

BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS

AGENDA

REGULAR MEETING

September 6, 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 the minutes from the August 2, 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 15-05** to receive comments and consider action on a request by James Vick for a Special Exception as required by City Code Section 17-421, Schedule of Uses and Off-Street Parking Requirements, 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.

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.

C. **CASE # BOA 16-05** to receive comments and consider action on a request by Armando Gonzalez for a Variance to the City Code Section 17-405, "Zoning District Generally," to allow a reduction in side yard setback from 15 feet to 13 feet and in the front yard setback from 50 feet

to 40 feet in an "R-1" single family residential zoning district at 911 Shady Oaks Dr, more particularly described as Hilldale Addition Block 2 Lot 17.

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 the City Secretary at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the September 6, 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 black ink that reads "Rachel Roberts". The signature is written in a cursive, flowing style.

Rachel Roberts, Planner and Board Secretary

STAFF REPORT TO THE BOARD OF DIRECTORS

Date: September 6, 2016

Agenda Item No: MINUTES APPROVAL - A.

I. Subject:

Consider approval of the minutes from the August 2, 2016 Board of Adjustment meeting

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

The minutes from the August 2 meeting are attached to this message for your review and consideration for approval.

IV. Recommendation:

Approve

V. Alternative Actions:

VI. Attachments:

1.	08.02.2016 BOA minutes	08.02.2016 BOA Minutes.pdf
----	------------------------	----------------------------

BOARD OF ADJUSTMENT & BUILDING BOARD OF APPEALS

MINUTES

REGULAR MEETING

August 2, 2016

CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE

REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

Mr. Clark called the meeting to order at 7:01 PM

II. ROLL CALL

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

A quorum was present.

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

III. SWEARING IN OF SPEAKERS

No one signed up to speak.

IV. MINUTES APPROVAL

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

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

V. VISITOR/CITIZENS FORUM

No one signed up to speak.

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.

Staff Presentation

Mr. Roberts said that she spoke with the Hoovers' attorney, and he told her he believed the Hoovers have made an agreement with the neighbor to acquire more land, and therefore they might not attend the meeting that night to pursue their variance request.

Motion made by the Board of Adjustment

Mr. Vader motioned to table the case for 30 days or until the next meeting, whichever was later. The motion was seconded by Mr. Madrid and passed with all in favor.

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

Ms. Roberts said that the attorney asked for an additional postponement and that the case should be in front of the board next month.

She said that the Bring It Event will be held in October. She also said that Katherine Rountree (Permit Clerk) accepted a job with the City of Mansfield, and her last day will be on August 16. Finally, she added that Dickey's and Chicken Express will have a groundbreaking ceremony on Friday, August 5.

Mr. Nevarez said that board renewal will be next month in September and that the public is encouraged to fill vacancies within the boards.

VIII. ADJOURNMENT

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

The meeting adjourned at 7:16 PM.

John Clark, Chairman

Date

ATTEST:

Rachel Roberts, Planner

Date: September 6, 2016
Agenda Item No: REGULAR ITEMS (A)

I. SUBJECT

CASE # BOA 15-05 to receive comments and consider action on a request by James Vick for a Special Exception as required by City Code Section 17-421, Schedule of Uses and Off-Street Parking Requirements, 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.

II. SUMMARY

BACKGROUND AND OVERVIEW

Request	Special exception to allow a welding shop
Applicant	James Vick
Location	537 W Kennedale Pkwy (close to the intersection with Dick Price/Bowman Springs Rd)
Surrounding Uses	Industrial, commercial, residential
Future Land Use Plan Designation	Downtown Village and Urban Corridor
Staff Recommendation	Approve with conditions can confirm his business meets or will meet the standards for a special exception

CURRENT STATUS OF PROPERTY

This property is zoned Old-Town Sub-District 4. This district has a unique character, as it allows a wide mix of uses that include potential historical structures, single-family residences, and commercial uses. The Old Town area has been in transition for over thirty years and will continue to redevelop with a mix of uses on the remaining undeveloped lots. The district's regulations are intended to encourage a relatively dense mix of residences and businesses that create an aesthetically-pleasing built environment and encourage walkability and public gatherings.

The property in question is at the edge of the Old Town district. The district is divided into four sub-districts; of these, sub-district 4 allows the most commercial uses and the most intensive commercial uses. The existing building at 537 W Kennedale Pkwy was built years ago and is therefore grandfathered from many of the city's current zoning regulations. Jimmy's Welding has been in business at this location since at least 1996, when a certificate of occupancy was granted.

SURROUNDING PROPERTIES & NEIGHBORHOOD

SURROUNDING ZONING

The properties to the south/southwest are also zoned Old Town sub-district 4. The properties across Dick Price to the north/northeast are zoned Industrial and also are largely within the Village Creek floodplain. Across Kennedale Pkwy, the properties are zoned C-2 general commercial.

SURROUNDING LAND USES

A mix of uses surrounds the property. The prevailing land use category is commercial/industrial, but there are residential uses located nearby, as well, mostly located along True Gunn and Woodlea Ln. A pipeline company is located across the street (Dick Price) and a similar use is on the remainder of the property where the welding shop is located. Note: the applicant is a tenant, not the property owner.

SPECIAL EXCEPTION HISTORY

Mr. Vick's first special exception for a welding shop was granted in 2002. The special exception was extended in 2004 and expired in 2006. Mr. Vick did not apply for a new special exception at that time. City staff was in transition then, and staff did not realize the special exception had expired.

PREVIOUS SPECIAL EXCEPTION CONDITIONS

- Outside storage (if utilized) must meet 25 foot setback requirement from right-of-way and be screened from public view with a 6' fence.
- If a dumpster is utilized, it must comply with screening requirements.
- No parking in street or right-of-way.
- Prohibit parking in landscape setback area (10 foot back from right-of-way).

The business meets the previous conditions (note: these requirements were put in place before Kennedale Pkwy was widened, so the right-of-way-related requirements would no longer be relevant).

A more detailed description of the special exception history for this applicant is provided later in this briefing report.

ANALYSIS

The special exception is a tool that allows a city to determine whether a particular use is suitable for a specific location. Kennedale's city code requires a special exception for any business owner wanting to operate a **welding shop** in the Old Town sub-district 4 zoning district.

STANDARDS FOR GRANTING A SPECIAL EXCEPTION.

No application for a special exception shall be granted by the Board of Adjustment unless the board finds all of the conditions described below are present.

STANDARD 1

The board must find that the establishment, maintenance or operation of the use will not be materially detrimental to or endanger the public health, safety, morals or general welfare.

Mr. Vick's application should demonstrate that the welding shop will not have a negative effect on the public health, safety, or general welfare. Potential elements of a welding shop that could affect general welfare include the following.

LIGHTING

Whenever a commercial use is located near a residential use, lighting is a potential problem. In this case, however, the business is not generally open in the evenings, and no residential uses are located close enough for existing lighting to be a problem.

FIRE

Welding and allied operations can cause fire or explosions if not handled properly. The Kennedale Fire Department recently conducted an inspection of this business, however, and found the use to be in compliance with fire code. The Fire Department staff does not object to a welding shop operating at this location.

FUMES

Fumes are another potential hazard from a welding operation. For a business of this small size, however, as long as the welding operations are conducted inside with appropriate ventilation, fumes should not be a problem for surrounding uses.

STANDARD 2

The board must find that the requested use will not impair or diminish the establishment, maintenance, or operation of, or use, values, or enjoyment of other property in the neighborhood for purposes already permitted.

This would include continuance of existing uses.

EXISTING AND PERMITTED USES IN THE VICINITY OF THIS LOCATION

COMMERCIAL BUSINESSES. The area has only a few commercial uses present now. However, the properties across Kennedale Pkwy are all zoned C-2 general commercial, and the Old Town zoned properties immediately surrounding the site of the welding shop also allow commercial uses. The C-2 district is the most permissive of the commercial districts and allows the heaviest land uses, such as contractor yards with outside storage. A welding shop this small is not expected to impair the operation of other commercial uses, either existing or permitted. For the properties in the Old Town zoning district, a welding shop has the potential to diminish the establishment or enjoyment of other permitted uses, depending on how the business is operated. This particular business is small enough that staff does not expect it to impair the establishment of other permitted commercial uses.

INDUSTRIAL. There are several industrial uses located nearby, as well as several vacant or underdeveloped properties zoned for industrial use. A welding shop is an industrial use and should not diminish or impair the operation of other industrial uses.

NEIGHBORHOODS. The residential uses in the area are not adjacent to this site. Generally, a welding shop is not suitable to be located next to a residential use, but since this is a small-scale operation, is

not immediately adjacent to the residences, and has operations enclosed in the building, the use is not expected to impair or diminish the enjoyment or operation of permitted residential uses nearby if all applicable city regulations are followed.

STANDARD 3

The board must find that the establishment of the use will not significantly impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Would the requested use be likely to impede the development and improvement of surrounding property for uses already permitted in the area but that don't exist there now? Would it impede improvement of property for existing uses?

The areas across Dick Price and Kennedale Pkwy to the north/northwest and east/northeast are zoned primarily for light industrial and commercial uses. The industrial zoning district was established to accommodate a number of industrial and manufacturing uses, provided such uses are not noxious or offensive through their emission of odors, soot, dust, noise, fumes, or vibrations. The C-2 commercial district was established to accommodate commercial activities that cannot generally be accommodated in the less intensive "C-1" district, such as contractors' yards, auto sales lots, boat storage, feed stores, and heavy equipment sales lots.

A welding shop is permitted by right in an Industrial district and is therefore not expect to impair the development of other properties in the nearby Industrial zoning districts. While the lighter commercial uses permitted in the district may be reluctant to be located near a welding shop in general, this business is small enough that it is not likely to impede the development of the C-2 zoned properties nearby.

For the adjacent and nearby properties in the Old Town district, a large welding operation could impede development. However, this small business does not generate significant amounts of traffic or noise, and operations are confined to the building. Staff does not expect it to impede the development of properties in the Old Town zoned portion of the neighborhood as long as adequate site control measures are in place.

The Future Land Use Plan characterizes this area as Downtown Village and Urban Corridor. The Downtown Village should include a relatively dense mix of residences and businesses. It serves as a gateway into Kennedale, distinguishing the city from neighboring communities. Development types include office, specialized retail, live-work units, and cafes. The Urban Corridor character district is expected to remain auto-oriented, but development patterns should still encourage pedestrian safety and emphasize a continuous edge along the street that is walkable and that enriches the character and image of the roadway. Regulations for achieving this character include requirements that pull buildings closer to the street. A welding shop does not contribute to achieving the desired character for the area, *per se*, but the site design does contribute to achieving this character in that the building is close to the street, as is desired for this district.

STANDARD 4

The board must find that adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided.

UTILITIES

According to the Public Works director, water and sewer facilities are available for this property. The property is connected to the Kennedale water system. It appears to be connected to the city waste water system, but this has not been confirmed, as the Utility Billing office reports the business is not being billed for sewer service. Mr. Vick will need to confirm that the business is connected to the city waste water system.

DRAINAGE

The city's storm water coordinator has determined the existing storm water facilities are adequate.

PARKING AND ACCESS

Mr. Vick's business does not generate a large amount of traffic. Public access to the site is from two drive approaches on Kennedale Pkwy, and the Public Works department has determined these to be adequate. The existing space dedicated for parking is also sufficient. However, the parking area in front of the business **needs to be repaved** (asphalt is sufficient), and **parking spaces need to be striped**.

OTHER SITE IMPROVEMENTS

Landscaping was provided as part of the TxDOT Green Ribbon grant program. **As long as the landscaping is maintained**, the current landscaping is sufficient for this site. However, if the landscaping is not maintained, the business would not be in compliance with the city's landscaping requirements.

STANDARD 5

The board must find that adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.

"Adequate measures" would include an adequate drive approach, deceleration lane if needed, etc.

The Public Works department considers the ingress and egress facilities for the property to be adequate. Public Works staff does not have concerns about traffic congestion due to this use at this location.

STANDARD 6

The board must find that the use shall 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.

AREA, YARD, HEIGHT, LOT COVERAGE, BUILDING SIZE, & EXTERIOR REQUIREMENTS

The property has an existing grandfathered building. If Mr. Vick were to add an additional building or expand the building to add more than 50% of the existing square footage, those improvements would

be required to meet the Old Town zoning regulations, but the existing building is not required to do so.

PARKING SPACE REGULATIONS

The building official has confirmed an adequate space for parking has been provided. However, the parking lot does not meet city code in terms of paving materials, and parking spaces have not been striped according to city code. Staff recommends that if the special exception is granted, the parking area in front of the building be required **to be paved** in compliance with city regulations and that **parking spaces be required to be striped**.

STAFF RECOMMENDATION

Staff analysis is that the proposed use will meet the standards for a special exception under certain conditions. Based on information about the area and the recent inspection, staff **recommends granting the special exception with the conditions listed below**. However, because Mr. Vick submitted no supporting information with his application, staff is unable to confirm for certain that his use meets the standards for a special exception. Staff therefore recommends approval with the conditions listed below **only if Mr. Vick is present at the hearing to confirm or submits sufficient information to confirm** that his business meets or will meet the standards for a special exception.

Please note that this area is in transition. Until now, the demand for development in this area has been very low, and therefore staff is unable to determine adequately whether a welding shop would impede development. Information on this matter may be more available as interest in the area grows. In addition, the business owner is not the property owner. If this business were to close, another welding shop under different ownership and operation could be established at this location, and the operation and scale could be quite different if that were to happen. Staff therefore recommends setting a time limit on the special exception. Staff recommends granting it for a period of **three (3) to five (5) years** only.

RECOMMENDED CONDITIONS OF APPROVAL:

- 1) The business shall connect to the city waste water system if the property is not already connected.
- 2) The parking lot shall be paved with asphalt or concrete and in accordance with city regulations, and parking spaces shall be striped, subject to city approval, within 90 days of the special exception being granted.
- 3) All welding operations must take place within the existing building, and the building footprint shall not be expanded except to allow additional office space or similar activities or storage of non-hazardous materials or equipment, rather than welding and its allied activities. If the building is expanded for those permitted purposes, it shall be done in compliance with the Old Town zoning district design regulations.
- 4) The special exception shall expire in [**minimum of 3, maximum of 5**] years from the date the special exception was granted. If the applicant does not re-apply for a special exception

at expiration or if the board does not grant an additional special exception at that time, the use shall be deemed illegal, and the business shall be required to cease operations.

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.*

Approval with Conditions: Based on the evidence and testimony provided, I find that the proposed use can meet the standards for a special exception under certain conditions and make a motion to approve the requested special exception with the following conditions [list conditions].

Deny: Based on the evidence and testimony provided, I find that the proposed use does not meet [list standards for a special exception not met] and make a motion to deny the request.

ADDITIONAL SPECIAL EXCEPTION HISTORY

In May 2015, staff sent a letter to Mr. Vick recommending he apply for a new special exception (see attached letter). Mr. Vick submitted an application (attached), but the application was incomplete in that it did not address the six standards for a special exception. Mr. Vick then retained Mr. Roger Heath, an attorney, to help him with his request. Staff met with Mr. Heath at his request. After some time passed, since staff had not heard anything more from Mr. Vick or Mr. Heath, the case was scheduled for consideration by the board. Mr. Heath then requested the case be postponed to allow him additional time to work on Mr. Vick's case. Staff agreed to the postponement, and Mr. Heath submitted an open records request for information related to Mr. Vick's property and previous requests. Staff supplied the information requested, and no further action was taken.

In January of this year, an additional open records request was submitted. It was not clear what different information was being requested from the previous request, so staff called Mr. Heath's office in early January and left a message with his assistant asking for clarification. Later that month, Mr. Heath spoke with staff by phone to discuss the open records request. After checking with the City Secretary's office on procedure in this case, staff sent an email to Mr. Heath notifying him that he would need to submit an amended request. No response to the message was received, and staff assumed no additional information was requested after all. In April, staff sent another email to Mr. Heath notifying him that Mr. Vick's case would be scheduled for consideration by the board in June. Staff sent a letter to Mr. Vick separately in May. No response to the email or to the letter was received, but after the required notification sign was posted on the property, Mr. Vick spoke with the mayor to ask why the sign had been posted. In response, staff called Mr. Vick and described the status of his special exception request. Mr. Vick requested staff to call his attorney, which we did. Mr. Heath had apparently not received the previous email messages, so he was unaware that case had been scheduled for board consideration. After verifying his fax number with his assistant, staff faxed over copies of the emails sent earlier this year. Since staff received no response to the fax, we called and left

a voicemail message for Mr. Heath on May 31 asking if he would like to postpone the case one month to have additional time to prepare. Mr. Heath then contacted staff and requested a one-month postponement.

Staff and Mr. Heath had discussions over the next several weeks about clarifying what should be included in the response to the open records request, and due to the delay in getting that request worked out, Mr. Heath requested an additional month's delay. In late July, Mr. Heath emailed staff to note that he did not think all materials requested had been provided and therefore requesting another one-month delay. Mr. Heath left a flash drive with the deputy city secretary on July 22, and she saved the information on the drive, which was picked up by Mr. Heath's associate the following week.



APPLICATION FOR SPECIAL EXCEPTION

Special Exception Use Requested: _____

Note: the use must be listed as a special exception use in Kennedale City Code Section 17-421.

Applicant

NAME: <u>ALBERT James Vick</u>	
PHONE: _____	EMAIL OR ALTERNATE PHONE: _____
MAILING ADDRESS: (Street) <u>PO Box 981</u>	
(City, State, Zip Code) <u>Burleson, TX 76097</u>	

Property for which a Special Exception is requested

ADDRESS: <u>537 W. Kennedale Pkwy, Kennedale TX 76060</u>
LEGAL DESCRIPTION:

NOTE: Attach metes and bounds description if property is not platted.

Property Owner

NAME: <u>Eagle Equipment</u>	
PHONE: <u>817-832-2657</u>	EMAIL OR ALTERNATE PHONE: _____
MAILING ADDRESS: (Street) <u>P.O. Box 170352</u>	
(City, State, Zip Code) <u>Arlington, Tex 76003</u>	

1. Has a previous application or appeal been filed on this property? ☐ Yes ☒ No

1.a. If yes, when was the application or appeal filed?

2. Identify any requirements of Section 17-422 of the Kennedale city code that cannot be met. Give reason(s) why the requirement(s) cannot be met. Use the back of this form or attach a separate page if additional space is needed.

3. If the special exception request is for a land use, is the request for a use not allowed in the zoning district?

☐ Yes ☒ No

3.a. Is this a remodel of an existing structure? ☐ Yes ☒ No

3.b. Is this new construction? ☐ Yes ☒ No

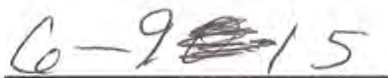
4. If the special exception request is for oil or gas well drilling, how many wells are requested for this location?

5. Special exceptions may be granted by the Board of Adjustment only if all of the conditions listed on the Notice to Special Exception Applicant are present.

On a separate page(s), please describe how your requested use will meet all of the six conditions stated above.



Signature of applicant



Date



CITY OF KENNEDALE
BOARD OF ADJUSTMENT
OWNER AFFIDAVIT

CASE #BOA _____

PROPERTY ADDRESS: 537 W. Kennedale Parkway
Kennedale, TX 76060

LEGAL DESCRIPTION:

Albert Vick

APPLICANT:

Tommys Welding + Fabrication

TYPE OF BOA REQUEST (E.G., SPECIAL EXCEPTION, VARIANCE):

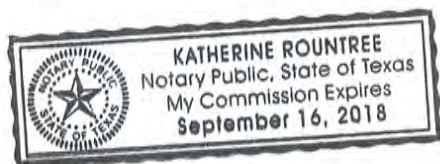
I, Wendell Smith, current owner of above mentioned property, authorize the applicant or his authorized representative to make application for the Kennedale Board of Adjustment to consider granting the above reference request on my behalf and to appear before the Board.

Owner Signature: [Signature]

Date: 6-9-15

SWORN TO and Subscribed before me by Drivers Licence - TX - Hollin Smith

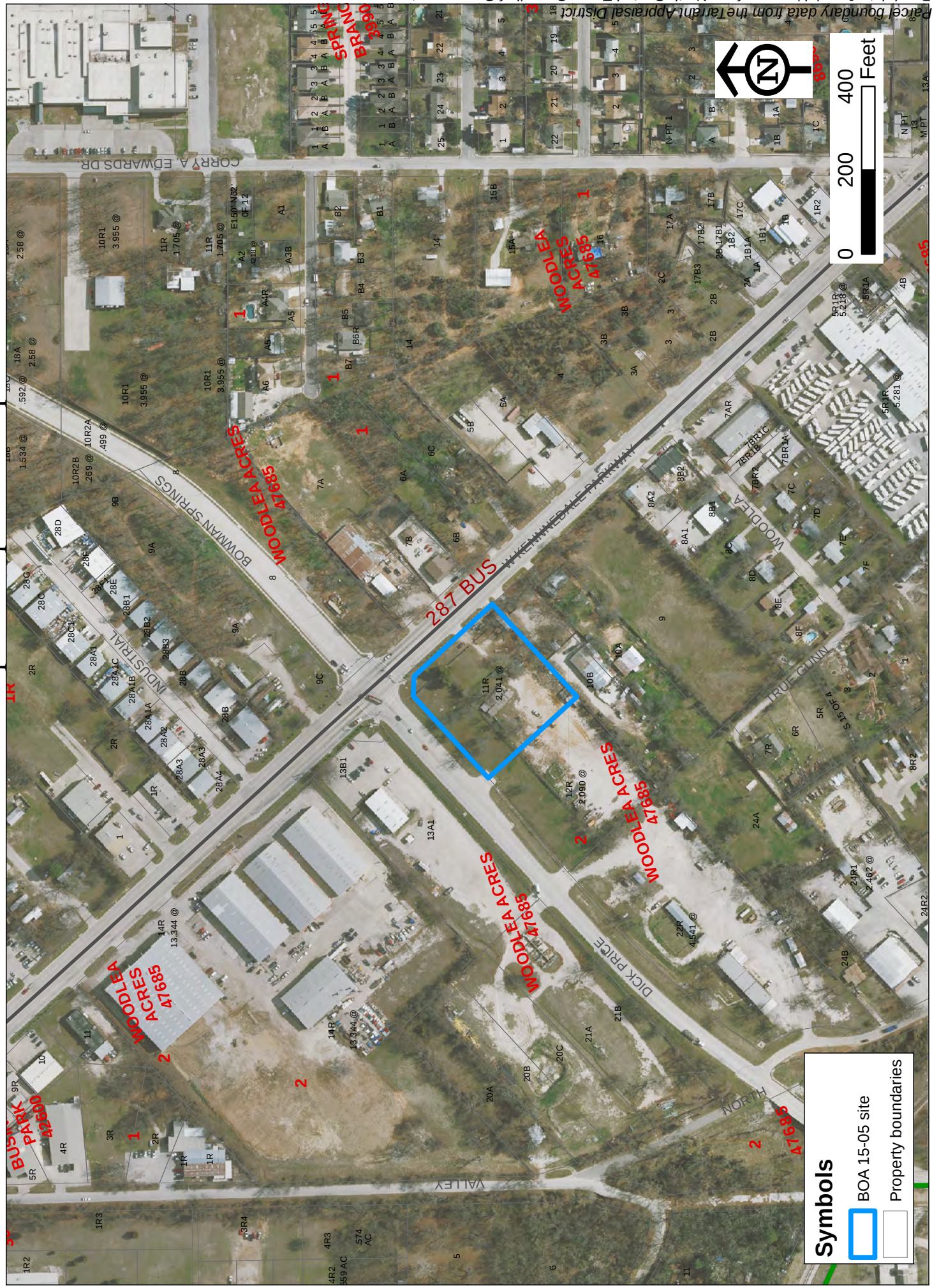
ON THIS 9th DAY OF June, 2015.



[Signature]

Notary Public, Tarrant County, Texas

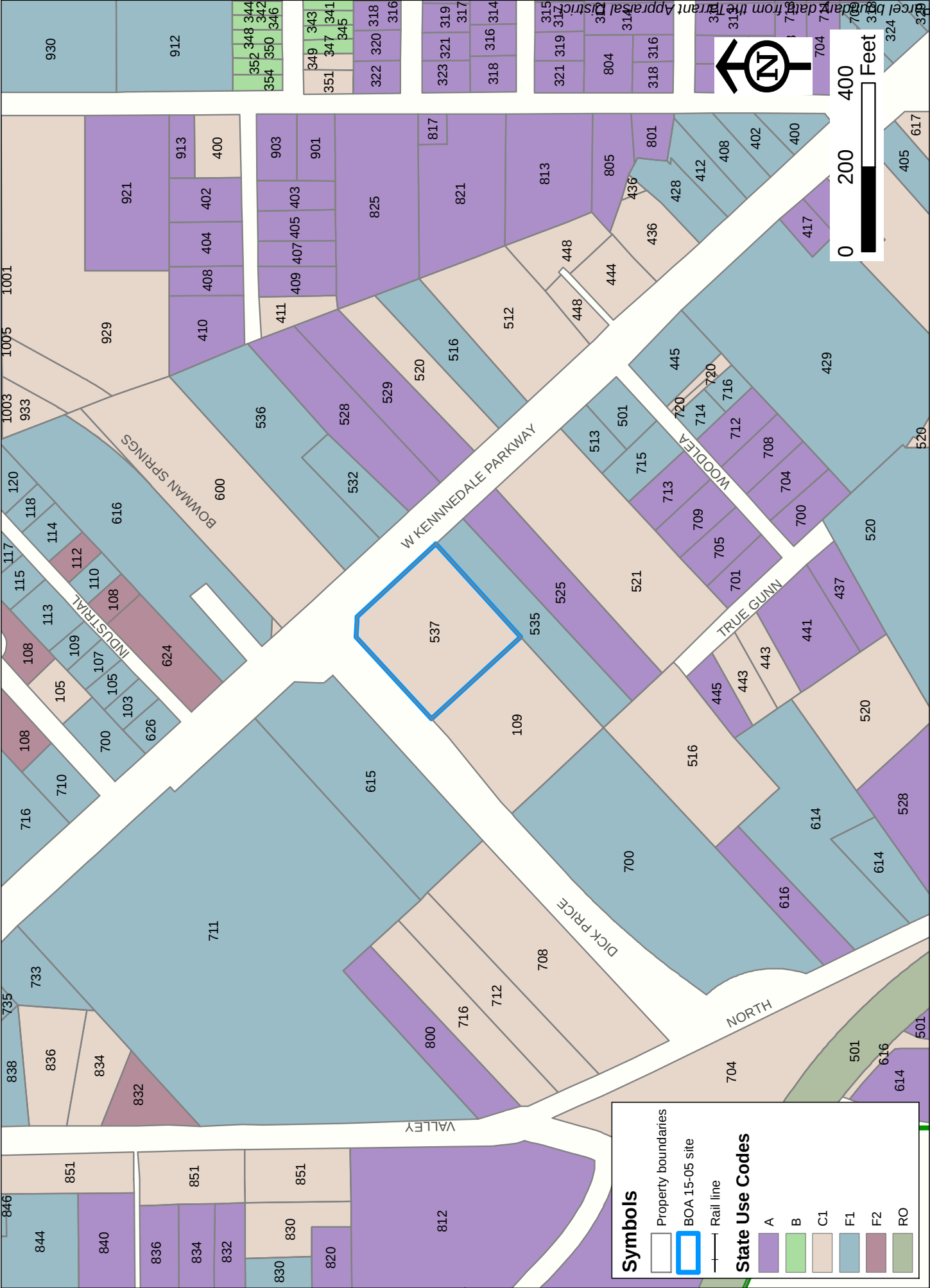
BOA 15-05 site of requested special exception



Symbols

-  BOA 15-05 site
-  Property boundaries

Land uses surrounding site of requested special exception (BOA 15-05)



Road data & aerial imagery from North Central Texas Council of Governments

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

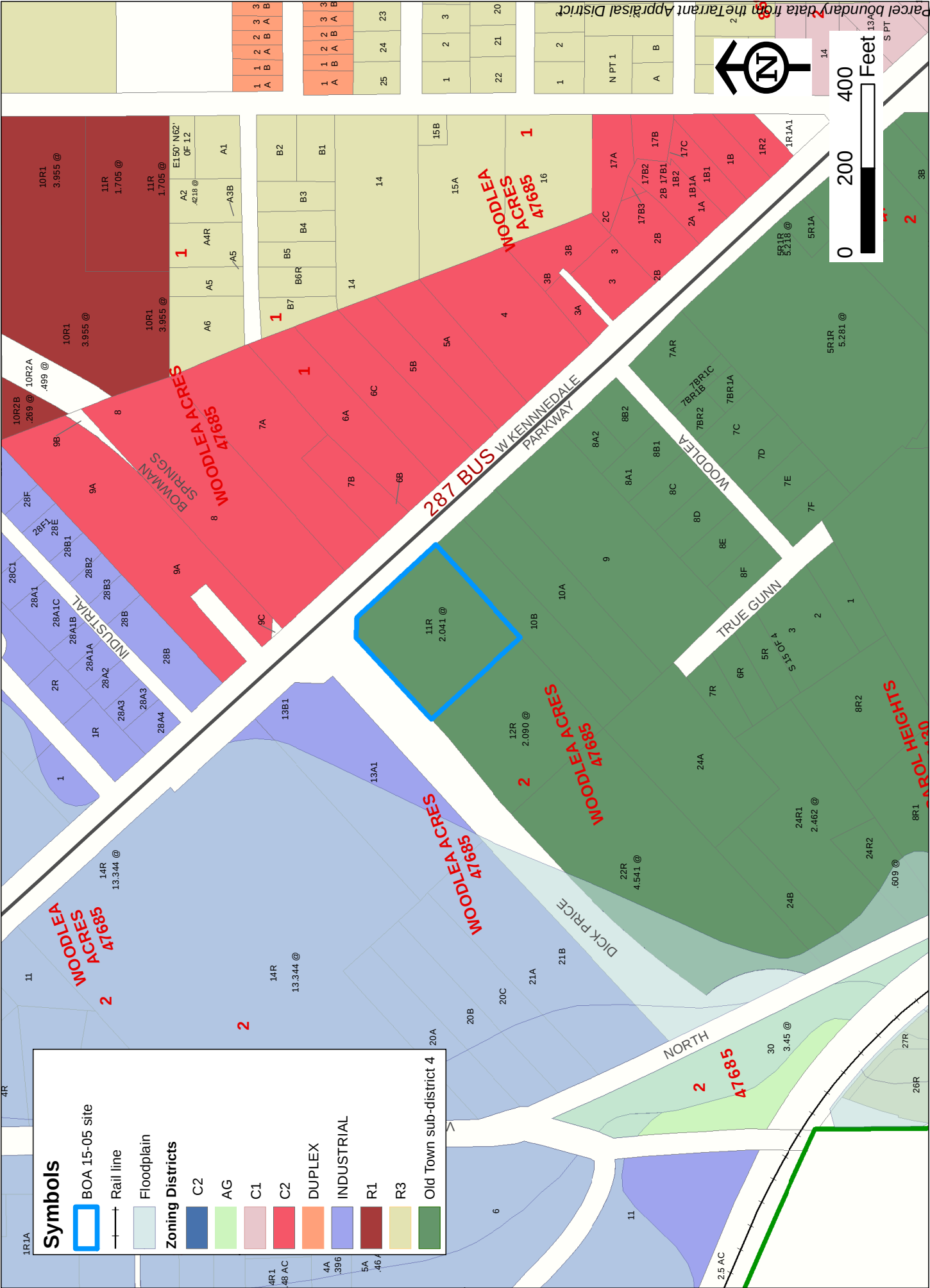
J UTILITIES	
J1	Water Systems
J2	Gas Companies
J3	Electric Companies
J4	Telephone Companies
J5	Railroads
J6	Pipelines
J7	Cable Companies
J8	Other

L COMMERCIAL/INDUSTRIAL	
L1	Commercial BPP
L2	Industrial BPP

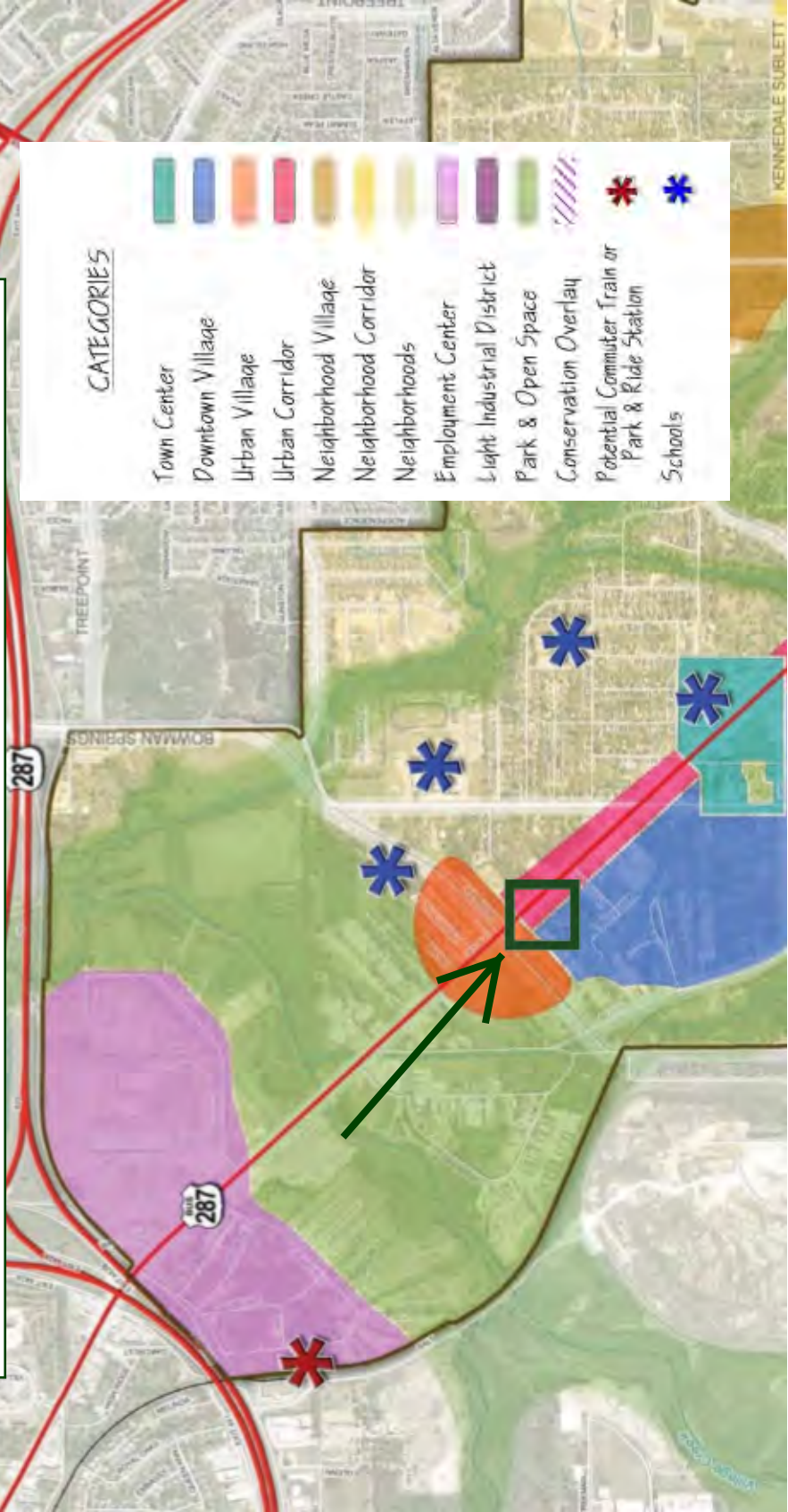
M MOBILE HOMES	
M2	Private Aircraft
M3	Mobile Home
M4	Other Tangible PP

O RESIDENTIAL INVENTORY	
O1	Vacant
O2	Improved

Zoning surrounding site of requested special exception (BOA 15-05)



Future Land Use Plan showing site of special exception request (BOA 15-05)





05/26/2016



537

05/26/2016

**ROGER HEATH
HEATH TRIAL FIRM**
P.O. Box 7048
Granbury, Texas 76048
844.628.7425 toll free
844.333.0740 toll free fax
rogerheath@outlook.com

June 23, 2015

OPEN RECORDS REQUEST

Dear Representative:

As allowed by the terms of *the Texas Open Records Act., Tex. Rev. Civ. Stat. Ann., Section 6252-17a (Vernon's Supp., 1988)*, we hereby make a request for the following documents, including all attachments thereto:

1. A full and complete unedited copy of any and all records, reports, documents, and correspondence of any nature including but not limited to those in electronic format, regarding 537 W. Kennedale Parkway and/or Jimmy's Welding & Fab located in Kennedale Texas and/or Albert Vick.

The documents and discs should be forwarded, addressed as follows:

Roger Heath,
P.O. Box 7048
Granbury, Texas 76048

If there are any charges for the reproduction of these materials, please advise our office at the above number prior to processing this request so that payment may be timely remitted

Thank you for your assistance in this request. If you have any questions regarding the request, please give me a call.

Very truly yours,



Roger Heath
RH:kmc

ROGER HEATH
HEATH TRIAL FIRM
P.O. Box 7048
Granbury, Texas 76048
844.628.7425 toll free
844.333.0740 toll free fax
rogerheath@outlook.com

June 23, 2015

Mr. Bob Hart, City Mgr.
City of Kennedale, Texas
405 Municipal Drive
Kennedale, Texas 76060

Re: My Client: Jimmy Vick
Jimmy's Welding & Fab
537 W. Kennedale Parkway
Kennedale, Texas

NOTICE OF REPRESENTATION

Dear Mr. Hart:

Please be advised that I represent Albert ("Jimmy") Vick, Individually and d/b/a Jimmy's Welding & Fab located in Kennedale, Texas.

Please direct all future correspondence and communication regarding this matter to the undersigned.

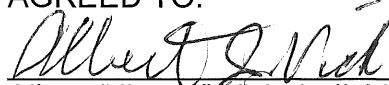
Very truly yours,



Roger Heath

RH:kmc

AGREED TO:



Albert "Jimmy" Vick, Individually and
d/b/a Jimmy's Welding & Fab

LICENSED TO PRACTICE LAW IN TEXAS AND NEW MEXICO

Rachel Roberts

From: Rachel Roberts
Sent: Tuesday, February 02, 2016 1:53 PM
To: 'rogerheath@outlook.com'
Subject: James Vick's special exception case

Dear Roger,

Could you tell me if you are still representing Mr. James Vick in his special exception case? If so, I would like to discuss with you placing his case on an agenda for the Board of Adjustment. I was planning to place his case on the board's March 1st agenda. Would that work for your and Mr. Vick's schedule?

Rachel Roberts

--
R A C H E L R O B E R T S
Community Development Director
cityofkennedale.com

O 817.985.2135
F 817.483.0182



* * * Communication Result Report (May. 25. 2016 5:04PM) * * *

1)
2)

Date/Time: May. 25. 2016 4:57PM

File	No. Mode	Destination	Pg(s)	Result	Page Not Sent
2761	Memory TX	18446287425	P. 3	OK	

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection



FAX

To: Roger Heath	From: Rachel Roberts
Fax: 844-333-0740	Pages: 3 (incl. cover)
Phone: 844-628-7425	Date: May 25, 2016
Re: James Vick's special exception request	CC:

Dear Roger,

I wanted to follow up with you because based on our conversation yesterday, it seems likely that you haven't received the emails I sent in February and April, and I think these email messages would help clear up some confusion about where we are in the process of Mr. Vick's request. I called this morning to see if I had the right email address and spoke with your assistant/receptionist. She said the one we have in our records is correct, so it may be that my emails went to your spam email account. I wanted to make sure you had all copies of communication we'd tried to send, so I am faxing over copies of the sent messages.

If you need any additional information, or if you have any questions about our process, next steps, etc., I would be happy to talk with you. I believe you have my phone number, but in case you need it, it is 817-985-2135.

Sincerely,

Rachel Roberts



May 11, 2016

James Vick
6629 CR 608
Burleson, TX 76028

Dear Mr. Vick,

Last year, you applied for a special exception to continue your welding business at its current location on Kennedale Pkwy. We postponed placing your request on an agenda for the Board of Adjustment at the request of your representative, Roger Heath, so that he would have more time to prepare for your application's hearing by the Board. Now that almost a year has passed since you applied for a special exception, we are placing your application on an agenda for the Board of Adjustment. Your application will be considered by the Board on Tuesday, June 7 at 7:00 PM in the Council Chambers at Kennedale City Hall.

We hope you will be able to attend the meeting on June 7 to present your case to the Board. A special exception will allow you to continue operating your business legally. Without a special exception, we would not be able to issue a business license for your business. It is important, therefore, for you to attend the meeting to present documentation to the Board about how your business meets the standards for a special exception (please note: if you are unable to attend the meeting, you can give the information to me beforehand, and I'll give the information to the Board during the meeting). For example, if your business produces any noise, odors, fumes, or light that would be considered a nuisance for another business that wanted to open next to your business, you would want to provide information to the Board about how you would eliminate or reduce any nuisance elements. You might also want to describe any utilities needed for your business and whether you have those utilities available on site. The enclosed handout shows the standards for granting a special exception that you will want to address through your presentation to the Board. I would be happy to answer any questions you may have about the kind of information the Board usually looks for.

for Roger Heath 505-504-8888 per qam Vick 5.23.16

JAN 04 2016

**ROGER HEATH
HEATH TRIAL FIRM**
P.O. Box 7048
Granbury, Texas 76048
844.628.7425 toll free
844.333.0740 toll free fax
rogerheath@outlook.com

Call - is this dir
from last time
asst or secy? will let me
know or have R. Heath call
me
RR
1-4-16

December 29, 2015

City of Kennedale, Texas
Attn: Clerk, Open Records Request
405 Municipal Drive
Kennedale, Texas 76060

Spoke w/ asst secy @ 844 #
on 5-25, confirmed correct
email address is the outlook
address. I will fax over sent
emails so Mr. Heath can see
previous communications.

OPEN RECORDS REQUEST

Dear Representative:

As allowed by the terms of the *Texas Open Records Act*, *Tex. Rev. Civ. Stat. Ann., Section 6252-17a (Vernon's Supp., 1988)*, we hereby make a request for a full and complete, unedited copies of the following documents regarding 537 W. Kennedale Parkway and/or Jimmy's Welding & Fab located in Kennedale Texas and/or Albert Vick, including all attachments thereto:

All Zoning applications, specifically but not limited to Special Use Permits, completed by referenced applicant;

All State mandated legal notices issued by City in regard to the Zoning applications, specifically but not limited to Special Use Permits;

All legally posted Agendas for the City's Board of Adjustment, Planning and Zoning Commission and City Council relevant to all Zoning applications submitted by applicant;

All adopted/approved Minutes of the City's Board of Adjustment, Planning and Zoning Commission and City Council, including all Public Hearings and official votes relevant to applicant's Zoning application;

All meeting notes, handwritten, recorded or type-written, made during all meetings with applicant. These meetings may or may not be posted and would be attended by members of the Board of Adjustments, Planning and Zoning Commission, City Council and/ or City staff;

All meeting notes, handwritten, recorded or type-written, made during legally posted meetings which were to consider applicant's Zoning application;

All notes, handwritten, recorded, or type-written, in all meetings, where any/all members of the Board of Adjustment, Planning and Zoning Commission, City Council and City staff are present, and applicant's Zoning application was discussed;

Record of all communication between the City and applicant. Such communication shall include but is not limited to all Zoning applications submitted by applicant; and

All City notices, letters or record of to applicant of the confirmation or denial of all Zoning cases requested.

The documents and discs should be forwarded, addressed as follows:

Roger Heath,
P.O. Box 7048
Granbury, Texas 76048

If there are any charges for the reproduction of these materials, please advise our office at the above number prior to processing this request so that payment may be timely remitted

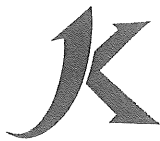
Thank you for your assistance in this request. If you have any questions regarding the request, please give me a call.

Very truly yours,



Roger Heath
RH:kmc

left msg on voicemail
@ 505-## asking if
they'd decided
whether they wanted
to postpone a month.
RH



KENNEDALE
Planning Department
www.cityofkennedale.com

FAX

To: Roger Heath	From: Rachel Roberts
Fax: 844-333-0740	Pages: 3 (incl. cover)
Phone: 844-628-7425	Date: May 25, 2016
Re: James Vick's special exception request	CC:

Dear Roger,

I wanted to follow up with you because based on our conversation yesterday, it seems likely that you haven't received the emails I sent in February and April, and I think these email messages would help clear up some confusion about where we are in the process of Mr. Vick's request. I called this morning to see if I had the right email address and spoke with your assistant/receptionist. She said the one we have in our records is correct, so it may be that my emails went to your spam email account. I wanted to make sure you had all copies of communication we'd tried to send, so I am faxing over copies of the sent messages.

If you need any additional information, or if you have any questions about our process, next steps, etc., I would be happy to talk with you. I believe you have my phone number, but in case you need it, it is 817-985-2135.

Sincerely,

Rachel Roberts

Rachel Roberts

From: Rachel Roberts
Sent: Thursday, February 04, 2016 12:30 PM
To: rogerheath@outlook.com
Subject: request for more information for Mr. Vick's request

Dear Roger,

I checked with Kathy Moore, and she said you would have to submit another open records request—or an amendment to your previous one—unfortunately. But you can send it directly to me or use the form on the city's website. It usually takes around 2 business days to get the boxes from storage and another 1-2 days for us to identify what boxes to pull and send the request to our storage facility. You won't have to charge a fee for us to get the boxes from offsite storage.

Rachel

--
RACHEL ROBERTS
Community Development Director
cityofkennedale.com

O 817.985.2135
F 817.483.0182



Rachel Roberts

From: Rachel Roberts
Sent: Tuesday, April 12, 2016 3:33 PM
To: 'rogerheath@outlook.com'
Subject: special exception request for James Vick

Dear Mr. Heath,

I'm writing to follow up with you after our last exchange of emails and phone calls in February. At that time, you had requested we delay placing Mr. Vick's case on an agenda to allow additional time for you to collect information. It has now been nearly a year since Mr. Vick's original application last June, and we are moving forward with his request. His case will be heard by the board on its June 7th agenda. If you would like to include any information in the board packet going to the Board of Adjustment, we will need that information in a digital format (PDF preferred) by the end of the business day on Monday, May 30th.

Please note that as part of the notice requirements, we will be placing a sign on his property to notify the public of the upcoming public hearing. We will also be visiting the site to review the site and use in terms of meeting the standards for a special exception.

If you have any questions about Kennedale's special exception process, please let me know.

Sincerely,
Rachel Roberts

--
RACHEL ROBERTS
Community Development Director
cityofkennedale.com

O 817.985.2135
F 817.483.0182



**ROGER HEATH
HEATH TRIAL FIRM**
P.O. Box 7048
Granbury, Texas 76048
844.628.7425 toll free
844.333.0740 toll free fax
rogerheath@outlook.com

June 23, 2015

OPEN RECORDS REQUEST

Dear Representative:

As allowed by the terms of the *Texas Open Records Act., Tex. Rev. Civ. Stat. Ann., Section 6252-17a (Vernon's Supp., 1988)*, we hereby make a request for the following documents, including all attachments thereto:

1. A full and complete unedited copy of any and all records, reports, documents, and correspondence of any nature including but not limited to those in electronic format, regarding 537 W. Kennedale Parkway and/or Jimmy's Welding & Fab located in Kennedale Texas and/or Albert Vick.

The documents and discs should be forwarded, addressed as follows:

Roger Heath,
P.O. Box 7048
Granbury, Texas 76048

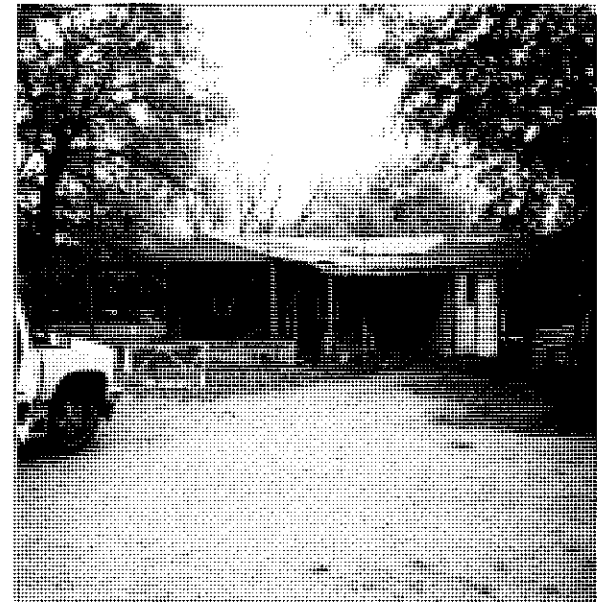
If there are any charges for the reproduction of these materials, please advise our office at the above number prior to processing this request so that payment may be timely remitted

Thank you for your assistance in this request. If you have any questions regarding the request, please give me a call.

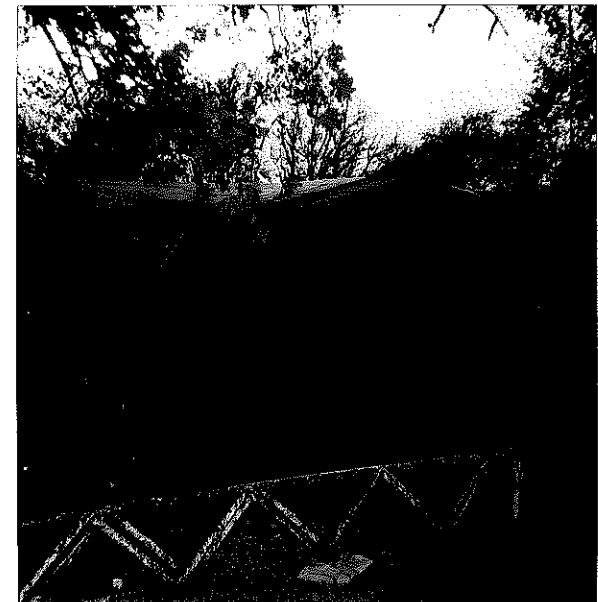
Very truly yours,



Roger Heath
RH:kmc



Demol
537 W. Mansfield Hwy
(EMC Equipment Co.)



Demol
537 W. Mansfield Hwy
(EMC Equipment Co.)

ELECTRICAL PERMIT

N^o 2647

CITY OF KENNEDALE

Box 268

Kennedale, Texas 76060

537 W. Mansfield Hwy

ADDRESS

6-8-99

DATE

ADDITION

LOT

BLOCK

ZONING

AREA SQ. FT.

GARAGE SQ. FT.

JOB DESCRIPTION

240V SERVICE

CONTRACTOR

297-3092

CHK #5810

ADDRESS

PHONE

76030

RECEIPT NO

CKNADP

APPROVED BY

☐ Commercial ☒ Residential ☐ Apartments

Permit Fee

\$

38.00

☐ New ☐ Addition ☐ Alteration ☒ Repair

Construction under this permit shall be in compliance with all city ordinances.

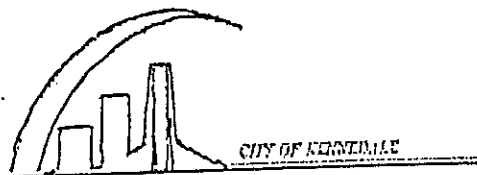
Office Copy - White

File Copy - Pink

Inspector's Copy - Blue

Contractor Copy - Canary

CITY OF KENNEDALE
209 N. NEW HOPE ROAD
P.O. BOX 268
KENNEDALE, TEXAS 76060
(817) 478-3418



CERTIFICATE OF OCCUPANCY

ISSUED TO Jimmy's Welding

ADDRESS OF USE 537 West Mansfield Highway

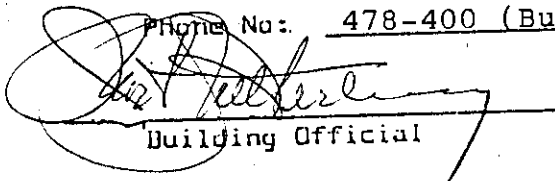
To be used as Welding Shop in "C-2" district,
and has been inspected and found to comply with the provision of the Zoning Ordinance and
Building Codes pertaining thereto. I do hereby approve and issue the Certificate of
occupancy.

SPECIAL CONDITIONS: Highway 287 Overlay Restrictions & Regulations apply. Portable
signage is prohibited. Dumpsters must be screened from public view. An annual
Business License is required. Building cannot be utilized as a residence or
for living or sleeping quarters. Property must be kept free of trash, debris,
junk parts and tall grass/weeds.

Tenant's Name: Jimmy and Laree Vick

Address: ~~X6629XXRX808XXBurlisonXXTexas76028XX~~ (Residence)

Phone No.: 478-400 (Business) ~~(817)XX295XX955~~ (Home)


Building Official

30 January 1996
Date Issued

REQUEST FOR INSPECTION

DATE: 1-29-96

537 W. Mansfield Hwy

TIME: 11:15 am

Jummy's Welding
JOB ADDRESS

CONTRACTOR

☐ RESIDENTIAL
☒ COMMERCIAL

BUILDING

- ☐ Foundation
- ☐ Fire Box
- ☐ Framing
- ☐ Final

ELECTRICAL

- ☐ Rough
- ☐ Final
- ☐ Temp. Pole
- ☐ Re-Connect
- ☐ Pool Ground

PLUMBING

- ☐ Rough
- ☐ 2nd Rough
- ☐ Final
- ☐ Sewer
- ☐ Gas

MECHANICAL

- ☐ Rough
- ☐ Duct
- ☐ Final

MISC.

- ☐ Approach
- ☐ Sign
- ☐ Zoning
- ☐ Other
- ☐ Stake Out
- ☐ Pool Steel
- ☐ Pool Final

☒ C.O. Inspection

☐ Reinspection

REMARKS

INSPECTOR

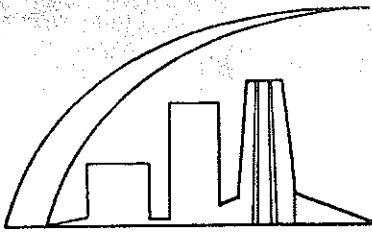
DATE

Bill & Assoc's
1-29-96

☒ APPROVED

☐ TURN DOWN

C.O. Insp



CITY OF KENNEDALE

"Building for Tomorrow"

9 November 1995

209 N. New Hope Road, P. O. Box 268 • Kennedale, Texas 76060 • (817) 478-5418

Mr. Wendel Smith
Eagle Equipment Company
P. O. Box 170606
Arlington, Texas 76003-0606

11-9-95 on site at 4:35pm
CERTIFIED # P 382 181 734 w/ copy via U.S. Mail
Chatted w/ Frank Newman (Eagle Employee) who is occupying the one house. He advised that Eagle Equipment was planning to demo the Sub-Std House (addressed herein) as well as the 3 auto-blogs (addressed herein) and clean up the entire property site. He stated, they would probably also "demo" the house.

RE: Code Violations and Sub Standard/Dilapidated Structures - Lot 11 of Block 2 in Woodlea Acres Sub Division, Kennedale, Texas (537 West Mansfield Highway)

Dear Mr. Smith:

This office has been advised that you possess ownership of the above referenced property and as a result, you are hereby provided with written notification that a number of problem areas exist, at that location, many of which are Ordinance or City Code violations. In the following, I will attempt to address each of the problem areas briefly:

1. The City Water line has been tapped onto and as a result, unmetered water has been acquired for various parts of the property. The City has shut off that water supply and service will not be restored until such time as a water service line has been installed/connected to the main service line on Mansfield Highway, a meter has been installed and all of the appropriate Water Impact fees and Deposits have been paid.

2. As you may or may not know, there are currently three (3) major structures located on the property and they are.....Jimmy's Welding (business address of 537 W. Mansfield Hwy), an abandoned /dilapidate residence, located behind the Jimmy's Welding structure and a residential structure which appears to be currently occupied (shown as 537 W. Mansfield Hwy. Residence). It is the latter structure that was previously addressed in item 1. as requiring City Water service. You should be advised that City records indicate that the 537 W. Mansfield Hwy Business location (Jimmy's Welding) does not receive City Water service. If it is discovered that this structure is, in fact, receiving water, that service will also be disconnected pending payment of Impact Fees, installation of approved water line and meter and payment of the required Deposits.

3. On occasion, a motorhome is positioned on the premises. I am assuming that it has been placed there for storage purposes only?. In the event that someone has been occupying it, you should be made aware of the fact that per Section 17-421 of the City Code, utilizing a piece of recreational equipment as a residence is unlawful and strictly prohibited within the City of Kennedale.

4. The property itself is in an unacceptable state, from an appearance standpoint, as evidenced by the tall weeds and brush, in excess of the twelve (12) inch maximum height and there are many areas where concentrations of debris and scrap materials have been permitted to accumulate. These conditions are in violation of Section 15-4 of the City Code and, as such, must be corrected on, or before Friday, 24 November 1995. Failure to remove the debris/waste materials and cut the weeds/brush will result in the receipt of a Citation and a fine of up to \$200 with each day beyond the 24 November 1995 compliance date being considered a separate offense.

5. Finally, you are hereby notified that the residential structure, directly behind the Jimmy's Welding location, has been inspected by the Building Inspector and as a result has been declared unsafe and uninhabitable and as such is considered a public nuisance and shall be abated by repair/rehabilitation or by demolition/removal. It should also be noted that there are three (3) other structures (outbuildings) located behind, and adjacent to the residence being occupied, that are also considered to be a child and safety hazard which will have to be abated through repair or demolition along with this structure.

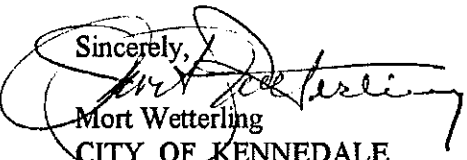
Within fifteen (15) days of the date of this notification, you shall advise the City of Kennedale as to whether it is your intent to rehabilitate or demolish these structures. If demolition is your elected option, you should be advised that a Demolition Permit shall be acquired within twenty-one (21) days of the date of this notification and prior to the demolition operation itself. Demolition includes the actual razing of the structures themselves as well as removal of all foundation and sub surface materials and the haul off /removal of same from the premises. The property owner is also held solely responsible for ensuring that all Utility services have been disconnected and that any hazardous materials have been appropriately disposed of in accordance with all State and Federal guidelines and requirements.

In the event that you are of the opinion that any of these structures are worth saving and that repair is economically feasible, please be advised that all of the required Permits (Building, Electrical, Plumbing and Mechanical) shall be acquired and Plans submitted prior to commencement of the rehabilitation process. The above referenced structures have been placarded as being Dangerous Structures which are Sub Standard and/or Unsafe For Occupancy. It is a misdemeanor to remove, attempt to remove or deface that Notice or Notices.

In the event that questions arise, please do not hesitate to contact the Code Compliance office for assistance. We can be reached at (817) 483-1297 during the business hours of 8:00 a.m. and 5:00 p.m. on Monday through Friday, Holidays excluded.

It is respectfully recommended that you give these urgent matters your most expeditious attention.

Sincerely,



Mort Wetterling

CITY OF KENNEDALE

Permits/Code Compliance Department

mw

cc: City Administrator
Director of Utility Billing
Director of Water Operations

CITY OF KENNEDALE
APPLICATION FOR CERTIFICATE OF OCCUPANCY

Date: 1-29-96

Fee 38.00

Business Name: Jimmy's Welding Bus. Tel. No. 478-4000

Business Address 537 W. Mansfield Hwy Tax I.D. # _____

Type of Business Welding Shop Bldg. Sq. Ft. _____

Bus. Owner's Name: Jimmy Vick-LAREE Home Address 6629 CR 608

Burleson, TX 76028

Home Tel. No. _____

Building Owner's Name Eagle Pipeline - Wendell Smith Home Address _____

Building Owner's Tel. No. 478-6797 (Work) _____

(Home) _____

Certificate Of Occupancy Questionnaire

1. Are you enlarging an existing tenant space by combining suites, or portions of suites? Yes ☐ No ☒

List lease spaces being combined _____

2. Will you store, use, dispense or mix flammable or combustible liquids for purposes other than maintenance for operation of equipment? Yes ☐ No ☒

If so, specify the type of product and the projected quantities. _____

3. Will there be any spray painting on premises? Yes ☐ No ☒

4. Will you handle or use any hazardous or toxic chemicals such as but not limited to oxidizers, corrosive liquids, poisonous gases and radioactive materials? If so, specify the type and projected quantities. Yes ☐ No ☒

5. Will the principal use of the building or tenant space be used for storage? Yes ☐ No ☒

a. If yes, what materials will be stored? _____

b. What percentage will be used for storage? _____

c. How high will materials be stacked? _____

d. Will the materials be stored in racks? Yes ☐ No ☒

6. Will the building be equipped with a fire sprinkler system or a standpipe system? Yes ☐ No ☒

7. Will food or beverages be manufactured, packaged, stored, distributed, sold or prepared in any manner other than vending machines? Yes ☐ No ☒

8. Will alcoholic beverages be sold for consumption on the premises? Yes ☐ No ☒

9. Will a swimming pool be located on the premises? Yes ☐ No ☒

10. Will a septic tank be used on the premises? Yes ☐ No ☒

11. Will any goods or merchandise be displayed outdoors? Yes ☐ No ☒

12. Will any goods, merchandise or raw materials be stored outdoors? iron Yes ☒ No ☒

13. Will used goods be sold on the premises? Yes ☐ No ☒

14. Will you be performing any of the following processes on the premises? If so please circle those activities.
Manufacturing _____ Treating _____ Formulation/Mixing/Processing _____ Vehicle Washing _____ Welding _____

15. Will any liquid wastes or sludges be generated which are not disposed of in the sewer system? Yes ☐ No ☒

16. Will any form of waste water pre-treatment be utilized at this facility? If yes, briefly describe: Yes ☐ No ☒

17. Will combustible dust be generated? Yes ☐ No ☒

I hereby certify that I have completed this questionnaire and know the same to be true and correct.

Printed Name LAREE Vick Signature Laree Vick Date 1-29-96

For Office Use Only

Land Use Code _____ Occupancy Group _____

Zone _____ Approved by M.C.

Overlay - District - Modifier _____

Date _____ Release No. _____

☐ Gas

☐ Electric

Inspected by Bull & Assoc's

Comments: C.O. Inspection

Date: September 6, 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	Postpone at this time

UPDATE: City staff contacted Mr. Webster by email on Wednesday, July 27 to inform him that board packets would be distributed that week and to inquire whether he had any case updates to provide to the board. Staff followed up by phone call the following Monday. Mr. Webster said the Hoovers seemed to have made arrangements with their neighbor to buy additional land and that therefore they may not be at the board meeting the next night.

As Mr. Webster and the Hoovers did not attend the meeting, the board voted to postpone making a decision on this case until the next month (or for 30 days, whichever was later). Staff sent an email to Mr. Webster on Thursday, August 11 to advise him of the board's action on August 2 and to ask if the Hoovers had indeed been able to make arrangements with their neighbor. We received no response and followed up with a second email on Friday, August 26. We followed up by phone on Tuesday, August 30, and Mr. Webster said he had received the emails but had not replied because they were still working out the sale of land. He added that they were in the process of getting a legal description so they could do the conveyance. At this time, staff recommends postponing the case until the next meeting of the board.

The original staff report for this case is shown below for your reference.

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.

The map displays a residential neighborhood with various lot numbers. A lot is highlighted with a blue border, situated between 939 and 937. The map includes several streets: OAKRIDGE, SHADY CREEK, SHADY VALE, LITTLE SCHOOL, INDIAN SPRINGS, GREENFIELD, and OAKRIDGE. A legend in the bottom right corner, titled 'Symbols', shows a blue outline for 'BOA 16-04 site of request' and a green outline for 'Kennedale city limits'. A scale bar indicates distances of 0, 200, and 400 feet. A north arrow is also present.

Shady Creek Dr

Shady Vale Dr

Oak Ridge Ct

Indian Springs

Y Creek

Scale: 0, 200, 400 Feet

North Arrow

Highlighted Property: 1, 2

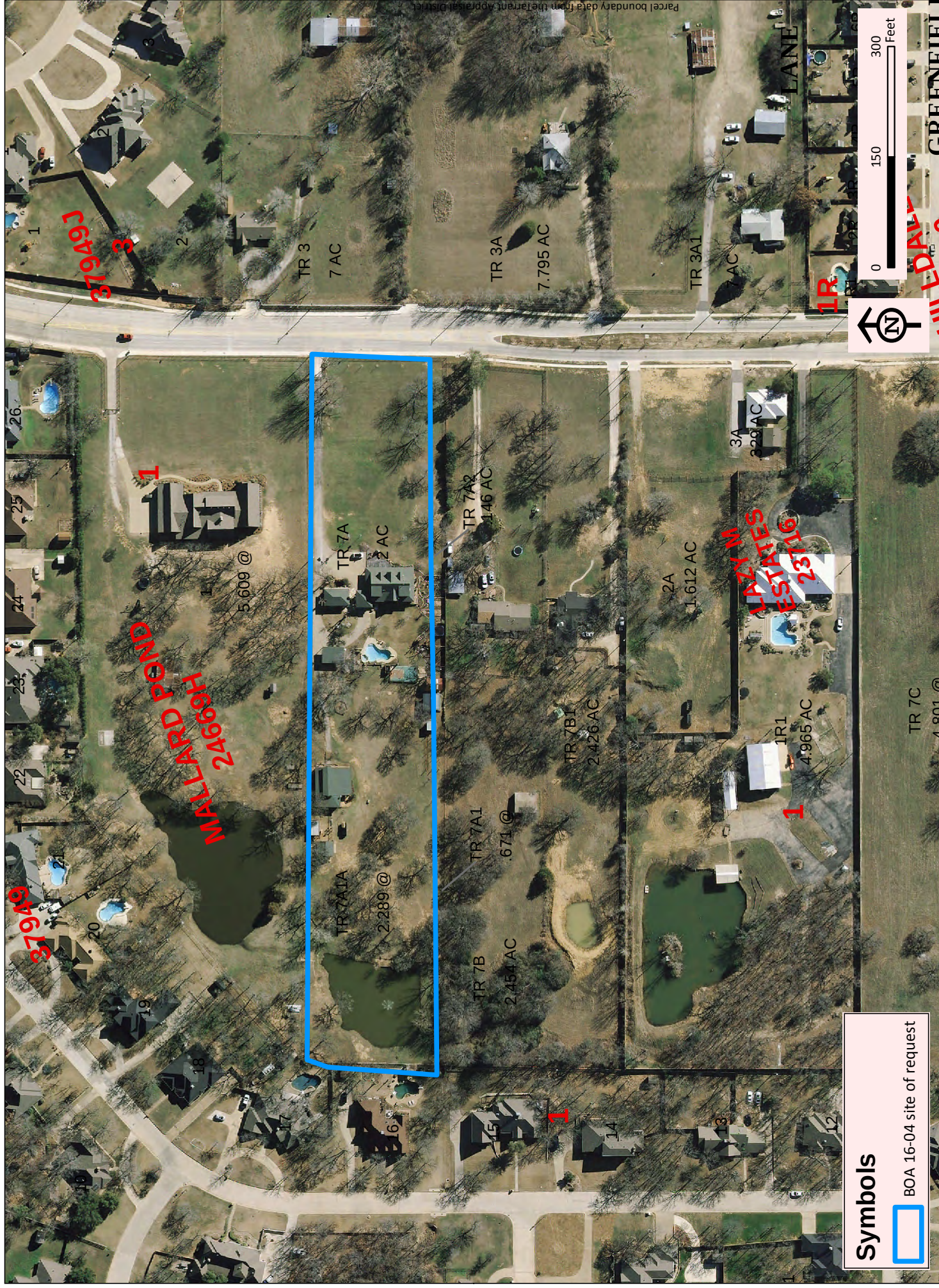
100

Symbols

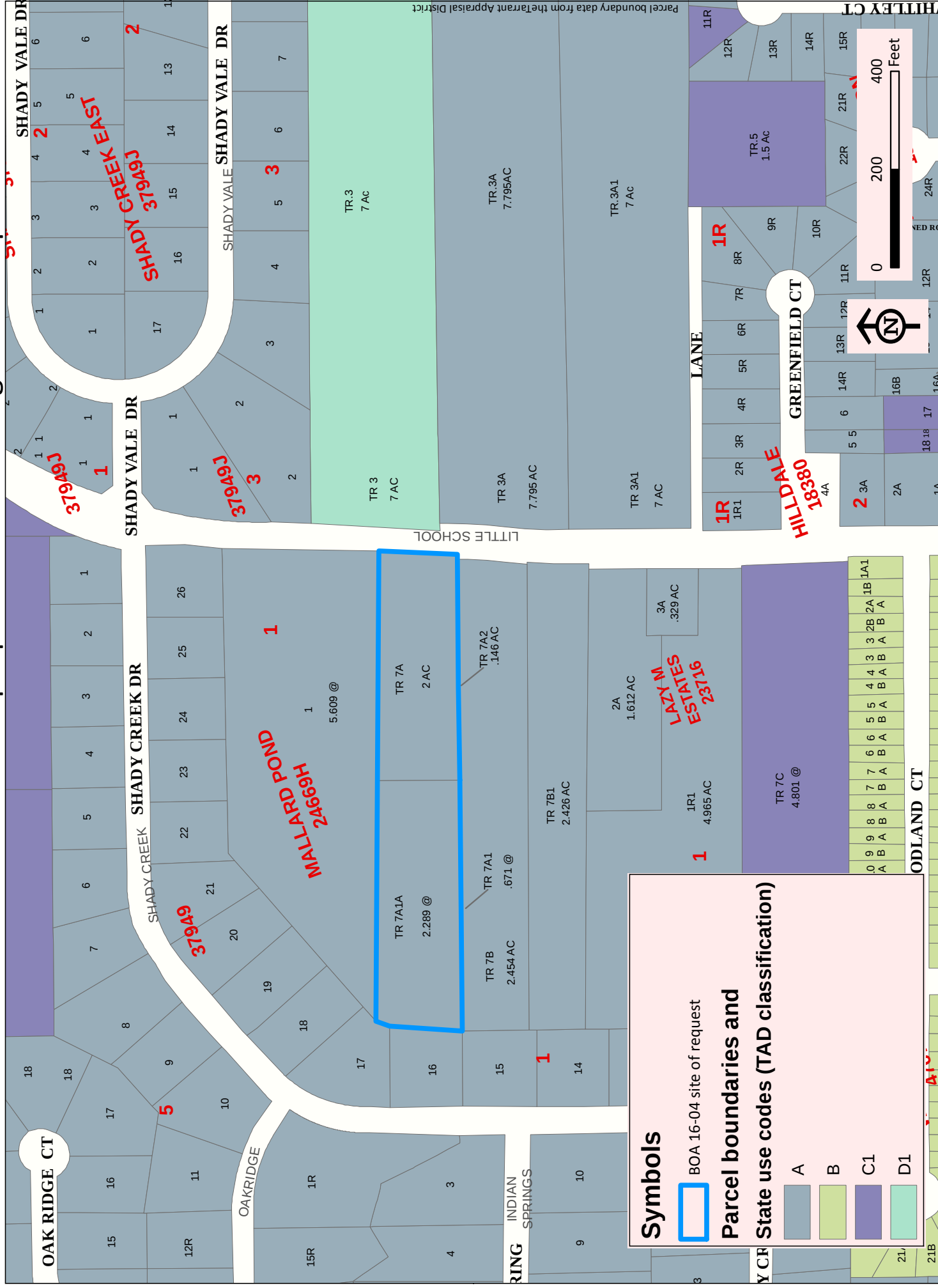
 BOA 16-04 site of request



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

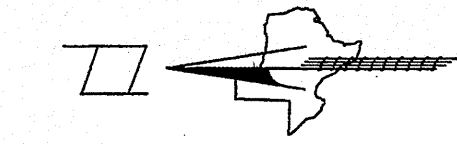
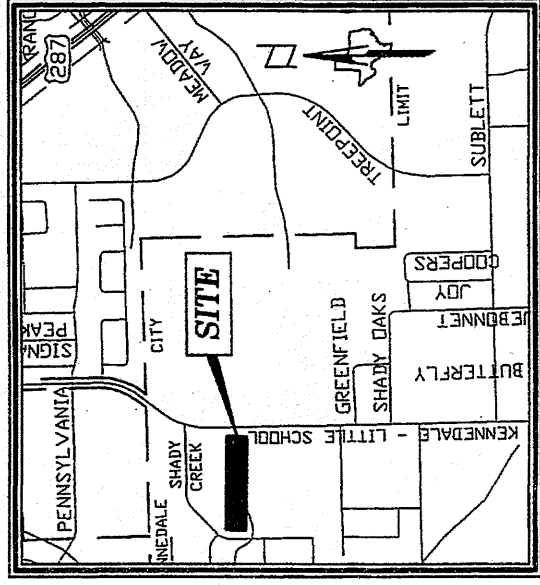
L COMMERCIAL/INDUSTRIAL	
L1	Commercial BPP
L2	Industrial BPP

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

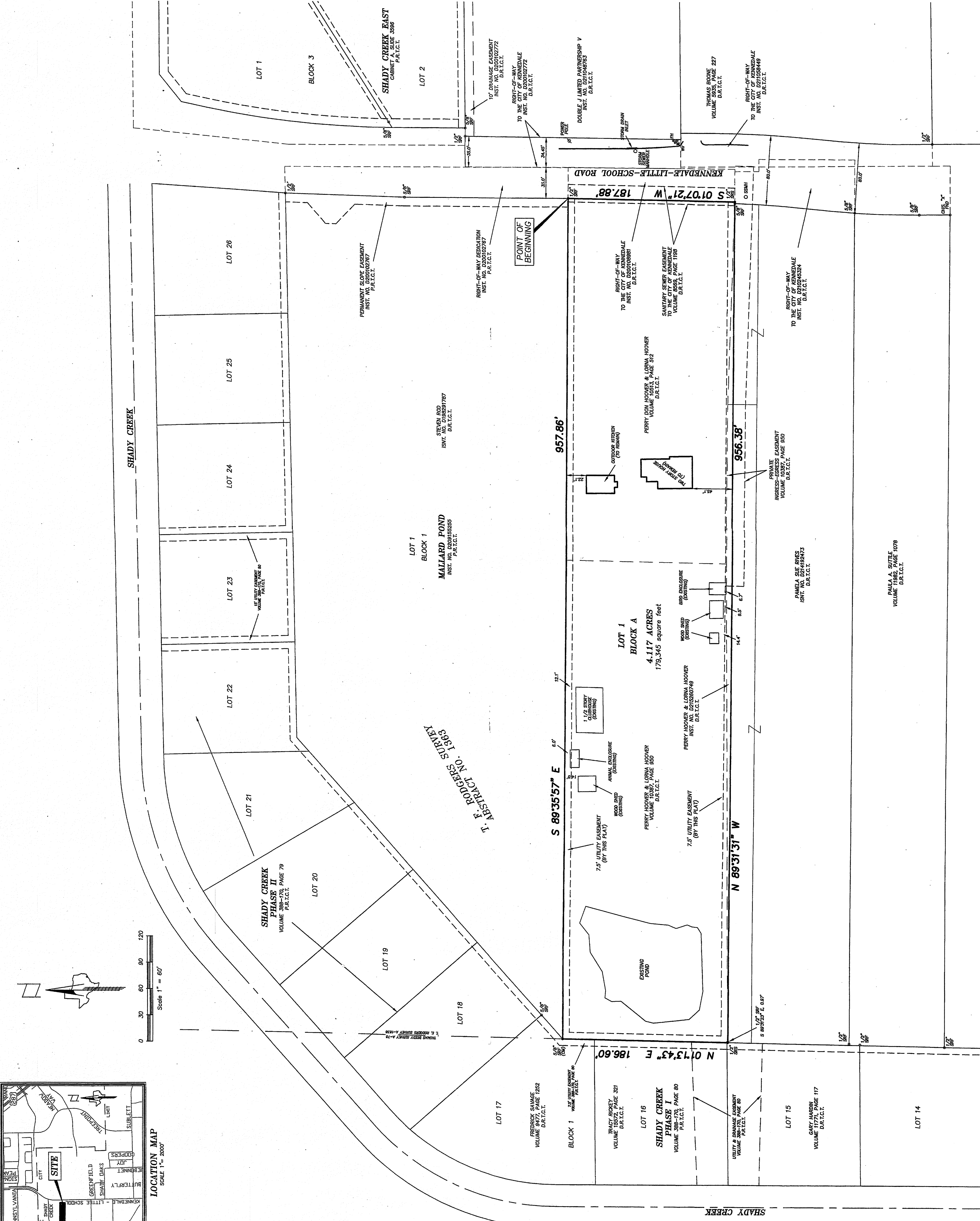
O RESIDENTIAL INVENTORY	
O1	Vacant
O2	Improved

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





Scale 1" = 60'



OWNERS DEDICATION AND ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF TARRANT

Know all men by these presents, that the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

KNOW ALL MEN BY THESE PRESENTS:

THAT, I, Michael Dale Linke, a Registered Professional Land Surveyor, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears from the records of the County of Tarrant, Texas, and is hereby approved and confirmed by me, the undersigned, on this day of May, 2016.

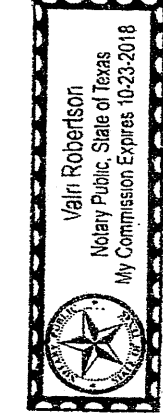
Michael Dale Linke
Registered Professional Land Surveyor
February 25, 2016
817-540-8048

NOTES:

- 1) The reason for this plat is to combine three unplatted lots into one lot.
- 2) The basis of bearings for this plat is the south line of Mallard Pond Addition.
- 3) State Plane Coordinates dated herein are based on City of Arlington Network Control Stations AR-18 and AR-45.

CITY SIGNATURE BLOCK:

THIS MINOR PLAT IS APPROVED BY THE CITY OF KENNEDALE, TEXAS ON THIS 14th DAY OF MAY, 2016.
By: *Rob Rott*
CITY MANAGER
Attest: *Valerie G. Murray*
CITY SECRETARY



MINOR PLAT LOT 1, BLOCK 1 ROCKING H RANCH AN ADDITION TO THE CITY OF KENNEDALE, TARRANT COUNTY, TEXAS

BEING 4.117 ACRES SITUATED
IN THE T. F. RODGERS SURVEY ABSTRACT NO. 1363,
IN THE CITY OF KENNEDALE,
TARRANT COUNTY, TEXAS

ONE LOT
4.117 ACRES
APRIL 16, 2016

PRISM SURVEYS, INC.

REG. NO. 101325-00

COMMERCIAL, RESIDENTIAL,
BOUNDARY, TOPOGRAPHIC,
SURVEYS
TITLE & EASEMENTS
1361 W. EULESS BOULEVARD, #112
EULESS, TEXAS 76040
(817) 540-8048
CONTACT: MR. MICHAEL LINKE

OWNER:

PERRY & LORNA HOOVER
937 LITTLE SCHOOL ROAD
KENNEDALE, TEXAS 76060
CONTACT: MR. PERRY HOOVER

FLOOD STATEMENT:
This plat is not a Flood Insurance Rate Map
for Tarrant County, Texas and Incorporated Areas, no
portion of this property is shown in a special flood hazard
zone on the Flood Insurance Rate Map, No. 404-800-000, Map Revised
September 25, 2009.

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

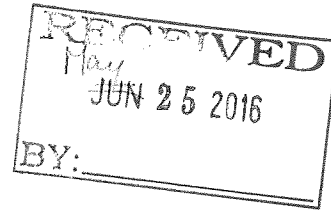
F: 817-483-0182

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~~ ft 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: September 6, 2016

Agenda Item No: REGULAR ITEMS - C.

I. Subject:

CASE # BOA 16-05 to receive comments and consider action on a request by Armando Gonzalez for a Variance to the City Code Section 17-405, "Zoning District Generally," to allow a reduction in side yard setback from 15 feet to 13 feet and in the front yard setback from 50 feet to 40 feet in an "R-1" single family residential zoning district at 911 Shady Oaks Dr, more particularly described as Hilldale Addition Block 2 Lot 17.

II. Originated by:

III. Summary:

IV. Recommendation:

Approve

V. Alternative Actions:

VI. Attachments:

1.	Decision Notice, 2004	copy of DECISION NOTICE #BOA03-012.pdf
2.	variance application BOA 16-05	BOA 16-05 application (reduced size).pdf
3.	Requirements for a variance	Staff report attachment -- requirements for a variance.pdf
4.	Zoning map (BOA 16-05)	BOA 16-05 map showing zoning.pdf
5.	Map showing land uses (BOA 16-05)	BOA 16-05 map showing land uses.pdf

Date: September 6, 2016

Agenda Item No: REGULAR ITEMS (C)

I. SUBJECT

CASE # BOA 16-05 to receive comments and consider action on a request by Armando Gonzalez for a Variance to the City Code Section 17-405, "Zoning District Generally," to allow a reduction in side yard setback from 15 feet to 13 feet and in the front yard setback from 50 feet to 40 feet in an "R-1" single family residential zoning district at 911 Shady Oaks Dr, more particularly described as Hilldale Addition Block 2 Lot 17.

II. SUMMARY

BACKGROUND AND OVERVIEW

Request	Variance from side yard and front yard setbacks
Applicant	Armando Gonzalez (property owner)
Location	Shady Oaks Dr is located off Little School Road, south of Greenfield Ct and north of Harrison Dr, east of Woodland Ct
Surrounding Uses	Single family residential
Future Land Use Plan Designation	Neighborhood
Staff Recommendation	Approve

CURRENT STATUS OF PROPERTY

This property is zoned "R-1" single family residential. The required front yard setback for primary buildings is fifty (50) feet, and the required side yard setback is fifteen (15) feet for interior lots.

The original Hilldale Addition plat dates from the 1950s. The lots within this subdivision were platted at lot widths of 66.5 feet (see attached plat drawing from 1958). At that time, there were restrictive covenants in place requiring a minimum house size of 800 square feet. Properties zoned R-1 now are required to have a minimum house size of 1,500 square feet in livable area, nearly twice what was originally required. And in reality, most R-1 properties have much larger homes due to the larger lot size required for this district. The average house size (living area) in R-1 properties is 3,525 square feet, according to the Tarrant Appraisal District, and 88% of R-1 lots are the required half acre or larger. Only four (4) properties with an R-1 zoning designation (including the property in question) are less than 1/3 of an acre in size.

Most of the lots on this street and within the Hilldale Addition have been built on, although this one has not been developed; the original owner also owned the lot to the west and built a house on that

lot only. All of the other houses on this street were built at a smaller front setback than the R-1 zoning district classification requires, approximately 35-40 feet.

Within this neighborhood, six lots are zoned R-1; three meet the minimum lot size of a half an acre, and three are 1/5-1/4 of an acre.

In 2004, the board granted a setback variance to the several properties within this subdivision (see attached decision notice from 2004).

SURROUNDING PROPERTIES & NEIGHBORHOOD

The property is located in a primarily residential area. There are only six properties on this street also zoned R-1; as you'll see on the attached zoning map, the majority of the properties in this part of the neighborhood are zoned R-3, which allows for much smaller lots (minimum 8,750 square feet) and setbacks (30-foot front setback, 10-foot side setback).

REQUIREMENTS FOR A VARIANCE

Please see the attached document "Requirements for a Variance" for a description of the board's role and authority regarding granting of variance requests.

ANALYSIS

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

Yes. This property was developed before the R-1 zoning district was created, and the platted lot sizes are smaller than the R-1 district requirements.

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

Essentially, yes. There are four lots in Kennedale zoned R-1 single family that are smaller than the half-acre minimum lot size; three of those lots are located in Hilldale (the lot in question and two adjacent lots). So while this lot is not the only property faced with this condition, it is unquestionably an unusual case.

(3) Is the condition self-created?

No. Mr. Gonzalez did not plat the property at the smaller lot size and did not request the R-1 zoning designation.

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

Yes. In most cases, owners of property within R-1 zoning districts have a lot size of half an acre to work within and have lots that are at least 100 feet wide and 125 feet deep, which allows much more room for a larger house expected in a zoning district with these lot requirements. Mr. Gonzalez and only a few of other property owners within Kennedale are not able to build similar homes.

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

While the property owner is able to use his property, he is not able to build with the same flexibility and to the same larger standard as other owners of property within an R-1 zoning district. Instead, he would be limited to building a home more fitting for an R-3 zoning district.

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

No. The majority of other properties in the area are zoned R-3 single family residential, which means the neighboring property owners will be accustomed to (and have homes built at) smaller front and side setbacks. And because the variance would be granted due to a condition inherent to the property rather than a financial or similar concern of the applicant, granting the variance still respects the purpose and intent of the zoning ordinance.

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

Yes. Granting the variance will allow the property owner to build a house in line with what other owners of property within an R-1 zoning district are able to build.

STAFF RECOMMENDATION

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

Yes. Based on the above analysis, staff recommends granting 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.

CITY OF KENNEDALE
BOARD OF ADJUSTMENT
VARIANCE DECISION NOTICE

The Board of Adjustment of the City of Kennedale does hereby grant/~~deny~~ a Variance to front, side, and rear building lines as requested:

Case # BOA 03-12

NAME: Jeff Herron

ADDRESS: 5519 Manassas Drive
Arlington, Texas

PROPERTY ADDRESS:

Hilldale Addition for Lots 8R, 9R, 10R, 11R, 12R, 13R, and Lot 24R in Block 8R in the City of Kennedale.

FOR THE PURPOSE OF:

Reducing the front, side, and rear building lines.

CONDITIONS:

With understanding of minimum square foot requirements of an R-3 being 2000 and an R-2 being 2500.

Granted in open session of the Board of Adjustment of the City of Kennedale, Texas on the 3rd day of February 2004

The Board's decision is officially filed this 4th day of February 2004 in the Board of Adjustment Secretary's office. Any appeal to this decision must be made within 10 calendar days after the decision of the board and not thereafter.

APPROVED:

John Berry, BOA Chairman

ATTEST:

Lisa Dawn Cabrera, BOA Secretary

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

APPLICANT AND OWNER INFORMATION

SECTION 1. APPLICANT.

Name ARMANDO GONZALEZ

Work Phone 817-320-3901 OR Home _____

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

Mailing Address

910 GREENFIELD CT. KENNEDALE TX 76060

SECTION 2. OWNER.

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

Name SAME AS APPLICANT

Work Phone _____ Home _____

Mailing Address

SECTION 3. PROPERTY INFORMATION.

Property Location (Number and Street)
911 Shady Oaks Dr.

Legal Description <i>(Lot, Block, and Subdivision/Addition)</i>
HILLDALE ADDITION, KENNEDALE, BLOCK 2, LOT 17

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

We need 13' SIDE SET BACK and 40' FRONT SET BACK , to be aligned with houses next to it.

VARIANCE REQUEST

Zoning District

R-1

City Code reference for requirements that creates need for variance

Describe City Code Requirement

This is R-1 Zone and requires lot area ½ acre, min lot area 100', min lot dept 125', side set back 15', front set back 50', rear set back 35'.

Describe variance requested

This property is only 66'-5" width and 154' depth, for the house plan we have we need: 13' side set back, and to make the house aligned with the neighbors properties, we need 40' front set back.

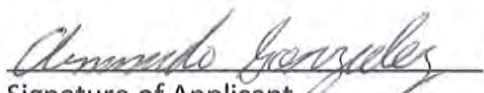
What hardship has been created?

We can't build in this R-1 lot the same way other one properties can be build on

What created the hardship?

The original zone size does not meet the standards of the R-1 districts. (R-ZONING CAUSED THIS ISSUE)

I declare that the above is true and correct.


Signature of Applicant

Date 7/28/2016

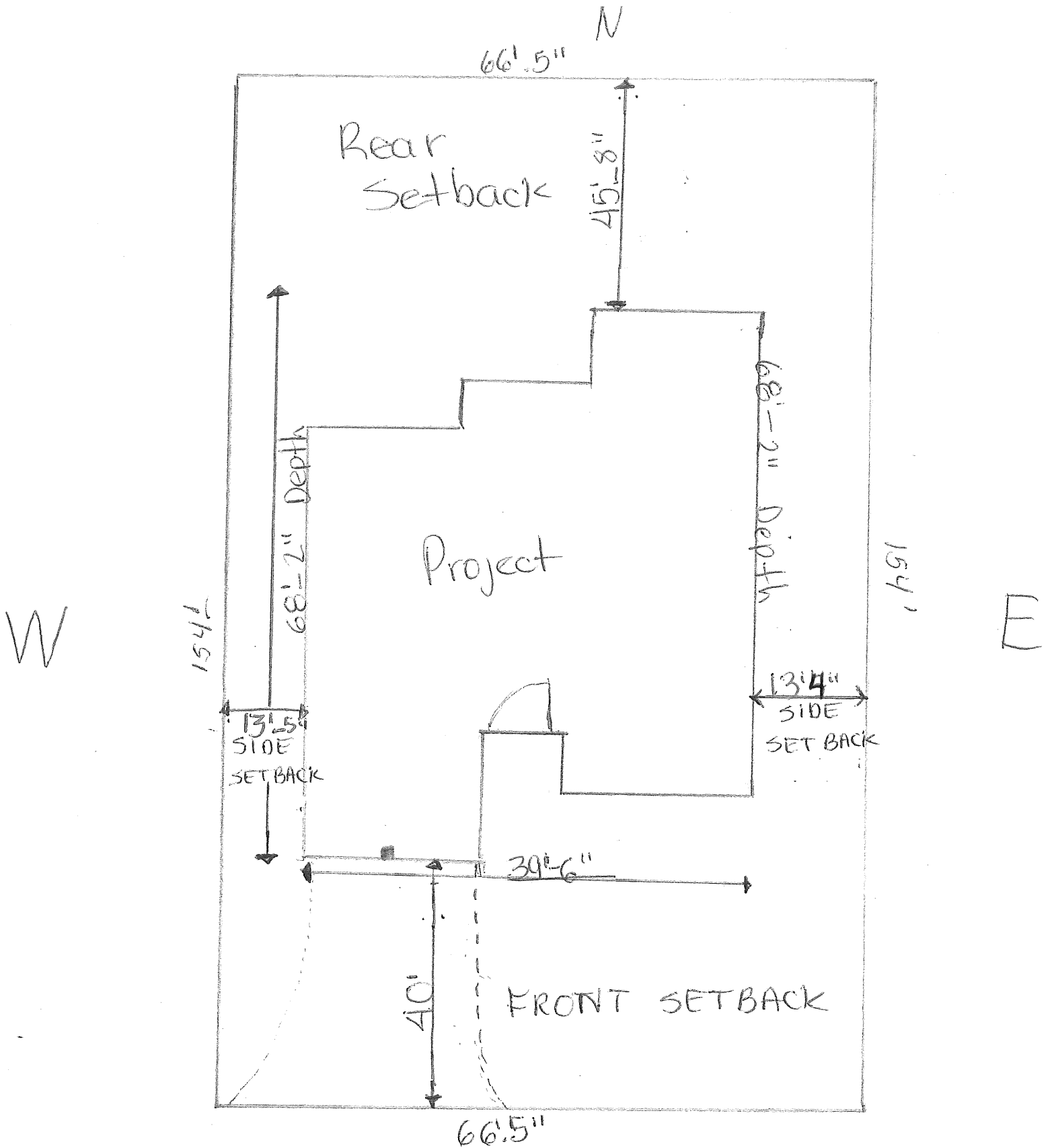
Required attachments

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

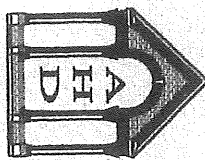
- 1) Two SITE PLANS, drawn to scale, showing all lot dimensions, and the location and dimensions of all existing and proposed lot improvements; and
- 2) A STATEMENT OF FACTS AND REASONS why the zoning regulations should not be applied to the property in question and how the standards governing the Board's 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.

Please explain the reason and circumstances for the variance requested:

We are planning to build a house in this property, but property size does not meet the standards of the R-1 districts which is 100' min lot width and 125' min lot depth. This lot size is 66'-5 width and 154 depth and it was platted before rezoning. The house dimensions for the house we plan to build is 39'-6" width and 68'-2" depth. The depth is not a problem, only that neighbors houses has around 40' front set back and we think is going to look a lot better if it is aligned with the neighbors houses in the street. The neighbors houses has around 8' side set back, and we think just a couple of feet less won't affect the view of the street. We have spoken to neighbors and they agree, that building a new house in that empty lot will bring an improvement to the street view.



911 Shady Oaks Dr.
S



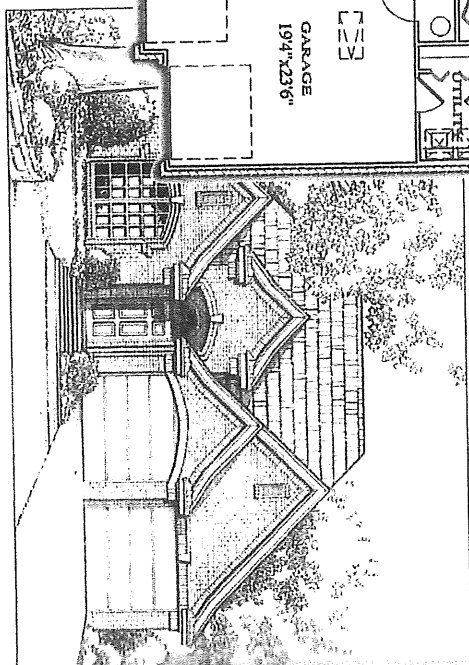
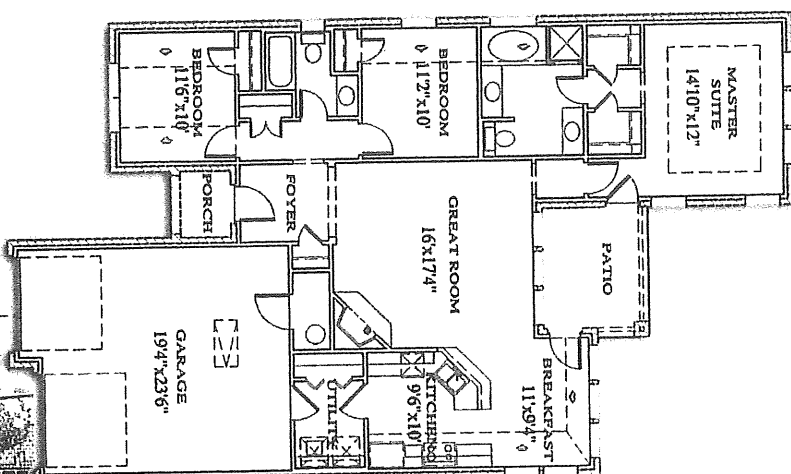
Associate
Home
Designs Inc.

Dallas/Fort Worth
817-538-2910

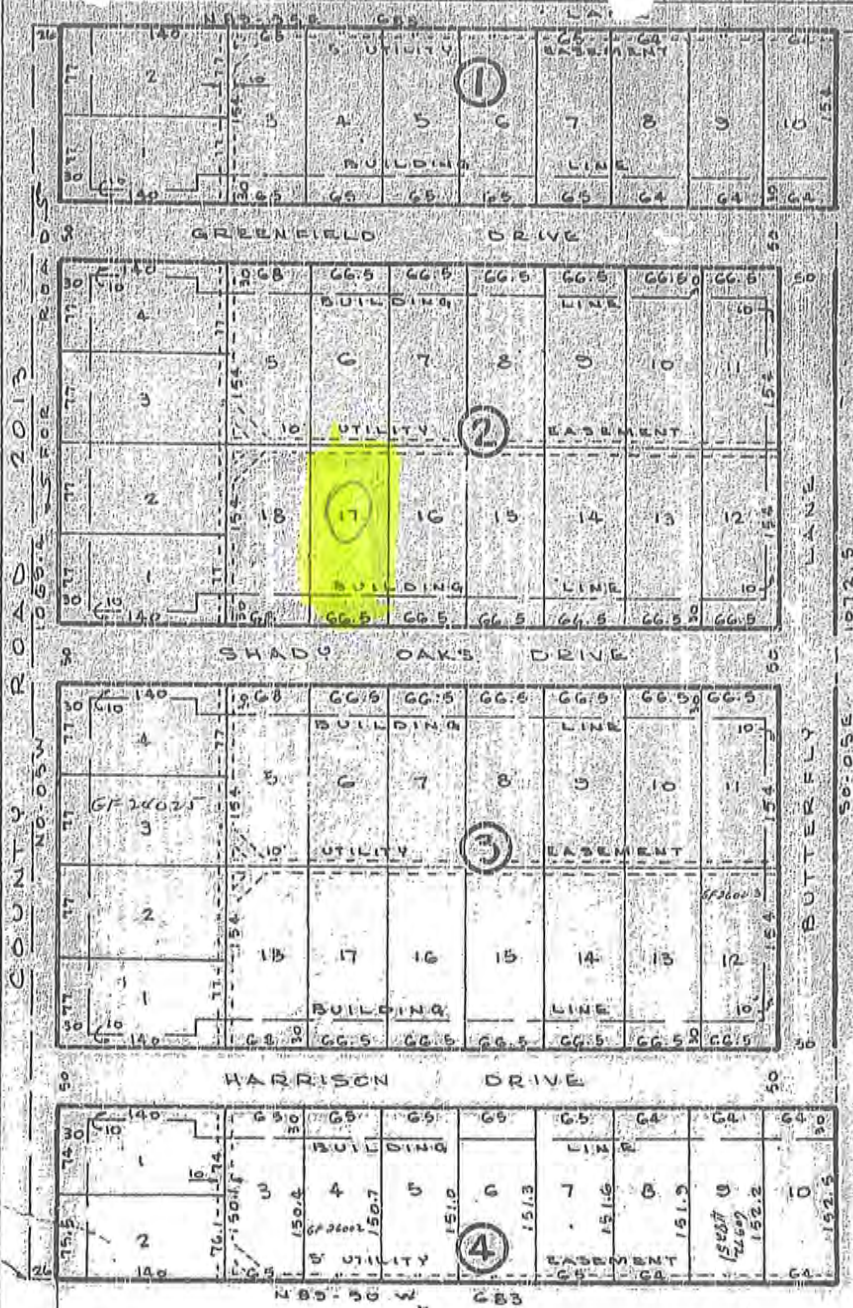
www.dougherrondesigns.com

House Proper (A/C)	1494
Garage	510
Porch & Patio	127
Total A.U.R.	2131
Width	39'-6"
Depth	68'-2"

068-1494-501



863 VARS EAST OF
SOUTHWEST CORNER
T. F. RODGERS SURVEY



HILDALE ADDITION

TO THE CITY OF KENNEDALE
TARRANT COUNTY, TEXAS
OUT OF THE T. F. RODGERS SUR.

APPROVED: JUNE 7, 1957

CITY OF KENNEDALE

BY N. J. Chedder

BY Lucy Helene Langston

SURVEYED MAY 9, 1957

HAYES & DUNAWAY

BY R. D. Hayes

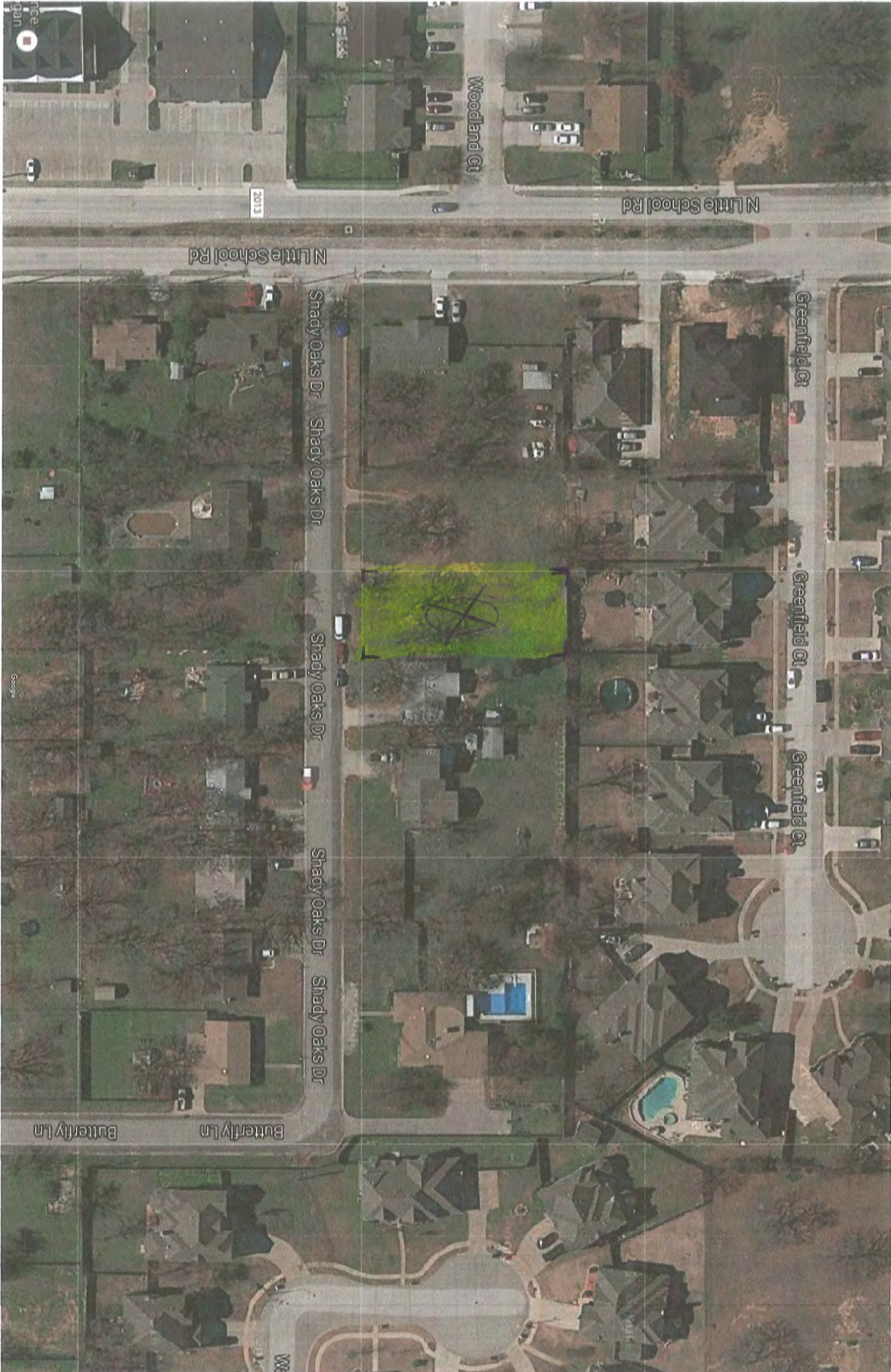


SCALE
1" = 100'

CHECKED
COUNTY CLERK, DALLAS
2-26-58

Construction

Idle Jan 6
388-11
22









REQUIREMENTS FOR A VARIANCE

The Board of Adjustment is permitted to grant variances to the development regulations in Article VI of the zoning code such as the front yard, side yard, rear yard, lot width, lot depth, lot coverage, minimum setback, off-street parking, off-street loading, lot area, maximum height, or other building regulations. Variances are permitted only where the literal enforcement of the provisions of Article VI would result in an unnecessary hardship, or where such variance is necessary to permit the reasonable development of a specific parcel of land which 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).

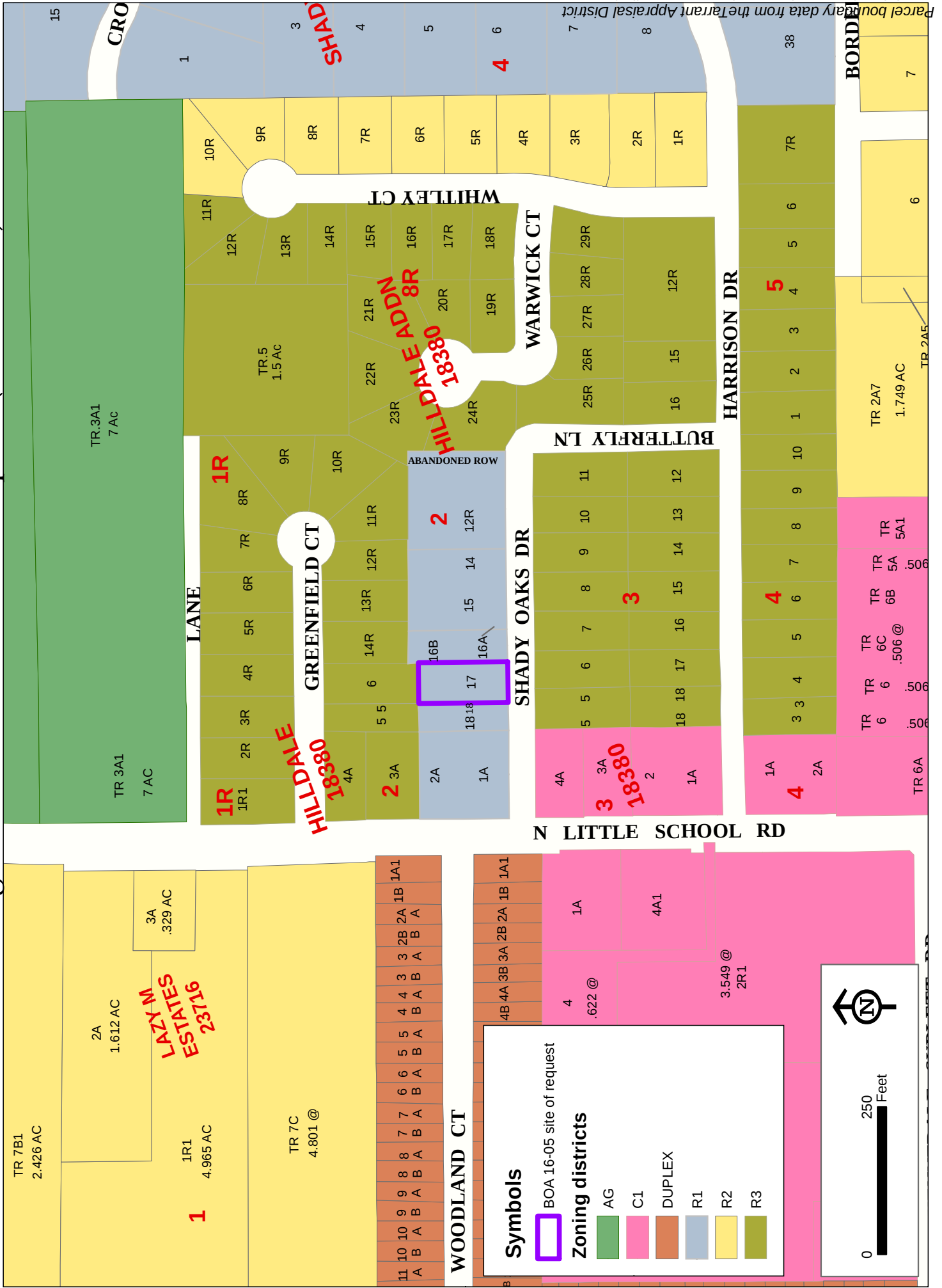
The board should consider the following questions in determining whether a variance request meets this standard:

- (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?

Zoning districts around site of request (BOA 16-05)



Land uses around site of request (BOA 16-05)

