January 31, 2017

Leane Heldenfels, Staff Liaison to Board of Adjustment
City of Austin Development Review Department
505 Barton Springs Road
Austin, TX 78704

Re: C15-2016-0115

Dear Ms. Heldenfels,

As you know, Drenner Group represents, and I am writing to you on behalf of, Lightsey Two, LP ("Permit Holder"), the owner of the property located at 3206 and 3208 Aldwyche Drive, Austin, Texas ("Property"). I understand that reconsideration of this Appeal is to be posted to the February 13, 2017 agenda of the Board of Adjustment despite the fact that the Appeal process is complete.

The Board of Adjustment, in keeping with its Rules (Article V(F)(5)(a)), issued a Decision Sheet in connection with the vote taken on the Appeal on December 12, 2016. In keeping with the Board's Rules, the Decision Sheet, signed by you and Diana Ramirez on behalf of William Burkhardt, states the ultimate disposition of the Appeal: that the Appeal was denied. The Decision Sheet is, as has been confirmed by City Staff, "the end" of the process. You stated to Leah Bojo with my firm that it is the Board's position that the Appeal is final, and that the pending reconsideration is a "new application" as explanation as to why the Decision Sheet from the December 12, 2016 denial of the Appeal has been posted. **A decision that is final cannot be "reconsidered." Allowing the Board to reconsider a Board decision *after* the Board files a Decision Sheet on a matter is in direct conflict with LGC Section 211.011(b).**

Additionally, Section 211.0101(d) of the LGC states that the Board shall decide the Appeal within a reasonable time. Texas case law on the matter of what constitutes a reasonable period of time holds in a number of instances that a six (6) month delay (and in many instances time periods that are substantially less) is unreasonable *as a matter of law*. The permit was issued to my client by City staff on September 2, 2016, and, if the Board of Adjustment proceeds (in violation of its own Rules and in violation of State law) to hear the reconsideration request on February 13, 2017, a time period of five (5) months and 12 days shall have elapsed. Since the Appeal was filed, my client has been unable to work on the Property during this time. Additionally, my client has pending contracts on the single family attached homes that are the subject of those permits. The delivery of those individuals' homes is being delayed. My client's right to have this issue resolved in a reasonable period of time has been, and continues to be, violated by the Board's illegal actions.

These arguments are in addition to and not in exclusion of those previously made by my firm, a copy of which is attached hereto as Exhibit A.

I appreciate your consideration to the matters contained in this letter.

Very truly yours,

Stephen O. Drenner

CC: Brent Lloyd, Assistant City Attorney
Carl Wren, Building Official
Rodney Gonzales, Director of Development Review Department

Exhibit A

DRENNER GROUP

December 27, 2016

Leane Heldenfels, Staff Liaison to the Board of Adjustment
City of Austin Development Review Department
505 Barton Springs Road
Austin, TX 78704

Re: Permit C15-2016-0115 (the "Permit")

Dear Ms. Heldenfels,

Drenner Group represents, and I am writing to you on behalf of, Lightsey Two, LP ("Permit Holder"), the owner of the property located at 3206 and 3208 Aldwyche Drive, Austin, Texas ("Property"). As you know, the Property and the Permit were the subject of appeal C15-2016-0115 (the "Appeal"), a permit/project-specific appeal seeking to overturn City staff's interpretation as to whether the trellis approved by City Staff in the Permit constitutes an attachment in Single Family Attached Residential Use in the City of Austin Land Development Code.

As you also know, after three months from the initial hearing date, on December 12, 2016, at a regular meeting of the Board of Adjustment with all members of the Board being present (with Bryan King recusing himself due to a conflict), the Board of Adjustment voted to deny the appeal and uphold City Staff's determination that the trellis in the Permit complies with current City Code.

We received notice that Kim Johnson, acting on behalf of the South Lamar Neighborhood Association, filed a request for reconsideration of the Board's decision on December 21, 2016 (the "Request" or the "Request for Reconsideration"). Pursuant to the Board of Adjustment Rules of Procedure, a request for reconsideration must (i) state how the Board erred in its determination; (ii) state why the action should be considered; and (iii) be supported by new or clarified evidence.

This letter outlines the reasons that the Applicant's request for reconsideration fails to comply with Article V(F)(4)(c)(i), (ii), and (iii).

I. The Request Fails to State Why the Board Erred in its Determination that Staff's Determination that the Trellis Structure in the Permit Complies with Current City of Austin Code.

The Applicant states that the Board erred in "their opinion that Code Amendment would be the appropriate vehicle for instant relief". The Applicant actually admits that Board Member McDaniel (one of the three votes denying the Appeal) stated when he made the motion to deny "that he could not bring himself to accept that 'the staff was wrong in their interpretation'". A disagreement among Staff members

is not tantamount to the Staff member who issued in the Permit making a mistake in how they interpreted Code. Janet Gallagher's 2003 memorandum was included in the Applicant's original back-up materials and was presented to the Board of Adjustment prior to their December 12, 2016 vote. The motion to reconsider fails to show why the Board was incorrect in determining that Applicant failed to prove that City Staff erred in determining that the trellis in the Permit is consistent with the current version of City Code.

II. **<u>The Request Fails to State a Reason Why the Motion Should be Reconsidered</u>.**

The reasons offered by Applicant in the Request are repetitions of prior information and rationale presented to the Board of Adjustment on two separate occasions (at the Special Called Meeting on November 21, 2016, and at the December 12, 2016, Regular Meeting). The fact that Applicant does not like the result of the Board's decision is not a justification or reason to reconsider.

III. **<u>The Request Fails to Provide New and/or Clarifying Evidence.</u>**

The Request fails to comply with subsection (iii) of Article V, (F)(4)(c)(iii) in that it is not new or clarifying. In fact, much of it is not relevant, and there is nothing in any of the information referenced or attached to the Request that changes any of the facts presented to the Board of Adjustment in either (i) the 20 minutes of testimony offered by the Applicant during the Special Called Meeting and the December 12, 2016, meeting or (ii) approximately 130 pages of back-up information previously provided by the Applicant to the Board of Adjustment prior to the Board's vote on December 21, 2016.

The evidence provided as support for reconsideration is irrelevant to the outcome of the appeal as denied on December 12, 2016, as follows:

1. The 1987 ordinance (870219-R) that created the Single Family Attached category is presented as clarifying the original intent of the Council-passed ordinance. This is not clarifying because:
    a. Ordinance 870219-R is not the ordinance that was in effect at the time that the permit was approved and is therefore irrelevant to this case;
    b. Ordinance 870219-R includes the same definition to 13-2A-1557 as is in current Code Section 25-2-3(B)(11), the applicable definition in both iterations of the Code define Single Family Attached Residential as "the use of a site for two dwelling units constructed with common or abutting walls, or are connected by a carport, garage, *or other structural element*, and where each is located on a separate lot"
    c. Ordinance 870219-R was available to the appellant prior to the initial hearings and could have been presented as evidence but was not per the decision of the appellant.
    d. Ordinance 870219-R was not in effect at the time the 2002 memorandum under which Staff's current interpretation is based was issued.
2. The December 21, 2016 email from former building official Janet Gallagher states only that Ms. Gallagher does not recall the interpretation and "perhaps it is time for the interpretation to be updated to reflect the current building/zoning standards being used in Austin Texas." It is as to what question was asked, by all appearances by Board Member Bryan King, under the subject line "Single family attached grape arbor." In addition to the lack of information that Ms. Gallagher is

"Single family attached grape arbor." In addition to the lack of information that Ms. Gallagher is able to provide, she references the possibility of an updated interpretation in the context of changing building and zoning standards. These regulations have not changed since well before the time that Ms. Gallagher made her interpretation, as is evidenced by Ordinance 870219-R in which Single Family Attached is defined in the same way in 1987 that it is today. The Subdivision Code (Chapter 13) is irrelevant in Staff's determination, because Staff (as previously state to the Board of Adjustment at the Special Called Meeting) is to consider Chapter 25 when making these interpretation determinations.

3. The detailed drawing requested by the Board at the November 21, 2016 Board Meeting was presented on the dias to the Board at the December 12, 2016 Board Meeting and is therefore not new evidence.

4. The additional photographs "showing the form of attachment PSW is using today to scab an attachment between buildings" are of properties other than the subject-property and are therefore not relevant to this appeal. The attempted use of other projects as evidence in this appeal illustrates that the appellant is not contesting one project, but is attempting to re-write the land development code outside of the proper avenue of a code amendment. Further, all of these properties were in existence on the date of the initial Appeal and all subsequent hearings.

5. It is unclear what additional information Board Member McDaniel requested after the hearing and what evidence is provided in response via this request for reconsideration.

6. The email correspondence between Board Chair Burkhardt and Nuria Zaragoza, Chair of the Planning Commission Codes and Ordinances Subcommittee, does not convey new or clarifying information, only that staff reported to the Codes and Ordinances Subcommittee that this interpretation was scheduled to come to the Board of Adjustment. This point was made at the public hearing before the Board of Adjustment on December 12, 2016. The Board discussed the history of single family attached homes, how they were distinguished from duplexes, and code amendments related to duplexes that had been processed since the 1980s.

7. The request for reconsideration makes several inaccurate statements, including the following:

    - That there is no interpretation under which the approved trellis meets the 'twice as long as it is wide' requirement under the 2002 interpretation from the Building Official. This is untrue as the subject-trellis is designed to be 30 inches wide by 78 inches long, making it more than twice as long as it is wide if length is interpreted as the longer dimension and width as the shorter dimension.

    - That the Board erred in that it only considered precedent. This is untrue in that the Board discussed and based its decision appropriately on facts and statements in the application, testimony and evidence presented at the public hearing, both the former and current City Officials' statements, and the Board's consideration and evaluation of the language in the Code, as per Article IV (C) Basis for Decision in the Board of Adjustment Rules of Procedure.

    - That the Board erred in their opinion that a code amendment would provide instant relief. The Board discussed in detail the differences between changing the interpretation versus

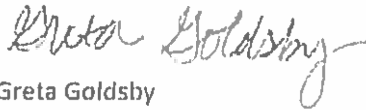
using the code amendment process at the December 12th meeting and expediency was specifically discussed.

To conclude, the Board of Adjustment has acted on this matter with full information over the course of several meetings. There is no additional information contained in the request for appeal that should change that outcome. It is clear from the numerous discussions with regard to this appeal that the South Austin Neighborhood Association would like the Code to contain a different definition of Single Family Attached and the appropriate avenue for the goal of changing the Code regarding future projects going forward is through the code amendment process. Through this process a community conversation can be had with proper notification and all affected parties at the table. This is the process that was used to amend the duplex ordinance that has been referenced repeatedly throughout this appeal, among many other code changes over the years. A one-off change of interpretation specific to a single project is not the proper way to make this change.

I appreciate your consideration to the matters contained in this letter.

Should you have any questions or comments, please do not hesitate to call me.

Very truly yours,



Greta Goldsby

CC: Leane Heldenfels, Staff Liaison to the Board of Adjustment

Enclosures