed as a large tree for compliance. An interior live oak tree was shown in the pedestrian area to help relieve the lack of buffer plant materials on the perimeter.

### 4. ADDITIONAL COMMENTS:

- All large trees are now scheduled for removal under the revised alternate landscape plan, except for a cluster of pecan trees on the western perimeter.
- The plan complies with two design standards: 1) screening of off-street parking and 2) enhanced pedestrian pavement.
- Provided dimension control plans also indicate a 4" to 16" tall retaining wall along Lover's Lane which is not identified on the revised alternative landscape plan.
- The City of Dallas Chief Arborist recommends denial of the revised alternate landscape plan, stating that a proposed 4"-16" tall retaining wall was identified on the same dimension control plans for the project which also located the placement of the storm sewer easement in the rear yard. The Chief Arborist states that the wall would be centered within the already restricted Lover's Lane landscape area and would negatively impact available tree planting and screening plant areas. The Chief Arborist states that the combined impact of the reduced perimeter buffer strip and reduced ability to sustain large trees in the street planting strip is not supportable by staff.
- 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 strips and number of associate buffer plant materials on the subject site.

**Timeline:**

February 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.  
No review comment sheets were submitted in conjunction with this application.

April 12, 2016: The City of Dallas Chief Arborist submitted a memo regarding this request (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: APRIL 20, 2016**

**APPEARING IN FAVOR:** Santos Martinez, 900 Jackson St., Dallas, TX

**APPEARING IN OPPOSITION:** Rick Gonzales, 4283 S. Cresthaven, Dallas, TX

**MOTION: Winslow**

I move that the Board of Adjustment, in Appeal No. **BDA 156-036**, on application of Santos Martinez, **grant** the special exception to the landscape regulations in the Dallas Development Code because our evaluation of the property and the testimony shows that strict compliance with the requirements will unreasonably burden the use of the property and the special exception 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 revised alternate landscape plan is required.

**SECONDED: Cannon**

**AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Bartos**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

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**FILE NUMBER: BDA156-038(SL)**

**BUILDING OFFICIAL’S REPORT:** Application of Andrea Winters, represented by Marc Jennings, for a special exception to the off-street parking regulations at 4246 W. Lovers Lane. This property is more fully described as Lot 4, Block A/4991, and is zoned PD-326 (Area C), which requires off-street parking to be provided. The applicant proposes to construct and maintain a structure for an office use, and provide 11 of the required 16 parking spaces, which will require a 5 space special exception to the off-street parking regulations.

**LOCATION: 4246 W. Lovers Lane**

**APPLICANT: Andrea Winters  
Represented by Marc Jennings**

**April 20, 2016 Public Hearing Notes:**

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

**REQUEST:**

A request for a special exception to the off-street parking regulations of 5 spaces is made to construct and maintain a two-story, approximately 5,200 square foot office structure/use on a site developed with a vacant single family structure/use, and provide 11 (or 69 percent) of the 16 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)(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:**

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer had recommended that this request be denied commenting “Lovers Lane is classified as a Minor Arterial with no apparent on-street parking available. Overflow parking would most likely result to parking along Areo Avenue and South Crest Haven Road potentially increasing traffic congestion.”
- The applicant had not substantiated how the parking demand generated by the proposed office 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.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 326 (Area C) (Planned Development)  
North: PD 326 (Area A) (Planned Development)  
South: R-7.5(A) (Single family residential 7,500 square feet)  
East: PD 326 (Area C) (Planned Development)  
West: PD 326 (Area C) (Planned Development)

**Land Use:**

The subject site is developed with a vacant single family use/structure that the applicant proposes to demolish and replace with an office structure/use. The area to the north is developed with what appears to be an office use and undeveloped land; the areas to the east and west are developed with office uses; and the area to the south is developed with single family uses.

**Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

**GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a two-story, approximately 5,200 square foot office structure/use on a site developed with a vacant single family structure/use, and providing 11 (or 69 percent) of the 16 required off-street parking spaces.
- The site is zoned PD 326 (Area C) which refers to the use regulations provided in Chapter 51A for specific off-street parking requirements.
- The Dallas Development Code requires the following off-street parking requirement:
  - Office use: 1 space per 333 square feet of floor area.
- The applicant proposes to provide 11 (or 77 percent) of the required 15 off-street parking spaces in conjunction with the construction of the approximately 5,200 square foot structure on the site being office use.
- The Sustainable Development Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” commenting: “Lovers Lane is classified as a Minor Arterial with no apparent on-street parking available. Overflow parking would most likely result to parking along Arco Avenue and South Crest Haven Road potentially increasing traffic congestion.”
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the personal service use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 5 spaces (or a 31 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 5 spaces shall automatically and immediately terminate if and when the office use is changed or discontinued, the applicant would be permitted to construct and maintain a two-story, approximately 5,200 square foot office structure/use on a site, and provide 11 (or 69 percent) of the 16 required off-street parking spaces.

**Timeline:**

February 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.

March 15, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

March 15, 2016: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

April 5, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for April public hearings. Review team members in attendance included: the Sustainable Development and Construction Interim Assistant Director, the Sustainable Development and Construction Board of Adjustment Chief Planner, the Sustainable Development and Construction Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Sustainable Development and Construction Project Engineers, the City of Dallas Chief Arborist, the Sustainable Development and Construction Board of Adjustment Senior Planner, and the Assistant City Attorneys to the Board.

April 7, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Lovers Lane is classified as a Minor Arterial with no apparent on-street parking available. Overflow parking would most likely result to parking along Arco Avenue and South Crest Haven Road potentially increasing traffic congestion.”

**BOARD OF ADJUSTMENT ACTION: APRIL 20, 2016**

APPEARING IN FAVOR: Marc Jennings, 4106 Walnut Hill LN, Dallas, TX  
Andrea Winters, 4246 W. Lovers Lane , Dallas, TX

APPEARING IN OPPOSITION: Rick Gonzales, 4283 S. Cresthaven, Dallas, TX

MOTION: **Bartos**

I move that the Board of Adjustment, in request No. **BDA 156-038**, on application of Andrea Winters, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 5 spaces because our evaluation of the property and the testimony shows that the parking demand generated by the proposed use on the site 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. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 5 spaces shall automatically and immediately terminate if and when the office use on the property is changed or discontinued.
- Additionally, the special exception shall terminate in 10 years.

**SECONDED: Winslow**

AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Bartos

NAYS: 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**MOTION: Cannon**

I move to adjourn this meeting.

**SECONDED: Brannon**

**AYES: 5 –Hounsel, Brannon, Winslow, Cannon, Bartos**

**NAYS: 0 –**

**MOTION PASSED 5 – 0 (unanimously)**

**3:11 P.M.** Board Meeting adjourned for **April 20, 2016**

\_\_\_\_\_  
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.