

**BOARD OF ADJUSTMENT, PANEL B  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, L1FN AUDITORIUM  
WEDNESDAY, SEPTEMBER 23, 2015**

MEMBERS PRESENT AT BRIEFING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Scott Hounsel, regular member Charles Johnson, regular member, Robert Agnich, alternate member, Lorlee Bartos, alternate member

MEMBERS ABSENT FROM BRIEFING: No one

MEMBERS PRESENT AT HEARING: Darlene Reynolds, Vice Chair, Sam Gillespie, Panel Vice Chair, Scott Hounsel, regular member Charles Johnson, regular member, Robert Agnich, alternate member, Lorlee Bartos

MEMBERS ABSENT FROM HEARING: No one

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Danielle Lerma, Planner, and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Donna Moorman, Chief Planner, Jamilah Way, Asst. City Attorney, Todd Duerksen, Development Code Specialist, Phil Erwin, Chief Arborist, Danielle Lerma, Planner, and Trena Law, Board Secretary

\*\*\*\*\*  
**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **September 23, 2015 docket.**

\*\*\*\*\*  
**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.

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel B August 26, 2015 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

MOTION: None

The minutes were approved.

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 2**

**FILE NUMBER:** BDA 145-040(SL)

**REQUEST:** To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B's favorable action on a request for a variance to the front yard setback regulations granted (with a condition) by Board of Adjustment Panel B on April 22, 2015.

**LOCATION:** 4734 Tremont Street

**APPLICANT:** Elaine Hewlett

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

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

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

**Timeline:**

April 22, 2015: The Board of Adjustment Panel B granted a request for a variance to front yard setback regulations of 20'. The Board imposed the following condition: Compliance with the submitted revised site plan is required. The case report stated that this request was made to replace an existing one-story nonconforming single family home structure on the subject site with a two-story single family home with (according to the submitted revised site plan) a building footprint of about 2,000 square feet and a total living area of about 2,600 square feet, part of which was to be located 5' from one of the site's two front property lines (N. Prairie Avenue) or 20' into this 25' front yard setback

September 2, 2015: The applicant sent a letter to the Board Administrator requesting an extension of the time period in which to make application for a building permit or certificate of occupancy (see Attachment A).

September 2, 2015: The Board Administrator emailed the applicant acknowledging her request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the April 22, 2015 favorable action. The applicant was emailed the following additional information:

- an attachment that provided the public hearing date of the request; and deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- an attachment of materials related to BDA 145-040; and
- The Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

**MOTION: Gillespie**

I move that the Board of Adjustment grant extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B's favorable action on a request for a variance to the front yard setback regulations granted (with a condition) by Board of Adjustment Panel B on April 22, 2015.

**SECONDED: Agnich**

**AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich**

**NAYS: 0 -**

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

\*\*\*\*\*

**MISCELLANEOUS ITEM NO. 3**

**FILE NUMBER:** BDA 145-049(SL)

**REQUEST:** To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B’s favorable action on a request for variances to the front yard setback regulations granted (with a condition) by Board of Adjustment Panel B on April 22, 2015.

**LOCATION:** 6939 Blackwood Drive

**APPLICANT:** Carl Baggett

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

- The Dallas Development Code states:
  - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files from and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
  - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

**Timeline:**

April 22, 2015: The Board of Adjustment Panel B granted requests for variances to front yard setback regulations of up to 30’. The Board imposed the following condition: Compliance with the submitted revised site plan

is required. The case report stated that this requests were made maintain the following structures on a site developed with a single family home use/structure: In the Hyde Park Drive 30' front yard setback: retaining walls ranging from 14" – 42"; a portion of an 8" high concrete porch; a gable roof, concrete porch, and stairs; and a variable height stone landscape terrace up to 12"; and in the Blackwood Drive 30' front yard setback: variable height stone landscape terraces ranging from 21" – 38"; stairs; and portion of concrete front porch 39".

September 2, 2015: The applicant sent a letter to the Board Administrator requesting an extension of the time period in which to make application for a building permit or certificate of occupancy (see Attachment A).

September 3, 2015: The Board Administrator emailed the applicant acknowledging his request for the Board to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days that the applicant had to do so from the April 22, 2015 favorable action. The applicant was emailed the following additional information:

- an attachment that provided the public hearing date of the request; and deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- an attachment of materials related to BDA 145-049; and
- The Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

APPEARING IN FAVOR: Ann Baggett, 6939 Blackwood Dr, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move that the Board of Adjustment grant the request to extend the time period in which to file an application for a building permit or certificate of occupancy an additional 12 months beyond the 180 days from the Board of Adjustment Panel B’s favorable action on a request for variances to the front yard setback regulations granted (with a condition) by Board of Adjustment Panel B on April 22, 2015.

SECONDED: Agnich

AYES: 5 – Reynolds, Gillespie, Housel, Johnson, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*

**FILE NUMBER:** BDA 145-092(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Robert Baldwin of Baldwin and Associates for a variance to the front yard setback regulations and for special exceptions to the fence height and visual obstruction regulations at 7743 Goforth Circle. This property is more fully described as Lot 1, Block A/5446, and is zoned R-7.5(A), which requires a front yard setback of 25 feet, limits the height of a fence in the front yard to 4 feet and requires a 45 foot visibility triangle at street intersections. The applicant proposes to construct and/or maintain structures and provide a 5 foot front yard setback, which will require a 20 foot variance to the front yard setback regulation, to construct and/or maintain a 12 foot high fence, which will require an 8 foot special exception to the fence regulation, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 7743 Goforth Circle

**APPLICANT:** Robert Baldwin of Baldwin and Associates

**REQUESTS:**

The following requests have been made on a site that is developed with a single family home/use:

- Variances to the front yard setback regulations of up to 20' are made to construct and maintain a pool and spa "structures" which will be located in the site's Goforth Circle 30' required front yard, and to construct and/or maintain a new arbor, pool equipment, and existing air conditioning unit structures which will be/are located in the site's Goforth Road 25' front yard setback\*;
- Requests for special exceptions to the fence height regulations of 8' are made to maintain a 6' 2" - 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 1/4" in the site's Goforth Circle and Goforth Road front yard setbacks; and
- A request for special exceptions to the visual obstruction regulations is made to maintain the 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 1/4" in the 45' visibility triangle at the intersection of Goforth Circle and Goforth Road.

\* Note that while a portion of the existing single family home is located in the Goforth Road front yard setback, the Board of Adjustment Panel B granted a variance to the front yard setback regulations of 12' 9" in 2013 to construct and maintain it in this front yard setback- one of three front yard setbacks on the subject site: BDA 123-051.

**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, lot 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.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

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

**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 (variances):**

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 from most lots zoned R-7.5(A) in that it is a lot with a restrictive area due to its three front yard setbacks. The atypical lot with three front yard setbacks precludes the applicant from developing it in a manner commensurate with development on other similarly zoned R-7.5(A) properties with the typical one front yard setback, two side yard setbacks, and one rear yard setback.

**STAFF RECOMMENDATION (fence height special exceptions):**

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

**STAFF RECOMMENDATION (visual obstruction special exception):**

Approval, subject to the following condition:

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

Rationale:

- The Sustainable Development and Construction Department Project Engineer had indicated that he has no objections to the request.
- The applicant had substantiated how the location and maintenance a 6' 2" - 8' high board on board cedar fence some of which is atop a stone retaining wall as high as 3' 10 1/4" in the 45' visibility triangle at the intersection of Goforth Circle and Goforth Road does not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-7.5(A) (Single family district 7,500 square feet)
- North: R-7.5(A) (SUP 972) (Single family district 7,500 square feet)(Specific Use Permit)
- South: R-7.5(A) (Single family district 7,500 square feet)
- East: R-7.5(A) (Single family district 7,500 square feet)
- West: R-7.5(A) (Single family district 7,500 square feet)

**Land Use:**

The subject site is developed with a single family use/structure. The area to the north is developed with an institutional/water utilities use; and the areas to the east, south, and west are developed with single family uses.

**Zoning/BDA History:**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. BDA 123-051, Property located at 7743 Goforth Circle (the subject site)</li> </ol> | <p>On May 22, 2015, the Board of Adjustment Panel B granted a request for a variance to the front yard setback regulations of 12' 9" imposing the submitted site plan as a condition to the request.</p> <p>The case report stated that the request was made to construct and maintain a two-story single family structure, part of which was to be located in one of the three front yard setbacks (Goforth Road).</p> |
|--|---|

**GENERAL FACTS/STAFF ANALYSIS (variances):**

- This request focuses on constructing and maintaining an approximately 480 square foot pool "structure" and an approximately 45 square foot spa "structure" which will be located in the site's Goforth Circle 30' required front yard, and to construct and/or

maintain a new approximately 140 square foot arbor structure, a new approximately 18 square foot pool equipment structure, and an existing approximately 9 square foot air conditioning unit structure which will be/are located in the site's Goforth Road 25' front yard setbacks on a site developed with a single family home/use.

- Structures on lots zoned R-7.5(A) are required to provide a minimum front yard setback of 25'.
- The subject site is located at the east corner of Goforth Road and Goforth Circle. Regardless of how the single-family structure is oriented to Goforth Circle, the site has three front yard setbacks since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The subject site has two 30' required front yards along Goforth Circle created by a platted building line, and a 25' required front yard setback along Goforth Road per the Dallas Development Code.
- A scaled site plan has been submitted indicating that the existing single family home is located in the Goforth Road 25' front yard setback. The Board of Adjustment Panel B granted a variance to the front yard setback regulations of 12' 9" in 2013 to construct and maintain it in this front yard setback.
- This application is made to construct/locate/maintain additional structures (as shown on the submitted site plan) in the two of the three front yards: a pool and spa in the Goforth Circle required front yard on the southwest side of the site; and a new arbor, pool equipment, and existing air conditioning unit structures in the Goforth Road front yard setback on the northwest side of the subject site.
- No part of this application has been made for any structure to encroach into the Goforth Circle 30' required front yard on the southeast side of the subject site.
- According to DCAD records, the "main improvement" at 7743 Goforth Circle is a structure built in 2013 with 4,385 square feet of living/total area. According to DCAD records, the "additional improvements" at 7743 Goforth Circle is a 484 square foot attached garage and a 144 square foot storage space.
- The subject site is flat, somewhat irregular in shape, and according to the application is 0.263 acres (or approximately 11,500 square feet) in area. The site is zoned R-7.5(A) where lots typically are 7,500 square feet in area.
- The site has three front yards (two 30' required front yards per a platted building line, one 25' front yard setback per the R-7.5(A) zoning district provision); and one 5' side yard setback; most residentially-zoned lots have one front yard setback, two side yard setbacks, and one rear yard setback.
- The submitted site plan shows that all of the pool and spa structures are proposed to be located in the 30' Goforth Circle front yard, and that over half of the arbor and all of the pool equipment and air conditioning unit structures would be/are located in the 25' Goforth Road front yard setback.
- The applicant states that only 39 percent of the lot is buildable given the three front yard setbacks where a more typical sized lot with one front yard setback would have 64 percent of buildable area.
- The applicant has the burden of proof in establishing the following:
  1. That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal

enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

2. The variances are 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-7.5(A) zoning classification.
  3. The variances 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-7.5(A) zoning classification.
- If the Board were to grant the variance requests, and impose the submitted site plan as a condition, the structures in the front yard setbacks would be limited to what is shown on this document— which in this case are structures located/to be located as close as 5' from a front property line (or as much as 20' into the 25' front yard setback).

### **GENERAL FACTS/STAFF ANALYSIS (fence height special exceptions):**

- These requests focus on maintaining a 6' 2" - 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 ¼" in the site's Goforth Circle and Goforth Road front yard setbacks on a site developed with a single family home.
- The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.
- The subject site is located at the east corner of Goforth Road and Goforth Circle. Regardless of how the single-family structure is oriented to Goforth Circle, the site has three front yard setbacks since the code states that if a lot runs from one street to another and has double frontage, a required front yard must be provided on both streets.
- The subject site has two 30' required front yards along Goforth Circle created by a platted building line, and a 25' required front yard setback along Goforth Road per the Dallas Development Code.
- The applicant has submitted a site plan/elevation of the proposal in the front yard setbacks that reaches a maximum height of 11' 10 ¼".
- The following additional information was gleaned from the submitted site plan/elevation:
  - The portion of the fence that exceeds 4' in height on the subject site is about 72' in length in the Goforth Circle required front yard and about 85' in length in the Goforth Road front yard setback.
  - The fence over 4' in height in the front yard setbacks is located approximately 3' from the property lines or 13' from the Goforth Circle pavement line/20' from the Goforth Road pavement line.
- The Board Administrator conducted a field visit of the site and surrounding area and noted four other fences above 4 feet high which appeared to be located in a front yard setback, 3 of which are solid fences approximately 6' high located immediately northeast of the subject site, none of which have recorded BDA history; and the

other of which is a solid fence approximately 6' high located immediately northwest of the subject site.

- One home fronts the existing fence along Goforth Circle– a property with no fence in its front yard setback; no home fronts the existing fence along Goforth Road- a property with an approximately 6' high solid fence in its front yard.
- As of September 11, 2015, no letters had been submitted in support of or in opposition to the request.
- The applicant has the burden of proof in establishing that the special exceptions to the fence height regulations of 8' will not adversely affect neighboring property.
- Granting these special exceptions of 8' with a condition imposed that the applicant complies with the submitted site plan/elevation would require the existing fence exceeding 4' in height in the front yard setbacks to be maintained in the location and of the heights and materials as shown on this document.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction special exception):**

- This request focuses on maintaining a 6' 2" - 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 ¼" in the 45' visibility triangle at the intersection of Goforth Circle and Goforth Road.
- 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).
- The applicant submitted a site plan/elevation denoting a 6' 2"- 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 ¼" in the 45' visibility triangle at the intersection of Goforth Circle and Goforth Road.
- 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 how granting the request for a special exception to the visual obstruction regulations to maintain a 6' 2" - 8' high board on board cedar fence some of which is located atop a stone retaining wall as high as 3' 10 ¼" in the 45' visibility triangle at the intersection of Goforth Circle and Goforth Road does not constitute a traffic hazard.
- Granting this request with the condition that the applicant complies with the submitted site plan/elevation would require the items in the visibility triangle to be limited to and maintained in the locations, height and materials as shown on this document.

**Timeline:**

- June 16, 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.
- August 19, 2015: 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."
- August 19, 2015: 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 September 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 11<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."
- September 8, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- September 11, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

APPEARING IN FAVOR: No one

APPEARING IN OPPOSITION: No one

MOTION: Gillespie

I move to grant that the Board of Adjustment grant application **BDA 145-092** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Hounsel**

**AYES:** 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich

**NAYS:** 0 -

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

\*\*\*\*\*

**FILE NUMBER:** BDA 145-093(DL)

**BUILDING OFFICIAL’S REPORT:** Application of Steve Gibson for a variance to the side yard setback regulations at 1212 Tavaros Avenue. This property is more fully described as Lot 1, Block B/5284, and is zoned CR, which requires a side yard setback of 20 feet. The applicant proposes to construct a nonresidential structure and provide a 10 foot side yard setback, which will require a 10 foot variance to the side yard setback regulation.

**LOCATION:** 1212 Tavaros Avenue

**APPLICANT:** Texas Telcom Credit Union  
Represented by Steve Gibson, President/CEO of Texas Telcom Credit Union

**REQUEST:**

A request for a variance to the side yard setback regulations of 10’ is made to construct and maintain a ±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.

**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:

- (D) 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;
- (E) 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

- (F) 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 site plan, floor plan, and elevation is required.

Rationale:

- This specific parcel of land is of a restrictive area that precludes the applicant from developing it in a manner commensurate with the development of other parcels of land in the same CR Community Retail District zoning. The subject site abuts an R-7.5(A) Residential District, which encumbers the lot with a 20' side yard setback. The site is 40' x 125'. A side yard setback of 20' at the southern border of the property leaves the applicant with a lot that has a buildable width of 20'. Had the site not been adjacent to an R-7.5(A), the site would have no minimum side yard setback.
- Note that the applicant has submitted a site plan that is not in compliance with current Chapter 51A regulations of the Dallas Development Code. Should the board grant approval of this application, it will not, in any way, provide relief for other aspects of the proposed development that are not in compliance with Chapter 51A regulations.

**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:**

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 an  $\pm 1,620$ - square foot, nonresidential structure, part of which is located 10' into the 20' side yard setback.
- Structures on lots zoned CR are required to provide no minimum side or rear yard setbacks, unless the lot is adjacent to or directly across an alley from an R, R(A), D, D(A), TH, TH(A), CH, MF, or MF(A) district, in which case the structures must provide a 20' side yard setback.
- This site, zoned CR, is directly across an alley from an R-7.5(A) Single Family Residential District to the southeast.
- A scaled site plan has been submitted indicating that a portion of the proposed nonresidential structure is to be located 10' from the alley to accommodate portions of a break room, offices, and a conference room.
- On September 8, 2015, the Current Planner contacted the applicant's representative and then confirmed via e-mail that the applicant does not wish to amend the site plan submitted with his application, even though the applicant risks being denied building permits due to non-compliance with current Chapter 51A regulations regarding landscaping regulations and off-street parking regulations.
- According to DCAD records, there are two "improvements" for property addressed at 1212 Tavaros Avenue, though the site is currently undeveloped:
  1. A free standing retail store of approximately 2,000-square feet.
  2. An office building of approximately 273-square feet.
- The subject site is rectangular in shape (40'x 125'), 0.115 acres 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.
- 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 front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the

development upon other parcels of land in districts with the same 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, floor plan, and elevations as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a portion of a structure located as close as 10’ from an alley at the southern border of the lot (or 10’ into this 20’ side yard setback).
- Note that granting the applicant’s request for a variance to the side yard setback regulations will not provide any relief to any existing or proposed noncompliance on the site related to various Chapter 51A regulations of the Dallas Development Code.

**Timeline:**

- June 19, 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.
- August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 27, 2015: The Current Planner 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 September 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 11<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.”
- September 8, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 8, 2015: The Current Planner advised the applicant that the submitted site plan was not in compliance with off-street parking regulations and landscaping regulations. He replied, via e-mail, that he wished to continue forward with his application and not revise the submitted site plan.

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

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

**APPEARING IN FAVOR:** No one

**APPEARING IN OPPOSITION:** No one

**MOTION: Gillespie**

I move to grant that the Board of Adjustment grant application **BDA 145-093** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

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

**SECONDED: Hounsel**

**AYES:** 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich

**NAYS:** 0 -

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

\*\*\*\*\*

**FILE NUMBER:** BDA 134-072(DL)

**BUILDING OFFICIAL’S REPORT:** Application of Houshang Jahvani for a variance to the minimum and maximum front yard setback regulations and a variance to the landscaping regulations at 332 W. Commerce Street. This property is more fully described as Lot 1, Block 3/6813, and is zoned PD-714 (Subdistrict 1A), which requires a minimum front yard setback of 6 feet with at least 50 percent of the front façade at the minimum front yard setback and a maximum front yard setback of 15 feet, and which requires mandatory landscaping. The applicant proposes to construct and maintain a nonresidential structure and provide a 99 foot front yard setback, which will require a 93 foot variance to the minimum front yard setback regulation and an 84 foot variance to the maximum front yard setback regulation, and provide an alternate landscape plan, which will require a variance to the landscape regulations.

**LOCATION:** 332 W. Commerce Street

**APPLICANT:** Houshang Jahvani

### **September 23, 2015 Public Hearing Notes:**

- The Current Planner informed the Board at the briefing that a revised alternate site/landscape plan had been submitted by the applicant's representative on September 17, 2015.
- The Current Planner informed the Board at the briefing that staff's recommendation of approval should have been subjected to the following condition:
  - Compliance with the submitted alternate site/landscape plan is required.
- The Chief Arborist revealed that a street easement had been discovered along Harbin Street that had not been depicted on either the submitted original or revised alternate site/landscape plans.
  - Because of this new information, staff recommended that the item be held until the Wednesday, October 21, 2015, Panel B Board of Adjustment meeting.
  - The item was briefed during the public hearing because the representative, who was not present at the briefing and therefore could not be asked if he concurred with staff's recommendation to hold the item, wanted the item to be heard.

### **REQUEST:**

The following requests have been made on a site currently developed with a motor vehicle fueling station of approximately 670-square feet:

1. A variance to the minimum front yard setback regulations of 93' is requested to allow the expansion of an existing nonresidential structure, built circa 1961, and not fully meet the 6' minimum front yard setback with at least 50% of the front facade at the minimum front yard setbacks along W. Commerce Street, Sulphur Street, Harbin Street, and Haslett Street.
2. A variance to the maximum front yard setback regulations of 84' is requested to allow the expansion of an existing nonresidential structure, built circa 1961, and not fully meet the 15' maximum front yard setbacks along W. Commerce Street, Sulphur Street, Harbin Street, and Haslett Street.
3. A variance to the landscape regulations is requested to allow the expansion of a nonresidential structure, built circa 1961, and not fully meet the landscape regulations.

### **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 (MINIMUM/MAXIMUM FRONT YARD SETBACK ON W. COMMERCE STREET):**

Approval.

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

**STAFF RECOMMENDATION (MINIMUM/MAXIMUM FRONT YARD SETBACK ON SULPHUR STREET):**

Approval.

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

**STAFF RECOMMENDATION (MINIMUM/MAXIMUM FRONT YARD SETBACK ON HARBIN STREET):**

Approval.

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

**STAFF RECOMMENDATION (MINIMUM/MAXIMUM FRONT YARD SETBACK ON HASLETT STREET):**

Approval.

Rationale:

- The applicant has substantiated how the site cannot be developed according to PDD No. 714, Subdistrict 1A, regulations. The site, while not sloped, is of a restrictive area and shape that precludes it from being developed in a manner commensurate with the development of other parcels of land within the same planned development district. Furthermore, the hardship is not self-created. City Council approved Ordinance No. 25898 on February 23, 2005, which made the existing structure, built circa 1961, nonconforming. PDD No. 714, modeled after form districts, encumbers the structure with four minimum/maximum front yard setbacks and does not allow for legal nonconforming structures to expand without meeting the requirements of the planned development district.

**STAFF RECOMMENDATION (LANDSCAPE REGULATIONS):**

Denial.

Rationale:

- The City of Dallas Chief Arborist does not support this landscape variance request. The applicant has not provided enough information to show that the proposed street trees along Commerce Street will not be denied at the permitting stage due to the trees' close proximity to a water or sewer main line. Furthermore, the Chief Arborist feels that the applicant could provide certain pedestrian amenities within visibility triangles and utility locations that inhibit otherwise suitable planting arrangements. While the Chief Arborist agrees that the application passes the variance test, he feels "a more comprehensive landscape design" would ensure the "spirit of the ordinance" was met.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: PDD No. 714 (Planned Development, Subdistrict 1A)

North: PDD No. 714 (Planned Development, Subdistrict 1A)  
South: PDD No. 714 (Planned Development, Subdistrict 1A)  
East: PDD No. 714 (Planned Development, Subdistrict 1A)  
West: PDD No. 714 (Planned Development, Subdistrict 1A)

**Land Use:**

The site is currently developed with a motor vehicle fueling station that according to DCAD was built in 1961. The area to the north and west is developed with office uses; the area to the east is developed with a multifamily residential use; and the area to the south is undeveloped.

**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 (FRONT YARD VARIANCES):**

- This request focuses on constructing and maintaining an addition to an existing motor vehicle fueling station, and providing a 99' front yard setback.
- Structures on lots zoned PDD No. 714, Subdistrict 1A, are required to provide a minimum front yard setback of 6' and a maximum front yard setback of 15'.
- A scaled site plan has been submitted indicating the location of the structure in relation to the minimum/maximum front yard setbacks:
  1. Along W. Commerce Street, the existing structure and/or proposed addition are located approximately 43' from the 15' maximum front yard setback, and approximately 52' from the 6' minimum front yard setback.
  2. Along Sulphur Street, the existing structure and/or proposed addition are located approximately 54' from the 15' maximum front yard setback, and approximately 63' from the 6' minimum front yard setback.
  3. Along Harbin Street, the existing structure and/or proposed addition are located approximately 1' from the 15' maximum front yard setback, and approximately 10' from the 6' minimum front yard setback.
  4. Along Haslett Street, the existing structure and/or proposed addition are located approximately 82' from the 15' maximum front yard setback, and approximately 91' from the 6' minimum front yard setback.
- According to DCAD records, the "improvement" at 332 W. Commerce Street is a 600-square foot "bayless service station" built in 1961.
- The site is flat, irregular in shape, and is approximately 0.4524 acres (or approximately 19,706.5-square feet) in area. The site is zoned PDD No. 714, Subdistrict 1A.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the landscape 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 PDD No. 714, Subdistrict 1A, 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 PDD No. 714, Subdistrict 1A, zoning classification.
- If the Board were to grant the variance request, and impose the submitted site/landscape plan as a condition, the proposed addition to the existing structure would be limited to what is shown on this document, which in this case, is located as much as 84' from the 15' maximum front yard setback, and as much as 93' from the 6' minimum front yard setback.

**GENERAL FACTS/STAFF ANALYSIS (LANDSCAPE VARIANCE):**

- This request focuses on completing and maintaining an expansion to an existing circa 1961 nonresidential structure, and not fully meeting the landscape regulations. More specifically, according to the City of Dallas Chief Arborist, the proposed plan does not fully comply with the required landscape standards of PDD No. 714, Subdistrict 1A, for a project that increases the floor area of all buildings on site by 310.45%.
- 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.
- Given specific provisions of the landscape provisions of PDD No. 714, Subdistrict 1A, the applicant can only seek these leniencies from the board of adjustment by requesting a *variance* to the landscape regulations within this PDD as opposed to the more typical *special exception* to the landscape regulations.
- The City of Dallas Chief Arborist submitted a memo regarding the applicant's request (see Attachment A). The memo states this request is triggered because the owner intends to increase the combined floor area of all buildings on site.
- The Chief Arborist's memo lists the following deficiencies, as stated in Section 714.114, Landscaping, 714.115, Street and Sidewalk Standards, and 714.116 Screening Regulations, in this case:
  - Landscaping of streets in compliance with Exhibit 714F for Subdistrict 1;
  - street trees;
  - site trees;
  - parking lot trees;
  - landscape plan; and
  - screening regulations.
- The Chief Arborist's memo lists the following factors for consideration:
  1. PDD No. 714, Subdistrict 1A, landscape requirements include the following:

- Landscaping of streets in compliance with Exhibit 714F for Subdistrict 1: The site cannot provide the required 15' sidewalk.
  - Street trees:
    - In Subdistricts 1A and 1B, trees must be placed in a 16' square tree grates. The alternate site/landscape plan only provides for tree grates along the W. Commerce Street frontage.
    - One street tree per 30 feet of street frontage with a minimum of two trees must be provided. While the property requires 22 street trees, the alternate site/landscape plan provides for 12.
  - Site trees: One site tree per 3,000 square feet with a minimum of 4 trees is required, but 3 trees are being provided on the alternate site/landscape plan.
  - Parking lot trees: Each required parking space must be within 75' of the trunk of a large canopy tree. One handicap parking space does not meet this requirement. Furthermore, street trees may not qualify for this measurement.
  - Landscape Plan: A landscape plan must earn at least 75 points (of a total possible 125 points). The submitted alternate site/landscape plan does not specify how it meets the criteria.
  - Screening regulations: The alternate site/landscape plan provides for screening regulations along W. Commerce Street, but not along Sulphur Street or Harbin Street. A surface parking lot requires a "low screen" when new construction begins on the site. A "low screen" is when shrubs form a three-foot high screen that is 95% opaque within three years of planting.
2. PDD No. 714 additional standards for non-compliance on-site:
    - PDD No. 714 also provides for an "open space fund" for if a property owner cannot plant all of the required trees on the building site – in these situations, the property owner shall comply with this requirement for no more than 50 percent of the required trees. The owner must make a payment into the West Commerce Street/Fort Worth Avenue Open Space Fund. This measure would account for only a portion of the overall landscape deficiency for the property. As of September 15, 2015, the applicant has not stated intention to pay or plant, per this ordinance, in order to help mitigate for the lack of required site trees on the property.
  3. Additional items to consider in evaluation of this case:
    - According to Sec. 714.114(h)(5), "Except as provided in this subsection, trees and shrubs must be planted at least 10' from the centerline of any water or sewer main." While the submitted alternate site/landscape plan does not identify the location of the known water line along W. Commerce Street, it appears the proposed trees along W. Commerce are too close to the known water line, and the trees may not be allowed.
    - The property has landscaping proposed in visibility triangles. The store sign and vacuum/air system are located in the northwest visibility triangle, but are not identified on the submitted alternate site/landscape plan.
    - The proposed canopies will provide a "significant shade structure" for the site.
- The Chief Arborist recommends denial of the alternate site/landscape plan. The Chief Arborist states that, while the applicant has met the conditions for approval of the variance, the proposed alternate site/landscape plan does not address the spirit of the ordinance that states, "Development should support West Commerce Street

as the gateway from downtown into the area...” The Chief Arborist recommends that, should the board choose to support the variance, to condition the approval with a provision that allows for the removal of the trees along Commerce Street if street and sidewalk standards prohibit their installation.

- The site is flat, irregular in shape, and is approximately 0.4524 acres (or approximately 19,706.5-square feet) in area. The site is zoned PDD No. 714, Subdistrict 1A.
- According to DCAD records, the “improvement” at 332 W. Commerce Street is a 600-square foot “bayless service station” built in 1961.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the landscape 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 PDD No. 714, Subdistrict 1A, 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 PDD No. 714, Subdistrict 1A, zoning classification.
- If the Board were to grant this request and impose a condition that the applicant must comply with the submitted alternate site/landscape plan, the site would be “varied” from certain landscape standards of PDD No. 714, Subdistrict 1A, as shown on this submitted alternate site/landscape plan.

**Timeline:**

- July 9, 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.
- August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.
- August 27, 2015: The Current Planner 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 September 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 11<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.”

September 8, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current 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.

September 10, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment A).

**3:45 P.M.: Case briefing by staff starts.**

**4:00 P.M.: Briefing by staff ends.**

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

APPEARING IN FAVOR: Houshang Jahvani, 2121 N Josey LN, Dallas, TX  
Malcom Aghesner, 9121

APPEARING IN OPPOSITION: No one

MOTION: **Johnson**

I move that the Board of Adjustment, in request No. **BDA 145-072**, hold this matter under advisement until **October 21, 2015**.

SECONDED: Hounsel

AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*

FILE NUMBER: BDA 145-090(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Mike Backlund for a special exception to the landscape regulations at 3403 N. Fitzhugh Avenue. This property is more fully described as Lot 14, Block 2/1521, and is zoned PD-193 (GR), which requires mandatory landscaping. The applicant proposes to construct and/or maintain a structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

LOCATION: 3403 N. Fitzhugh Avenue

APPLICANT: Mike Backlund

**REQUEST:**

A request for a special exception to the landscape regulations is made in conjunction with transitioning/enlarging an existing vacant 2-story medical office use/structure to a restaurant use, and not fully providing required landscaping.

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

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

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted alternate landscape plan is required.

Rationale:

- The Chief Arborist recommended approval of the submitted alternate landscape plan because he had concluded that the proposal did not appear to compromise the spirit and intent of the PD 193 (GR) landscape requirements.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD 193 (GR) (Planned Development District, General Retail)
- North: PD 193 (GR) (Planned Development District, General Retail)
- South: PD 193 (GR) (Planned Development District, General Retail)
- East: PD 193 (GR) (Planned Development District, General Retail)
- West: PD 193 (R-7.5) (Planned Development District, Single family)

**Land Use:**

The subject site is developed with a vacant office structure. The areas to the north, east, and south are developed with nonresidential uses; and the area to the west is the Katy Trail.

**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 transitioning/enlarging an existing vacant 2-story medical office use/structure to a restaurant use, and not fully providing required landscaping. More specifically, according to the City of Dallas Chief Arborist, the features shown on the submitted alternate landscape plan does not conform to PD 193 landscape regulation standards related to tree planting zone, sidewalk location/width, and surface parking area screening.
- 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 B) that the request in this case is triggered by new building addition resulting in increased floor area ratio on the property.
- The Chief Arborist notes that the submitted alternate landscape site plan is deficient in the following ways:
  1. The plan provides for 8 maple trees within the front yard of the property along both Buena Vista Street and Fitzhugh Avenue. (A tree planting zoned between 2.5' and 5' from back of curb with a minimum of 7 trees is required).
  2. The Fitzhugh Avenue sidewalk is generally 4.5' wide measured 2' from back of curb. The Buena Vista frontage will retain the existing sidewalk to the curb at the Fitzhugh intersection and will be modified and expanded to 6' wide south of the driveway while maintaining continuity with the adjacent property. (A six foot sidewalk from 5' – 12" from back of curb is required).
  3. The off-street parking screening is typically required to be at 42" in height. The plan proposal identifies the planting of a perimeter of 5 gallon boxwoods adjacent to 5 gallon Indian Hawthorne. A height specification is not provided but is expected will naturally be maintained at 3' or higher. (All off-street surface parking areas require screening at a minimum height of 3.5' above the parking surface).
- The Chief Arborist listed several factors for consideration:
  1. The alternative landscape plan identifies the tall "retainer wall" along the entire Fitzhugh Avenue frontage. The property is elevated behind the wall over the street elevation.
  2. The site complies with other landscape, general, and special planting requirements.
  3. The tree planting zoned and required sidewalk width cannot be both included in the space provided along the Fitzhugh frontage. It is recommended the street sidewalk conditions remain as originally constructed.
  4. An overhead utility structure restricts planting any trees in the tree planting zone along Buena Vista south of the driveway. Ordinance allows for this tree to be places in the front yard due to conflict.
  5. The landscape yard within the Katy Trail is not part of a building permit for the lot and is not subject to this Board action. Any improvements placed in this area to

connect to the trail must be authorized through the Parks and Recreation Department.

- The Chief Arborist recommends approval of the submitted alternate landscape plan because the proposal does not appear to compromise the spirit and intent of the PD 193 (GR) landscape requirements.
- The applicant has the burden of proof in establishing the following:
  - The special exception (where an alternate landscape plan has been submitted that is deficient in meeting the tree planting zone, sidewalk location/width, and surface parking area screening of the PD 193 landscape regulations) will not compromise the spirit and intent of Section 51P-193-126: “Landscape, streetscape, screening, and fencing standards”.
- If the Board were to grant this request and impose the submitted alternate landscape plan as a condition, the site would be granted exception from full compliance to the tree planting zone, sidewalk location/width; and surface parking area screening requirements of the PD 193 landscape regulations.

### **Timeline:**

June 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.

August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 19, 2015: 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 September 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 11<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.”

September 2, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

September 8, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction

Department Current 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.

September 10, 2015: The City of Dallas Chief Arborist submitted a memo regarding the request (see Attachment B).

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

**APPEARING IN FAVOR:** Rob Baldwin, 3904 Elm #B, Dallas, TX  
Mike Backlund, 709 Edward Ct, Southlake TX

**APPEARING IN OPPOSITION:** Eric Bing, 4116 Stonebridge Dr., Dallas, TX  
John Collins, 4111 Stonebridge Dr., Dallas, TX  
James Hughes, 4143 Buena Vista, #A, Dallas, TX  
Michael Burns, 3699 McKinney Avenue, Dallas, TX  
Frank Miller, 4120 Stonebridge Drive, Dallas, TX  
John Wall, 4143 Travis ST., Dallas, TX  
Monica Berry, 3372 Miro PL, Dallas, TX

**MOTION: Agnich**

I move that the Board of Adjustment, in request No. **BDA 145-090**, on application Mike Backlund, **grant** the request to provide an alternate landscape plan as a special exception to the landscape regulations in PD193(GR) code because our evaluation of the property and the testimony shows that the special exception will not compromise the spirit and intent of the Oak Lawn Ordinance. I further move that the following conditions be imposed to further the purpose and intent of the Oak Lawn Ordinance:

- Compliance with the submitted alternate landscape plan is required.

**SECONDED: Hounsel**

**AYES:** 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich

**NAYS:** 0 -

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

Break: 2:40 P.M.

Resumed: 2:54 P.M.

\*\*\*\*\*

**FILE NUMBER:** BDA 145-096(SL)

**BUILDING OFFICIAL'S REPORT:** Application of Eric W. Johnson for a variance to the front yard setback regulations and a special exception to the visual obstruction regulations at 9008 San Benito Way. This property is more fully described as Lots 16, 17, 18, & 19, Block 12/5239, and is zoned MF-2(A), which requires a front yard setback of 25 feet, and a 20 foot visibility triangle at driveway approaches. The applicant

proposes to construct and/or maintain a structure and provide a 3 foot front yard setback, which will require a 22 foot variance to the front yard setback regulations, and to locate and maintain items in a required visibility triangle, which will require a special exception to the visual obstruction regulations.

**LOCATION:** 9008 San Benito Way

**APPLICANT:** Eric W. Johnson

**September 23, 2015 Public Hearing Notes:**

- The Board Administrator circulated a revised site plan submitted by the applicant and revised comments from the Sustainable Development and Construction Department Project Engineer to the Board at the briefing (see Attachments C and D).

**REQUESTS:**

The following requests have been made on a site that is developed with a multifamily development use (San Benito Apartments):

- A variance to the front yard setback regulations of 22' is made to relocate and maintain an existing dumpster "structure" in the 25' front yard setback to a new location to the southwest of its current location 3' from the front property line or 22' into in the site's 25' front yard; and
- A request for special exception to the visual obstruction regulations is made to relocate and maintain the existing dumpster structure (and 6' high wood fence/enclosure) in a driveway to the northeast in a 20' driveway visibility triangle into the site from San Benito Way.

**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, lot 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:

- (G) 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;
- (H) 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
- (I) 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.

**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 (variance):**

Denial

Rationale:

- Staff concluded that there was no property hardship to the site that warranted a front yard variance in this case made to relocate and maintain an existing dumpster “structure” in the front yard setback.
- The applicant had not substantiated how the physical features of the flat, rectangular in shape, and 32,000 square foot (200’ x 160’) subject site preclude it from being developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2(A) zoning classification while simultaneously complying with code provisions including front yard setback regulations.

**STAFF RECOMMENDATION (visual obstruction):**

Denial

Rationale:

- The Sustainable Development and Construction Department Project Engineer had submitted a review comment sheet marked “recommends that this be denied” commenting that the proposed location conflicts with visibility triangle, and that various alternatives for waste disposal are available that do not require placing a trash receptacle in the visibility triangle.
- The applicant had not substantiated how the relocation and maintenance of a dumpster structure (and 6’ high wood fence/enclosure) in a 20’ driveway visibility triangle into the site from San Benito Way does not constitute a traffic hazard.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: MF-2(A) (Multifamily)  
North: CR & R-7.5(A) (Community retail and Single family district 7,500 square feet)  
South: MF-2(A) & R-7.5(A) (Multifamily and Single family district 7,500 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: CR (Community retail)

**Land Use:**

The subject site is developed with a multifamily development use (San Benito Apartments). The area to the north is developed with a mix of single family and retail/commercial uses; and the areas to the 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 (variance):**

- This request focuses on relocating and maintaining an existing dumpster “structure” in the 25’ front yard setback to a new location to the southwest of its current location 3’ from the front property line or 22’ into in the site’s 25’ front yard.
- The subject site is located on a block that is divided by two zoning districts- MF-2(A) and R-7.5(A). While the subject site is zoned MF-2(A) where structures in this zoning are required to provide a minimum front yard setback of 15’, the front yard setback on the subject site is 25’ because the remaining part of the block is zoned R-7.5(A) and the Dallas Development Code states that if street frontage within a block is divided by two or more zoning districts, the front yard for the entire block must comply with the requirements of the district with the greatest front yard requirement.
- A scaled site plan has been submitted indicating that the “proposed trash enclosure” and trash container within it (approximately 30 square feet in area) is located 3’ from the front property line or 22’ into the 25’ front yard setback.
- According to DCAD records, the “main improvement” at 9008 San Benito Way is an “apartment” built in 1961 with 16,356 square feet in area.
- The subject site is flat, rectangular in shape, and 32,000 square feet (200’ x 160’) in area.
- The applicant has the burden of proof in establishing the following:
  1. That granting the variance to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  2. 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-7.5(A) zoning classification.
  3. 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-7.5(A) zoning classification.
- If the Board were to grant the variance request, and impose the submitted site plan as a condition, the structure in the front yard setback would be limited to what is shown on this document– which in this case is a structure to be located as close as 3’ from the front property line (or 22’ into the 25’ front yard setback).

- Note that if the Board denies this request for variance to the front yard setback regulations to relocate and maintain the existing “dumpster” structure in the front yard setback, the other request in this application (a special exception to the visual obstruction regulations to relocate and maintain this structure in a drive approach visibility triangle) becomes moot.

**GENERAL FACTS/STAFF ANALYSIS (visual obstruction):**

- This request focuses on relocating and maintaining an existing dumpster structure (and 6’ high wood fence/enclosure) in a driveway to the northeast in a 20’ driveway visibility triangle into the site from San Benito Way.
- 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).
- The applicant submitted a site plan and an elevation denoting a 6’ wood enclosure (with “trash container” in it) which is located in a 20’ visibility triangle at a driveway into the site from San Benito Way.
- The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” with the following additional comment: “Proposed location conflicts with visibility triangle. Various alternatives for waste disposal are available that do not require placing receptacle in visibility triangle.”
- The applicant has the burden of proof in establishing how granting the request for a special exception to the visual obstruction regulations to relocate and maintain the existing dumpster structure (and 6’ high wood fence/enclosure) in a driveway to the northeast in a 20’ driveway visibility triangle into the site from San Benito Way does not constitute a traffic hazard.
- Granting this request with the condition that the applicant complies with the submitted site plan and elevation would require the items in the visibility triangle to be limited to and maintained in the locations, height and materials as shown on these documents.
- Note that if the Board denies the request for other request in this application (a variance to the front yard setback regulations to relocate and maintain an existing “dumpster” structure in the front yard setback), this request for a special exception to the visual obstruction regulations made to relocate and maintain this structure in a drive approach visibility triangle becomes moot.

**Timeline:**

July 20, 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.

August 19, 2015: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel B.

August 19, 2015: 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 September 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 11<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."

September 5 & 8, 2015:

The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachments A and B).

September 8, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

September 11, 2015: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Recommends that this be denied" with the following additional comment: "Proposed location conflicts with visibility triangle. Various alternatives for waste disposal are available that do not require placing receptacle in visibility triangle."

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

APPEARING IN FAVOR: Eric Johnson, 9008 San Benito Way, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Bartos**

I move that the Board of Adjustment in Appeal No. **BDA 145-096** hold this matter under advisement until **October 21, 2015**.

**SECONDED: Johnson**

**AYES: 5** – Reynolds, Hounsel, Johnson, Agnich, Bartos

**NAYS: 0** -

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

**\*Member San Gillespie recused himself and did not hear or vote on this matter.**

\*\*\*\*\*

**FILE NUMBER:** BDA 145-100(SL)

**BUILDING OFFICIAL’S REPORT:** Application of Maxwell Fisher and Dallas Cothrum of Masterplan 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 height restrictions on Flora Street to 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/or maintain a structure with a 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 and Dallas Cothrum of Masterplan

**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:**

<u>Site:</u>	PD 145 (Planned Development District)
<u>North:</u>	PD 145 (Planned Development District)
<u>South:</u>	PD 145 (Planned Development District)
<u>East:</u>	PD 145 (Planned Development District)
<u>West:</u>	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. 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 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 submitted a site/development plan and a building elevation that the applicant has described as follows: "The portions of building planned for encroachment into the Flora Street frontage are limited to two building corners of Floors 5 and 6. The degree of encroachment varies from 6 to 11 feet as shown on enclosed exhibit of the building, while other portions of the building have a greater setback than required...The building profile is such that those areas set farther back from Flora Street off-set the minimal sections that encroach to the good of 51 square feet."
  - 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 site/development plan and a building elevation 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 be 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.

- August 19, 2015: 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."
- August 19, 2015: 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 September 2<sup>nd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 11<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."
- September 2, 2015: The Board Administrator added portions of the Sasaki Plan to the case file (see Attachment A).
- September 3, 2015: The applicant submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- September 8, 2015: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Board of Adjustment Chief Planner, the Assistant Building Official, the Board Administrator, the Building Inspection Senior Plans Examiners/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Current Planner, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- September 11, 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).

**BOARD OF ADJUSTMENT ACTION: SEPTEMBER 23, 2015**

**APPEARING IN FAVOR:**

Sarah Galaro, 6041 Village Crest Drive, Dallas, TX  
 Dallas Cothrum, 900 Jackson Street, Dallas, TX  
 George Schrader, 4211 Shedon Glen Dr, Dallas, TX  
 Chris Heinbaugh, 1429 Caddo St #9, Dallas, TX  
 Erica Felicella, 114 S Shore Drive, Dallas, TX

APPEARING IN OPPOSITION: No one

MOTION: **Hounsel**

I move that the Board of Adjustment, in request No. **BDA 145-100**, 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 site/development plan and building elevations is required.
- The portion of the building exceeding the maximum height permitted is occupied exclusively by multiple-family uses.

SECONDED: **Agnich**

AYES: 5 – Reynolds, Gillespie, Hounsel, Johnson, Agnich

NAYS: 0 -

MOTION PASSED: 5 – 0 (unanimously)

\*\*\*\*\*

MOTION: **Gillespie**

I move to adjourn this meeting.

SECONDED: **Reynolds**

AYES: 5– Reynolds, Gillespie, Hounsel, Johnson, Agnich

NAYS: 0 –

MOTION PASSED 5 – 0 (unanimously)

**4:20 P.M.** Board Meeting adjourned for **September 23, 2015**

\_\_\_\_\_  
CHAIRPERSON

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

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

\*\*\*\*\*

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