

**BOARD OF ADJUSTMENT AND
BUILDING BOARD OF APPEALS AGENDA
REGULAR MEETING
TUESDAY, AUGUST 11, 2020 6:00 PM
VIA VIDEOCONFERENCE**

**MEMBERS OF THE PUBLIC MAY JOIN BY VISITING
<https://us02web.zoom.us/j/7732695410> AND/OR BY DIALING 877 853 5257 AND
USING MEETING ID Meeting ID: 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 for the June 23, 2020 regular meeting

VIII. DECISION ITEMS

- A. CASE # BOA 20-03 to receive comments and consider action on a request for a special exception by Phong Nguyen for the special exception use of Outdoor Storage as required by Section 6.2 of the Unified Development Code for 7084 E Kennedale Parkway, Block 1, Lot 1, Elam Addition, City of Kennedale, Tarrant County, Texas.
- B. CASE # BOA 20-04 to receive comments and consider action on a request for a variance by Farshid Ighani 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 for the property located at 505 Pennsylvania Avenue, City of Kennedale, Tarrant County, Texas.

IX. 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.*

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

XI. ADJOURNMENT

CERTIFICATION

I DO HEREBY CERTIFY THAT THE AUGUST 11, 2020 BOARD OF ADJUSTMENT AND BUILDING BOARD OF APPEALS AGENDA WAS POSTED INSIDE THE MAIN ENTRANCE OF CITY HALL (405 MUNICIPAL DRIVE), IN A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AT ALL TIMES; AND THAT SAID AGENDA WAS POSTED AT LEAST SEVENTY-TWO (72) HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING, IN ACCORDANCE WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.



MELISSA DAILEY, AICP
DIRECTOR OF PLANNING AND
ECONOMIC DEVELOPMENT

In compliance with the Americans with Disabilities Act (ADA), the City of Kennedale will provide for reasonable accommodations for persons attending 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 by calling 817-985-2104 or (TTY) 1-800-735-2989.

CREATED 8/7/2020 11:31 AM

POSTED _____ (DATE) _____ (TIME)

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

**REGULAR MEETING | June 23, 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 Mona Adi sworn in by Board Secretary Meghan Riddlespurger.

V. VISITOR AND CITIZEN FORUM

No citizens spoke.

VI. REPORTS AND ANNOUNCEMENTS

Mr. Nevarez announced that current COVID-19 case numbers from the Tarrant County Public Health Department are available at the Kennedale News website.

VII. MINUTES APPROVAL

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

A motion was made by Azam Shaikh to approve the minutes from October 8, 2019. Martin Young seconded the motion. The motion passed 4-0-1 with Pat Vader in abstention. He stated that he was abstaining because he was not at the previous meeting.

VIII. DECISION ITEMS

- A. 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.

Staff Presentation:

Director of Planning and Economic Development Melissa Dailey reviewed the variance request to allow a 4' setback instead of an 8' setback to accommodate the construction of a swimming pool for therapy for the applicant's son with autism, as well as recreational purposes for their family. Ms. Dailey reviewed statutory requirements for the granting of a variance. She stated that the request did not meet all of the eight areas of consideration. She stated because the requirements for a variance are not met, staff recommends denial. Ms. Dailey stated two neighbors simply inquired about the request but that no support or opposition was expressed via notice, call, or email.

Public Hearing

Applicant Mona Adi stated that the variance is needed to allow construction of a pool meant for aquatic occupational therapy for her five-year-old non-verbal autistic son. She stated the variance allows them spatial ability to construct a tanning ledge for those therapy purposes in addition to recreational pool space. She stated the backyard is not big and has a retaining wall which both limit space for construction of a pool that meets the family's unique requirements. She stated that she directly contacted all surrounding neighbors and that all were supportive.

Mr. Vader stated the 8' setback from the building is intended for fire and safety access. He stated the issue is unique to the homeowner, not to the lot. He stated that if the variance is granted for a smaller setback from the home, there would be fire and safety access issues. Mr. Young concurred and stated that the pool could still be large without additional setback allowance.

Ms. Dailey stated that there are two variances being requested, one between the principal building and one on the rear, and that the Board can grant or deny one or both.

Jeff Nevarez closed the public hearing at 6:20pm.

Board Discussion

Mr. Vader expressed concern regarding the setback from the principal building and stated there should not be a variance granted due to fire and safety issues. Mr. Nevarez stated the case should be considered alone based on the circumstances of the case. Mr. Young stated the setback from the principal should be maintained for all homeowners. Kelli Rod stated that there appeared to be excess space for construction in the rear.

Pool contractor Lance Gray (1928 Canterbury Dr. Bedford, TX) stated the variance in the rear requested is a setback of 6' from the waterline to property line. From the principal structure, the team planned to present an engineering letter for a 4' setback to waterline as he stated is standard in many cities. He stated the rear variance is the only one being requested as the engineering letter should support the 4' distance from the house.

Board Decision

Mr. Shaikh made a motion to approve the requested variances for reduced setbacks on both the rear and from the principal structure. The motion failed to receive a second.

Mr. Vader made a motion to deny the requested variances for reduced setbacks on both the rear and from the principal structure. Mr. Martin seconded the motion. The motion failed 3-2 with Mr. Nevarez and Mr. Shaikh in opposition.

Mr. Vader made a motion to approve the requested variance for a reduced setback in the rear, and to deny the reduced setback from the principal structure. Mr. Shaikh seconded the motion. The motion passed unanimously.

XII. ADJOURNMENT

Mr Shaikh made a motion to adjourn the meeting. Kelli Rod seconded. The motion passed unanimously. The meeting was adjourned at 6:33 p.m.

Date: August 11,, 2020
Agenda Item No: REGULAR ITEMS (A)

I. SUBJECT

CASE # BOA 20-03 to receive comments and consider action on a request for a special exception by Phong Nguyen for the special exception use of Outdoor Storage as required by Section 6.2 of the Unified Development Code for 7084 E. Kennedale Parkway, Block 1, Lot 1, Elam Addition, City of Kennedale, Tarrant County, Texas.

II. SUMMARY

BACKGROUND AND OVERVIEW

Request	Special exception to allow outdoor storage
Applicant	Phong Nguyen
Location	7084 E Kennedale Parkway
Surrounding Uses	Industrial, retail, restaurant, residential
Surrounding Zoning	I, C2, R3, MH
Future Land Use Plan Designation	Light Industrial District
Staff Recommendation	Deny

CURRENT STATUS OF PROPERTY

This property is an approximately 2 acre site zoned Industrial. The applicant business is NPK Freight, a freight shipping trucking company based out of Irving. The sign in front of the building states "Vehicle Storage". The property has several metal buildings on the site in poor condition. The applicant would like to store autos, boats, tractors, trailers and RVs on the site.

SURROUNDING PROPERTIES & NEIGHBORHOOD

SURROUNDING PROPERTIES AND NEIGHBORHOOD

There are a variety of uses in the immediate area that are industrial, retail, a restaurant, and single family uses are located within 600' feet of this site. Specifically, there are several salvage yards, an auto sales store, Pitt Stop Café, a feed store, and some larger lot residential uses across Kennedale Parkway. Immediately to the west, across the railroad track, are large tracts of land that are to be developed as residential in the future land use plan. It is anticipated that one of the salvage yards in the immediate area will close within a few years, due to a contractual agreement with the City, and that land will be cleared and cleaned. The two other salvage yards in the immediate area, Apple and Apache, are

currently operating illegally, as their special exceptions have been expired for more than a year and they have no re-applied. The City has filed suit against these two salvage yards.

ANALYSIS

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.

The establishment, maintenance and operation of outdoor storage of vehicles could be materially detrimental to or endanger the public health, safety, morals and general welfare. It is common for vehicles that are stored, particularly older or wrecked vehicles, to leak fluids into the ground, causing contamination. This is particularly a challenge with the close proximity of the creeks to this site, being less than 800 feet away.

STANDARD 2

The board must find that the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the use.

Existing and permitted uses in this area include industrial uses, retail and residential. The comprehensive plan shows this site as light industrial. Continuing heavy industrial uses and large lots of stored vehicles does impair and diminish both existing uses, including the restaurant and existing residential, as well as permitted uses, particularly future residential development. The land adjacent to the parkway is designated an urban corridor with the intent of attracting urban style retail development. Approximately ½ mile north on Kennedale Parkway is a designated Urban Village in the comprehensive plan. Land used for stored vehicles in the area hampers urban redevelopment envisioned in the Comprehensive Plan.

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.

For the reasons stated in Standard 2, staff is of the opinion that the continued use of auto storage does impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district, which include retail, restaurants, residential development and an urban village. The land immediately west is envisioned in the Comprehensive Plan to be residential, and the redevelopment of this area is important to the quality of life for Kennedale. Outdoor storage of vehicles is not compatible with retail and residential that is allowed in the district and is an impediment to this type of development.

STANDARD 4

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

According to Public Works staff, the property is served by all necessary site improvements.

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.

According to Public Works staff, adequate measures have been provided.

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.

The outdoor storage proposed does have the capacity to meet these requirements.

STAFF RECOMMENDATION

Based on the above analysis, staff recommends denial of the special exception.

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 special exception and make a motion to approve case BOA 20-01.

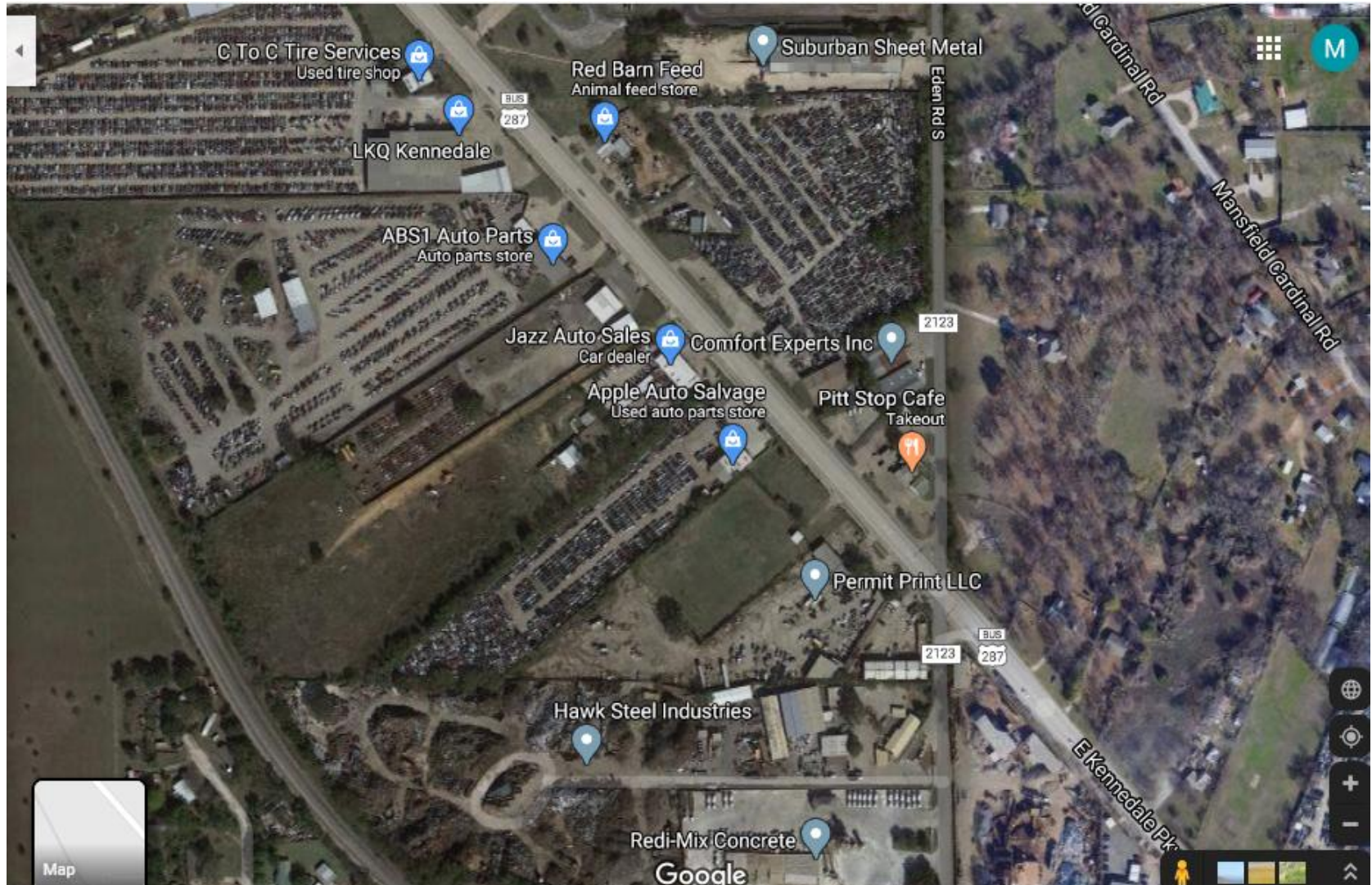
Deny: Based on the evidence and testimony provided, I find that the proposed request does not meet the standards for a special exception and make a motion to case BOA 20-01.

Approve with Conditions: Based on the evidence and testimony provided, I find that the proposed request meets the standards for a special exception and make a motion to approve case BOA 20-01 with the following conditions (state conditions).

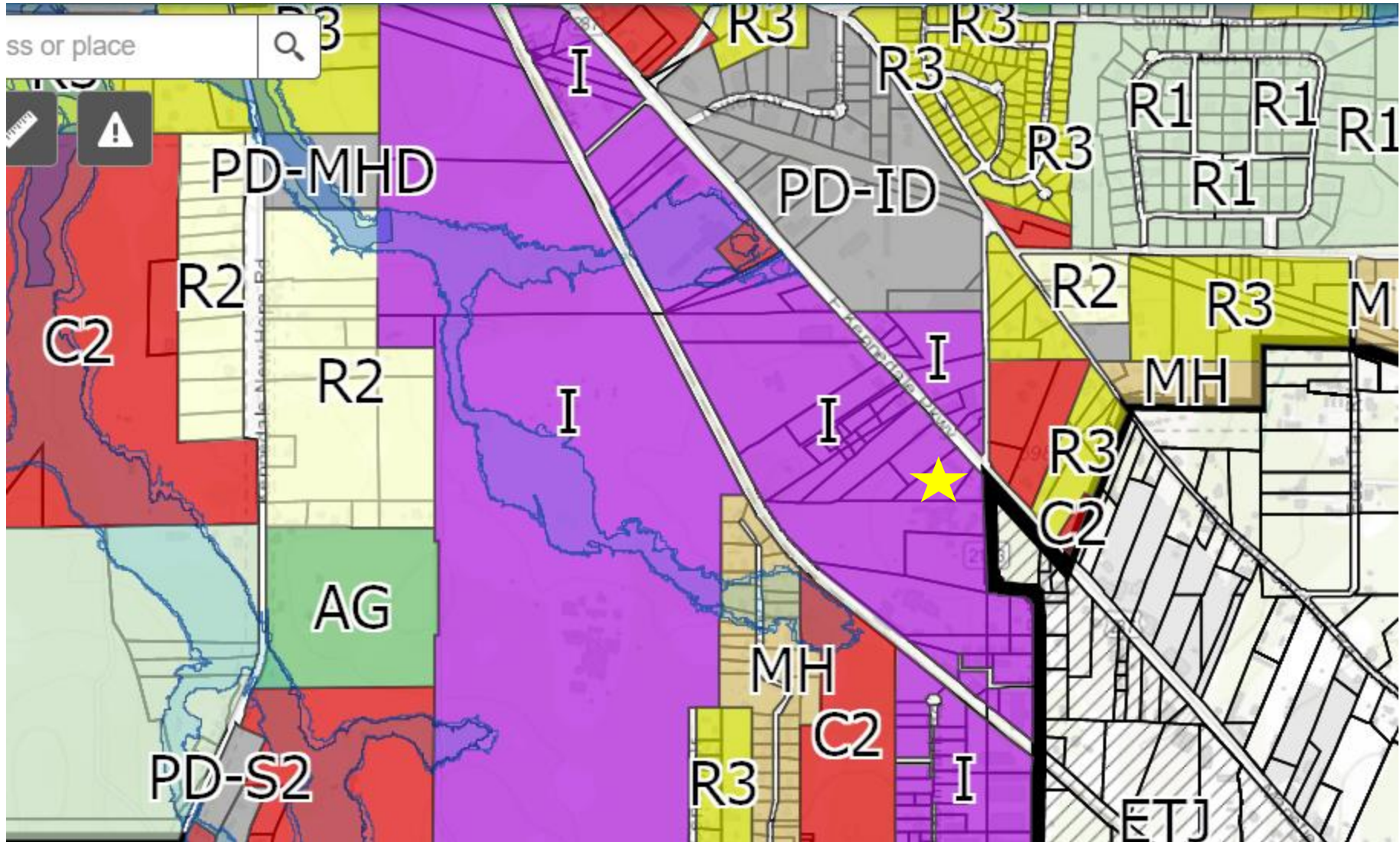
BOA 20-03 7084 E Kennedale Parkway



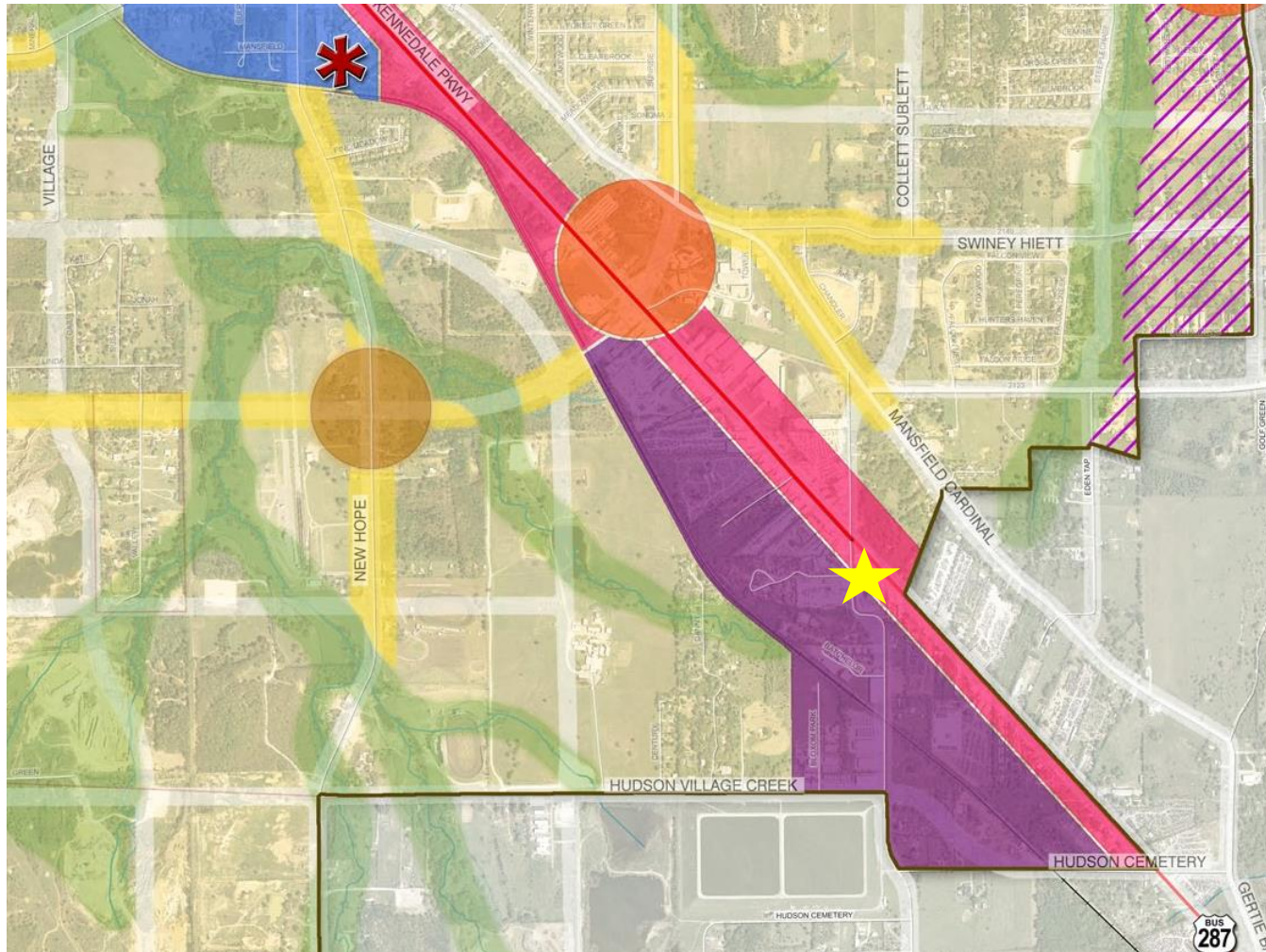
BOA 20-03 7084 E Kennedale Parkway



BOA 20-03 7084 E Kennedale Parkway



BOA 20-03 7084 E Kennedale Parkway



KENNEDALE COMPREHENSIVE PLAN UPDATE

FUTURE LAND USE PLAN

CATEGORIES

Town Center	
Downtown Village	
Urban Village	
Urban Corridor	
Neighborhood Village	
Neighborhood Corridor	
Neighborhoods	
Employment Center	
Light Industrial District	
Park & Open Space	
Conservation Overlay	
Potential Commuter Train or Park & Ride Station	
Schools	

Date: August 11, 2020
Agenda Item No: REGULAR ITEM (B)

I. SUBJECT

CASE # BOA 20-04 to receive comments and consider action on a request for a variance by Farshid Ighani 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 for the property located at 505 Pennsylvania Avenue, City of Kennedale, Tarrant County, Texas.

II. SUMMARY

BACKGROUND AND OVERVIEW	
Request	Allow 5' building setback instead of 8' required building setback
Applicant	Farshid Ighani
Location	505 Pennsylvania Avenue
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	Approve

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?

Yes. 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. The west half of the yard has a retaining wall running through the middle of almost half of the back the yard and is necessary for the prevention of erosion. This retaining wall significantly reduces the amount of back yard space for a pool, as a pool cannot be placed in this half of the yard. Additionally, a reduced rear setback is not possible, as there is an 8' utility easement along the rear of the yard.

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

Yes. All homes in the neighborhood do not have these issues that limit the space in the back yard for placing a pool.

(3) Is the condition self-created?

No. The retaining wall and utility easement are required and not self-created..

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

Yes. This owner would have far more hardship created by strict enforcement of the building setback requirement than other property owners in the neighborhood that do not have the combination of the retaining wall and utility easement..

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

Yes. It would make it challenging to build a reasonably sized pool.

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

No. Adjacent property owners have expressed support for the variance, and staff does not believe the public would be negatively affected by issuing the variance.

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

Yes. The unique characteristics of the back yard create a hardship, and granting the variance would further be within the spirit of the ordinance and furthering substantial justice..

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

Yes. Literal enforcement would create a difficulty in building a reasonably sized pool with the restrictions of the retaining wall and utility easement.

STAFF RECOMMENDATION

Due to reasons stated above, staff recommends approval.

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.

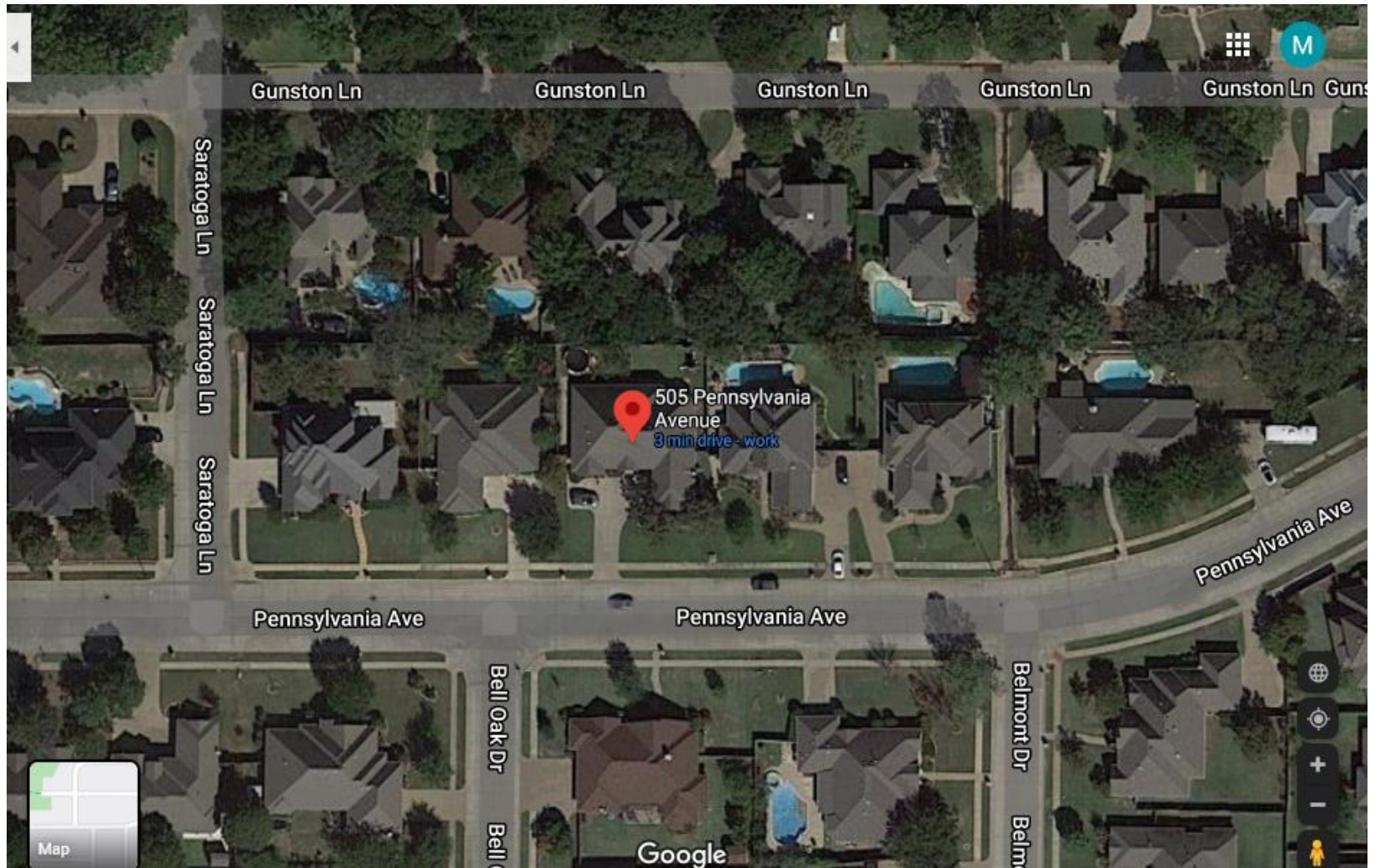
Approve: Based on the evidence and testimony provided, I find that the proposed request meets the standards for a variance and make a motion to approve the requested variance.

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.

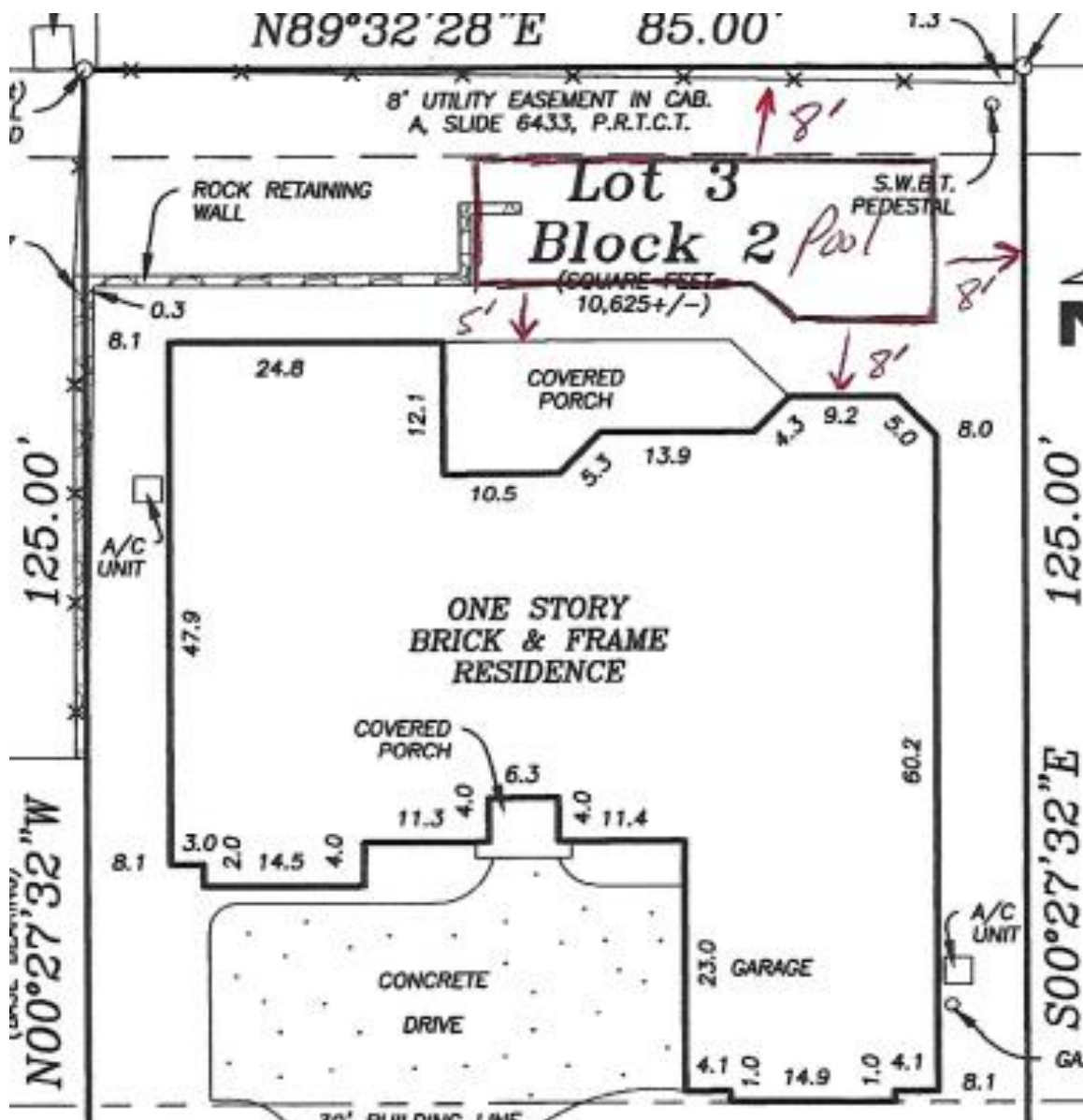
BOA 20-04 505 Pennsylvania Avenue



BOA 20-04 505 Pennsylvania Avenue



BOA 20-04 505 Pennsylvania Avenue



BOA 20-04 505 Pennsylvania Avenue



BOA 20-04 505 Pennsylvania Avenue





KENNEDALE
Planning Department
www.cityofkennedale.com

NOTIFICATION RESPONSE FORM

Case BOA 20-04

BOA Meeting Date: August 11, 2020 at 6:00 p.m.

Your Name: Raymond + Sandra Moore

Address: 506 Pennsylvania Ave

Please provide completed forms via mail, fax or email (mdailey@cityofkennedale.com) before the start of the scheduled public hearing.

Being the owner(s) of the property so noted above, are hereby

In favor of

opposed to

undecided about

(circle or underline)

the proposed Application referenced above.

Comments (optional)

Signature

Sandra Moore

Date

July 25 2020

Printed Name(s) Sandra Moore

One form per property

Phone number (optional) 817-478-2949

Direct questions and mail responses to the address below, call (817) 985-2135, or fax form to (817) 483-0812 or email to mdailey@cityofkennedale.com.



KENNEDALE
Planning Department
www.cityofkennedale.com

NOTIFICATION RESPONSE FORM

Case BOA 20-04

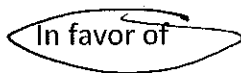
BOA Meeting Date: August 11, 2020 at 6:00 p.m.

Your Name: CHRIS STRONCEK

Address: 507 PENNSYLVANIA AVE

Please provide completed forms via mail, fax or email (mdailey@cityofkennedale.com) before the start of the scheduled public hearing.

Being the owner(s) of the property so noted above, are hereby



opposed to

undecided about

(circle or underline)

the proposed Application referenced above.

Comments (optional)

Signature C. J. Stroncek

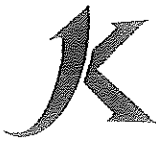
Date: 7/23/20

Printed Name(s) C. J. STRONCEK

One form per property

Phone number (optional) _____

Direct questions and mail responses to the address below, call (817) 985-2135, or fax form to (817) 483-0812 or email to mdailey@cityofkennedale.com.



KENNEDALE
Planning Department
www.cityofkennedale.com

NOTIFICATION RESPONSE FORM

Case BOA 20-04

BOA Meeting Date: August 11, 2020 at 6:00 p.m.

Your Name: Tai Nguyen

Address: 410 Pennsylvania Ave.

Please provide completed forms via mail, fax or email (mdailey@cityofkennedale.com) before the start of the scheduled public hearing.

Being the owner(s) of the property so noted above, are hereby

In favor of

opposed to

undecided about

(circle or underline)

the proposed Application referenced above.

Comments (optional)

Signature

Tai Nguyen

Date:

7-29-2020

Printed Name(s)

TAI NGUYEN

One form per property

Phone number (optional)

Direct questions and mail responses to the address below, call (817) 985-2135, or fax form to (817) 483-0812 or email to mdailey@cityofkennedale.com.