

**BOARD OF ADJUSTMENT AND BUILDING
BOARD OF APPEALS AGENDA REGULAR MEETING**

June 23, 2020 AT 6:00 PM

VIA ZOOM TELECONFERENCE

Members of the Public May Join by Visiting

<https://us02web.zoom.us/j/7732695410>

And/or by dialing (877) 853 5257 (TOLL FREE) and using access code 773 269 5410

I. CALL TO ORDER

NOTE: Pursuant to Texas Government Code §551.071, the Board reserves the right to adjourn into Executive Session at any time during the Work Session or the Regular Session to discuss posted Executive Session items or to seek legal advice from the City Attorney on any item posted on the agenda.

II. REGULAR SESSION

III. ROLL CALL

IV. SWEARING IN OF SPEAKERS

V. VISITOR AND CITIZEN FORUM

At this time, any person may address the board or governing body, provided that an official 'Speaker's Request Form' has been submitted to the secretary prior to the start of the meeting. All comments must be directed towards the body as a whole, rather than individual 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 nor discussion held regarding these items.

VI. REPORTS AND ANNOUNCEMENTS

VII. MINUTES APPROVAL

- A. Consider approval of minutes from the February 11, 2020 regular meeting

VIII. DECISION ITEMS

CASE # BOA 20-02 to receive comments and consider action on a request for a variance by Mona Adi as required by the Unified Development Code, Section 10.15 requiring the water's edge of swimming pools to be located at least eight (8) feet from the principle building and eight (8) feet from the rear lot line for the property located at 409 Mt Pleasant Court, Lot 12, Block 6, Oakhill Park Addition, City of Kennedale, Tarrant County, Texas.

EXECUTIVE SESSION

The Board of Adjustment/Board of Appeals reserves the right to convene in Executive Session(s) during this meeting pursuant to §551.071(2) when the Board of Adjustment/Building Board of Appeals seeks the advice of its attorney concerning any item on this agenda or a matter in which the duty of the attorney to the Board of Adjustment/Board of Appeals under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Government Code.

IX. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

X. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending public meetings. This facility is wheelchair accessible and accessible parking spaces are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meeting. Please contact the City Secretary at 817-985-2104 or (TTY) 1-800-735-2989.

CERTIFICATION

I certify that a copy of the Jun 23, 2020, Board of Adjustment and 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.



MELISSA DAILEY, AICP
DIRECTOR OF PLANNING AND
ECONOMIC DEVELOPMENT

POSTED AT MUNICIPAL
BUILDING:

DATE _____

TIME: _____

**BOARD OF ADJUSTMENT AND
BUILDING BOARD OF APPEALS
MINUTES**

**REGULAR MEETING | February 11, 2020 at 6:00 PM
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE**

I. CALL TO ORDER

Chairman Jeff Nevarez called the meeting to order at 6:00 PM

II. REGULAR SESSION

III. ROLL CALL

PLACE	COMMISSIONER	PRESENT	ABSENT
1	Azam Shaikh		X
2	Jeff Nevarez	X	
3	Kelli Rod	X	
4	Martin Young	X	
5	Lana Sather	X	
6	Jeremy Johnston, alternate		X
7	Josh Virnoche, alternate		X
8	Thelma Kobeck, alternate	X	
9	Patrick Vader, alternate		X

IV. SWEARING IN OF SPEAKERS

Applicant Jeff Morris sworn in by Board Secretary Meghan Riddlespurger.

V. VISITOR AND CITIZEN FORUM

No citizens spoke.

VI. REPORTS AND ANNOUNCEMENTS

Mr. Nevarez announced that City Council election deadline is approaching.

VII. MINUTES APPROVAL

- A. Consider approval of minutes from the October 8, 2019 regular meeting

A motion was made by Martin Young to approve the minutes from October 8, 2019. Lana Sather seconded the motion. The motion passed unanimously.

VIII. DECISION ITEMS

- A. CASE # BOA 20-01

Director of Planning and Economic Development Melissa Dailey reviewed case information including current zoning and uses on and adjacent to the property, proposed site of the accessory dwelling unit, adherence to the future land use plan, UDC sections

that would apply to the accessory dwelling unit, and adherence to special exception requirements. She stated that the property must be platted before the building permit is issued. She stated that two notification response forms were received from adjacent neighbors in favor of the applicant's request.

The board inquired about utility access, building materials, foundation requirements, history of accessory dwelling unit special exception decisions, occupancy details, and setback requirements.

Applicant Jeff Morris stated that the dwelling unit is intended for his wife's mother-in-law and that it would serve as a place for his children in the future. He stated that he believes the construction of the accessory dwelling unit would increase the value of the lot and contribute to the city.

Thelma Kobeck made a motion to approve the special exception. Lana Sather seconded the motion.

Martin Young stated that if the board approves the special exception, the city and neighbors would be burdened if the dwelling is used for rental. He stated that there are separate zoning categories for single-family and multi-family dwellings.

Kelli Rod stated that extending space for families to live near each other is a contemporary trend. Thelma Kobeck concurred.

Melissa Dailey stated that the extension of the utilities from the primary structure is a measure that would dissuade illegal rental of the structure.

Mr. Nevarez stated that the scope of the decision should be limited to the specifics of the application being considered by this board.

Mr. Nevarez opened the public hearing. As there were no speakers, Mr. Nevarez closed the public hearing.

The motion passed 4-1 with Martin Young voting to deny.

XII. ADJOURNMENT

Lana Sather motioned to adjourn. Kelli Rod seconded. The motion passed unanimously. The meeting was adjourned at 6:32 p.m.

Date: June 23, 2020

Agenda Item No: CASE BOA 20-02

I. SUBJECT

CASE # BOA 20-02 to receive comments and consider action on a request for a variance by Mona Adi as required by the Unified Development Code, Section 10.15 requiring the water's edge of swimming pools to be located at least eight (8) feet from the principle building and eight (8) feet from the rear lot line for the property located at 409 Mt Pleasant Court, Lot 12, Block 6, Oakhill Park Addition, City of Kennedale, Tarrant County, Texas.

II. SUMMARY

BACKGROUND AND OVERVIEW

Request	Allow 5'9" rear setback instead of 8' required rear setback, and 4'1" setback from principle building instead of required 8' setback
Applicant	Mona Adi
Location	409 Mt Pleasant Court
Current Zoning	Single-Family Residential District R-3
Current Land Use	Single family residential
Surrounding Uses	Single family residential
Future Land Use Plan Designation	Neighborhood
Staff Recommendation	Deny

CURRENT STATUS OF PROPERTY

This property is a single family residence in the Oak Hill Park neighborhood.

SURROUNDING PROPERTIES & NEIGHBORHOOD

The property is located in a residential area in the Oak Hill Park neighborhood. It is in the northeastern part of Kennedale surrounded by single family neighborhoods in Kennedale and Arlington.

REQUIREMENTS FOR A VARIANCE

The Board of Adjustment is permitted to grant variances to the development regulations of Article 3 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, where the literal enforcement of the provisions of this article 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 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 cannot 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. Lots in this neighborhood are approximately $\frac{1}{4}$ acre with larger homes that are setback from the front, creating a smaller back yard. This is typical throughout the neighborhood. Back yards are typically approximately 20-25 feet deep from the back of the house to the back property line. The back yard in this property is approximately 25 feet deep.

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

No. The back yard size and characteristics are typical for the neighborhood. Although there is a retaining wall, it is close to the back fence within the 8' setback area, so would not affect the ability to meet the 8' setback.

(3) Is the condition self-created?

Yes. The owner desires to install a large pool 36' x 15'. Should the setbacks be met, the pool could be built, and would be 36' x 9'.

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

No. The general public with similar lots in the neighborhood and with similar lot sizes would be required to meet the same setbacks.

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

No. A pool could still be built, albeit slightly smaller. The pool could still be quite large at 36' long.

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

Not that staff is aware of. At this point, staff has not received any responses from the notifications sent to neighbors within 200' of the property or any other responses.

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

No. The pool could meet setback requirements while allowing the owner to build a large pool.

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

No. The property owner could still build a pool.

STAFF RECOMMENDATION

The owner stated that the pool is for her autistic son, and that the pool would be used for occupational therapy as well as family recreation, and that the large size of their home at 4,400 square feet along with the retaining walls in the back yard have created a small space for a pool. This home size is typical for the neighborhood, as is the approximately 25' deep yard. The yard is wide, however, along for a long, more narrow pool. The retaining wall appears to be within the rear setback area, so not impeding the ability to retain the required 8' setback. Although staff understand the need for the owner's son, unfortunately this is not a consideration for setback variances. Staff recommends denial based on the fact that the back yard size and shape is typical for the neighborhood and that a sizable pool can still be constructed while meeting the setback requirements.

ACTION BY THE BOARD OF ADJUSTMENT

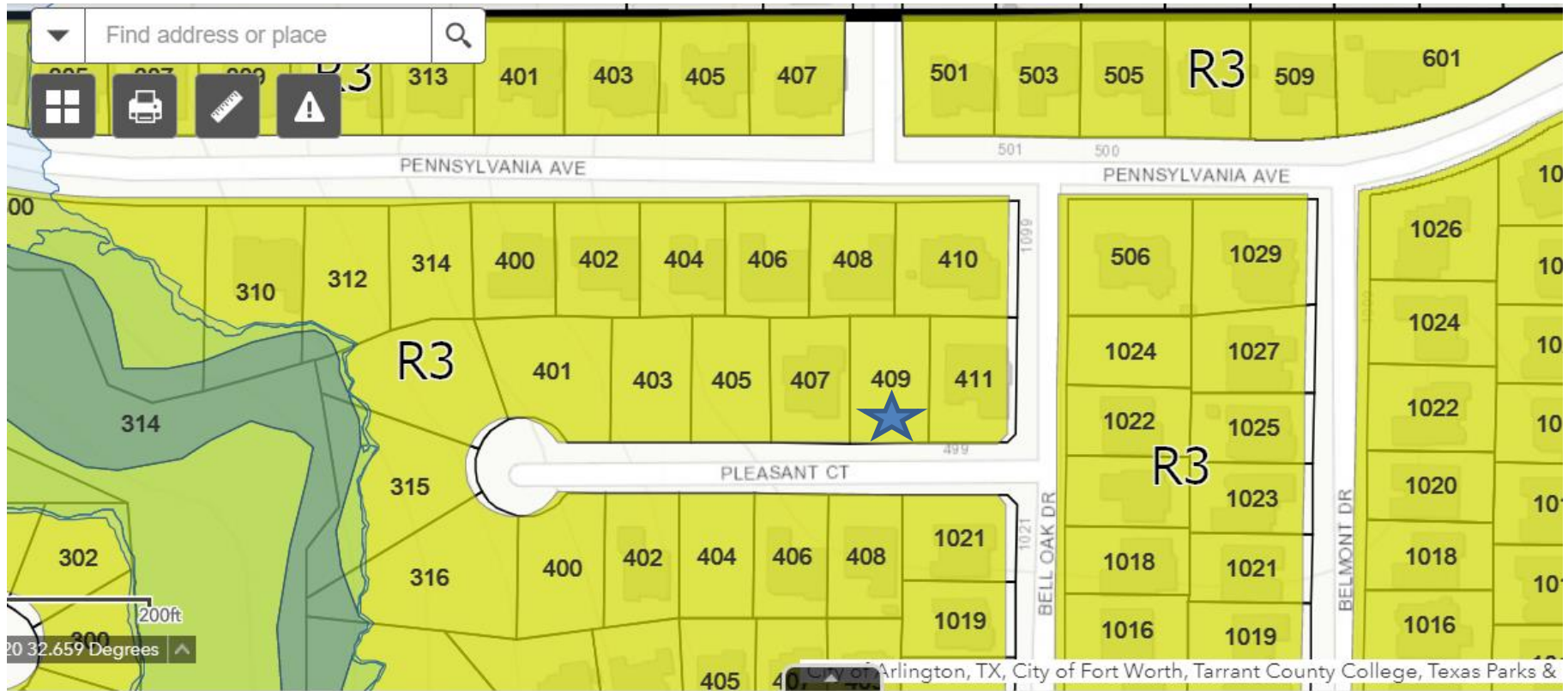
The board may grant or deny the request or postpone its vote until a later date. If you postpone your decision, you should state in your motion when the case will be heard by the board again. Sample motions are provided for your reference below. You are not required to use either of the motions provided,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

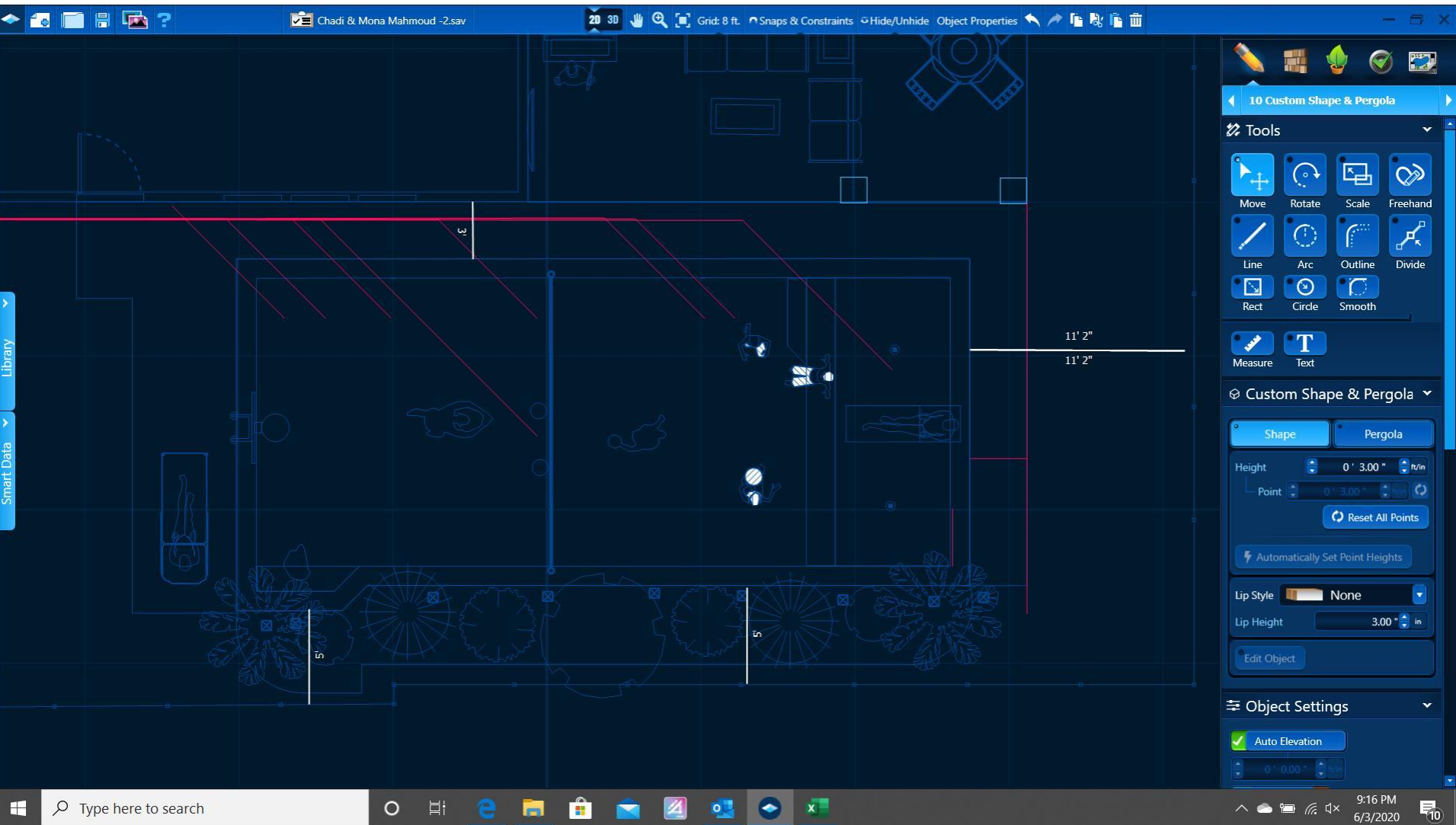
BOA 20-02

409 Mt Pleasant Ct



BOA 20-02

409 Mt Pleasant Ct



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