

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
CITY OF DALLAS- VIDEOCONFERENCE  
MONDAY, NOVEMBER 15, 2021**

MEMBERS PRESENT AT BRIEFING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Nick Brooks, alternate member, Jared Slade, alternate member

MEMBERS ABSENT FROM BRIEFING: None

MEMBERS PRESENT AT HEARING: Robert Agnich, Vice Chair - regular member, Roger Sashington, regular member, Judy Pollock, regular member, Nick Brooks, alternate member, Jared Slade, alternate member

MEMBERS ABSENT FROM HEARING: None

STAFF PRESENT AT BRIEFING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes and Daniel Moore, Asst. City Attorneys, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director

STAFF PRESENT AT HEARING: Jennifer Munoz, Chief Planner/Board Administrator, Anna Holmes and Daniel Moore, Asst. City Attorneys, Pamela Daniel, Senior Planner, Robyn Gerard, Senior Public Information Officer, LaTonia Jackson, Board Secretary, Charles Trammell, Development Code Specialist, David Nevarez, Senior Traffic Engineer, and Andreea Udrea, Assistant Director

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**11:02 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's, **November 15, 2021 docket.**

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**1:05 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and

testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

Approval of the Board of Adjustment Panel C, October 18, 2021 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**MOTION: Sashington**

Approval of the Board of Adjustment Panel C, October 18, 2021 public hearing minutes.

**SECONDED: Agnich**

**AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington**

**NAYS: 0**

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

**MISCELLANEOUS ITEM NO. 2**

Approval of the 2022 Board of Adjustment Calendar

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**MOTION: Agnich**

Approval of the 2022 Board of Adjustment Calendar with revisions:

(Removal of 1/11/22 Special call Meeting date and to replace the dates of 11/21-11/23/22 to 11/14-11/16/22)

**SECONDED: Sashington**

**AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington**

**NAYS: 0**

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

**MISCELLANEOUS ITEM NO. 3**

Approval of 2022 Board of Adjustment Schedule

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**MOTION: Agnich**

Approval of 2022 Board of Adjustment Schedule

**SECONDED: Slade**

**AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington**

**NAYS: 0**

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

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**FILE NUMBER:** BDA201-W01

**BUILDING OFFICIAL'S REPORT:** Application of Jeff Baron for a waiver of the two-year waiting period to submit a board application on the same or related request per Section 51A-4.703(e) regarding variances to the side yard setback regulations at 6401 Richmond Avenue. This property is more fully described as Part of Lot 15, Block B/2788 and is zoned Tract III within Conservation District No. 2. On Monday, June 21, 2021, Panel B approved variances to the side and corner side yard setback regulations to permit construction of a proposed single-family dwelling unit.

**LOCATION:** 6401 Richmond Avenue

**APPLICANT:** Jeff Baron

**REQUESTS:**

The applicant requests a waiver of the two-year waiting period due to the discovery of additional right-of-way dedication needed for Abrams Road. Section 51A-4.402(2) states that the setback will be taken from the greater of either the property line or right-of-way line. This discovery further restricts the area and imposes upon the granted one-foot variance along the west side of the property. The applicant would like to reapply for a larger corner side yard setback variance to cover the increased right-of-way circumstance and allow for the development of the site as previously requested.

**STANDARD FOR A WAIVER:**

- (e) Two-year limitation.
  - (1) Except as provided below, after a final decision is reached by the board, no further request on the same or related issues may be considered for that property for two years from the date of the final decision.
  - (2) If the board renders a final decision of denial without prejudice, the two-year limitation is waived.
  - (3) The applicant may apply for a waiver of the two-year limitation in the following manner:
    - (A) The applicant shall submit his request in writing to the director. The director shall inform the applicant of the date on which the board will consider the request and shall advise the applicant of his right to appear before the board.

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**APPEARING IN FAVOR:** Jeff Baron 8600 Forest Hills Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION: Sashington**

I move that the Board of Adjustment **grant** the request to waive the two year limitation on returning to the Board on the same or related issues, such as the variance to the side yard

setback, at 6401 Richmond Avenue because there are changed circumstances regarding the property sufficient to warrant a new hearing.

**SECONDED: Brooks**

**AYES:** 5 – Brooks, Slade, Pollock, Agnich, Sashington

**NAYS:** 0-

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

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**FILE NUMBER:** BDA201-100 (PD)

**BUILDING OFFICIAL’S REPORT:** Application of Frank Moscrey for a special exception to the fence standards regulations at 1609 Houghton Road. This property is more fully described as Lot 6, Block 29/6237, and is zoned an R-7.5(A) Single Family District, which prohibits the use of certain materials. The applicant proposes to construct and maintain a six-foot-high fence in a required side and rear yard utilizing prohibited materials which will require a special exception to the fence standards regulations regarding materials.

**LOCATION:** 1609 Houghton Road

**APPLICANT:** Frank Moscrey

**REQUEST:**

The applicant is seeking to install a six-foot-high fence using prohibited steel metal sheet material (corrugated metal) on the fence and sliding gate on a property currently developed with an approximately 1,246-square-foot single-family dwelling constructed in 1954.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards 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.

**BACKGROUND INFORMATION:**

**Zoning:**

**Site:** R-7.5(A) (Single Family District)

**North:** R-7.5(A) (Single Family District)

**East:** R-7.5(A) (Single Family District)

**South:** R-7.5(A) (Single Family District)

**West:** R-7.5(A) (Single Family District)

**Land Use:**

The subject site is currently developed with a single-family dwelling. Surrounding properties to the north, east, south, and west are developed with single-family dwellings as well.

**Zoning/BDA History:** There have been two related board cases in the vicinity within the last five years.

1. **BDA201-FW3:** On August 16, 2021, Board of Adjustment Panel C granted a fee waiver request for a special exception to the prohibited fence materials regulations at 1609 Houghton Road. **\*\*subject site\*\***
  
2. **BDA167-089:** On August 16, 2017, Board of Adjustment Panel B granted a special exception to the side yard setback regulations for a carport at 7323 Barney Street.

**GENERAL FACTS/STAFF ANALYSIS:**

The property is currently developed with an approximately 1,246-square-foot, one-story single-family dwelling. The applicant proposes to construct and maintain a six-foot-high fence made of steel metal sheet material (corrugated metal) with one steel sliding gate along the side yard and rear yard of the property.

Section 51A-4.602(9)(B) states that except as provided in this subsection, the following fence materials are prohibited:

- (A) Sheet metal;
- (B) Corrugated metal;
- (C) Fiberglass panels;
- (D) Plywood;
- (E) Plastic materials other than preformed fence pickets and fence panels with a minimum thickness of seven-eighths of an inch;
- (F) Barbed wire and razor ribbon (concertina wire) in residential districts other than an A(A) Agricultural District; and,
- (G) Barbed wire and razor ribbon (concertina wire) in nonresidential districts unless the barbed wire or razor ribbon (concertina wire) is six feet or more above grade and does not project beyond the property line.

The following information is shown on the submitted survey plat/site plan:

- The proposed fence consisting of a sliding steel metal gate is located along the side yard and rear yard setbacks.

- The proposed six-foot-high fence extends 87 linear feet along the side yard setback then 62.5 linear feet along the rear yard which fronts along an unimproved alley.
- The fence is proposed to be constructed of steel sheet metal more commonly known as corrugated metal.

As of November 5, 2021, four letters have been submitted in support of the request and no letters have been submitted in opposition of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to materials located on Houghton Road will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to materials would require the proposal to be maintained in the locations, heights and materials as shown on the survey plat/site plan and elevation plan.

Staff conducted a site visit of the subject site and surround area and noted several other fences constructed of prohibited materials along Houghton Road and adjacent streets such as Fresno Street, Amy Street, and Barney Street, many of which do not have recorded BDA history (**Attachment A**).

Additionally, the representative provided evidence (**Attachment A**) to staff which contains more than 40 photographs of properties containing prohibited fence materials within the vicinity of the subject property that have not been granted special exceptions to the fence standard regulations.

**Timeline:**

- August 24, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- Aug. 24, 2021: The representative submitted evidence to staff (**Attachment A**).
- October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.
- October 14, 2021: The Board Senior Planner emailed the applicant the following information:
  - a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.

Oct. 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.

No staff review comment sheets were submitted with this request

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**APPEARING IN FAVOR:** Frank Moscrey 1609 Houghton Rd Dallas, TX  
Shirley Moscrey 1609 Houghton Rd. Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Brooks**

I move that the Board of Adjustment, in Appeal No. BDA 201-100, on application of Frank P. Moscrey, **grant** the request for a special exception to the fence standards contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan and elevation is required.

**SECONDED: Sashington**

**AYES:** 5 – Brooks, Slade, Pollock, Agnich, Sashington

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA201-105(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Karl Crawley of Masterplan Texas for a special exception to the fence height regulations at 5532 Park Lane. This property is more fully described as Part of Lot 2 and 3, Block 7/5597, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct and maintain an eight-foot-high fence which will require a four-foot special exception to the fence height regulations.

**LOCATION:** 5532 Park Lane

**APPLICANT:** Karl Crawley of Masterplan Texas

**REQUEST:**

The applicant proposes a fence eight-feet-in-height, constructed of wrought iron (fence and gate) and brick (columns) materials located along Park Lane at a width of 177 feet and a length of 40 feet from the front property line. The site is currently developed with an approximately 16,159-square-foot, two-story single-family dwelling unit.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards 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.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac(A) (Single Family District)  
North: R-1ac(A) (Single Family District)  
East: R-1ac(A) (Single Family District)  
South: R-1ac(A) (Single Family District)  
West: R-1ac(A) (Single Family District)

**Land Use:**

The subject site is currently developed with a single family use. Surrounding properties to the north, east, south, and west are developed with single-family uses as well.

**Zoning/BDA History:**

There have been 12 related board cases in the vicinity within the last five years.

1. **BDA201-042:** On May 19, 2021, the Board of Adjustment Panel B granted a request for a special exception to the fence height regulations to construct an eight-foot seven-inch-high fence in a required front yard, which provided a four-foot seven-inch special exception at 5535 Park Lane.
2. **BDA167-003:** On June 23, 2020, the Board of Adjustment Panel B granted a special exception to the fence regulations to construct and maintain a 10-foot-high fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which required a six-foot special

exception to the fence height regulations and a special exception to the fence standards at 9520 Hathaway Street.

3. **BDA189-109:** On January 21, 2020, the Board of Adjustment Panel A granted special exceptions to the single-family regulations to construct and/or maintain an accessory dwelling unit (for rent) with an additional electrical utility service or electrical meter on a lot with a single-family use at 5952 Joyce Way.
4. **BDA189-118:** On October 23, 2019, the Board of Adjustment Panel B granted a special exception to the fence standards regulations and visual obstructions regulations to construct and maintain five-foot six-inch-high fence, which provided a one-foot six-inch special exception to the fence height regulations and special exception to the visual obstruction regulations at 5807 Park Lane.
5. **BDA189-100:** On September 17, 2019 the Board of Adjustment Panel A granted a request for special exceptions to the fence standards regulations construct and/or maintain an 11-foot 10-inch-high fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which required a seven-foot 10-inch special exception to the fence height and a special exception to the fence standards regulations, at 5518 Winston Court.
6. **BDA178-135:** On December 10, 2018, the Board of Adjustment Panel C granted special exceptions to the fence standards regulations to construct and/or maintain a seven-foot six-inch-high fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which required a three-foot six-inch special exception to the fence height and a special exception to the fence standards regulations, at 9424 Meadowbrook Drive.
7. **BDA178-073:** On August 21, 2018, the Board of Adjustment Panel A granted a variance to the front yard setback regulations, and special exceptions to the fence standards and visual obstruction regulations to construct/maintain a structure and provide a seven-foot front yard setback and a six-foot six-inch-high fence with portions of the fence located within required visibility triangles at driveway approaches and at a street intersection, which required a 33-foot variance to the front yard setback regulations, two-foot six-inch special exception to the fence standards regulations, and to special exceptions to the visual obstruction regulations at 5333 Deloache Avenue.
8. **BDA178-041:** On May 21, 2018, the Board of Adjustment Panel C granted a special exception to the fence standards regulations to construct and/or maintain a 12-foot four-inch-high fence in a required front yard at 9422 Alva Court.
9. **BDA178-017:** On February 20, 2018, the Board of Adjustment Panel A granted special exceptions to the fence standards and visual obstruction regulations to construct and maintain a six-foot six-inch-high fence in a required front yard with portions located within required visibility triangles, which required a two-foot six-inch special exception to the fence height regulations and a special exception to the visual obstruction regulations at 5530 Falls Road.

10. **BDA178-006:** On January 16, 2018, the Board of Adjustment Panel A granted a variance to the front yard setback regulations to construct and maintain a structure and provide a 34-foot front yard setback at 5243 Park Lane.
11. **BDA178-003:** On January 16, 2018, the Board of Adjustment Panel A granted special exceptions to the fence standards and visual obstruction regulations to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line with portions located within required visibility triangles, which required a special exceptions to the fence standards and visual obstruction regulations at 9025 Douglas Avenue.
12. **BDA167-051:** On May 16, 2017, the Board of Adjustment Panel A granted special exceptions to the fence standards to construct and maintain an eight-foot two-inch-high fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, which required a four-foot two-inch special exception to the fence height regulations and special exception to the fence standards regulations at 5814 Watson Avenue.

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

The request for a special exception to the fence height regulations of four feet is made to construct and maintain an eight-foot-high fence which will require a four-foot special exception.

The property is zoned an R-1ac(A) Single Family District with requires a minimum lot area of one acre or 43,560 square feet. The subject site is currently developed with an approximately 16,159 square foot, two-story single-family dwelling unit and is situated along the south line of Park Lane between Hollow Way Road and Kemper Court. The applicant proposes to construct a fence containing wrought iron (fence and two gates) with 12 brick columns.

The Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard.

The following information is shown on the submitted site plan:

- The proposed fence with 12 brick columns, two electric gates, and a wrought iron fence is proposed to be located along Park Lane approximately 40 feet from the property line and approximately 60 feet from the back of curb/pavement line.
- Along Park Lane the fence is proposed at a width of 177 feet and has a depth of 240 feet and proposed along the entire boundary of the property.

As of November 5, 2021, no letters have been submitted in opposition or in support of the request.

The applicant has the burden of proof in establishing that the special exception to the fence standards related to the height of four feet located on Park Lane will not adversely affect neighboring properties.

Granting the special exception to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback located along Park Lane to be maintained in the locations, heights and materials as shown on the site plan and elevation plan.

**Timeline:**

Sept. 23, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.

October 14, 2021: The Board Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.

October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Transportation Senior Engineer, Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted with these requests.

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**APPEARING IN FAVOR:** Karl Crawley 2201 Main St #1280 Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION: Brooks**

I move that the Board of Adjustment, in Appeal No. BDA 201-105, on application of George Peinado and Julie Peinado, represented by Karl Crawley of Masterplan Texas **grant** the special exception to the fence height requirement contained in the Dallas Development Code, subject to the following condition:

Compliance with submitted site plan and elevation plan is required.

**SECONDED: Sashington**

**AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington**

**NAYS: 0 -**

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

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**FILE NUMBER: BDA201-107(PD)**

**BUILDING OFFICIAL’S REPORT:** Application of Larry Nickell for a special exception to the single-family use regulations and variances to the side yard setback regulations and to the building height regulations at 8656 Forest Hills Boulevard. This property is more fully described as Lot 15, Block 4/5225, and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one, requires a five-foot side yard setback, and requires that the height of an accessory structure may not exceed the height of the main building. The applicant proposes to construct and maintain an additional dwelling unit ADU (not for rent), and to provide a two-foot side yard setback, with a building height of 20 feet three inches. As proposed, the project will require a special exception to the single-family use regulations, a three-foot variance to the side yard setback regulations, and a one-foot eight-inch variance to the maximum building height regulations for accessory structures.

**LOCATION: 8656 Forest Hills Blvd**

**APPLICANT: Larry Nickell**

**REQUESTS:**

The applicant proposes to construct and maintain an additional dwelling unit with approximately 396 square feet of floor area on a site developed with a single-family dwelling and an existing detached garage.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:**

The board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when *in the opinion of the board*, the additional dwelling unit will not adversely affect neighboring properties.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of 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:

- 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;
- 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
- 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.

**State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
  - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
  - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
  - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

- (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (e) the municipality consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION (both variances):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in the R-7.5(A) Single Family District considering its restrictive lot area of 7,475 square feet so that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning. The applicant submitted documents (**Attachments A and B**) indicating the average lot in the area is 10,051 square feet with an average of 553 square feet for improvements (i.e. garages). The existing 2,418-square-foot dwelling unit and approximately 396-square-foot detached garage with the proposed 396-square-foot additional dwelling unit on the site for a total of 3,210-square-feet of floor area is commensurate to six other lots in the same zoning district.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-7.5(A) Single Family District
- North: R-7.5(A) Single Family District
- South: R-7.5(A) Single Family District
- East: R-7.5(A) Single Family District
- West: R-7.5(A) Single Family District

**Land Use:**

The subject site and all surrounding properties are developed with single-family uses.

**Zoning/BDA History:**

There has been one related board case in the vicinity within the last five years.

1. **BDA190-030:** On March 18, 2020, the Board of Adjustment Panel B granted a special exception to the single-family use regulations to construct and maintain an ADU (non-rent) at 8719 Diceman Drive.

**GENERAL FACTS/STAFF ANALYSIS:**

The requests for variances to the side yard setback and maximum floor area ratio regulations and a special exception to the single-family use regulations focus on constructing and

maintaining a 396-square-foot additional dwelling unit (non-rent) to be constructed three-feet into a required five-foot side yard setback. The property is zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot. Additionally, a minimum side yard setback of five feet is required and an additional dwelling unit (ADU) cannot exceed the maximum height of the main building.

DCAD records indicate the following improvements for the property located at 8656 Forest Hills Blvd: "main improvement: a structure with 2,418 square feet of living area built-in 1939" and "additional improvements: a 162-square-foot detached garage. However, internal City records reflect a permit for the construction of a 320-square-foot detached garage on April 20, 1992. The proposed ADU with 396 square feet of floor area represents 14.4 percent of the 2,738 square-foot floor area of the main structure. Additionally, the main one-story structure contains a saltbox roof which has a median height of 18-feet-seven-inches while the ADU proposed atop of an existing one-story garage proposes a maximum height of 20-feet-three-inches and contains a flat roof which does not provide a median distance between the highest point and lowest point of the roof line utilized to calculate the median height.

While the proposed ADU has been constructed, City records reflect permits for the construction of the proposed two-story accessory dwelling unit was submitted for review on June 22, 2021 with the encroachment of three feet into the required five-foot side yard setback.

The site plan and elevation plan denote the proposed addition of a floor area to the garage of approximately 396 square feet for a total floor area of 792 square feet and maximum height of 20-feet-three-inches. Further, the site plan confirms the height and location of the structures, including the ADU located three feet into the five-foot required side yard setback.

The property is rectangular in shape, flat, and according to the application, contains 0.182 acres, or approximately 7,927 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet. However, according to the evidence submitted by the applicant (**Attachments A and B**) 12 properties within the vicinity are one-third larger than the minimum lot size requirement.

The applicant has submitted documents comparing the lot sizes and improvement of the subject site with 16 existing homes and 12 new builds for a total comparative analysis of 28 homes in the vicinity with the same zoning. The average lot size is 10,051 square feet with an average floor area of 3,293 square feet for improvements including garages which provide a delta of 2,576 square feet for the lot size and a delta of 83 square feet for improvements including the garage. Thus, the proposed 396-square-foot additional dwelling unit atop the existing garage on the site is commensurate to six other lots in the same zoning district.

The applicant has the burden of proof in establishing the following:

- That granting the variances 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 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 zoning classification.

- 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 zoning classification.

As of November 5, 2021, no letters have been submitted in support of or in opposition to the request.

Ultimately, the three requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the variances to the side yard setback regulations and maximum height regulations for structures accessory to single-family uses and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. Furthermore, if the board were to grant the special exception to allow the ADU, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

However, granting these requests will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all other code requirements), as depicted on the site plan, including the increase in floor area ratio and encroachment into the side yard setback if each is approved by the board.

**Timeline:**

September 23, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

October 12, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.

October 14, 2021: The Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application.
- an attachment that provided the public hearing date and panel that will consider the application; the October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.

October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearings.

Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Building Inspection Chief Planner, the Interim Assistant Director of Current Planning, and the Assistant City Attorney to the board.

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

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**APPEARING IN FAVOR:** Larry Nickell 8656 Forest Hills Blvd Dallas, TX

**APPEARING IN OPPOSITION:** None  
**MOTION: Brooks**

I move that the Board of Adjustment, in Appeal No. BDA 201-107, on application of Larry Nickell and Mary Nickell, **grant** the request of this applicant for a special exception to the single-family use regulations and variances to the side yard setback regulations and to the building height regulations contained in the Dallas Development Code, subject to the following conditions:

Compliance with the submitted site plan and elevation is required; and

The applicant must deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**SECONDED: Sashington**

**AYES: 5 – Brooks, Slade, Pollock, Agnich, Sashington**

**NAYS: 0**

**MOTION PASSED: 5–0 (unanimously)**

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**FILE NUMBER: BDA201-111(JM)**

**BUILDING OFFICIAL’S REPORT:** Application of Raymond Bronner for a variance to the front yard setback regulations at 5005 Denton Drive. This property is more fully described as Lot 1, Block J/2325, and is zoned an R-7.5 Single Family Subdistrict within Planned Development District No.193, which requires a front yard setback of 25 feet. The applicant proposes to construct a single-family residential structure with pool and provide a three-foot six-inch front yard setback, which will require a 21-foot six-inch variance to the front yard setback regulations.

**LOCATION: 5005 Denton Drive**

**APPLICANT: Raymond Bronner**

## **REQUEST:**

The request for a variance to the front yard setback on Maple Springs Boulevard is made to construct and maintain a 2,325 square-foot single-family dwelling and swimming pool on a site that is currently undeveloped. The Denton Drive front yard of 25 feet will be provided.

## **STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of 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:

- 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;
- 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
- 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.

## **State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
  - (a) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01 (Submission of Rolls to Taxing Units), Tax Code;
  - (b) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development is authorized to physically occur;
  - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (e) the municipality consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- Staff concluded that the subject site is unique and different from most lots zoned an R-7.5 Single Family District within PD No. 193 in that it is flat, irregular in shape (ranging from about 20 – 81 feet-in-width), narrow, and, according to the application, contains 0.181 acres (or approximately 7,884 square feet) in area. Lots in this subdistrict are a minimum of 7,500 square feet in area. However, evidence submitted by the applicant (**Attachments A and B**) identified five lots in the immediate vicinity with an average of 17,309 square feet of lot area.
- The evidence also showed the average house size is about 2,515 square feet. The proposed development is for a commensurate 2,325 square feet.
- Finally, the subject site is encumbered with the unnecessary hardship of two front yards. Between the odd shape and additional front yard setback, the evidence presented notes the site in its current condition maintains about 27 percent of developable area, where adjacent lots have up to 75 percent. The applicant is seeking relief from the additional front yard setback along Maple Springs Boulevard and plans to provide a minimum of 25 feet along Denton Drive, as required.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: PD 193 (R-7.5) (Single family subdistrict)
- North: PD 193 (R-7.5) (Single family subdistrict)
- South: PD 193 (R-7.5) (Single family subdistrict)
- East: PD 193 (R-7.5) (Single family subdistrict)
- West: PD 193 (R-7.5) (Single family subdistrict)

**Land Use:**

The subject site is undeveloped. All surrounding properties are developed with single family uses.

**GENERAL FACTS /STAFF ANALYSIS:**

This request for a variance to the front yard setback regulations is made to construct and maintain a single-family dwelling unit and swimming pool structure. The site is undeveloped and located in an R-7.5 Single Family District within PD No. 193 which requires a minimum front yard setback of 25 feet. However, this property is encumbered with two front yards due to a provision in the Dallas Development Code meant to maintain block continuity when lots face

upon a street and provide a front yard setback. This second front yard setback is required to maintain block continuity established by a lot to the south fronting onto Maple Springs Boulevard.

The applicant is seeking relief from the additional front yard setback along Maple Springs Boulevard and plans to provide a minimum of 25 feet along Denton Drive, as required. The submitted site plan indicates that the proposed structures are located as close as three-feet six-inches from the front property line along Maple Springs Boulevard or as much as 21-feet six-inches into the 25-foot front yard setback.

Lots in this district are typically 7,500 square feet in area. flat, irregular in shape (ranging from about 20 – 81 feet-in-width), narrow, and, according to the application, contains 0.181 acres (or approximately 7,884 square feet) in area. The applicant submitted evidence (**Attachments A and B**) which identified five lots in the immediate vicinity with an average of 17,309 square feet of lot area. The evidence also showed the average house size is about 2,515 square feet. The proposed development is for a commensurate 2,325 square feet. Finally, the evidence presented notes the site in its current condition maintains about 27 percent of developable area, where adjacent lots have up to 75 percent.

According to DCAD records, there are no improvements listed for the property addressed at 5005 Denton Drive.

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 PD No. 193 (R-7.5) 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 PD No. 193 (R-7.5) zoning classification.

As of November 5, 2021, no letters had been received regarding the request.

If the board were to grant the variance request and impose the submitted site plan as a condition, the proposed single-family dwelling and swimming pool structure located within the front yard setback along Maple Springs Boulevard would be limited to what is shown on this document. No additional relief is provided with this request.

**Timeline:**

- September 27, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- October 12, 2021: The Board of Adjustment Chief Planner randomly assigned this case to Board of Adjustment Panel C.
- October 19, 2021: The Board of Adjustment Chief Planner/Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the October 26, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the November 5, 2021 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.
- October 29, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the November public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board. No staff review comment sheets were submitted in conjunction with this application.
- November 2, 2021: The applicant submitted additional evidence for consideration (**Attachments A and B**).

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**APPEARING IN FAVOR:** Ray Bronner 5202 Denton Dr. Dallas, TX

**APPEARING IN OPPOSITION:** None.

**MOTION: Brooks**

I move that the Board of Adjustment, in Appeal No. BDA 201-111, on application of Raymond Bronner and Dennis O’Reilly, **grant** the variance to the front yard setback regulations contained in the Dallas Development Code, subject to the following condition:

Compliance with the submitted site plan is required.

**SECONDED: Sashington**

**AYES:** 5 – Brooks, Slade, Pollock, Agnich, Sashington

**NAYS:** 0 -

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

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**FILE NUMBER:** BDA201-092(PD)

**BUILDING OFFICIAL’S REPORT:** Application of Danielle Mathews of Masterplan Texas for a special exception to the fence height regulations at 10645 Lennox Lane. This property is more fully described as Lot 2, Block C/5534, and is zoned an R-1ac(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct and maintain a nine-foot-high fence in a required front yard, which will require a five-foot special exception to the fence regulations.

**LOCATION:** 10645 Lennox Lane

**APPLICANT:** Danielle Mathews of Masterplan Texas

**REQUEST:**

The request for a special exception to the fence standards regulations relating to height of five feet is made to construct and maintain a nine-foot-high fence. The property is currently undeveloped, fenced, and moderately wooded.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

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

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards 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.

**BACKGROUND INFORMATION:**

**Zoning:**

- Site: R-1ac (Single Family District)
- North: R-1ac (Single Family District)
- East: R-1ac (Single Family District)
- South: R-1ac (Single Family District)
- West: R-1ac (Single Family District)

**Land Use:**

The subject site is currently undeveloped and moderately wooded. Surrounding properties to the north, east, south, and west are developed with single-family uses.

**Zoning/BDA History:** There have been nine related board cases in the vicinity within the last five years.

3.                   **BDA167-047:**                    On April 17, 2017, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 10545 Lennox Lane.
4.                   **BDA167-140:**                    On December 11, 2017, the Panel C, Board of Adjustments granted a special exception to the fence standards at 10564 Lennox Lane.
5.                   **BDA178-038:**                    On May 21, 2018, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 10515 Lennox Lane.
6.                   **BDA178-111:**                    On October 18, 2018, the Panel B, Board of Adjustments granted a special exception to the fence height regulations at 10650 Strait Lane.
7.                   **BDA178-127:**                    On November 14, 2018, the Panel B, Board of Adjustments granted a special exception to the fence height regulations at 10747 Lennox Lane.
8.                   **BDA189-099:**                    On October 21, 2019, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4554 Harrys Lane.
9.                   **BDA189-141:**                    On December 16, 2019, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4610 Catina Lane.
10.                  **BDA190-079:**                    On October 19, 2020, the Panel C, Board of Adjustments granted a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations at 4651 Cantina Lane.
11.                  **BDA190-050:**                    On June 22, 2021, the Panel C, Board of Adjustments granted a special exception to the fence height regulations at 4610 Cantina Lane.

**GENERAL FACTS/STAFF ANALYSIS:**

The applicant requests a special exception to the fence height standards of five feet to construct and maintain a nine-foot tall stone veneer wall, an eight-foot tall screening wall that while it encroaches into the setback is set back five feet from the front property lot line, a five-foot tall blackened finish steel picket fence, an eight-foot tall limestone veneer wall with an integrated eight-foot-tall, twenty-two-foot long solid steel plate vehicular gate with an approximate length of 294 feet along Lennox Lane and along Catina Lane, an eight-foot-tall security fence with landscape, an eight-foot-tall, two-foot wide stone veneer column with an eight-foot-tall, six-foot-wide pedestrian gate, and a five-foot-tall, blackened finish steel picket fence with an approximate length of 330 feet.

Currently, the property is undeveloped, however, internal records reflect a building permit issued in 2018 for a single-family dwelling unit with approximately 9,379 square feet of floor area.

Section 51A-4.602(A)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. The subject site is zoned an R-1ac Single Family District and requires a minimum front yard setback of 40 feet. However, the property is situated along the northwest line of Catina Lane and Lennox Lane and thereby must maintain the 40-foot front yard setback in compliance with the front yard provisions for residential districts.

Staff conducted a site visit of the subject site and surround area and noted several other fences along Catina Lane, and Lennox Lane located in the front yard setbacks which appeared to be above four feet-in-height and located in the front yard setback, many of which have recorded BDA history (see the Zoning/BDA History section of this case report for details).

Additionally, the representative provided evidence (**Attachment A**) to staff which contains eight board cases related to height within the vicinity of the subject property that have been granted special exceptions to the fence height regulations and fence standard regulations.

As of October 8, 2021, two emails have been submitted in opposition of the request and no letters in support of the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height of nine feet located on Lennox Lane will not adversely affect neighboring properties.

Granting the special exception to the fence height regulations would require the proposal exceeding four feet-in-height in the front yard setback located along Catina Lane and Lennox Lane to be maintained in the locations, heights and materials as shown on the site plan and elevation plan.

**Timeline:**

- August 9, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.
- Sept. 16, 2021: The Board of Adjustment Administrator assigned this case to Board of Adjustment Panel C.
- Sept. 17, 2021: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the September 28, 2021 deadline to submit additional evidence for staff to factor into their analysis; and the October 8, 2021 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.
- Sept. 24, 2021: The representative submitted evidence to staff (**Attachment A**).
- Sept. 30, 2021: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. The review team members in attendance included: the Planning and Urban Design Interim Assistant Director, the Board of Adjustment Chief Planner/Board Administrator, the Chief Arborist, the Development Code Specialist, the Senior Sign Inspector, the Transportation Senior Engineer, the Board of Adjustment Senior Planner, and the Assistant City Attorney to the Board.
- No staff review comment sheets were submitted with this request.
- October 8, 2021: The applicant provided duplicate evidence as was provided on September 24<sup>th</sup> (**Attachment A**).
- October 18, 2021: The Board held the request under advisement until the November 15, 2021, Panel C hearing. To date, no updates have been provided.

**BOARD OF ADJUSTMENT ACTION: November 15, 2021**

**APPEARING IN FAVOR:** Danielle Mathews 2201 Main St, #1280 Dallas, TX  
Dallas Cothrum 2201 Main St. #1280 Dallas, TX

**APPEARING IN OPPOSITION:** None

**MOTION: Agnich**

I move that the Board of Adjustment in Appeal No. BDA 201-092 **hold** this matter under advisement until **February 24, 2022**.

**SECONDED: Sashington**

**AYES: 5** – Brooks, Slade, Pollock, Agnich, Sashington

**NAYS: 0** -

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

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**MOTION: Agnich**

I move to adjourn the Panel C hearing.

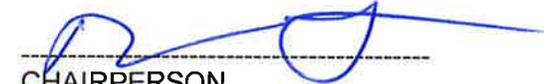
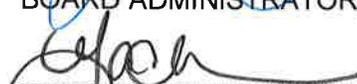
**SECONDED: Sashington**

**AYES: 5** – Brooks, Slade, Pollock, Agnich, Sashington

**NAYS: 0** -

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

The meeting was adjourned at **1:50 P.M. on November 15, 2021**.

  
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 CHAIRPERSON  
  
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 BOARD ADMINISTRATOR  
  
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 BOARD SECRETARY

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