

BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS
AGENDA
REGULAR MEETING
August 2, 2016
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 approval of minutes from July 5, 2016 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 16-04** to receive comments and consider action on a request by Ned Webster for a Variance to City Code Section 17-405, Zoning districts generally, to allow encroachment into side setback by 15 inches in an "R-2" Single Family district at 937 Little School Rd, more particularly described as Rocking H Ranch Addn Lot 1 Blk 1.

VII. REPORTS/ANNOUNCEMENTS

A. Update on CASE # BOA 15-05 (request by James Vick for a Special Exception to allow a welding shop in Sub-District 4 of the Old Town zoning district at 537 W Kennedale Pkwy, more particularly described as Woodlea Acres Addition Block 2 Lot 11R) -- postponement requested by the applicant

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 the City Secretary at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the August 2, 2016, 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.

A handwritten signature in cursive script that reads "Rachel Roberts". The signature is written in dark ink and is positioned above a horizontal line.

Rachel Roberts, Board Secretary



STAFF REPORT TO THE BOARD OF DIRECTORS

Date: August 2, 2016

Agenda Item No: MINUTES APPROVAL - A.

I. Subject:

Consider approval of minutes from July 5, 2016 Board of Adjustment meeting

II. Originated by:

Katherine Rountree, Permits Clerk

III. Summary:

Consider approval of minutes from July 5, 2016 Board of Adjustment meeting

IV. Recommendation:

Approve

V. Alternative Actions:

VI. Attachments:

1.	07.05.2016 BOA Minutes	07.05.2016 BOA Minutes Final.docx
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BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS
MINUTES
REGULAR MEETING
July 5, 2016
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

Present?	Commissioner
X	John Clark
X	Brian Cassady
	Jeff Madrid
X	Patrick Vader
X	Martin Young
	<i>Alternates</i>
X	Jeff Nevarez
X	Lana Sather
	<i>Vacant</i>

There was a quorum.

Staff present: Rachel Roberts (city planner); Katherine Rountree (board secretary).

II. ROLL CALL

Mr. Clark called the meeting to order at 7:00 PM.

III. SWEARING IN OF SPEAKERS

Ms. Rountree swore in those who wished to speak.

IV. MINUTES APPROVAL

A. Consider approval of minutes from May 3, 2016 Board of Adjustment meeting.

Mr. Cassady motioned to approve the minutes. The motion was seconded by Mr. Vader and passed with all in favor.

V. VISITOR/CITIZENS FORUM

No one signed up to speak.

VI. REGULAR ITEMS

A. **CASE # BOA 16-03** to receive comments and consider action on a request by Jose Jaime for a Special Exception as required by City Code Section 17-421, Schedule of uses and off-street parking requirements, to allow a salvage yard in an "I" Industrial district at 6940 E Kennedale Parkway, more particularly described as W H Hudson Addn Lot 1.

Applicant Presentation

Jose Jaime said that he had to renew his special exception because it was only granted for a year.

Staff Presentation

Ms. Roberts said the board is familiar with this case. She said the board had a condition from the last special exception for the applicant to establish a fire lane and to pave it in asphalt or concrete. She said the applicant had met with fire department staff to make sure the proposed fire lane was in the right location and right size, and the fire department staff had told him that he did not need to pave it with asphalt or concrete. She said that there have not been issues and recommended granting another special exception, continuing the conditions on the hours of operation and lighting. She also recommended that if the applicant had reports from environmental consultants, the board require Mr. Jaime to submit copies of the reports. She went over the remaining standards that must be met to be granted a special exception.

Applicant Response

The applicant says that he was going to do the asphalt or concrete but the Fire Department said that he didn't have to do it and could keep gravel. The board members discussed the matter and determined that Fire Department didn't have the authority to approve a gravel fire lane.

Staff Response and Summary

Staff recommended approval with the following conditions:

- 1) The special exception shall be granted for a maximum of three (3) years, to expire in May 2019.
- 2) Outdoor storage areas must be maintained in good condition, with adequate gravel fill in place at all times, with what is considered adequate to be determined by the fire department.
- 3) No outside storage shall be permitted on grass or other areas that are unpaved or without gravel.
- 4) Any heavy-duty equipment or other equipment that may create loud noises shall be prohibited from use before 8 AM or after 8 PM.
- 5) If the business adds or changes any exterior lighting on site, the lighting must be kept to a level that is not visible to nearby residential areas

Motion by the Board of Adjustments

Mr. Vader motioned to approve with the following conditions.

- 1) The special exception shall expire in one (1) year, to expire in May 2017.
- 2) All outside storage shall be maintained in good condition at all times.
- 3) No outside storage shall be permitted on grass and/or unpaved areas.
- 4) Any heavy-duty equipment or other equipment that may create loud noises shall be prohibited from use before 8 AM or after 8 PM.
- 5) If the business adds or changes any exterior lighting on site, the lighting must be kept to a level that is not visible to nearby residential areas.
- 6) The applicant shall install an asphalt fire lane within ninety (90) days of the approved of the special exception.

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

B. **CASE # BOA 16-04** to receive comments and consider action on a request by Ned Webster for a Variance to City Code Section 17-405, Zoning districts generally, to allow encroachment into side setback by 15 inches in an "R-2" Single Family district at 937 Little School Rd, more particularly described as Rocking H Ranch Addn Lot 1 Blk 1.

Applicant Presentation

Ned Webster, representing Perry & Lorna Hoover, went over the background of the accessory building. He said that the first survey the Hoovers had was incorrect and the Hoovers purchased some property from the neighbor to try and fix the setback problem. He said every adjoining lot to the property has not had a problem with the request. He went over the staff report and addressed his concerns. He said that the condition was not self-created and that there is not a negative impact. Perry Hoover addressed concerns about the encroachment.

Staff Presentation

Ms. Roberts said that the problem was self-created since the Hoovers never pulled a permit for the location so city staff could let them know setback regulations. She said that Mr. Hoover had been a representative on the BOA and on City Council and should have been aware of setback regulations and that a permit was required. She said by approving the variance, it would set precedent. She said that the Hoovers had met with the city to address the unpermitted buildings and they have since applied for permits but this is the only one that was denied.

Public Hearing

Doug Jackson, 802 Shady Creek Dr. Kennedale, TX 76060, said that the Hoovers have only improved the property.

Pam Rives, 929 N. Little School Rd. Kennedale, TX 76060, said that the Hoovers have done everything they have been asked to do. She said she would sell the additional 15 inches to them if she needed to.

Applicant Response

Mr. Webster said that under his experience, the Hoovers would have to re-plat the property in order to have a permit issued.

Staff Response and Summary

Staff recommended denial.

Motion by the Board of Adjustments

Mr. Vader motioned to table the case for 30 days to see if the problem is rectified by the neighboring property owner selling the 15 inches needed. The motion was seconded by Mr. Cassidy and passed with Mr. Young in favor while Ms. Sather and Mr. Clark were opposed.

VII. REPORTS/ANNOUNCEMENTS

Summer Beginner Birding Workshop will be at City Hall on July 23, 2016 at 8 AM.

The Historical Society is having a picnic at TownCenter Park on July 30th at 6:30 PM, and lemonade and ice cream will be provided.

The library is holding a Summer Reading Program.

VIII. ADJOURNMENT

Mr. Young motioned to adjourn. The motion was seconded by Ms. Sather and passed with all in favor.

The meeting adjourned at 7:55 PM.

STAFF REPORT TO THE BOARD OF DIRECTORS

Date: August 2, 2016

Agenda Item No: REGULAR ITEMS - A.

I. Subject:

CASE # BOA 16-04 to receive comments and consider action on a request by Ned Webster for a Variance to City Code Section 17-405, Zoning districts generally, to allow encroachment into side setback by 15 inches in an "R-2" Single Family district at 937 Little School Rd, more particularly described as Rocking H Ranch Addn Lot 1 Blk 1.

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

At the July meeting of the Board of Adjustment, the board voted to continue the case until the August meeting in order to allow the property owners time to pursue the option of acquiring additional land from their neighbor, which could resolve the property owners' setback problem.

During the July meeting, Mr. Webster (the applicant and the Hoovers' attorney) stated that the bird house had been installed based on an incorrect survey, and the Hoovers had a hardship that was not self-created. While the Hoovers may have had an incorrect survey (a copy of which has not been provided to the board), because the building was constructed without a permit, there is no way to determine whether the Hoovers intended to meet the setback regulations or not. Had a permit been issued for the building, staff would be able to vouch for the Hoovers' intent and affirm that they thought (and staff thought) the setback regulations had been met. However, because no permit was obtained, whether the Hoovers intended to meet the setback regulations cannot be verified.

In addition, the board has precedent for denying variance requests in cases where setback regulations have not been met, even when the setback regulation was violated unintentionally. In these cases, the applicants were not considered to have a hardship or were considered to have a self-created hardship.

Case # BOA 06-04, request for a variance from the side yard setback for a storage building constructed without a permit. The board denied the variance.

Case # BOA 04-06, request for a variance from the side yard setback for a storage building constructed within the required side yard setback. The board denied the variance. (A permit may not have been required--this is not clear from the record--but the building was installed without the property owner verifying it met the setbacks.)

Case # BOA 01-04, request for a variance from the rear yard and side yard setbacks for a storage building constructed without a permit. The board denied the variance.

Case # BOA 00-06, request for a variance from the side yard and rear yard setbacks for a carport built without a permit. The board denied the variance.

Case # BOA 99-01, request for a variance from the side yard setback for an accessory building, when the contractor adjusted the slab location and installed it within the required setback without the

property owner's knowledge. The board denied the variance. (Note: this request was made by board member Mr. Cassady).

The staff recommendation from last month's meeting is unchanged; we recommend the request for a variance be denied.

The staff report from last month's meeting is included in your packet for your reference. We have not yet received an update from Mr. Webster on whether the Hoovers were able to acquire additional land.

IV. Recommendation:

V. Alternative Actions:

VI. Attachments:

1.	BOA 16-04 map showing site	BOA 16-04 map of request.pdf
2.	BOA 16-04 aerial view 1	BOA 16-04 aerial view 1 (compressed file size).pdf
3.	BOA 16-04 aerial view 2	BOA 16-04 aerial view 2 (compressed file size).pdf
4.	BOA 16-04 surrounding land uses	BOA 16-04 surrounding land uses.pdf
5.	BOA 16-04 zoning on surrounding properties	BOA 16-04 zoning.pdf
6.	Site plan, BOA 16-04	BOA 16-04 site plan (Hoover minor plat).pdf
7.	BOA 16-04 application	BOA 16-04 application.pdf
8.	BOA 16-04 original staff report (July 2016)	BOA 16-04 staff report 6-30-2016.pdf

This is a detailed plat map of a residential area in Littleton, Colorado. The map shows numerous lots, many of which are numbered. Key streets include OAKRIDGE, SHADY CREEK, SHADY VALE, and GREENFIELD. A specific lot, 937, is highlighted with a blue border, indicating it is the BOA 16-04 site of request. Other lots are outlined in green, representing Kennedale city limits. The map also includes a north arrow and a scale bar (0 to 400 feet). The area is bounded by OAKRIDGE to the north, SHADY CREEK to the east, and SHADY VALE to the south. The map shows a grid of lots, with some larger lots (e.g., 936, 908, 906) and many smaller lots (e.g., 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561,

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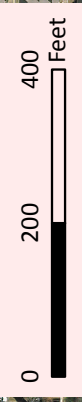
BOA 16-04 site of request

0 200 400 Feet

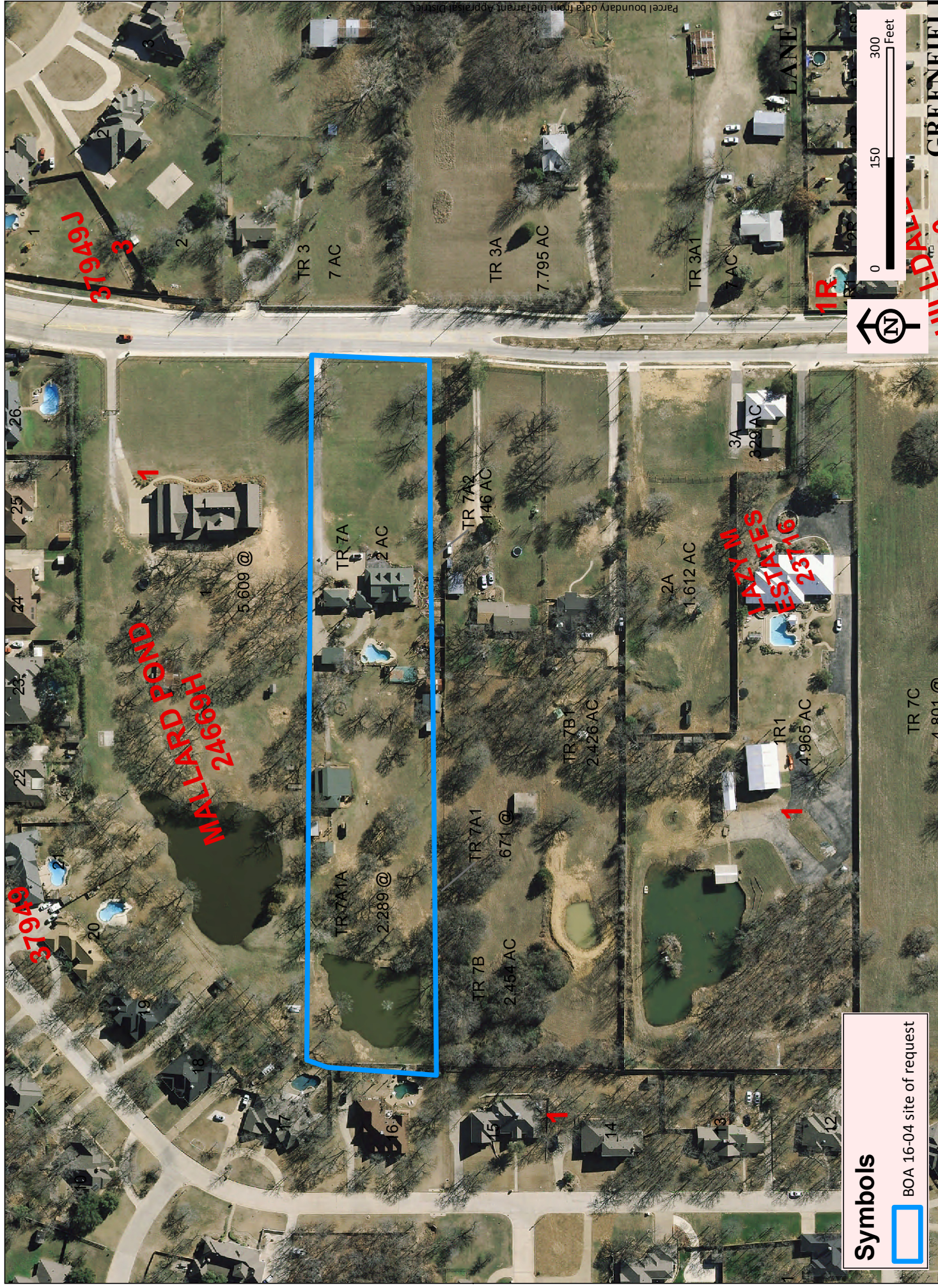
Parcel boundary data from the current Appraisal District

11

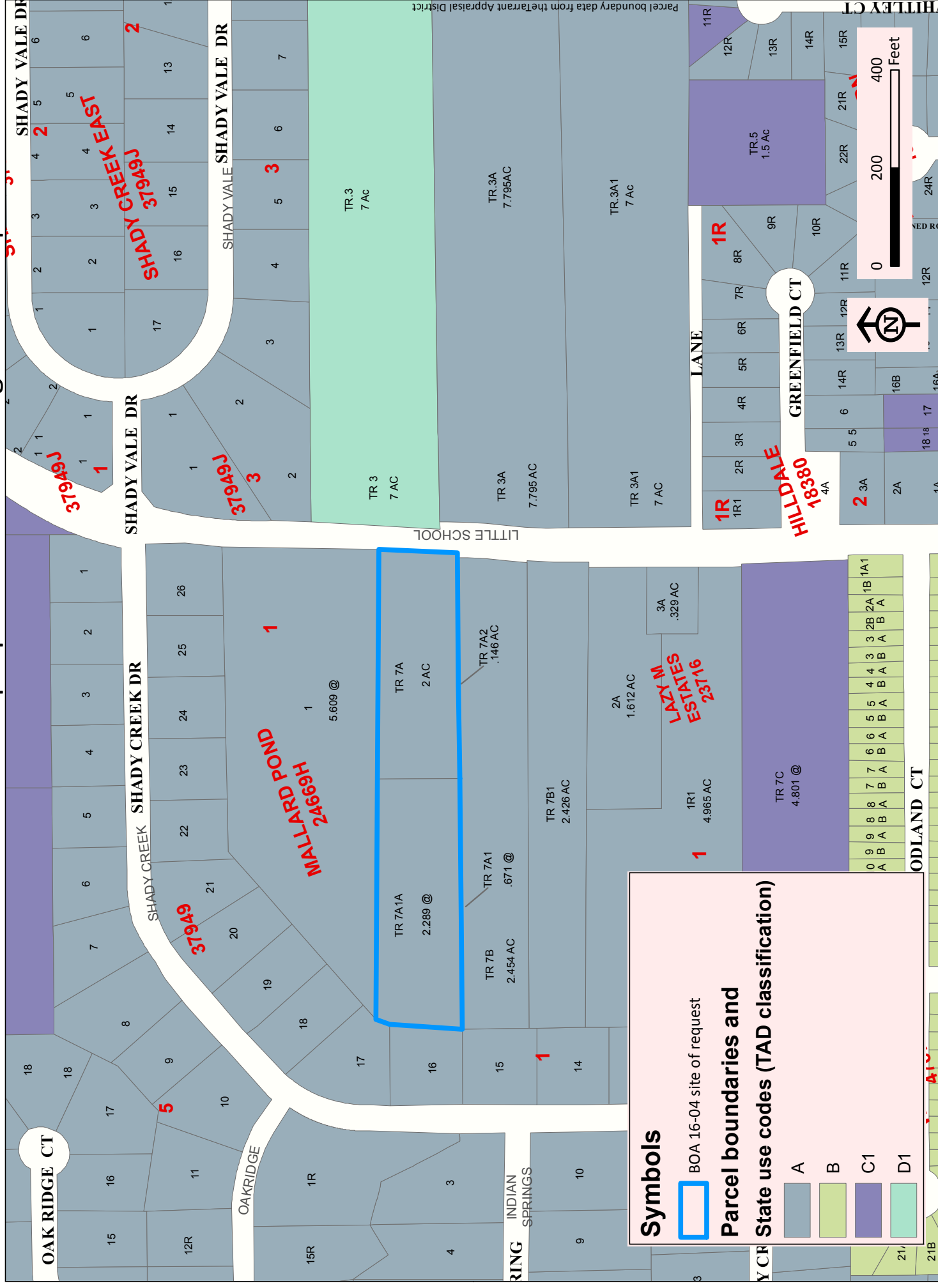
Parcel boundary data from the Tarrant Appraisal District
Road data from North Central Texas Council of Governments



BOA 16-04: Aerial view 2



BOA 16-04: Land uses on properties surrounding site of request



STATE USE CODES

A RESIDENTIAL	
A1	Single-Family
A2	Mobile Homes
A3	Condominiums
A4	Townhomes
A5	Planned Unit Development (PUD)
A9	Interim use

B RESIDENTIAL	
B1	Multi-Family
B2	Duplex
B3	Triplex
B4	Quadraplex

C VACANT PLATTED LOTS/TRACTS	
C1	Residential
C2	Commercial
C3	Rural
C6	Vacant Exempt (Right-of-Way)

D ACREAGE	
D1	Ranch Land
D2	Timberland
D3	Farmland
D4	Undeveloped

E FARM/RANCH	
E1	House + Limited Acres
E2	Mobile Home + Limited Acres
E3	Other Improvements

F COMMERCIAL/INDUSTRIAL	
F1	Commercial
F2	Industrial
F3	Billboards

G OIL/GAS/MINERAL RESERVES	
G1	Oil/Gas/Mineral Reserves

J UTILITIES	
J1	Water Systems
J2	Gas Companies
J3	Electric Companies
J4	Telephone Companies
J5	Railroads
J6	Pipelines
J7	Cable Companies
J8	Other

L COMMERCIAL/INDUSTRIAL	
L1	Commercial BPP
L2	Industrial BPP

M MOBILE HOMES	
M2	Private Aircraft
M3	Mobile Home
M4	Other Tangible PP

O RESIDENTIAL INVENTORY	
O1	Vacant
O2	Improved

BOA 16-04: Zoning on properties surrounding site of request



NW

Law Office of Ned Webster, P.L.L.C.

1304 West Abram St., Suite 250 ~ Arlington, Texas 76013

Telephone: (817) 459-2440 ~ Fax: (817) 459-2480

ned@nedwebsterlaw.com

May 25, 2016

Zoning Board of Adjustment
City of Kennedale, Texas
405 Municipal Drive
Kennedale, Texas 76060

Re: Variance request Lot 1, Block 1, Rocking H Ranch Addition

Dear Board Members,

I represent Perry and Lorna Hoover, the owners and applicants for the above referenced variance. This letter is written to provide a statement of facts and reasons justifying such request as required in accordance with the application requirements.

The structure in question has existed for a number of years. It together with other, minor, ancillary structures were built without building permits in the past on the property, as the owners were unaware that such permits were required for such structures. Recently, the City Code Enforcement Department became aware of these matters and have required my clients to obtain building permits for all of such structures. This they have endeavored to do, and have obtained such permits for all such structures, with the exception of the subject matter of this request.

The structure was first constructed based upon a survey which was in error. The survey upon which the property was actually purchased in 1995 reflected that the north and south property lines were parallel. Upon recent review by another surveyor, it was determined that the south property line was not parallel to the north property line, and that such fact placed the structure within the side yard setback. Upon the recommendation of the second surveyor, the owners purchased an additional 3000 square feet of property parallel to the south property line, which they were told should rectify all setback encroachments. Upon the preparation of the plat of the property however, it was determined that the structure still encroached into the setback by 15 inches.

As reflected in the attached letter from Ms. Roundtree, the owners can either tear down the structure or move it 15 inches. The structure is on a concrete slab, and therefore moving it does not appear to be a viable option. The hardship has not been self-created by the property owners, nor is the hardship purely economic in nature. The adjacent owner to the south is not opposed to this request, and such request would be in keeping with the spirit of the ordinance.

We request that the strict provisions of Section 17-405(d) of the Zoning ordinance be varied to allow this 15 inch encroachment by the structure.

Sincerely,

A handwritten signature in black ink, appearing to read "Ned Webster", with a stylized, cursive script.

Ned Webster

On May 13, 2016, at 2:26 PM, Katherine Rountree <krountree@cityofkennedale.com> wrote:

Hello,

The following permits have been approved and ready for payment and pickup:

Dining Area: \$241.25

Workshop: \$156.25

Barn-Gameroom: \$727.17

Carport: \$156.25

Storage Building of 326 sq ft: \$156.25

Total: \$1,437.17

The following permit has been denied:

Bird/Green House: The bird/green house was denied because it is too close to the property line. The minimum requirement is 8 feet and the building encroaches 1.3'. There are different ways to fix this. You can move the building the 1'3" to be at least 8' from the property line, cut that portion of the building off, or remove the building.

If you have any questions, please feel free to contact Sandra Johnson at 817-538-7359.

Thanks!

Katherine Rountree

Permit Clerk

Permits and Planning Dept.

City of Kennedale

405 Municipal Drive

Kennedale, TX 76060

P: 817-985-2133

F: 817-483-0182

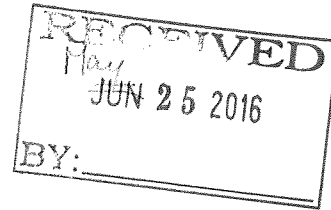
krountree@cityofkennedale.com

"The best preparation for tomorrow is doing your best today."



KENNEDALE
Development Services
www.cityofkennedale.com

**CITY OF KENNEDALE
BOARD OF ADJUSTMENT
APPLICATION FOR VARIANCE**



APPLICANT AND OWNER INFORMATION

SECTION 1. APPLICANT.

Name **NED WEBSTER**

Work Phone OR Home **(817) 459-2440**

Please provide a phone number where we can reach you during regular business hours.

Mailing Address

 1304 W. ABRAM ST., ARLINGTON, TX 76013

SECTION 2. OWNER.

If the owner is the applicant, write "same as applicant" below and leave the rest of this section blank.

Name **PERRY AND LORNA HOOVER**

Work Phone Home **(817) 319-6351**

Mailing Address

 937 N. LITTLE SCHOOL ROAD
 KENNEDALE, TX. 76060

SECTION 3. PROPERTY INFORMATION.

Property Location (Number and Street)

937 N. LITTLE SCHOOL RD.



KENNEDALE
Development Services
www.cityofkennedale.com

Legal Description (Lot, Block, and Subdivision/Addition)

LOT 1, BLOCK 1, ROCKING H. RANCH ADDN.

Note: Attach a metes and bounds description if the property is not platted.

VARIANCE REQUEST

Zoning District

R-2

City Code reference for requirements that creates need for variance

11-405(d)

Describe City Code Requirement

8 FOOT SIDE YARD SETBACK

Describe variance requested

VARIANCE TO ENCROACH 15 INCHES INTO SIDE YARD WITH "BIRD HOUSE"/"GREEN HOUSE".

What hardship has been created?

"BIRD HOUSE"/"GREEN HOUSE" LOCATED 15 INCHES INTO SIDE YARD SETBACK



KENNEDALE
Development Services
www.cityofkennedale.com

What created the hardship? THE STRUCTURE WAS ORIGINALLY CONSTRUCTED BASED UPON A SURVEY WHICH WAS IN ERROR. PURSUANT TO THE RECOMMENDATION OF A SECOND SURVEYOR THAT THE PURCHASE OF AN ADDITIONAL 3000 ~~sq~~ ALONG THE SIDE OF THE PROPERTY WOULD RECTIFY THE SETBACK PROBLEM, SUCH PURCHASE WAS MADE, HOWEVER SUCH PURCHASE STILL LEFT A 15 INCH ENCROACHMENT.

I declare that the above is true and correct.

Signature of Applicant

Date 5/25/16

Required attachments

The following items must be submitted with your application and the required application fee.

- 1) Two SITE PLANS, drawn to scale, showing all lot dimensions, and the location and dimensions of all existing and proposed lot improvements; and
- 2) A STATEMENT OF FACTS AND REASONS why the zoning regulations should not be applied to the property in question and how the standards governing the Board's actions would be satisfied; and
- 3) A STATEMENT from authorized city staff citing the reasons for refusing to issue a permit under the plans submitted.

Date: July 5, 2016

Agenda Item No: REGULAR ITEMS (B)

I. SUBJECT

CASE # BOA 16-04 to receive comments and consider action on a request by Ned Webster for a Variance to City Code Section 17-405, Zoning districts generally, to allow encroachment into side setback by 15 inches in an "R-2" Single Family district at 937 Little School Rd, more particularly described as Rocking H Ranch Addn Lot 1 Blk 1.

II. SUMMARY

BACKGROUND AND OVERVIEW

Request	Variance from side yard setback
Applicant	Neb Webster, on behalf of Perry and Lorna Hoover
Location	Little School Road, north of Woodland Ct and south of Shady Creek Dr
Surrounding Uses	Single family residential (acreage lots and neighborhood-type lots)
Future Land Use Plan Designation	Neighborhood/Open Space
Staff Recommendation	Deny

CURRENT STATUS OF PROPERTY

This property is zoned "R-2" single family residential, which allows accessory buildings as long as they meet the required setbacks and other development restrictions. The required side yard setback for accessory buildings is eight (8) feet.

The Hoovers purchased this property in the early 1990s. They obtained a permit to build the house in 1995. Additional buildings have been added over the years, which were added without the required building permits, including the building for which a variance is requested. After prompting from city staff, the Hoovers have applied for the required building permits.

Two of the accessory buildings along the south side did not meet the minimum side yard setback of eight (8) feet, but the Hoovers were able to buy additional land from a neighbor, which added enough distance to meet the side yard setback for one of the buildings. The other building, the bird house / green house, still does not meet the setback requirement; therefore, the Hoovers are applying for a variance for that structure.

NOTE: the animal pen shown on the north side of the property was built before the Hoovers bought the property, so city staff is not requiring the Hoovers to obtain a permit for it.

SURROUNDING PROPERTIES & NEIGHBORHOOD

The property is located in a primarily residential area. The properties on either side and behind are also zoned R-2. The properties immediately across the Little School are zoned Agricultural (see map).

REQUIREMENTS FOR A VARIANCE

The Board of Adjustment is permitted to grant variances to the development regulations of the zoning code such as minimum setbacks, lot width and lot depth, off-street parking, and maximum height. Variances are permitted only where the literal enforcement of the provisions of the zoning code would result in an unnecessary hardship, or where such variance is necessary to permit the reasonable development of a specific parcel of land that differs from other parcels of land in the same district by being of such area, shape or slope that it cannot be developed in a manner commensurate with the development permitted upon other parcels of land in the same district.

In other words, in order to grant a variance, the variance applicant is required to demonstrate that the property itself is unusually different enough from other properties in the same zoning district that it can't be developed in the same way as other parcels in the same district, which creates a hardship. A hardship cannot be of the applicant's own making, and it cannot be financial (e.g., the applicant can't meet the development regulations simply due to the applicant's financial situation).

The board should consider the following questions in determining whether a variance request meets this standard:

- (1) is the request owing to a special condition inherent in the property itself;
- (2) is the condition unique to the property for which a variance is requested;
- (3) is the condition self-created;
- (4) will a strict enforcement of the zoning ordinance create hardship above that suffered by the general public; and
- (5) will the hardship deprive the property owner of the right to use his property?

If you find the answers above demonstrate conditions favorable to granting a variance, the board should also consider these questions:

- (6) would granting the variance be contrary to the public interest; and
- (7) is the request within the spirit of the ordinance and further substantial justice?

ANALYSIS

(1) Is the request owing to a special condition inherent in the property itself?

No. The property is not smaller than other properties in the district, and is in fact much larger than the minimum lot size, width, and depth required. The property does not have floodplain, unusual topography or shape, or other factors that would make it difficult to develop the property under the city's R-2 zoning district regulations.

(2) Is the condition unique to the property for which a variance is created?

As mentioned above, the property does not have a unique condition. It is approximately 180 feet wide, which is much larger than the required 100-foot width for R-2 zoning districts, and over 900 feet deep. The property has plenty of room for the Hoovers to have built the bird house within the requirements of city code.

(3) Is the condition self-created?

Yes. The Hoovers constructed the building without a building permit, and therefore without confirmation that the building met the required setback.

(4) Will a strict enforcement of the zoning ordinance create a hardship above that suffered by the general public?

No. Other owners of property within the R-2 zoning district must also meet the setback requirements to the R-2 zoning district, including property owners whose lots are much smaller in size and only 100 feet wide.

(5) Will the hardship deprive the property owner of the right to use his property?

No. The property is already developed, and the Hoovers have enjoyed the full use of their property already, including residing in the house on-site and using their property for special events.

(6) Would granting the variance be contrary to the public interest?

The property owner to the north has told staff she is in support of granting the variance, but her residence is not close to the bird house. It may be that the neighboring property to the south would not be negatively affected by granting the variance, since it is a large site and the house is a good distance from the bird house, but this depends on whether the bird house being used in a way that does not create excessive noise or other nuisance conditions. However, even if the neighbor to the south does not object to the variance, it is contrary to the public interest to grant a variance when no hardship has been identified and when a property owner chose to construct a building without obtaining the required permits first and without verifying the structure met the required setbacks.

(7) Is the request within the spirit of the ordinance and further substantial justice?

No. The bird house was constructed without a permit, and no hardship has been proven. Moreover, Mr. Hoover is a former member of the Board of Adjustment and a former City Councilman, so he was in a position to know that the city requires building permits for accessory buildings and to understand setback regulations.

STAFF RECOMMENDATION

Will the literal enforcement of the provisions of this article result in an unnecessary hardship?

No. The Hoovers are not under an unnecessary hardship.

Based on the above analysis, staff recommends denying the request for a variance.

ACTION BY THE BOARD OF ADJUSTMENT

The board may grant or deny the request or postpone its vote until a later date. If you postpone your decision, you should state in your motion when the case will be heard by the board again. Sample motions are provided for your reference below. You are not required to use either of the motions provided, but your motion should state why you are granting or denying the request.

Approve: Based on the evidence and testimony provided, I find that the proposed request meets the standards for a variance and make a motion to approve the requested variance.

Deny: Based on the evidence and testimony provided, I find that the proposed use does not meet the standards for a variance and make a motion to deny the request.



STAFF REPORT TO THE BOARD OF DIRECTORS

Date: August 2, 2016

Agenda Item No: REPORTS/ANNOUNCEMENTS - A.

I. Subject:

Update on CASE # BOA 15-05 (request by James Vick for a Special Exception to allow a welding shop in Sub-District 4 of the Old Town zoning district at 537 W Kennedale Pkwy, more particularly described as Woodlea Acres Addition Block 2 Lot 11R) -- postponement requested by the applicant

II. Originated by:

III. Summary:

The applicant has requested the case be postponed for one month.

IV. Recommendation:

V. Alternative Actions:

VI. Attachments: