

BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS

AGENDA

REGULAR MEETING

October 7, 2014

CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE

REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

II. ROLL CALL

III. SWEARING IN OF SPEAKERS

IV. MINUTES APPROVAL

A. Consider for approval the minutes from the May 6, 2014 Board of Adjustment meeting

V. VISITOR/CITIZENS FORUM

At this time, any person with business before the Board of Adjustment not scheduled on the Agenda may speak to the Board, provided that an official 'Speaker's Request Form' has been completed and submitted to the Board Secretary prior to the start of the meeting. All comments must be directed towards the Chair, rather than individual board members or staff. All speakers must limit their comments to the subject matter as listed on the 'Speaker's Request Form.' No formal action can be taken on these items.

VI. REGULAR ITEMS

A. **CASE # BOA 14-07** to receive comments and consider action on a request by Osama Salem for a Special Exception pursuant to the City Code Sections 17-421 and 17-422 to allow operation of an auto inspection station in a "C-1" Restricted Commercial zoning district at 105 W Kennedale Pkwy, more particularly described as City of Kennedale Addition Block 23 Lot 1A.

VII. REPORTS/ANNOUNCEMENTS

VIII. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending City Council meetings. This building is wheelchair accessible, and parking spaces for disabled citizens are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meetings. Please contact Amethyst Cirimo, City Secretary, at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the October 7, 2014, Board of Adjustment & Building Board of Appeals agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.



Rachel Roberts, City Planner



Date: October 7, 2014

Agenda Item No: MINUTES APPROVAL - A.

I. Subject:

Consider for approval the minutes from the May 6, 2014 Board of Adjustment meeting

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

The minutes from the May 6, 2014 meeting are attached to this page for your consideration.

IV. Recommendation:

Approve

V. Alternative Actions:

VI. Attachments:

1.	05.06.2014 BOA draft minutes	05.06.2014 BOA minutes.doc
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KENNEDALE
Board of Adjustment
www.cityofkennedale.com

Note: These minutes have not been approved and are not official.

Rachel Roberts
5.28.2014

DRAFT -- UNOFFICIAL

BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS
MINUTES
REGULAR MEETING
May 6, 2014
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE

I. CALL TO ORDER

Chairman Adams called the meeting to order at 7:00 P.M.

II. ROLL CALL

Ms. Roberts called roll.

Commissioner	Present	Absent
Rick Adams	x	
Brian Cassady	x	
Jeff Madrid	x	
Patrick Vader	x	
Martin Young	x	
<i>Alternates</i>		
Jeff Nevarez	x	
Lana Sather	x	
Richard West		x

A quorum was present.

Staff present: Rachel Roberts (planning director); Sandra Johnson (building inspector); Bob Hart (city manager; present for the meeting before executive session)

III. SWEARING IN OF SPEAKERS

Ms. Roberts swore in those who wished to speak.

IV. MINUTES APPROVAL

A. Review and consider approval of minutes from the March 4, 2014 regular meeting

Mr. Madrid made a motion to approve the minutes from the March 4th meeting, seconded by Mr. Vader. The motion passed with all in favor.

V. VISITOR/CITIZENS FORUM

No one registered to speak.

VI. REGULAR ITEMS

Ms. Roberts told the Board that Mr. Bowerman, the applicant for Case BOA 14-05, had guests coming in from out of town for a fundraiser and had asked if he could be considered first on the agenda. The Board stated that the other cases were likely to need more time on the agenda and that it would be better to hear Case 14-05 first.

D. Case # BOA 14-05 to hold a public hearing and consider a request by Bowerman Oil & Gas for a Special Exception to the City Code Section 17-421 *Schedule of uses and off-street parking requirements*, to allow for farm/ranch use (livestock) in “R-3” Single Family Residential at 1437 Swiney Hiatt Rd, legal description of C. C. Swiney Subdivision, being a portion of Lot 8, being all of a tract of land described in deed to Charles Blish, recorded in Vol. 8794 p. 2303, D.R.T.C

1. Staff Presentation

Ms. Roberts gave the staff presentation. She described staff's position on whether the applicant met the six standards for a special exception. She recommended approval provided conditions are applied:

1. Only one livestock animal may be kept on the property, or one bull and one cow from time to time on a temporary basis.
2. The property must be fenced so that the animal is kept to the back part of the property, as shown on the illustration attached to the staff report.
3. Fencing for the property shall be maintained in good repair.
4. The property should never be used for commercial agricultural purposes.
5. The property owner shall maintain the property in good condition to prevent erosion and to prevent loss of grass cover, to prevent dust problems and to prevent an increase in storm water pollution.
6. The property owner shall clear animal waste from the property, as needed, to prohibit an increase in storm water pollution. If the animal moves about the property, this may not be an issue, but the condition is recommended to make sure the property owner is inspecting the property to make sure waste isn't a problem.
7. If city inspection or code compliance staff determines that any of the above conditions have been violated, the special exception shall be placed on the next agenda of the Board of Adjustment, and the Board shall be authorized to revoke the special exception if it determines any of the conditions have been violated.

2. Applicant Presentation

Bill Bowerman addressed the Board. He thanked the Board for letting him go first on the agenda. He said the previous owner's daughter asked him to buy the property after the owner died. He said the property used to be used for a slaughterhouse; the house was uninhabitable, so they tore it down. He referred to the images he had submitted to the Board, mentioning where the fence lines are, where the buildings had been, and where a neighbor's fence was falling down. He said the idea was to put the bull on the property with a cow for breeding purposes.

Mr. Vader said Mr. Bowerman has 47 acres behind this property and runs cattle there. Mr. Bowerman said he has four head and two horses. Mr. Vader asked why he didn't fence off part of the 47 acres instead of requesting to put the use closer to the houses of people who are opposed to it. Mr. Bowerman said he doesn't really have to do that; he'd like to run cattle on the Blish property, just a few, that it's either run cattle or sell the property for someone else to develop. Mr. Adams said he understood what Mr. Bowerman was saying, but he doesn't understand why if he has all that property, he says if he can't run a few cattle on it, he's going to sell it. Mr. Bowerman said if he can't use it—Mr. Adams said he is using it, and Mr. Bowerman said he isn't using the property now, he tore down the buildings. He said the property to the west runs cattle and the property to the east has horses.

Mr. Vader asked if the city had received any complaints from neighbors. Ms. Roberts said she hadn't heard any and checked with Ms. Johnson, who said she hadn't heard of any complaints. Mr. Vader asked if the property was still zoned R-3, and Ms. Roberts said it was.

Mr. Young asked what would be the minimum number of livestock Mr. Bowerman would put on the property. Mr. Bowerman said he was asking for four but would like to have two or three.

Mr. Vader asked how much land was necessary, one or two acres? Mr. Bowerman said the fence is 100 feet off the road, and he'd like to use everything back of that.

3. Public Hearing

Ms. Roberts said no one signed up to speak, but she had received a letter from one of the neighbors who was opposed to granting the special exception, which she had distributed to the members of the Board.

4. Applicant Response

In response to comments in the letter, Mr. Adams asked why the fencing on the property was changed to barb wire.

Marvin Lough, 7301 Briarwick Ct, Fort Worth, addressed the Board on behalf of Mr. Bowerman. He said when they took over the property, the fence line was so grown up with trees that when they took down the house, they decided to go ahead and clear the fence line and put in a new fence at the same time. He said they cleaned up the area, and the neighbors were pleased. He said he hadn't heard anything except from one person to the west; the person whose address the Board has, he had talked with that person, who liked the fence they put up.

Mr. Cassady asked if it would be effective to fence off a smaller area to keep the cattle away from the residents to the east. Mr. Lough said they can keep them completely, he said the fence they put up was to their back yard, not the side of their house. Mr. Cassady said keeping the cattle to where the slaughterhouse had been might be an alternative, and Mr. Lough said that was at the very back of the property. Mr. Lough said they're not going to be up by the house.

Mr. Adams said the letter says to please have the owner remove the barb wire from the side of their home and the side of their back yard. Mr. Lough said they ran the barb wire against the neighbor's existing chain link fence and wooden stockade fence.

5. Staff Response and Summary

Ms. Roberts said staff believes a limited number of livestock in a controlled location would be compatible. She said she thought originally Mr. Bowerman just wanted to keep a bull there, but if they want to use the property for breeding, then one cow, maybe two, for short periods of time, with conditions about where the animals would be kept should be compatible.

Mr. Vader said the city doesn't have enough staff to monitor whether the conditions were being followed. He said it's an R-3 zoning district. They have objections from some of the citizens, Mr. Bowerman has 47 acres to keep cattle, and this case seemed a bit of a stretch and does impact the welfare of the neighbors.

Mr. Cassady said one of the premises of the special exception is that it is not detrimental to health and welfare people surrounding it, and he agreed with Mr. Vader, this case was a stretch.

6. Action by the Board of Adjustment

Mr. Vader made a motion to deny the request for a special exception, seconded by Mr. Madrid. The motion passed unanimously.

A. Case # BOA 14-02 to receive comments and consider action on a request by Ron Sturgeon for a Special Exception to the City Code Section 17-421 *Schedule of uses and off-street parking requirements*, to allow an auto salvage yard in an "I" Industrial zoning district at 1206 and 1208 E Kennedale Pkwy, more particularly described as Kennedale Business Park Block 1 Lot 1R1 and Greenleaf Addition Block 1 Lot 1.

1. Staff Presentation

Ms. Roberts gave the staff presentation. She also said she would like to clarify that Ron Sturgeon is the only applicant for this case. She then reviewed the background of the case and the standards for a

special exception, whether the applicant met the standards, as described in the staff report. The applicant met some of the standards, and some standards the applicant met for now but may not meet over the long-term, given the city's vision for this area in the comprehensive land use plan. She recommended granting a special exception for five years with conditions, with the special exception not to be renewed after the five-year period.

1. The operator of the salvage yard shall be required to maintain the landscaping from the front of the building to the curb. If the business were to close for any reason, the property owner shall be required to maintain the landscaping.
2. Effective the first day after the special exception expires, the operator or the property owner shall begin cleanup of the property in a reasonable manner that will provide for the complete removal of all automobile parts, recycling products, scrap metal, junk, trash, debris, and other waste material, and any storage materials used for storing parts or equipment outdoors, with the cleanup to be completed within six months after the special exception expires. The property shall be left in a neat and presentable condition and not in violation of any City ordinances.

Mr. Adams asked if the city had a history with businesses cleaning up salvage yards, so they could know if six months was enough time. Ms. Roberts said the recycling facility that had agreed to close in 2017 expected to need that amount of time to remove materials on their property, so staff expected the salvage yard would need a similar amount of time. She said the applicant could say how long he would expect that to take.

2. Applicant Presentation

Ron Sturgeon, applicant, addressed the Board. He began by handing out a statement, which he read to the Board, as well as a copy of a rezoning application submitted by Mr. Sturgeon to the city in 1995 to request a change from residential to industrial zoning, and a letter from Mr. Sturgeon to the city in 1996 stating Mr. Sturgeon's understanding of the overlay district requirements in relation to his property [these documents are on now file with the city]. He said the city annexed the property knowing the use and the use should be grandfathered. He said he has never waived his right to be grandfathered. Mr. Sturgeon requested a special exception for ten years with no mention of closing.

Mr. Adams said that Mr. Sturgeon had mentioned the billions of dollars LKQ has made across the country, but how much taxes have they paid? Mr. Sturgeon said this is primarily a wholesale facility and sells almost exclusively to body shops and garages, so it doesn't provide sales tax dollars. Mr. Adams asked why he had given the money made by LKQ has a reason to keep this business open. Mr. Sturgeon said because of the ad valorem taxes and the employment and the reasons in his presentation.

Mr. Adams said Mr. Sturgeon said he was grandfathered, but the document he gave them saying he was grandfather was written by Mr. Sturgeon. Did he have anything from the city saying they agree with him? Mr. Sturgeon said it was part of the minutes of the meeting and the city accepted his application as tendered. Mr. Adams said he didn't see anything saying the city agreed with Mr. Sturgeon. Mr. Sturgeon said it was arguable and he appreciated Mr. Adams' position.

Bob Riley, consultant for Mr. Sturgeon, addressed the Board. He handed out two documents, one being an email exchange with Ms. Roberts regarding salvage yards that do not have special exceptions and the other being a statement he read to the Board [documents are on file with the city].

Walt Leonard, attorney, 101 Summit Avenue, Suite 1010, addressed the Board. He said the property was annexed in the 1990s and the salvage yard was a pre-existing use and was grandfathered because the city knew it was an existing use when it annexed the property. He said that under Texas state law, if a city annexes property, it can continue with an existing use. He argued there has to be a nexus between the law and what the Board is asking. He argued that his client is willing to work with the city after ten years if his special exception is granted, perhaps through using a planned development district.

Mr. Adams asked Mr. Leonard if he wouldn't agree that a special exception is for a certain term, and there's no guarantee after that the special exception will be granted again. Mr. Leonard said it can be. Mr.

Madrid asked if the law guarantees a special exception will be granted. Mr. Leonard said there's no requirement that it be granted, but if you can show compatibility with existing zoning, it should be granted.

Mr. Madrid asked if in the last twenty years, has Mr. Sturgeon ever raised the question that he doesn't need to be under a special exception. Mr. Leonard said it was highlighted in the documents submitted to the Board. Mr. Madrid said Mr. Leonard can agree with the Board's misgivings about documents they don't know where they came from. Mr. Leonard said the Board has sworn testimony, and Mr. Madrid said the Board asks the question, how do we know the factual basis of the documents, when it was written in 1995? Mr. Leonard argued that they had the testimony given to them.

Mr. Adams said to Mr. Leonard that he assumed his client would fight a change to light industrial zoning. Mr. Leonard said if the city did it as light industrial.

Mr. Vader said Mr. Sturgeon says he's been operating under the auspices that he was grandfathered, yet on two separate occasions, Mr. Sturgeon sought a special exception. Mr. Leonard said he was told he had to apply for a special exception or there would be difficulty. Mr. Vader said the 1999 previous special exception had been granted for ten years, with annual reviews by staff, and since this [documentation of such] was in your packet, he assumes this was acceptable to Mr. Sturgeon. Mr. Leonard said it was with the proviso already given. Mr. Vader said but there is nothing in the documentation that the city said it was grandfathered, and Mr. Leonard said it was not necessary.

Mr. Sturgeon said that at the end of the ten years, the Board won't give him ten more years unless the zoning hasn't been implemented and the development patterns have changed. He said this should be before the Council, the amortization and the closing of businesses.

Mr. Vader asked if a special exception is required. Ms. Roberts said that a new salvage yard that wanted to open would have to have a special exception. She said the Board had a copy of the zoning code that includes the non-conforming standards. She said a use may be grandfathered until it receives a special exception, at which time it becomes a conforming use. The benefit of that is that a conforming use is not subject to amortization. She explained that once a use loses its special exception, under the city code, it becomes an illegal use. She said there's a plus and minus you have to weigh when getting a special exception. She said on one hand, you know you can work for so many years when you have the exception without having to worry about amortization, but you have to weigh that against there being no guarantee the special exception will be renewed. She said the way the code is written, a use with a special exception is not a grandfathered use, and she can respond to the other points later after the public hearing. She said she can't speak to what went on before, but an existing use that is grandfathered is not required to have a special exception, but it may want to do so because there are a number of benefits that come with that.

Mr. Adams asked Ms. Roberts if she agreed that Mr. Sturgeon's property was grandfathered. She said it was not grandfathered, it was a conforming use. Mr. Adams said he didn't see anything about grandfathering in the packet. Ms. Roberts said it's in the city code, which the Board had in its documents, and staff hadn't mentioned grandfathering because the use is not grandfathered.

Mr. Adams said that he would like to go into executive session. Ms. Roberts said they would need to make a motion.

Mr. Vader made a motion to adjourn into executive session, seconded by Mr. Madrid. The motion passed unanimously.

The Board reconvened into its regular session at 9:26 P.M.

3. Public Hearing

James Pliska, 6828 Inwood Dr, North Richland Hills, 76182, registered to address the Board. Ms. Roberts advised Mr. Pliska that the Board's policy for public hearings is to allow speakers three minutes to address the Board. Mr. Pliska said he used to be director of planning and inspections for Haltom City. He spoke in favor of the special exception and handed out a letter in support, which he read to the Board.

[letter is on file with the city]. He said Haltom City had made salvage yards a non-conforming use, and the salvage yards are still there but haven't been maintained, and it would be better to require salvage yards to make improvements.

4. Applicant Response

Mr. Sturgeon addressed the Board and said that the Future Land Use Plan does not establish zoning. He was annexed and requested zoning and wrote on his application he was grandfathered. He said no one told him that he could have a special exception or be amortized, he was told to apply for a special exception. He would like to know where the city code says you waive your grandfathered status. He said the requirement for a special exception was passed after he was grandfathered.

Mr. Adams said they were told the laws were amended in 1999, and after that could still have their grandfathered status if they didn't get a special exception. Mr. Sturgeon said he certainly wasn't told that if he got a special exception he would lose his grandfathered status.

Mr. Adams said when you get a special exception, it's not guaranteed you'd get it again and again and again. Mr. Sturgeon said he specifically said he wasn't waiving his right to be grandfathered. He said no one told the properties annexed after 1999 they needed a special exception. Mr. Adams said they were annexed after 1999 and didn't need a special exception. Ms. Roberts said she didn't know what Mr. Sturgeon was told, but she could say what the regulations are now, and that is no one is required to have a special exception if they're a grandfathered use, and she wanted to make that clear, since he'd said the other yards aren't required to have a special exception. She said they aren't required to, but they have the option, and then added that she would have to look at the code to be sure, but she thought they had the option.

Mr. Vader said their decision is not to determine whether Mr. Sturgeon is grandfathered, but rather just to determine whether to extend the special exception. Mr. Sturgeon said he didn't see where the special exception code said they can close his business. Mr. Madrid said they can make conditions on the special exception as they see fit, including saying they grant a special exception for twenty years and not grant an extension after that. Mr. Sturgeon said there are questions they probably won't be able to resolve tonight.

Mr. Leonard said Mr. Sturgeon never waived his grandfathered rights, and since the Mr. Sturgeon said he wasn't waiving his rights, the city either accepted that or didn't have the authority.

Mr. Madrid said they were not here to debate whether the grandfather clause is in place; they're here to rule on whether or not to renew the special exception. Mr. Vader said you could have ignored the special exception and fallen into non-conforming status. Mr. Leonard said Mr. Sturgeon wants to be cooperative.

5. Staff Response and Summary

Ms. Roberts said she would need to check with the attorney to make sure, but from what she understands, the city is not obligated to accept Mr. Sturgeon's terms that he is grandfathered. Mr. Sturgeon can assert that, but the city isn't obligated to accept it, but as Mr. Madrid said, that's not what the Board was there to decide. She said to clarify Mr. Adams' point about annexing, anything annexed prior to 1999 would probably benefit from getting a special exception because they would avoid what some businesses would consider the negative effects of annexation.

Ms. Roberts said that Mr. Riley was right, the comprehensive plan is not zoning, but it is a guiding document for land use decisions, which is why staff mentioned it.

She said she wanted to address some of the points that were brought up, such as Mr. Sturgeon's comment in his statement about paper recycling. She said the comprehensive plan mentions recycling as a possibility that could be used in a light industrial district. She said she was asked if paper recycling might be an example, and she had said it might be, that they were looking for an enclosed facility. As to Mr. Sturgeon's statement that the properties in the north end of town were now used after the businesses were amortized, she said after the sexually oriented businesses were closed, the city attracted a QT, and

it's been a great business for the city, and they had engineering plans submitted and were expecting building plans soon for the two properties to the south of QT for some fast food restaurants.

Ms. Roberts said this is a well-run business for this type of business, but she wanted to be clear that she's saying it's well-run for this type of business. As for the statement about not using a crystal ball to predict future land use, we have to look in to the future, that's part of land use planning. As part of granting a special exception, you have to look at how a use fits what's there now as well as what's permitted for future development. As the city is working toward implementing the comprehensive plan and trying to attract some of the commercial and retail uses that are permitted there now, they're having a hard time getting those uses because of some of the salvage yards that are there now. But at this time the salvage yards do fit with uses that are there now, so staff recommends granting the special exception, but they are hesitant about the time frame because of some of the issues they're having with development and the long-term plans. Staff doesn't believe the use will be compatible over a long-term period, but if the Board is not comfortable looking ahead, it has to make the decision its comfortable making. Staff is comfortable recommending a short-term renewal.

6. Action by the Board of Adjustment

Mr. Madrid said that he found the use will meet the standards for a special exception with the addition of conditions to secure compliance with the standards and requirements of Section 17-422 of the city code and made a motion to approve the request for a special exception for a period of five years, with the following condition:

1. The operator of the salvage yard shall be required to maintain the landscaping from the front of the building to the curb. If the business were to close for any reason, the property owner shall be required to maintain the landscaping.

The motion was seconded by Mr. Vader. The motion passed unanimously.

B. Case # BOA 14-03 to hold a public hearing and consider a request by Jose Jaime for a Special Exception to the City Code Section 17-421 Schedule of uses and off-street parking requirements, to allow an auto salvage yard in an "I" Industrial zoning district at 6940 E Kennedale Pkwy, more particularly described as W H Hudson Addn Block Lot 1.

1. Staff Presentation

Ms. Roberts gave the staff presentation and reviewed the background of the case and the standards for a special exception, and for each standard, she said whether the applicant met the standards, as described in the staff report. She said that most of the conditions from the previous special exception had been met, except one had not been met, which was that a hard surface parking topping material must be used for parking and on the appropriate acreage for storage of vehicles.

Mr. Adams asked how long this property had had a special exception, since the last one was granted. Ms. Roberts said they received one in 2002, and it was renewed in 2004 for two more years, and they can't find a record of when it was renewed after that. Mr. Adams asked if the special exception granted in 2002 included the condition about the hard surface parking. Ms. Roberts said it was in 2004. Mr. Adams said they had had ten years to provide the parking and hadn't done it. Ms. Roberts said she thinks what happened is they provided it at first and then over time, the parking expanded into the non-paved areas. She said Mr. Adams might want to confirm with the applicant if that is what happened.

Mr. Adams asked what use is behind this property, is it housing? Ms. Roberts said it was not.

Ms. Roberts recommended granting the special exception for one year with the following conditions:

1. The operator of the salvage yard shall be required to maintain the landscaping from the front of the building to the curb. If the business were to close for any reason, the property owner shall be required to maintain the landscaping.

2. The operator will submit to the City a copy of its storm water permit from the Texas Commission on Environmental Quality and its storm water plan.
3. The special exception shall expire on May 31, 2015.

2. Applicant Presentation

Mr. Jaime, 819 Shady Creek, Kennedale, addressed the Board. He said they had gravel when they applied for the last special exception. He said they can put out more gravel if they need to. He said he didn't have his storm water permit with him, but he could bring it to the city.

Mr. Adams asked Mr. Jaime to clarify that whether there had been gravel there, and grass had just grown up through the rocks. Mr. Jaime said in some cases, yes. Mr. Adams said you can see in the aerial photos all the other salvage yards around it, where they put rock.

3. Public Hearing

No one registered to speak.

4. Applicant Response

Since no one spoke in the public hearing, so response was necessary.

5. Staff Response and Summary

Ms. Roberts said if Mr. Jaime will bring his storm water permit at the earliest possible time, staff will consider the standard about necessary site improvements to be met. She said staff is still concerned about the parking, so she recommends granting the special exception but just for one year so that staff can monitor for compliance. Mr. Madrid asked about the requirement for a hard parking surface, did gravel meet that requirement? Ms. Roberts said her understanding is that gravel would not meet the standard. Mr. Adams asked if they needed clarification from staff, if Mr. Jaime didn't meet the requirement last time, why would he keep getting a special exception. Ms. Roberts said if he didn't meet the requirement this time, she would not recommend approval next time. Ms. Roberts said the current parking lot standards require asphalt or concrete, and she wasn't there when the previous exception was granted, but she assumes the city was trying to bring businesses into compliance. Mr. Madrid said he found it hard to believe that in 2004 hard surface would have meant gravel, and Mr. Adams said the city didn't do anything about it. Ms. Roberts said that the city not enforcing a regulation doesn't waive someone's requirement to abide by it. Mr. Adams said he agreed.

6. Action by the Board of Adjustment

Mr. Vader made a motion to grant a special exception for one year, with the following conditions.

1. The property owner will maintain the landscaping from the front of the building to the curb as required by city code.
2. The operator will submit to the City a copy of its storm water permit from the Texas Commission on Environmental Quality and its storm water plan.

The motion was seconded by Mr. Madrid. The motion passed with all in favor.

C. Case # BOA 14-04 to hold a public hearing and consider a request by Jerry Coyel for a Special Exception to the City Code Section 17-421 *Schedule of uses and off-street parking requirements*, to allow an auto salvage yard in an "I" Industrial zoning district at 7001, 7003 & 7015 E Kennedale Pkwy, more particularly described as Wade H Hudson Survey A 716 Tr 3B03, 3B3, 3B3A, 3B04, & 3B05A.

1. Staff Presentation

Ms. Roberts reviewed the background of the case and said the comprehensive plan envisioned this area as Urban Corridor, which is more commercial in nature, but it is zoned Industrial now. She said there are a restaurant and some residences nearby. She said that in her staff report, they had received no complaints about traffic, noise, etc., but since then, she had received a complaint letter, which she had given to the Board. She then reviewed the standards for a special exception and whether the applicant met the standards, as described in the staff report. The applicant met some of the standards, and some standards the applicant met for now but may not meet over the long-term, given the city's vision for this area in the comprehensive land use plan. Ms. Roberts also said they had received the storm water permit, so the applicant now meets that requirement. She recommended granting a special exception for five years with conditions.

1. The property owner shall be required to maintain the landscaping from the front of the building to the curb, as required by city code for all properties.
2. The special exception should expire in three to five years.
3. The owner will patch or repair the parking lot and will add striping or some other way to mark off the parking spaces.

Mr. Cassidy said [from the aerial photograph] the vehicle storage area looks like gravel. Ms. Roberts said the code compliance officer checked the area and said it met the requirement for parking.

2. Applicant Presentation

Glenn Gidel, Fort Worth, attorney representing Mr. Coyel, addressed the Board [Note: Mr. Gidel marked speaker form to say he was against the request for a special exception; staff assumes the "against" box was checked in error]. Mr. Gidel first asked for clarification from Ms. Roberts that the staff was not recommending the special exception not be eligible for renewal. Ms. Roberts said they'd had clarification that the Board is not obligated to renew the special exception when this one expires, so she didn't feel it was necessary to add it to the recommendation.

Mr. Gidel said they agree with the staff report on why there should be an extension, and the only question was the recommendation on three to five years. He said the previous one was for ten years, and they don't see any reason not to extend it for ten years. Mr. Gidel said he didn't think the Board should be concerned with shutting down a business, but should decide whether to allow a business to continue if it meets the standards that have been set. He said it's been in business for over forty years, and the owner used to own another salvage yard, but the city amortized it. He said the city then started the procedure to amortize the other lot in the north end, but then the state changed the law and the city couldn't use the amortization process, so now it's a non-conforming use. He added that there are some legal issues here that no one here knows the answers to and will have to be decided at some time, and it's not the job of the Board that night to resolve it, but one of the issues is unequal treatment. Mr. Coyel has a yard on the north end of the town where he doesn't have to deal with the special exception and a yard on the south end that does, and the two yards aren't getting the same treatment. He said he thinks that it's a legal issue that will arise but isn't an issue that had to be decided that night. He then asked the Board not to add any conditions about not renewing the special exception. He agreed that the Board has the power not to renew it again after this special exception, if conditions have changed. He said if they need to stripe the parking lot, as far as he knew that was the only part of the operation that wasn't in compliance.

Mr. Madrid asked Mr. Coyel about the traffic flow in and out of the yard, was it off Kennedale Parkway, where does the inventory come from? Laura Hall, representing Mr. Coyel, said they have a pick-up truck that brings in inventory maybe twice a week. Mr. Madrid asked if they come in from the Parkway and not from Eden Road. Ms. Hall said they don't come in from Eden Rd. Mr. Madrid and Mr. Adams said there had been a complaint about a lot of trucks going to the salvage yard and Hawk Steel. Ms. Hall said that might have been more about Hawk Steel. Mr. Coyel said Hawk Steel sometimes has trucks backed up in front of his salvage yard.

3. Public Hearing

Ms. Roberts mentioned the letter against granting the special exception she had received from Marshall & Sharon Tuttle of 529 Eden Rd S. She had given copies of the letter to the Board at the start of the meeting.

David Dickinson, 3850 S Eden Rd., registered to speak against granting the special exception. Ms. Roberts advised him he would have three minutes to speak. He told the Board he owns five acres across the street, and he was told when he bought his house that plans were in place to start closing salvage yards within Kennedale. He said that with such long-term special exceptions as ten years, how will the city ever get into doing planning? He said asked the Board for a maximum term of three to five years. He also said there is a heavy amount of truck traffic and that part of Eden Rd is a "no box truck" route, and the police department won't enforce it. He said there was no clean-up on the backside of the property. He asked why the trash shouldn't be picked up by the property owner.

4. Applicant Response

Mr. Coyel said he has no entrance along Eden Rd. He said if anyone had brought the trash issue to his attention, he would have done something about it and that in his opinion, what Mr. Dickinson said is not true. He said that state police said his salvage yard is cleaner than Wal-Mart's parking lot. Mr. Dickinson attempted to respond, and Mr. Adams told Mr. Dickinson that that he could not address comments to Mr. Coyel. Mr. Coyel said sometimes there are lose panels, but when they find them, they fix them.

Mr. Adams said to make his best effort to check on it and keep the trash picked up.

5. Staff Response and Summary

Ms. Roberts said staff recommended renewal with the conditions she had already mentioned. She said that because of the concerns expresses by the residents, they may be news to Mr. Coyel, but they are heartfelt concerns of residents, so she recommended granting a maximum of five years.

Mr. Adams said, for the record, everyone was treated the same as far as the conditions to be stopped at the same time.

6. Action by the Board of Adjustment

Mr. Madrid made a motion to approve the request for a special exception for a period of five years, with the following conditions.

1. The special exception shall expire in five years.
2. The operator of the salvage yard shall be required to maintain the landscaping from the front of the building to the curb as required by city code for all properties.
3. The operator shall make improvements to the customer parking area, with proper striping to indicate parking areas and travel lanes.
4. The operator shall maintain the frontage on Eden Rd.

The motion was seconded by Mr. Young. The motion passed with all in favor.

VII. REPORTS/ANNOUNCEMENTS

Ms. Roberts said the Splash Pad is now open, and Bark in the Park was going to be May 17th, and the city-wide garage sale would be May 30th and 31st. Mr. Cassidy asked about the city-wide cleanup, and Ms. Roberts said she would have to check on the date and let him know.

VIII. ADJOURNMENT

Mr. Madrid made a motion to adjourn, seconded by Mr. Cassidy. The motion passed unanimously.

The meeting adjourned at 10:35 P.M.

Rick Adams, Chair

Date

ATTEST:

Rachel Roberts, Board Secretary/Planning Director

Date

DRAFT - UNOFFICIAL



Date: October 7, 2014

Agenda Item No: REGULAR ITEMS - A.

I. Subject:

CASE # BOA 14-07 to receive comments and consider action on a request by Osama Salem for a Special Exception pursuant to the City Code Sections 17-421 and 17-422 to allow operation of an auto inspection station in a "C-1" Restricted Commercial zoning district at 105 W Kennedale Pkwy, more particularly described as City of Kennedale Addition Block 23 Lot 1A.

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

Applicant: Osama "Sam" Salem

Property Address: 105 W Kennedale Pkwy (Kennedale Filling Station/Chevron)

Request: special exception to operate an auto inspection station

Surrounding land uses (see attached illustration):

- office/retail space attached to the filling station (vacant) (zoned C-1)
 - Kennedale Baptist Church (across Kenney St.) (zoned C-1)
 - house (belonging to owner of Kennedale Filling Station) (zoned C-1)
 - TownCenter (across 3rd Street) (zoned PD – Planned Development)
 - Three Corners Food Store/gas station (across 4th St and New Hope Rd) (zoned C-1)
 - CPA office (at the corner of New Hope and 4th St) (zoned C-1)
-

Background & Overview.

When the structure housing the Kennedale Filling Station was built, an auto repair bay was built as part of the gas station. The car repair component of the station closed several years ago and hasn't been used since that time.

In 2012, the Board of Adjustment considered a request for a special exception to allow tire sales, repair, and installation (Case BOA 12-01). The Board denied the request, citing concerns about whether the operation could meet the standards for a special exception, given potential nuisance elements for this kind of business, such as noise from tools and equipment.

Last year, Mr. Salem applied for a certificate of occupancy to operate an oil change, auto repair, and auto inspection station at this location. The building official at that time issued the certificate of occupancy to Mr. Salem, but the c.o. was issued in error. The property's zoning district does not allow auto repair, and auto inspections are not permitted without a special exception. City staff informed Mr. Salem of the error, and he is now pursuing the proper course of action to receive permission to operate his business legally. His first step is to request a special exception for the auto inspection portion of his business.

Standards for Granting Special Exceptions.

No application for a special exception shall be granted by the board of adjustment unless the board finds all of

the required conditions are present. These six standards are listed in Section 17-422 of the Kennedale city code and are addressed in the staff review section, below. Section 17-422 also authorizes the board to add conditions as part of granting a special exception and to require such evidence and written guarantees as the board may deem necessary as proof that the conditions stipulated in connection with the exception are being and will be complied with.

Staff Review & Recommendation.

As the Board is aware, there are six standards that must be met in order for you to grant a special exception. Below is staff's review of the standards in terms of the requested use.

1. Will the establishment, maintenance or operation of the use be materially detrimental to or endanger the public health, safety, morals or general welfare?

Auto inspection businesses do not generally make use of dangerous chemicals or other materials that could endanger public health. And unlike some other auto-oriented businesses, such as tire repair and installation, they also do not usually generate the noise levels that would be expected from some other types of auto-oriented uses, such as tire repair businesses.

The proposed use is not expected to be materially detrimental to or endanger the public health, safety, morals, or general welfare.

2. Will the uses, values and enjoyment of other property in the neighborhood for purposes already permitted be in any foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the use?

The use is part of an existing auto-oriented business, namely, a gas station and convenience store. The convenience store is adjacent to a strip retail center, which was built in the 1930s or 1940s and has housed a variety of commercial operations over the years. The inspection business would have only one service bay, which limits the number of vehicles the business can serve. The addition of an inspection business of this size should not impair or diminish the uses, values, or enjoyment of other property in the neighborhood, which are already accustomed to a larger amount of traffic, noise, etc., from the gas station/convenience store and from the historic retail center, as well as from the surrounding commercial uses. However, as a precaution, staff recommends that if the special exception is granted, the hours of operation be restricted (see staff recommendation below).

The proposed use is not expected to impair or diminish the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted.

3. Will the establishment of the use significantly impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district?

The neighborhood around the building where the use is located has already developed, for the most part. There are several properties where development is expected, such as the property across 4th St, which used to be the site of an old house, and TownCenter. The vacant lot at TownCenter is already planned as the future location of the existing Chicken Express, and the operation of an auto inspection station nearby should not impede the restaurant's development. The vacant lot across 4th St is the future home of a new building for the First Baptist

Church, and an auto inspection business should not impede this development, either.

The proposed use is not expected to impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

4. Have adequate utilities, access roads, drainage and other necessary site improvements been provide, or will they be provided?

The public works department has determined that adequate utilities, roads, etc. have been provided.

5. Have adequate measures been taken, or will they be taken, to provide ingress or egress so designed as to minimize traffic congestion in the public streets?

The streets department has determined that adequate means of ingress and egress have been provided.

6. Does the use conform to all applicable area, yard, height, lot coverage, building size and exterior requirements and parking space regulations of the district in which it is located?

The use is proposed as a secondary use for an existing building that has been in continuous operation for its primary use (the gas station/convenience store), so the setback, lot coverage, area, height, building size, and exterior requirements do not apply in terms of considering whether this use would be permitted.

New uses, however, must still meet the district's parking regulations. Auto inspection stations require two parking spaces per service bay. Two to three parking spaces are provided adjacent to the parking for the Kennedale Filling Station, and two spaces are provided along the west side of the building (see attached photos). The Filling Station is required to have four to five parking spaces, and adequate parking is provided along the north/northwest side of the store. However, as you may be able to see from the attached photos, none of the parking spaces appear to be striped, so it can be difficult to determine for sure that the parking spaces meet the required minimum size.

The signs for the auto inspection business do not meet code, for example: no permit has been issued for the signs, the banner sign has been up for longer than is permitted, and only one attached sign is permitted per street front, but the applicant has two on the north/northwest side of the building. But please note that these issues are not of a scale that will need to be resolved by the Board. Staff will address sign compliance through code enforcement.

Staff Recommendation.

The special exception is a tool that provides cities flexibility in their zoning district regulations, recognizing that certain land uses may be a good fit in one area but not in another area within the same kind of zoning district. And as the Board is aware, special exceptions can be granted with conditions that can make a land use more compatible with its surroundings.

An auto inspection operation proposed in this case would be compatible with the area in which it is located, given the commercial nature of the surrounding properties and the scale of the business (having one service bay limits the number of customers and amount of traffic). Staff therefore recommends approval of the special exception. However, to ensure the business is run in a way that truly is compatible, and to ensure all relevant codes are met, staff recommends the following items be added as conditions of approval.

1. Parking must be on paved surfaces only, and all parking for the auto inspection station (the required two spaces, plus any other parking spaces used by the auto inspection station or its customers) must be striped within sixty (60) days of the special exception being granted.
2. Parking for this use shall not impede the flow of onsite traffic for the convenience store.
3. No repairs are permitted as part of the auto inspection business.
4. Hours of operation shall be restricted to between 7 AM and 7 PM.
5. Violation of these conditions is grounds for revoking the special exception and/or certificate of occupancy.
6. The applicant shall apply for a renewal of the special exception two years after the date the special exception is granted. If the applicant does not apply for and receive another special exception, the special exception granted under case BOA 14-07 shall expire.

Action by the Board of Adjustment.

- The board can approve the request, deny the request, or approve it with conditions.
- You may also postpone/continue the case until a later date, but you must specify when the case will be continued.
- If you approve or deny the request, your motion should state why you are doing so (i.e., it meets all standards for a special exception, it doesn't meet the standard concerning ...).

Sample motions are provided below for your reference; please note that you are not required to use one of the sample motions.

APPROVE WITHOUT CONDITIONS

I find that the use meets the standards and requirements for a special exception and make a motion to grant the request.

APPROVE WITH CONDITIONS

I find that the use will meet the standards for a special exception with the addition of conditions to secure compliance with the standards and requirements of the city code and make a motion to approve the request for a special exception for a period of [specify time frame] , with the following conditions [list conditions]...

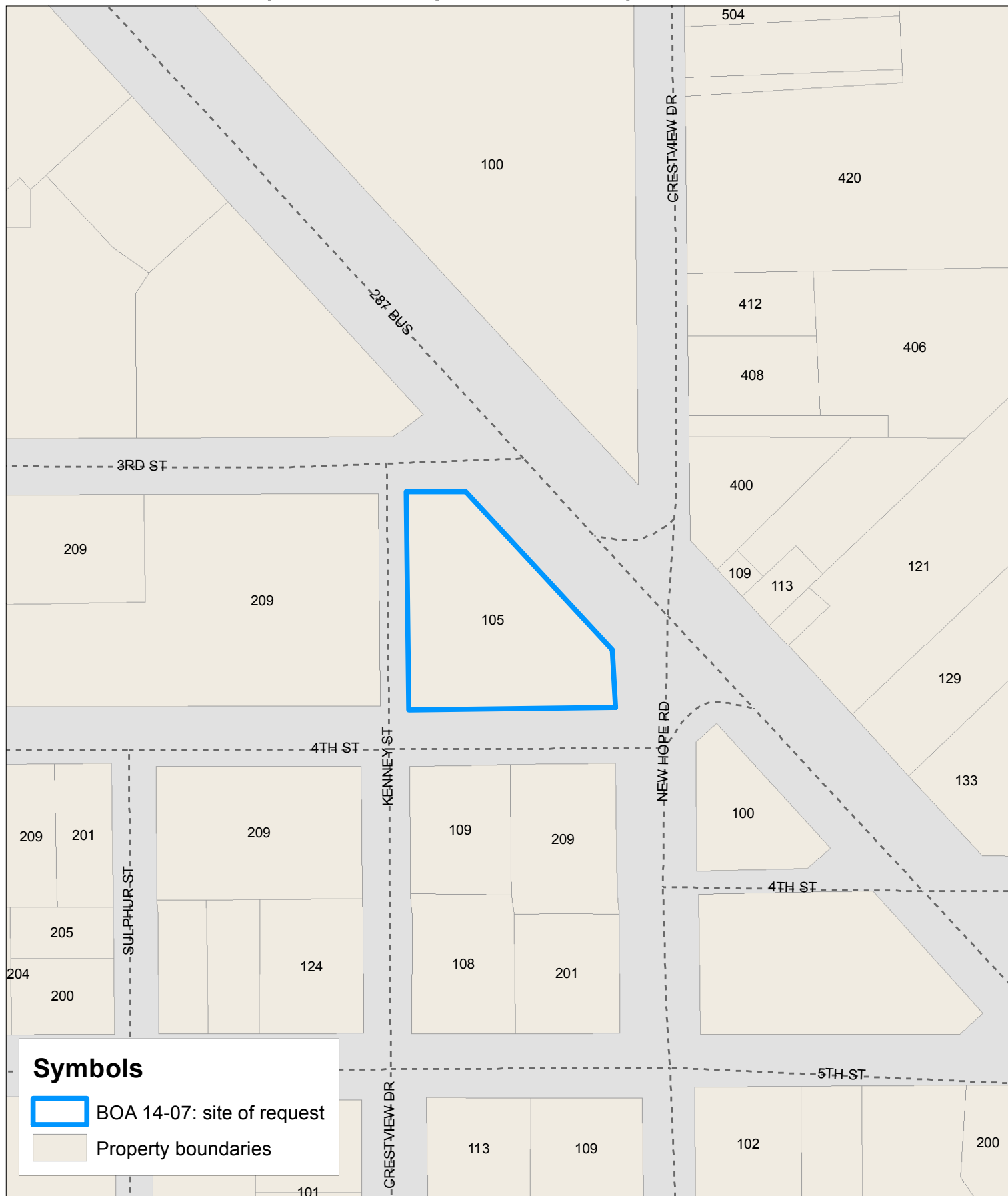
DENY

I find that the use does not meet the standards and requirements for receiving a special exception and make a motion to deny the request for a special exception.

V. Attachments:

1.	BOA 14-07 map showing site of request	BOA 14-07 map showing site of request.pdf
2.	BOA 14-07 aerial view	BOA 14-07 aerial view.pdf
3.	BOA 14-07 map of surrounding uses	BOA 14-07 surrounding uses labeled.pdf
4.	BOA 14-07 parking at Chevron	Chevron parking thumbnail.pdf
5.	BOA 14-07 auto inspection parking	auto insp parking thumbnail.pdf
6.	BOA 14-07 Church across Kenney St	Church thumbnail.pdf
7.	BOA 14-07 House behind Chevron	House behind Chevron thumbnail.pdf
8.	BOA 14-07 CPA, Three Corners Food Store	e Corners & CPA thumbnail.pdf

Site of Request for Special Exception -- BOA 14-07



Site of Request for Special Exception -- BOA 14-07



Parcel boundary data from the Tarrant Appraisal District
Road data from North Central Texas Council of Governments



0 50 100 Feet

Surrounding Uses -- BOA 14-07



OIL CHANGE

ONE STOP AUTO **Mobil 1**
Brakes • Tune-Ups • Struts

STATE INSPECTION \$30
OIL CHANGE \$17⁹⁹
FREE AC CHECK



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COFFEE CAFE





