

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1 AUDITORIUM  
WEDNESDAY, AUGUST 17, 2016**

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

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Scott Hounsel, Vice-Chair, Larry Brannon, regular member, Alex Winslow, regular member, Wini Cannon, regular member, and Robert Agnich, alternate member

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Mary McCollough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Donna Mooreman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Mary McCollough, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Clay Buehrle, Engineering, Donna Mooreman, Chief Planner, Jennifer Munoz, Senior Planner and Trena Law, Board Secretary

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**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **August 17, 2016 docket.**

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**1:03 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 June 29, 2016, 2016 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2016**

MOTION: None

The minutes were approved as amended.

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**FILE NUMBER:** BDA156-071(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Sharmin Noorani, represented by Ashish Nayyar, to enlarge a nonconforming use at 3415 S. Malcolm X Boulevard. This property is more fully described as Lot 21 and part of Lot 20, Block A/1694, and is zoned PD-595 (NC) Tract 14, which limits the legal uses in a zoning district. The applicant proposes to enlarge a nonconforming food or beverage store use as defined per Section 51P-595.104(4), which will require a request to enlarge the nonconforming use.

**LOCATION:** 3415 S. Malcolm X Boulevard

**APPLICANT:** Sharmin Noorani  
Represented by Ashish Nayyar

**REQUEST:**

A request to enlarge a nonconforming use is made for a nonconforming food or beverage store use on the site that was enlarged, according to a submitted floor plan of the structure, by 536 sq. ft. (from 1,255 sq. ft. to 1,791 sq. ft.) in order to obtain a Certificate of Occupancy. They are removing a structure and will lose nonconforming rights for the additional square footage. The unit is not under construction.

**STANDARD FOR ENLARGING A NONCONFORMING USE:**

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

**STAFF RECOMMENDATION:**

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

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: PDD No. 595, NC (Neighborhood Commercial), Tract 14  
North: PDD No. 595, R-5(A), Historic Overlay 100—Wheatley Place Historic District; SUP No. 999 for ROW; and NC (Neighborhood Commercial), Tract 14  
South: PDD No. 595, R-5(A)  
East: PDD No. 595, R-5(A)  
West: PDD No. 595, R-5(A)

#### **Land Use:**

The subject site is developed as a nonconforming food or beverage store use, according to the Planned Development District No 595 regulations. An old storage addition that does not meet building code, but was a part of the original square footage of the certificate of occupancy, must be removed. It is not allowed to be reconstructed, as the use is now nonconforming. An enlargement request must be heard by the board in order to provide approximately the same square footage they once had. Once nonconforming uses are reduced, they lose the right to continue to operate at that previous size.

The area to the northwest has a multi-use business with a thrift store, community programs, and general store. To the north is a vacant building and vacant land. To the northeast, east, and south are single family homes. To the west is vacant land.

#### **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 a nonconforming food and beverage store use on the site that is seeking to be enlarged, according to a submitted floor plan of the structure, by 536 square feet, after removing a structurally unsound addition of similar size, per code.
- The subject site is zoned PDD No. 595 NC Neighborhood Commercial, Tract 14.
- A food or beverage store use is not permitted in the PDD No. 595, NC Neighborhood Commercial, Tract 14 zone.

- A food or beverage store use on the subject site could become a conforming use only if an application were made for a change in zoning to and granted by the City Council through a public hearing process.
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- This application is made to allow the nonconforming food or beverage store use to be enlarged back to the originally occupied nearly 1,800 square feet. (If denied, the nonconforming use could remain, but would not be allowed to replace the approximately 535 square foot addition they plan to remove for code compliance).
- This application is made to enlarge a nonconforming *use*. The application is *not* made to enlarge a nonconforming *structure*. However, since no request for variance or special exception has been made to any other code provision, it would appear that enlargement of the existing nonconforming use made within the existing structure is a conforming structure as it relates to development code requirements.
- Records from Building Inspection Department indicate that the food or beverage store use has been identified by Building Inspection as a nonconforming use.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
  1. does not prolong the life of the nonconforming use;
  2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and,
  3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted floor plan, the enlargement of the nonconforming use would be limited to what is shown on this document.

**Timeline:**

May 12, 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.

July 14, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

July 18, 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 July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the June 5<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;
- the nonconforming use provisions from the Dallas Development Code; and
- the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

August 5, 2016: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2016**

APPEARING IN FAVOR: Kevin Ritter, 362 W Fork #3115, Irving TX

APPEARING IN OPPOSITION: No one

MOTION: Cannon

I move that the Board of Adjustment, in request No. **BDA 156-071**, on application of Sharmin Noorani, **grant** the request of this applicant to enlarge a nonconforming use because our evaluation of the property and the testimony presented shows that the enlargement does not prolong the life of the nonconforming use and would have been permitted under the zoning regulations that existed when the nonconforming use was

originally established by right; and (3) will not have an adverse effect on the surrounding area. 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: Agnich**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0(unanimously)

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**FILE NUMBER:** BDA156-073(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Santos T. Martinez for a special exception to the side yard setback regulations at 424 Cristler Avenue. This property is more fully described as Lot 7, Block 32/1615, and is zoned R-7.5(A), which requires a side yard setback of 5 feet. The applicant proposes to construct and/or maintain a carport and provide a 1 foot 3 inch side yard setback, which will require a 3 foot 9 inch special exception to the side yard setback regulations.

**LOCATION:** 424 Cristler Avenue

**APPLICANT:** Santos T. Martinez

**REQUEST:**

A request for a special exception to the side yard setback regulations of 3’ 9” is made to maintain a carport, part of which is located in the site’s northwestern 5’ side yard setback on a site developed with a single family home structure/use.

**STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

## **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is, when in the opinion of the board, the carport will not have a detrimental impact on surrounding properties.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>North:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>South:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>East:</u>	R-7.5(A) (Single family district 7,500 square feet)
<u>West:</u>	R-7.5(A) (Single family district 7,500 square feet)

### **Land Use:**

The subject site is developed with a single family home. The area 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:**

- This request focuses on maintaining a carport, part of which is located in the site's northwestern 5' side yard setback, on a site developed with a single-family home structure/use.
- A 5' side yard setback is required in the R-7.5(A) zoning district.
- The applicant has submitted three documents (a site plan, an elevation plan, and wall section) indicating size and materials of the carport, and its location 1' 3" from the site's northwestern side property line.
- The following information was gleaned from the submitted site plan:
  - The carport is represented to be 69.5' in length and approximately 13' in width (approximately 900 square feet in total area) of which approximately 1/4 is located in the northwestern side yard setback.
- The following information was gleaned from the submitted elevation plan:
  - 10.5' – 12.5' in height.
- The following information was gleaned from the submitted wall section:
  - Metal roof and galvanized tube columns.
- The subject site is approximately 130' x 50' (or approximately 6,500 square feet) in area.

- According to DCAD records, the “main improvement” for property addressed at 424 Cristler Avenue is a structure built in 1947 with 1,186 square feet of living/total area; and “no additional improvements”.
- The Board Administrator conducted a field visit of the area approximately 500 feet northwest and southeast of the subject site and noted one other carport that appeared to be located in a side yard setback.
- As of August 5, 2016, no letters had been submitted in support of the request, and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing the following:
  - that granting this special exception to the side yard setback regulations of 3’ 9” will not have a detrimental impact on surrounding properties.
- Granting this request and imposing the following conditions would require the carport to be maintained in the location and of the heights and materials as shown on these documents:
  1. Compliance with the submitted site plan, elevation, and wall section is required.
  2. The carport structure must remain open at all times.
  3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
  4. All applicable building permits must be obtained.
  5. No item (other than a motor vehicle) may be stored in the carport.

**Timeline:**

- May 13, 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.
- July 14, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- July 15, 2016: The Board Administrator contacted the applicant and emailed 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 July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<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.”
- August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

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

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2016**

APPEARING IN FAVOR: Santos Martinez, 900 Jackson St., Dallas, TX  
Pablo Smith, 500 Cristler, Dallas, TX

APPEARING IN OPPOSITION: No one

**MOTION: Winslow**

I move that the Board of Adjustment, in request No. **BDA 156-073**, on application of Santos Martinez, **grant** a 3-foot 9-inch special exception to the side yard setback regulations for a carport because our evaluation of the property and testimony shows that the special exception will not have a detrimental impact on surrounding properties. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan, elevation, and wall section is required.
- The carport structure must remain open at all times.
- No lot-to-lot drainage is permitted in conjunction with this carport special exception.
- All applicable building permits must be obtained.
- No item (other than a motor vehicle) may be stored in the carport.

**SECONDED: Cannon**

AYES: 4 – Hounsel, Winslow, Cannon, Agnich

NAYS: 1 – Brannon

**MOTION PASSED** 4 – 1

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**FILE NUMBER:** BDA156-078(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Karl A. Crawley of Masterplan for a special exception to the landscape regulations at 1700 Cedar Springs Road. This property is more fully described as Lot 1A, Block 291, and is zoned PD-193 (PDS 110), 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:** 1700 Cedar Springs Road

**APPLICANT:** Karl A. Crawley of Masterplan

**REQUEST:**

A special exception to the landscape regulations is made to develop the subject site as a planned mixed use development with multifamily, office, retail, and personal service uses, and not fully comply with the landscape regulations.

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted landscape plan is required.

Rationale:

- The City of Dallas Chief Arborist supports the applicant's request in that the submitted revised alternate landscape proposal meets the spirit and intent of the PD 193 landscape requirements.

**BACKGROUND INFORMATION:**

<u>Site:</u>	PDD No. 193 (PDS 110)
<u>Northwest:</u>	PDD No. 193 (PDS 79, Subarea K)
<u>North:</u>	PDD No. 193 (I-2), PDD No. 193 (HC)
<u>Northeast:</u>	PDD No. 193 (HC)
<u>East:</u>	PDD No. 193 (HC); PDD No. 193 (PDS 24)
<u>South:</u>	PDD No. 193 (I-2); PDD No. 193 (MF-3)
<u>West:</u>	PDD No. 193 (MF-3); PDD No. 193 (PDS 79, Subarea K)

**Land Use:**

The subject site is currently vacant and being excavated for development of a planned mixed use development with multifamily, office, retail, and personal service uses in addition to a plaza area. The areas to the north, east, south, and west are developed with a mix of land uses including multifamily, office, and restaurant.

**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:**

- The applicant has provided an alternate landscape plan which would allow for the replacement of ground cover by grass within the plaza area.
- There are no other amendments requested to the required landscaping.
- PD 193 states that the landscape, streetscape, screening, and fencing standards shall become applicable to uses (other than to single family and duplex uses in detached structures) on an individual lot when work is performed on the lot that increases the existing building height, floor area ratio, or nonpermeable coverage of the lot unless the work is to restore a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind.
- The City of Dallas Chief Arborist states in a memo (see Attachment A) that the request in this case is triggered by new construction.
- The Chief Arborist notes that the site is deficient in meeting the landscape requirements in that the proposed plan does not fully comply with the “General Planting Area definition” which requires ground cover in the “Plaza Area.” The applicant has requested to replace the ground cover with sod.
- The Chief Arborist notes that the following factors for consideration:
  - PD 193 Part 1 states the General Planting Area must contain living trees, shrubs, vines, flowers, or ground cover vegetation. In PD 193 (Sec. 193.126(b)(1)(D)) minimum planting requirements, ‘turf grass’ and ‘ground cover’ have distinct and separate applications in the General, Special, and Parkway, planting areas. The two categories are not typically interchangeable as each of the applied materials may have distinct suitability toward pedestrian uses and physical appearance.
  - The Plaza landscaping area is called out specifically in PDS 110 to use the General Planting Area definition of PD 193. However, the concept in design provides for a pedestrian turf surface for events which may not be suitable under another type of surface vegetation material, or ground cover.
- The Chief Arborist supports the request because the applicant has demonstrated that the submitted landscape plan meets the spirit and intent of the PD 193 regulations.
- The applicant has the burden of proof in establishing the following:
  - The special exception will not compromise the spirit and intent of Section 51P-193-126: “Landscape, streetscape, screening, and fencing standards”.
- If the Board were to grant this request and impose the submitted landscape plan as a condition, the site would be granted exception from full compliance to requirements of the landscape requirements of the Oak Lawn PD 193 landscape ordinance.

**Timeline:**

- June 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.
- July 14, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- July 18, 2016: The Board Administrator emailed the following information to the applicant's representative:
- 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 July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<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."
- August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.

August 8, 2015: The City of Dallas Chief Arborist submitted a memo regarding this application (see Attachment A)

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2016**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Agnich**

I move to grant that the Board of Adjustment grant application **BDA 156-078** 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted landscape plan is required.

**SECONDED: Cannon**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0(unanimously)

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**FILE NUMBER:** BDA156-082(JM)

**BUILDING OFFICIAL’S REPORT:** Application of Edwin Brantley Smith for a special exception to the off-street parking regulations at 2737 W. Mockingbird Lane. This property is more fully described as Lot 1, Block 2570, and is zoned IR, which requires off-street parking to be provided. The applicant proposes to construct and/or maintain a structure for an animal shelter or clinic use and provide 32 of the required 36 off-street parking spaces, which will require a 4 space special exception to the off-street parking regulations.

**LOCATION:** 2737 W. Mockingbird Lane

**APPLICANT:** Edwin Brantley Smith

**REQUEST:**

A request for a special exception to the off-street parking regulations of 4 spaces is made to construct a 1,344 square foot addition to an existing 9,532 square foot building on a site that is developed with an animal shelter or clinic use, and provide 32 of the required 36 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:**

Approval, subject to the following condition:

- The special exception of 4 spaces shall automatically and immediately terminate if and when the animal shelter or clinic use is changed or discontinued.

Rationale:

- The Sustainable Development and Construction Department Project Engineer indicated that he has no objections to the applicant's request.

Zoning:

Site: IR  
North: IR, SUP No. 14 (Love Field Airport)  
South: IR  
East: IR  
West: IR

Land Use:

The subject site is located behind a multitenant office and retail strip center, but has its own lot. The area to the north includes DART ROW and Love Field Airport. The area to the east is developed with office and retail uses. The area to the south is developed with a multitenant office and retail strip center (part of site but not request area). The area to the west is a large parking lot serving an office use.

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 1,344 square foot addition to an existing 9,532 square foot building on a site that is developed with an animal shelter or clinic use, and provide 32 of the required 36 off-street parking spaces.
- The Dallas Development Code requires the following off-street parking requirements:
  - Animal shelter or clinic use: 1 space per 300 square feet.
- The applicant has submitted photo evidence that the parking does not reach capacity over time (Attachment A).
- The Sustainable Development Department Project Engineer has indicated that he has no objections to the request (Attachment B).
- The applicant has the burden of proof in establishing the following:
  - The parking demand generated by the "animal shelter or clinic" use on the site does not warrant the number of off-street parking spaces required, and
  - The special exception of 4 spaces (or a 9 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 4 spaces shall automatically and immediately terminate if and when the animal shelter or clinic use is changed or discontinued; the applicant would be allowed to construct and maintain the structure on the site with this specific use ("animal shelter or clinic") with the specified square footage, and provide 32 of the 36 code required off-street parking spaces.

**Timeline:**

June 24, 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.

July 14, 2016: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

July 18, 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 July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<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.”

August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

August 4, 2016: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Has no objections.”

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2016**

**APPEARING IN FAVOR:** Edwin Brantley Smith, 8226 Douglas Avenue #600, Dallas, TX

**APPEARING IN OPPOSITION:** Sara Knight, 12700 Park Central Dr #110, Dallas, TX

**MOTION: Hounsel**

I move that the Board of Adjustment, in request No. **BDA 156-082**, on application of Edwin Brantley Smith, **grant** the request of this applicant to reduce the number of required off-street parking spaces in the Dallas Development Code by 4 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 condition be imposed to further the purpose and intent of the Dallas Development Code:

- The special exception of 4 spaces shall automatically and immediately terminate if and when the animal shelter or clinic use on the property is changed or discontinued.

**SECONDED: Agnich**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0(unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA156-069(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Jeffrey R. Bragalone, represented by Signe Smith, for a variance to the height regulations at 4105 W. Lawther Drive. This property is more fully described as Lot 4B, Block 4408, and is zoned R-1ac(A), which limits the maximum building height to 36 feet. The applicant proposes to construct and maintain a structure with a building height of 41 feet 9 inches, which will require a 5 foot 9 inch variance to the height regulations.

**LOCATION:** 4105 W. Lawther Drive

**APPLICANT:** Jeffrey R. Bragalone  
Represented by Signe Smith

**August 17, 2016 Public Hearing Notes:**

- The Board Administrator submitted additional information from the applicant to the Board at the briefing (see Attachment C).

**REQUEST:**

A request for a variance to the height regulations of 5’ 9” is made to construct and maintain a three-level single family home structure which is proposed to exceed the 36’ maximum structure height on the undeveloped subject site.

**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, subject to the following condition:

- Compliance with the submitted “enlarged site plan, site section” document is required.

Rationale:

- The subject site is unique and different from most lots in the R-1ac(A) zoning district in that it is sloped. The slope of the subject site is the factor that makes the proposed 35’ 6” high single family home on the site measured from existing grade, 41’ 9” in height (or 5’ 9” above the 36’ maximum permitted height) measured from *average* grade.
- Furthermore, the proposed home with a total square footage of approximately 8,200 square feet appears to be commensurate with other developments in the same R-1ac(A) zoning district. The applicant has provided information where the average of seven other properties on the street/zoning district is approximately 10,900 square feet.

**BACKGROUND INFORMATION:**

**Zoning:**

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

**Land Use:**

The subject site is undeveloped. The areas to the north and west are developed with single family uses; the area to the east is White Rock Lake; and the area to the south is undeveloped.

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

1. BDA145-075, Property at 4105 W. Lawther Drive (the subject site)

On August 26, 2015, the Board of Adjustment Panel B granted a request for a variance to height regulations of 5' 9". The board imposed the following condition: compliance with the submitted enlarged site plan and revised section is required.

The case report stated that the request was made to construct and maintain a three-level single family home structure which is proposed to exceed the 36' maximum structure height on the undeveloped subject site.

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

- This request focuses on constructing and maintaining a three-level single family home structure which at its highest point reaches 41' 9", and exceeds the 36' maximum structure height on the undeveloped R-1ac(A) zoned subject site by 5' 9".
- The applicant's representative has stated that this application is the same proposal/application that was granted unanimously by the Board of Adjustment Panel B in August of 2015, and that this application is filed only because the applicant did not file for a building permit within 180 days from the Board's favorable action of August 26, 2015.
- The maximum structure height on properties zoned R-1ac(A) is 36'.
- The Dallas Development Code provides the following definition for "height": "Height means the vertical distance measured from grade to: (A) for a structure with a gable, hip, or gambrel roof, the midpoint of the vertical dimension between the lowest eaves and the highest ridge of the structure; (B) for a structure with a dome, the midpoint of the vertical dimension of the dome; and (C) for any other structure, the highest point of the structure".
- The Dallas Development Code provides the following definition for "grade": "Grade means the average of the finished ground surface elevations measured at the highest and lowest exterior corners of a structure. For purposes of this definition, finished ground surface elevation means the ground surface elevation of a building site before any construction or the ground surface elevation as altered in accordance with grading plans approved by the building official. Finished ground surface elevation does not include: (A) fill material not necessary to make the site developable; (B) berms; or (C) landscape features".
- The Dallas Development Code provides the following definition for "structure": "Structure means that which is built or constructed, an edifice or building

of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner”.

- An application and a site/building section document has been submitted that represents the maximum height of the proposed structure to be 41’ 9” or 5’ 9” above the 36’ maximum structure height permitted in the R-1ac(A) zoning district.
- The applicant states that the proposed home would have a total square footage of approximately 8,200 square feet where the average of seven other properties on the street/zoning district is approximately 10,900 square feet.
- The submitted site plan/building section document provides the following notation adjacent to the proposed structure: “35’-6” Exist. Grade-to-roof peak (36’-0” allowed).”
- A revised “enlarged site plan, site section” document has been submitted with notations regarding the height of the proposed structure that indicates: 1) “35’-6” top of roof above existing grade (36’-0” allowed); and 2) “41’-9” top of roof above average grade”.
- According to DCAD records, there is “no main improvement” or “no additional improvements” for property addressed at 4105 W. Lawther Drive.
- A site plan has been submitted that documents the slope of the subject site. The site plan denotes contour lines that range from 465’ to 491’ over the length of the 400’ subject site.
- The sloped subject site is rectangular in shape, and according to the submitted application is 1.1 acres in area. The site is zoned R-1ac(A) where lots are typically one acre in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the height regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-1ac(A) zoning classification.
  - The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-1ac(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted “enlarged site plan, site section” document as a condition, the height of the structure on the site would be limited to what is shown on this document.

### **Timeline:**

May 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.

- May 13, 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."
- May 13, 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 June 8<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the 1 p.m., June 17<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."
- June 8, 2016: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).
- June 14, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for June 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 Building Inspection, Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- No review comment sheets with comments were submitted in conjunction with this application.
- June 29, 2016: The Board of Adjustment Panel B conducted a public hearing on this application. The Board delayed action on this application until their next public hearing to be held on August 17, 2016.
- June 29, 2016: The Board Administrator wrote the applicant's representative a letter that provided the board's action; and the July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials. (Note that the applicant's representative has not submitted any additional

documents from what was presented before/at the June 29<sup>th</sup> public hearing).

August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

**BOARD OF ADJUSTMENT ACTION: JUNE 29, 2016**

APPEARING IN FAVOR: Jeffrey R. Bragalone, Dallas, TX  
Signe Smith, 6565 Axton Lane, Dallas, TX

APPEARING IN OPPOSITION: Kent Saunders, 4211 Lawther, Dallas, TX  
Mike Coker, 31121 Canton, Dallas, TX  
James Archer, 4109 W. Lawther, Dallas, TX

**2:59 P.M.: Break**

**3:05 P.M.: Resumed**

**MOTION #1: Canon**

I move that the Board of Adjustment, in request No. **BDA 156-069**, on application of Jeffrey R. Bragalone, grant a 5 foot, 9 inch variance to the height regulations 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 conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted enlarged site plan with site section is required.

**SECONDED: Agnich**

AYES: 3 –Hounsel, Cannon, Agnich,

NAYS: 2 – Brannon, Hill

MOTION FAILED 3 – 2

**MOTION #2: Agnich**

I move that the Board of Adjustment, in request No. **BDA 156-069**, hold this matter under advisement until **August 17, 2016**.

**SECONDED: Hounsel**

AYES: 3 – Hounsel, Cannon, Agnich

NAYS: 2 – Brannon, Hill  
MOTION PASSED 3 – 2

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2016**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: **Cannon**

I move that the Board of Adjustment, in request No. **BDA 156-069**, on application of Jeffrey R. Bragalone, **deny** the height variance **without prejudice** because the applicant's request has become moot.

SECONDED: **Winslow**

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

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

1:54 P.M.: Break

2:00 P.M.: Resumed

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FILE NUMBER: BDA156-083(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Maxwell Fisher for a special exception to the Flora Street height restrictions at 901 Pearl Street. This property is more fully described as Lot 1, Block 528, and is zoned PD-145, which limits the maximum building height within the Flora Street frontage area, the height of any portion of a structure must be equal to or less than the shortest distance of that portion of the structure from the vertical plane extending through the Flora Street centerline. The applicant proposes to construct and maintain a multifamily residential structure with a building height that exceeds the setback by 11 feet, which will require an 11 foot special exception to the Flora Street height restrictions.

LOCATION: 901 Pearl Street

APPLICANT: Maxwell Fisher

REQUEST:

A request for a special exception to the Flora Street building height requirements of 11' is made to construct and maintain a mixed use structure/development (multifamily/retail) on a site developed as a surface parking lot, and not fully complying with PD 145 height restrictions on Flora Street which restricts the maximum building height within the Flora Street frontage area to the height of any portion of a structure must be equal to or less than the shortest distance from the vertical plan extending through the Flora Street centerline.

**STANDARD FOR A SPECIAL EXCEPTION TO THE HEIGHT RESTRICTIONS ON FLORA STREET IN THE FLORA STREET FRONTAGE AREA OF PD 145:**

The board may grant a special exception to the height restrictions of Flora Street in the Flora Street frontage area of PD 145 if the special exception will not adversely affect appropriate development of the Dallas Arts District: The Flora Street height restrictions contained in Section 51P-145.104(d)(3), but only if the portion of the building exceeding the maximum building height permitted in that section is occupied exclusively by multiple-family uses.

**STAFF RECOMMENDATION:**

Denial

Rationale:

- The Manager in Sustainable Development and Construction Department recommended denial of the request where he concluded that if the structure were built as proposed, it would adversely affect appropriate development in the Arts District, and would not be consistent with all previous development along Flora Street in the Arts District. The Manager stated among other things that the distinctiveness of Flora Street as the primary spine of the Dallas Arts District, including the height and setback regulations allowing additional light and openness along this corridor, was a key design consideration in the creation of this District; and that to date, all development that has occurred along Flora Street has complied with the Flora Street height restrictions.
- The applicant had not substantiated how the special exception will not adversely affect appropriate development of the Dallas Arts District.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PD 145 (Planned Development District)  
North: PD 145 (Planned Development District)  
South: PD 145 (Planned Development District)  
East: PD 145 (Planned Development District)  
West: PD 145 (Planned Development District)

**Land Use:**

The subject site is developed as a surface parking lot. The areas to the east and west are developed with cultural uses (The Morten Myerson Symphony Center, and The Nasher Sculpture Center, respectively); the area the south is developed as the Belo Mansion and Pavilion, and the area to the north is developed with a high-rise multifamily development (The Museum Tower).

**Zoning/BDA History:**

1. BDA145-100, Property located at 901 Pearl Street (the subject site)

On September 23, 2015, the Board of Adjustment Panel B granted a request for a special exception to the Flora Street height regulations of 11' imposing the following conditions to the request: 1) compliance with the submitted site/development plan and building elevations is required, and 2) the portion of the building exceeding the maximum permitted height in that section must be occupied exclusively for multiple-family uses.

The case report stated that the request was made to construct and maintain to construct and maintain a mixed use structure/development (multifamily/retail) on a site developed as a surface parking lot, and not fully complying with PD 145 height restrictions on Flora Street which restricts the maximum building height within the Flora Street frontage area to the height of any portion of a structure must be equal to or less than the shortest distance from the vertical plan extending through the Flora Street centerline.

2. BDA 990-315, Property located at 2121 Flora Street (the subject site)

On August 15, 2000, the Board of Adjustment Panel B granted a request for a special exception to the Flora Street height regulations imposing the following conditions to the request: 1) compliance with the submitted elevation is required, and 2) the portion of the building exceeding the maximum permitted height in that section must be occupied exclusively for multiple-family uses.

The case report stated that the request was made to construct and maintain an approximately 680,000 square foot mixed use project (residential/parking/hotel/commercial).

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

- This request focuses on constructing and maintaining an approximately 600,000 square foot, 40-story mixed use structure/development (multifamily and retail) on a on a site developed as a surface parking lot, part of which would not fully comply

with PD 145 height restrictions on Flora Street which restricts the maximum building height within the Flora Street frontage area to the height of any portion of a structure must be equal to or less than the shortest distance from the vertical plan extending through the Flora Street centerline.

- The subject site is located in PD 145.
- PD 145 states that the Board of Adjustment may grant a special exception to the following requirements of the PD if the special exception will not adversely affect appropriate development of the Dallas Arts District:
  1. The Flora Street frontage area use requirements contained in Section 51P-145.104(d)(2), except that the board may not allow a use not permitted in Section 51P-145.104(c).
  2. The Flora Street height restrictions contained in Section 51P-145.104(d)(3), but only if the portion of the building exceeding the maximum height permitted in that section is occupied exclusively by multiple-family uses.
- Section 51P-145.104(d)(3) provides the following height restrictions on Flora Street: “Within the Flora Street frontage area, the height of any portion of a structure must be equal to or less than the shortest distance of that portion of the structure from the vertical plane extending through the Flora Street centerline.”
- PD 145 was established in 1983. Its development standards state that the Dallas Arts District Design Plan prepared by Sasaki Associates, Inc. in August, 1982 (“Sasaki Plan”) shall serve as a guideline for development in the Dallas Arts District. (See Attachment A for parts of this plan). The Sasaki Plan has been approved by the property owners and the city plan commission and is made part of the PD ordinance.
- The “Objectives” set forth in the Sasaki Plan states among other things:
  1. “The consortium wishes the district to reflect a multinational atmosphere, and contain mixed uses- arts facilities, office, retail and residential space, and cultural events – and feature Flora Street as a physical and visual link within the district.
  2. Also requested have been outdoor/indoor spaces of sufficient size and versatility to accommodate various art groups, integrating them as much as possible with the streetscape. Provision of a human scale pedestrian environment through the use of planting, street furniture, building heights and setbacks, and façade design is seen as essential.”
- The “Plan for the Dallas Arts District” set forth in the Sasaki Plan states among other things:
  1. “The Flora Street urban design plan is a physical development scenario that utilizes the street as a major pedestrian corridor and unifying element for the various uses within the Dallas Arts District. The right-of-way includes two moving traffic lanes (one in each direction), two drop-off lanes, and 30’ wide sidewalks.
  2. Distinctive paving patterns distinguish the three zones, and bollards separate vehicular and pedestrian traffic.
  3. Closure of Flora Street for special events or on weekends or at noontime would extend this pedestrian orientation.
  4. Flora Street is lined with triple rows of trees. Benches, kiosks, and sidewalk cafes are located in the pedestrian area beneath the trees. Illuminate bollards, up-and-down lighting of trees, and illumination of special features and landmark building facades create the desired ambiance while ensuring pedestrian safety.”

- The “setback/height regulations” set forth in the Sasaki Plan states among other things
  1. “Height limit of 50 feet at Flora Street property line to maintain scale appropriate to pedestrian environment and encourage low base podiums for building development along Flora Street.
  2. Height limit of 100 feet at 50 feet from Flora Street property line.
  3. Beyond 50 feet from property line, unlimited height; FAA or City of Dallas restrictions apply.
  4. Suggested crenelation of streetwall along Flora Street to create entries, sitting alcoves, planting areas or places for cafes. Crenelation should not extend more than 30 feet so that activity will remain visible from Flora Street.
  5. At least 50% of Flora Street frontage built with two story base or podium.”
- The applicant has stated the following: “The Dallas Board of Adjustment, Panel B authorized encroachment into the Flora Street setback on September 23, 2015... As can be expected with the scale and complexity of a mixed use development tower in the Dallas Arts District, additional time was needed...unfortunately, this level of coordination could not be accomplished in 180 days. The purpose of this application is to obtain the same authorization as approved with the original application. There are no changes to the type or degree of special exception requested.”
- The applicant submitted a letter and revised plans to staff (see Attachment B). The letter states among other things “Our current applicant is identical to the application submitted and approved by the Board of Adjustment Panel B in September of 2015. Accordingly, the enclosed exhibits match those approved and conditioned in September of 2015.”
- The Manager in Sustainable Development and Construction Department submitted a review comment sheet marked “Recommends that this be denied” and additional comments to support his conclusion (see Attachment C).
- The applicant has the burden of proof in establishing that the special exception will not adversely affect appropriate development of the Dallas Arts District.
- If the Board was to grant this request and impose conditions that the submitted “development plan”, “building elevations north-west & north-east”, and “building elevations south-west & south-east” is required, and that the building exceeding the maximum building height permitted in that section is to be occupied exclusively by multiple-family uses, the building encroaching beyond the maximum building height within the Flora Street frontage area would limited to that what is shown on these documents.

**Timeline:**

- July 22, 2015:       The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- July 14, 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.”

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

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the July 27<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the August 5<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.”

July 20 & 27, 2016: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

July 29, 2016: The Manager in Sustainable Development and Construction Department submitted a review comment sheet marked “Recommends that this be denied” and additional comments to support his conclusion (see Attachment C).

August 2, 2016: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August 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 Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the Chief Arborist, the Sustainable Development and Construction Department Senior Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

**BOARD OF ADJUSTMENT ACTION: AUGUST 17, 2016**

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

**APPEARING IN OPPOSITION:** No one

**MOTION:** Winslow

I move that the Board of Adjustment, in request No. **BDA 156-083**, on application of Maxwell Fisher, **grant** the request to provide an 11-foot height special exception to the Flora Street height restrictions in Planned Development District 145 because our evaluation of the property and the testimony shows that this special exception will not

adversely affect appropriate development of the Dallas Arts District. I further move that the following conditions be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with submitted development plan, and the submitted building elevations is required.
- The portion of the building exceeding the maximum height permitted is occupied exclusively by multiple-family uses.

**SECONDED: Cannon**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

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**MOTION: Cannon**

I move to adjourn this meeting.

**SECONDED: Agnich**

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

**NAYS:** 0 –

**MOTION PASSED** 5 – 0 (unanimously)

**2:45 P.M.** Board Meeting adjourned for **August 17, 2016**

\_\_\_\_\_  
CHAIRPERSON

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

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

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