

**BOARD OF ADJUSTMENT
AGENDA
REGULAR MEETING
November 6, 2012
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE
REGULAR SESSION - 7:00 PM**

I. CALL TO ORDER

II. ROLL CALL

III. MINUTES APPROVAL

- A. Discuss and consider minutes from the September 4, 2012 Board of Adjustment meeting

IV. 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.

V. REGULAR ITEMS

- A. **CASE # BOA 12-04** to receive comments and consider action on a request by First Texas Homes for a Variance to the City Code Section 17-405(d), "Schedule of District Regulations Adopted," to allow a reduction in front setback from 40 feet to 20 feet in an "R-2 Single Family Residential" zoning district at 514 Oak Forest Ct, more particularly described Lot 27, Block 3, Oakhill Park Addn, Kennedale.

- A. Staff Presentation
- B. Applicant Presentation
- C. Public Hearing
- D. Applicant Response
- E. Staff Response and Summary

VI. REPORTS/ANNOUNCEMENTS

VII. ADJOURNMENT

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

CERTIFICATION

I certify that a copy of the November 6, 2012, Board of Adjustment 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 small square box, likely a placeholder for a signature or stamp.

Rachel Roberts, Board Secretary



Date: November 6, 2012

Agenda Item No: MINUTES APPROVAL - A.

I. Subject:

Discuss and consider minutes from the September 4, 2012 Board of Adjustment meeting

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

The minutes from the September 4th meeting are attached to this message for your review and consideration for approval. Please double-check the person I have listed as making the motion to table/postpone case BOA 12-04, as my notes were not clear.

IV. Recommendation:

Approve

V. Alternative Actions:

VI. Attachments:

1.	09.04.2012 BOA Minutes	Minutes 09.04.2012 BOA FINAL.doc
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BOARD OF ADJUSTMENT
Minutes
REGULAR MEETING
September 4, 2012
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE

I. CALL TO ORDER

Chairman Adams called the meeting to order at 7:05 PM

II. ROLL CALL

Ms. Roberts called roll.

Members present: Rick Adams (chair), Brian Cassady, Darrell Dixon, Jeff Madrid, Pat Vader

Members absent: Linda Elam (vice-chair), Jeremy Redding (alternate), Richard West (alternate)

Staff present: Rachel Roberts (planner); James Cowey (development services director)

Ms. Roberts swore in those who wished to speak during the meeting.

III. MINUTES APPROVAL

A. Review and consider approval of minutes from the June 5, 2012 meeting

Mr. Vader made a motion to approve the minutes from the June 5 meeting, seconded by Mr. Madrid.
The motion passed with all in favor.

IV. VISITOR/CITIZENS FORUM

No one registered to speak.

V. REGULAR ITEMS

A. **CASE # BOA 12-04** to receive comments and consider action on a request by First Texas Homes for a Variance to the City Code Section 17-405(d), "Schedule of District Regulations Adopted," to allow a reduction in front setback from 40 feet to 20 feet in an "R-2 Single Family Residential" zoning district at 514 Oak Forest Ct, more particularly described Lot 27, Block 3, Oakhill Park Addn, Kennedale.

Staff Presentation

Ms. Roberts gave the staff presentation.

Mr. Adams asked if development will affect property owners on Colonial Court in terms of drainage. Mr. Cowey said he was hoping development will help, that improvements added during construction should allow for better drainage. He added that proper grading, not the house, is what should address the problem. Mr. Cowey pointed out the lot on the plat and added that the property in question, because of the hammerhead design of Oak Forest Court, has about 50' less front yard than the other lots. He said it borders on being undevelopable, and the question is does this meet the standards for a hardship.

Mr. Adams asked if First Texas didn't have a plan that would fit without needing a variance? Mr. Cowey replied that with the front setback, there's only about 20' left.

Mr. Vader pointed out that the lot was zoned R-2, but it wasn't an R-2 lot, and there was some give and take here. He said there was a 20' difference in the setbacks, and the house First Texas proposed to build was a 3000 sq ft slab according to the plot plan, and maybe one could scale it down. Mr. Cowey said that was a good question, what can fit there, and added that the lot may fit the definition of R-2 by lot size, but it isn't really an R-2 lot because it includes the creek.

Mr. Adams asked if there was anything the City could do to make the developer fix drainage, and Ms. Roberts and Mr. Cowey indicated that the City generally accepts improvements after two years.

Applicant Presentation

Rob Pantin, 217 West Brian Lane, Grand Prairie, Texas from First Texas Homes addressed the Board. In response to the question about building a smaller house on the lot, he said the radius of the hammerhead pushes the build line back about 50 feet in comparison to the lot to the left (Lot 26). On the lot in question, it's about 90 feet from the front property line of the house to the left. He said there is not a home they build that they would be comfortable putting at the 40 foot setback line because it would push it too close to the creek. They asked for variance to move the house as far away from the creek as reasonably possible. Even 10 feet would be better, although that wouldn't fit the aesthetics of the neighborhood.

Mr. Vader said he doesn't disagree with him, the way it's laid out makes sense, but the issue is that when developers develop property and builders build, do due diligence to find out what property you have, and the Board has an obligation to citizens to be consistent. He added that for as long as he's been on the Board, setback variances have been sacrosanct. Mr. Vader said the City would be listening to problems from the home owner in a year, and it would be incumbent on them to build some type of retaining wall in the back to divert the problem from occurring.

Mr. Cowey stated that this is a situation not created by the applicant, it is a true hardship, and staff looked to the Board for guidance, do they consider this a hardship? Do they just not create variances?

Mr. Adams replied that he doesn't want to see somebody buy the house and have problems with the creek as it keeps eroding more and more. He asked if there were anything the City could do to keep it from eroding? Mr. Cowey said it would depend on a person maintaining it, no matter what we do.

Mr. Cassidy stated that this lot truly does have something different than other lots. Mr. Pantin added that First Texas believes this case meets the definition of a variance, otherwise they wouldn't have requested a variance. Mr. Cassidy asked if moving the house up 20 feet would put it on par with the house next to it? Mr. Pantin said that it would still be behind the house next to it.

Public Hearing

Darrell Erwin, 1016 Colonial Ct., addressed the Board against the request for a variance. Mr. Erwin took some pictures of the site and presented them to the board. He said the lot is 120' from the front of the lot to where the creek drops off. He proposed that First Texas should put in a park on this lot. He said that the way the original developer talked was that they would fix the drainage problems in this area, but now First Texas Homes is building [not original developer]. He added that the only way to put in an R-2 house is to fill in by the creek and put in retaining walls. Mr. Adams asked if filling in the creek wasn't what Mr. Erwin had said had created problems already? Mr. Erwin said he wasn't sure how it works.

John Allevato, 1015 Colonial Ct, addressed the Board against the request. He said when the subdivision was developed, there was no hammerhead there and that the City put the hammerhead in. He said the lot should have been reclassified, but never was. He said, also, the creek has changed since he moved in and development since then has pushed water to that corner. He added that if a house was put there now, then in a few years, there'll be no back yard.

David Adams, 512 Oak Forest Ct, addressed the Board against the request on behalf of himself and his wife Lynn. He said they'd bought their house because they liked the 40 foot setbacks of the neighborhood. Also, he hoped a retaining wall would be built if a variance is granted, as the lot is higher than his, and he would expect to see drainage coming off that lot onto his.

Ernest Harvey, 604 Oak Leaf Ct., addressed the Board and said he was against the request if the builder did not wish to adjust or reduce the size of the house. He said his house is across the creek from the lot in question. His lot is 5 feet lower than across the street. He said adding a retaining wall on the creek would push water back on to him, then he'd have more erosion. Originally he thought it would be better to reduce the size of the home, but if other residents don't want a smaller home built there, then maybe other development plans are needed for this lot.

Applicant Response

Mr. Pantin responded, clarifying his reference to the 20 foot setback request, that the distance is not from the curb but from the property line. It's about 10 feet from the curb to the property line, so it would be about 31 feet from curb to build line. He indicated a variance would be needed no matter what house is built on the lot. First Texas Homes wanted the setback reduction to get the house as far away from the creek as possible while getting as much consistency as they can [with the subdivision]. Drainage has to stay on the property, and First Texas has put numerous retaining walls out there for houses with excess of 3 to 1 slope, and will also drop a brick ledge to reduce the grade. He said that it was incumbent on them to ensure the lot drains properly when they build, and they wouldn't want to do anything with the creek that would negatively affect existing homeowners. He add that if they put in a smaller house, other homeowners won't be happy because it's not consistent.

Staff Response

Ms. Roberts said the Board could apply conditions when granting a variance.

Mr. Adams he was going to ask about how to address all the issues that came up during the meeting.

Mr. Cowey said that right now, First Texas Homes can build on the lot. He said the product proposed is a

typical product in the subdivision, and it's not a question of the product not fitting the subdivision.

Mr. Vader said drainage really isn't germane to the variance. He feels bad for the neighbors, but if a house is built there, it isn't necessarily going to affect the houses already there. Conceivably, they could build a house there without a variance. They may not want to, but they have every right to bring in a house plan that fits the lot. Mr. Cowey said that was how the case came about, they brought in a building permit, and staff encouraged them to apply for the variance.

Mr. Adams said his concern was that there are property owners who are going to have problems going forward, and his question was what can we do going forward to minimize the problem as much as possible?

Mr. Vader asked if a variance is not granted and First Texas comes to build on the R-2 footprint on the lot, would the City have to approve it? Mr. Cowey said the drainage issues for that property would still have to be met.

Mr. Vader said he couldn't think of a condition where you'd tell a builder, yes, you can build, but you have to put up a retaining wall on both sides of the creek. Mr. Adams said he agreed, but it's a case where if the Board doesn't grant a variance, First Texas can build an R-2 house and nothing can be said about it. Mr. Cassady added that if they handle the drainage right, it shouldn't affect the existing drainage problem.

Mr. Vader said he's not sure he's that clairvoyant. He said the setback variance would probably be the least offensive of ones he's seen, but buyer beware, First Texas bought the property and knew the setback regulations.

Mr. Vader then asked Mr. Pantin what would be the opportunity to turn the lot into a neighborhood park. Mr. Pantin replied that the decision would go over his head. He added that First Texas had been building in Kennedale for 5 years, and they have a good track record for doing what they say they'll do. He said he can't speak to drainage concerns for the creek but he can talk about drainage for the lot, and it was incumbent on them to make sure the home owners that are next to this lot are not affected.

Action by the Board

Mr. Madrid made a motion to table the case for 30 days and see if the Board could get a more definitive answer from the City and from the builder on what to do to address issues from neighbors. He then amended the motion to table it no more than 60 days.

The motion was seconded by Mr. Cassady, and all members voted in favor.

VI. REPORTS/ANNOUNCEMENTS

Ms. Roberts mentioned the upcoming Chamber of Commerce car show and the historical society's bake sale. She also mentioned the Green Ribbon grant.

Mr. Adams asked about the statue of the little girl reading that was stolen from the roundabout by the high school. Mr. Cowey said staff was looking at ways to keep her more secured.

Mr. Vader asked about Arlington's plan for Bowman Springs, and Mr. Cowey replied that it should be out for bid this fall.

VII. ADJOURNMENT

Mr. Vader motioned to adjourn, seconded by Mr. Madrid. The motion passed with all in favor. The meeting adjourned at 8:46 P.M.



Date: November 6, 2012

Agenda Item No: REGULAR ITEMS - A.

I. Subject:

CASE # BOA 12-04 to receive comments and consider action on a request by First Texas Homes for a Variance to the City Code Section 17-405(d), "Schedule of District Regulations Adopted," to allow a reduction in front setback from 40 feet to 20 feet in an "R-2 Single Family Residential" zoning district at 514 Oak Forest Ct, more particularly described Lot 27, Block 3, Oakhill Park Addn, Kennedale.

- A. Staff Presentation
- B. Applicant Presentation
- C. Public Hearing
- D. Applicant Response
- E. Staff Response and Summary

II. Originated by:

III. Summary:

This case was tabled at the meeting in September. The request is to reduce the front setback from 40' to 20'. At the previous meeting, there appears to have been some confusion about where the property line is located. Please note that the front property line is approximately 5-10 feet behind the curb already in place.

At the public hearing last time, residents near the property under consideration and BOA members voiced concerns related to drainage and setbacks. These issues are addressed below.

Drainage & Erosion.

This variance request is not a request to vary from the city's drainage and grading regulations; all city requirements related to drainage will apply, regardless of whether a variance is granted. For this reason, drainage would not necessarily be considered in this particular case, unless granting the variance would affect the drainage such that the variance would be contrary to the public interest. City staff are aware of past drainage problems in this area, and problems associated with building on the lot would be addressed through the permitting process. There are three issues relating to drainage: (1) drainage on the lot in question; (2) drainage for the area (the lot in question and surrounding lots); and (3) drainage of the creek.

At the last meeting, the Board discussed whether a retaining wall would be beneficial. Staff's position is that if a retaining wall were to be built here, it would help the property in question (if conditions warranted a retaining wall) but would not benefit the surrounding properties. However, as long as development on the lot in question does not exacerbate drainage problems on other lots, then the drainage problems on other lots should have no bearing on this case.

Setbacks.

The setback is requested so that a structure can be built farther away from the creek, as mentioned above. The variance request is for 20' from the property line, not 20' from the curb. The front 5'-10' of the lot would be taken up by sidewalks and the grassy area provided between the sidewalk and the curb, and therefore the structure would be built approximately 25-30' from the existing curb.

Attached to this report is an image taken at approximately 30' from the curb, facing west. The white painted line in the foreground shows the 20' setback line, which is approximately 30' from the curb and behind the front of the adjacent house on Oak Forest. The setback line and relation to adjacent house is shown in the attached picture. As you can see in the picture, the house would not detract from the character established by the setback distance of other houses on the street.

The setback lines are also illustrated in the aerial view included with the staff report. The red lines in the image represent the property lines. As you can see, the front property line for 514 Oak Forest (Lot 27) is just about level with the front of the house on Lot 26, to the west. The request variance is to allow a house to be built 20' behind this line, and thus 20' behind the front build line of the adjacent house, and approximately 5'-10' behind the house to the east on Colonial Court.

Recommendation.

In terms of the drainage issue, staff assert that allowing a smaller front setback will help alleviate drainage issues by allowing more room in the back yard area, in turn allowing more of the existing vegetation to stay in place. The existing vegetation helps in accommodating water run-off from this lot and from adjacent properties, which should help slow down water flow and thus lessen the speed at which erosion occurs.

As for setbacks, the intent of setback regulations is to ensure a consistent neighborhood character in a particular zoning district. In the Oakhill Park neighborhood, the intent was to give a feeling of larger yards and more space between curb and structures. Because of the shape of this lot and the neighboring properties, as well as the hammerhead street design, a 20' front setback would still allow the house to be set back from the curb at a sufficient distance to be farther back than its neighbor on Oak Forest (see attached picture). Granting a setback variance in this case will allow the property to be developed in a manner commensurate with what is permitted on other lots in the same district, while taking into account the unique conditions of this lot and also maintaining the spirit and intent of the R-2 Zoning District regulations.

During the September meeting, the Board expressed concern about setting precedent, which is an issue the Board must take into consideration when making decisions, since it is a quasi-judicial board. However, since each request for a variance is based on the conditions specific to a particular property, the Board's decision on this case will not set precedent for setback variances in general, but only for other variance requests in which the characteristics inherent to the property are substantially the same (for example, a cul-de-sac lot that backs up to a creek and has a steep drop-off at the back of the lot, among other factors).

The request appears to meet the standards for receiving a variance. Staff recommends granting the variance, which would allow the house to be built farther from the creek, and which will help the long-term stability of the structure.

IV. Recommendation:

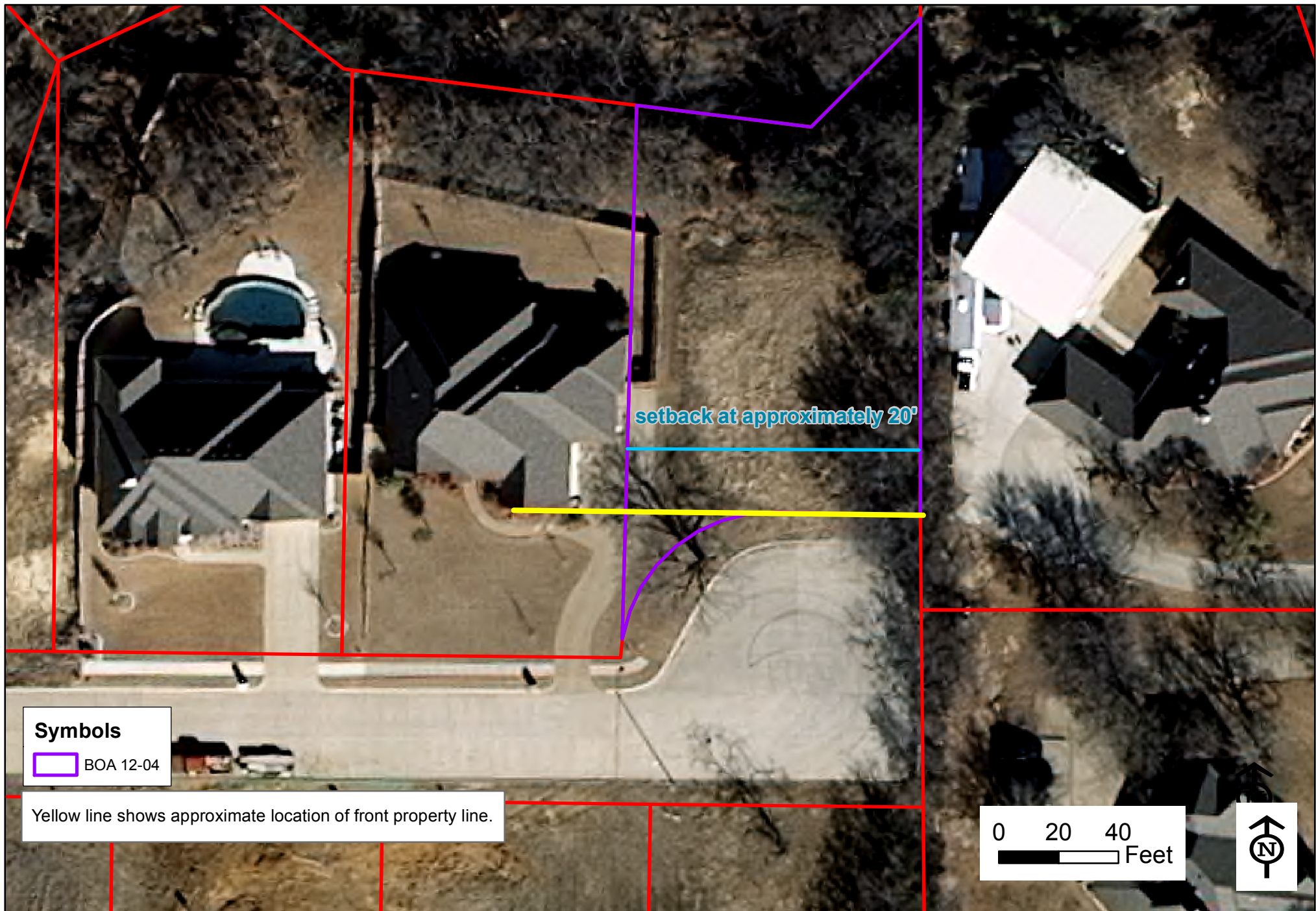
Approve

V. Alternative Actions:**VI. Attachments:**

1.	Image of 20' BL, facing west	Facing west at approx 20' BL.pdf - Adobe Acrobat.pdf
2.	Aerial view showing setback line(s)	BOA 12-04 showing proposed setback line (aerial).pdf
3.	Revised survey, BOA 12-04	BOA 12-04 revised survey.pdf



Aerial view of 514 Oak Forest Court



LEGEND OF ABBREVIATIONS AND SYMBOLS

B.L.	= Building Line	I.P.F.	= Iron Pipe Found	P.A.E.	= Public Access Easement	S.E.	= Sewer Easement
C.M.	= Control Monument	I.R.F.	= Iron Rod Found	P.O.S.E.	= Public Open Space Easement	U.E.	= Utility Easement
D.E.	= Drainage Easement	I.R.S.	= Iron Rod Set	R.O.W.	= Right of Way	X.T.R.W.	= Railroad Tie Retaining Wall
D.U.E.	= Drainage & Utility Easement	M.E.	= Maintenance Easement	R.W.	= Retaining Wall	O.H.E.	= Overhead Electric
ET	= Electric Transformer	()	= Record Data				
F.P.	= Fence Post	()	= Bearing Basis				

