

AGENDA
Meeting of the Prosper
Board of Adjustment/Construction Board of Appeals
108 W. Broadway St., Prosper, Texas
Town of Prosper Municipal Chambers
Monday, June 8, 2015, 6:00 p.m.

1. Call to Order / Roll Call.

CONSENT AGENDA

(Items placed on the Consent Agenda are considered routine in nature and are considered non-controversial. The Consent Agenda can be acted upon in one motion. A Board of Adjustment/Construction Board of Appeals member may remove any item for discussion and separate action. The Board of Adjustment/Construction Board of Appeals may vote nay on any single item without comment and may submit written comments as part of the official record.)

2. Consider and act upon minutes from the September 8, 2014 Regular Board of Adjustment/Construction Board of Appeals meeting.

REGULAR AGENDA

(If you wish to address the Board of Adjustment/Construction Board of Appeals during the regular agenda portion of the meeting, please fill out a "Speaker Request Form" and present it to the Building Official prior to the meeting. Citizens wishing to address the Board of Adjustment/Construction Board of Appeals for items listed as public hearings will be recognized by the Chair. Those wishing to speak on a non-public hearing related item will be recognized on a case-by-case basis, at the discretion of the Board of Adjustment/Construction Board of Appeals.)

3. Consider and act upon the appointment of a Chair and Vice-Chair.
4. Conduct a Public Hearing, and consider and act upon a request for a Variance to the Zoning Ordinance to allow for a fence exceeding four feet in height and encroaching a side yard setback of a key lot, located at the southwest corner of Cedar Springs Drive and Coletto Creek Drive (1820 Cedar Springs Drive). (V15-0002).
5. Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.
6. Adjourn

Note: The order in which items are heard on the agenda is subject to change.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted on the inside window at the Town Hall of the Town of Prosper, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on Friday, June 5, 2015, at 5:00 p.m. and remained so posted at least 72 hours before said meeting was convened.

Robyn Battle, Town Secretary

Date Noticed Removed

If during the course of the meeting covered by this Notice, the Board of Adjustment/Construction Board of Appeals should determine that a closed or executive meeting or session of the Board of Adjustment/Construction Board of Appeals or a consultation with the attorney/special counsel for the Town should be held or is required, then such closed or executive meeting or session or consultation with the attorney/special counsel as authorized by the Texas Open Meetings Act, Texas Government Code, §551.001, *et seq.*, will be held by the Board of Adjustment/Construction Board of Appeals at the date, hour and place given in this Notice or as soon after the commencement of the meeting covered by this Notice as the Board of Adjustment/Construction Board of Appeals may conveniently meet in such closed or executive meeting or session or consult with the attorney/special counsel for the Town concerning any and all subjects and for any and all purposes permitted by the Act, including, but not limited to, the following sections and purposes:

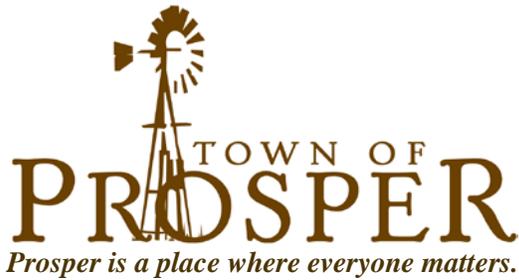
Texas Government Code:

§551.071 - Consultation with the attorney/special counsel for the Town.

NOTICE

Pursuant to Town of Prosper Ordinance No. 13-63, all speakers other than Town of Prosper staff are limited to three (3) minutes per person, per item, which may be extended for an additional two (2) minutes with approval of a majority vote of the Board of Adjustment/Construction Board of Appeals.

<p>NOTICE OF ASSISTANCE AT PUBLIC MEETINGS: The Prosper Board of Adjustment/Construction Board of Appeals Meetings are wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as Interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the Town Secretary's Office at (972) 569-1011. BRAILLE IS NOT AVAILABLE.</p>
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MINUTES
Meeting of the Prosper
Board of Adjustment/Construction Board of Appeals
108 W. Broadway St., Prosper, Texas
Town of Prosper Municipal Chambers
Monday, September 8, 2014, 6:00 p.m.

1. Call to Order / Roll Call.

The meeting was called to order at 6:04 p.m.

Members present include: Bob Wierschem, Steve George, Tracy Kirl, Kevin Drown (Alternate)

** Board Members Casady, Sanders and Frazier were absent from the meeting.

Staff present included: Hulon Webb, Executive Director of Development and Community Service; John Webb, Director of Development Services; Alex Glushko, Senior Planner; Ronnie Tucker, Fire Chief; Bryan Ausenbaugh, Fire Marshal; Bill Elliott, Building Official; Pamela Clark, Planning Technician; and Terry Welch, Town Attorney.

2. Consider and act upon minutes from the following Board of Adjustment/Construction Board of Appeals meeting:

- **November 11, 2013 Regular Meeting**

Motioned by George, seconded by Kirl, to approve item 2. Motion approved 4-0.

REGULAR AGENDA

3. Consider and act upon an appeal to the Fire Marshal's decision to require audio / visual (A/V) notification throughout the facility at 1241 Prosper Commons Blvd., AKA Advantage Storage.

Discussion

Ausenbaugh: Reviewed information used to determine the necessity of an audio/visual notification system within the interior corridors of the building. Provided information on the offices that are being constructed in the facility and described the type of access they have to interior storage units. Addressed comments made in an email by Kelley Stalder, State Fire Marshal.

Brian Baca (Applicant): Explained the current fire system that is installed and what type of notification is within the facility. Stated he is aware that the Town has adopted the 2013 Fire Code; however, when they permitted this building the 2003 Fire Code was in use. Described the type of use they believe will take place within the office units. Stated the 2013 Fire Code was not adopted when they started construction.

Board discussed the appeal request.

Motioned by Wierchem, seconded by George, to deny the Appellant's appeal of the Fire Marshal's decision to require audio/visual (AV) notification throughout the facility located at 1241 Prosper Commons Boulevard, also known as Advantage Storage. Motion approved 4-0.

4. Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.

No action.

5. Adjourn

Motioned by George, seconded by Kirl, to adjourn. Motion approved 4-0.

Meeting was adjourned at 7:15 p.m.

Pamela Clark, Planning Technician

Chair/Vice Chair



DEVELOPMENT SERVICES

To: Board of Adjustment

From: Alex Glushko, AICP, Senior Planner

Through: John Webb, AICP, Director of Development Services

Re: Board of Adjustment Meeting – June 8, 2015

Agenda Item:

Conduct a Public Hearing, and consider and act upon a request for a Variance to the Zoning Ordinance to allow for a fence exceeding four feet in height and encroaching a side yard setback of a key lot, located at the southwest corner of Cedar Springs Drive and Coletto Creek Drive (1820 Cedar Springs Drive). (V15-0002).

Description of Agenda Item:

The subject property has an existing single family residential home and a six foot (6') high privacy wood fence located within the side yard setback on the side property line. The applicant is pursuing replacement of the fence, which is proposed to be constructed in the same location as the existing fence and consisting of the same height and materials.

The fence was installed at the conclusion of the construction of the home on the property. The Town's records indicate the fence permit was issued in in July, 2010 and received a final inspection with the completion of the home in August, 2010. The fence permit was issued in error in that the fence did not meet the Zoning Ordinance requirements for the placement of a "key lot" fence. The fence is located on the property line; it should have been located thirty feet (30') from the property line. Permits which get issued in error, such as in this case, do not exempt applicants from meeting the requirements of the Zoning Ordinance.

Town staff has informed the applicant that a fence permit cannot be issued for the replacement fence because it does not meet the requirements of the Zoning Ordinance; therefore the applicant is pursuing a Variance to these requirements.

The subject property is a "key lot." A key lot is a corner lot which has adjacent front facing lots on either side. An illustration of a key lot from the Zoning Ordinance has been included with this packet of information (Attachment 2). According to the Zoning Ordinance, on key lots the side yard is treated as a front yard and the maximum height of a fence or wall in a required front yard of a single family shall not exceed four feet (4') in height. As a result, in accordance with the Town standards, the options for the proposed fence replacement are as follows, unless a Variance is granted by the Board of Adjustment:

1. The six foot (6') wooden replacement fence should be located at the side setback line, thirty feet (30') from the property line;

2. The replacement fence should be a maximum of four feet (4') in height; or
3. The replacement fence should be a minimum of fifty percent (50%) open (i.e. ornamental metal)

According to the Zoning Ordinance, the Board of Adjustment may consider, in specific cases, a variance of height, yard, area, exterior structure, lot coverage, off-street parking and loading requirements from the terms of the Zoning Ordinance, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of the Ordinance is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by Ordinance to other parcels of land in the Town or the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.

In order to make a finding of hardship and to grant a variance, the Board of Adjustment must determine that the following four (4) criteria have been met:

1. The requested variance does not violate the intent of the Zoning Ordinance or its amendments; and
2. Special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district; and
3. The hardship is in no way the result of the applicant's own actions; and
4. The interpretation of the provisions in the Zoning Ordinance or its amendments would deprive the applicant of rights commonly enjoyed by other properties, in the same zoning district, that comply with the same provisions.

The applicant has provided a letter with responses to each of these criteria which has been included with this packet of information (Attachment 4).

The Town's interpretation is that the applicant has not satisfied all the aforementioned criteria necessary for a Variance to be granted. There is not a physical hardship preventing the applicant from either 1) locating the replacement six foot (6') wooden fence at the required thirty-foot setback, 2) installing a fence not exceeding four (4') in height, or 3) providing an ornamental metal fence. Additionally, within the La Cima subdivision there are several other key lots which have met the Town standards and either set the fence back to the side yard setback line, or provided ornamental metal fencing. Example photos of key lots within La Cima have been included with this packet of information (Attachment 3).

The concurring vote of four (4) members of the Board of Adjustment is necessary to authorize a variation from the terms of the Zoning Ordinance.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by the Zoning Ordinance. Town staff has received two Public Hearing Notice Reply Forms; one in opposition to the request, and one not in opposition to the request.

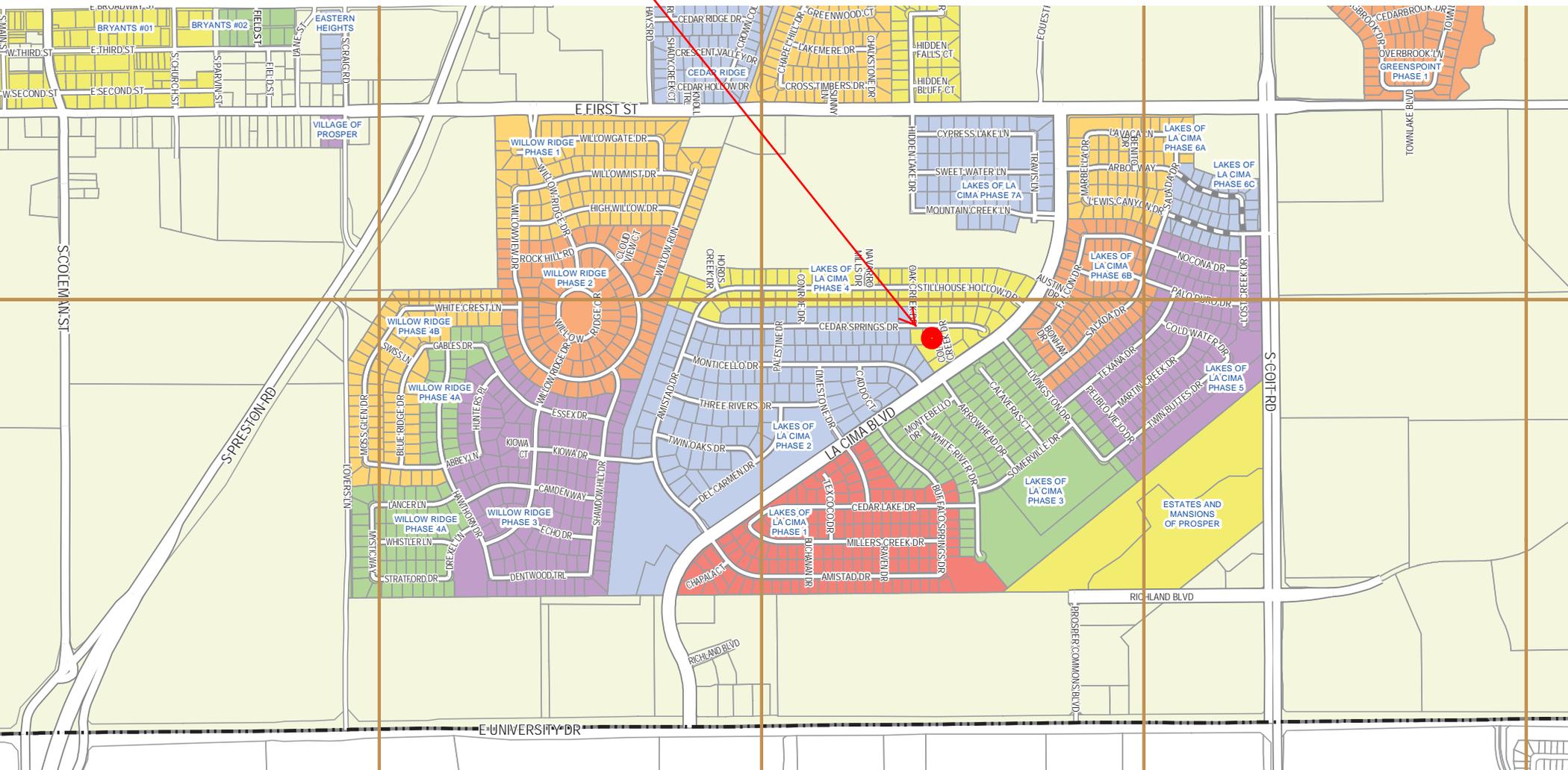
Attached Documents:

1. Subject property location map, aerial, exhibit, and photo
2. Key lot and side yard regulations
3. La Cima key lot example photos
4. Variance materials from applicant
5. Public hearing notice reply forms

Town Staff Recommendation:

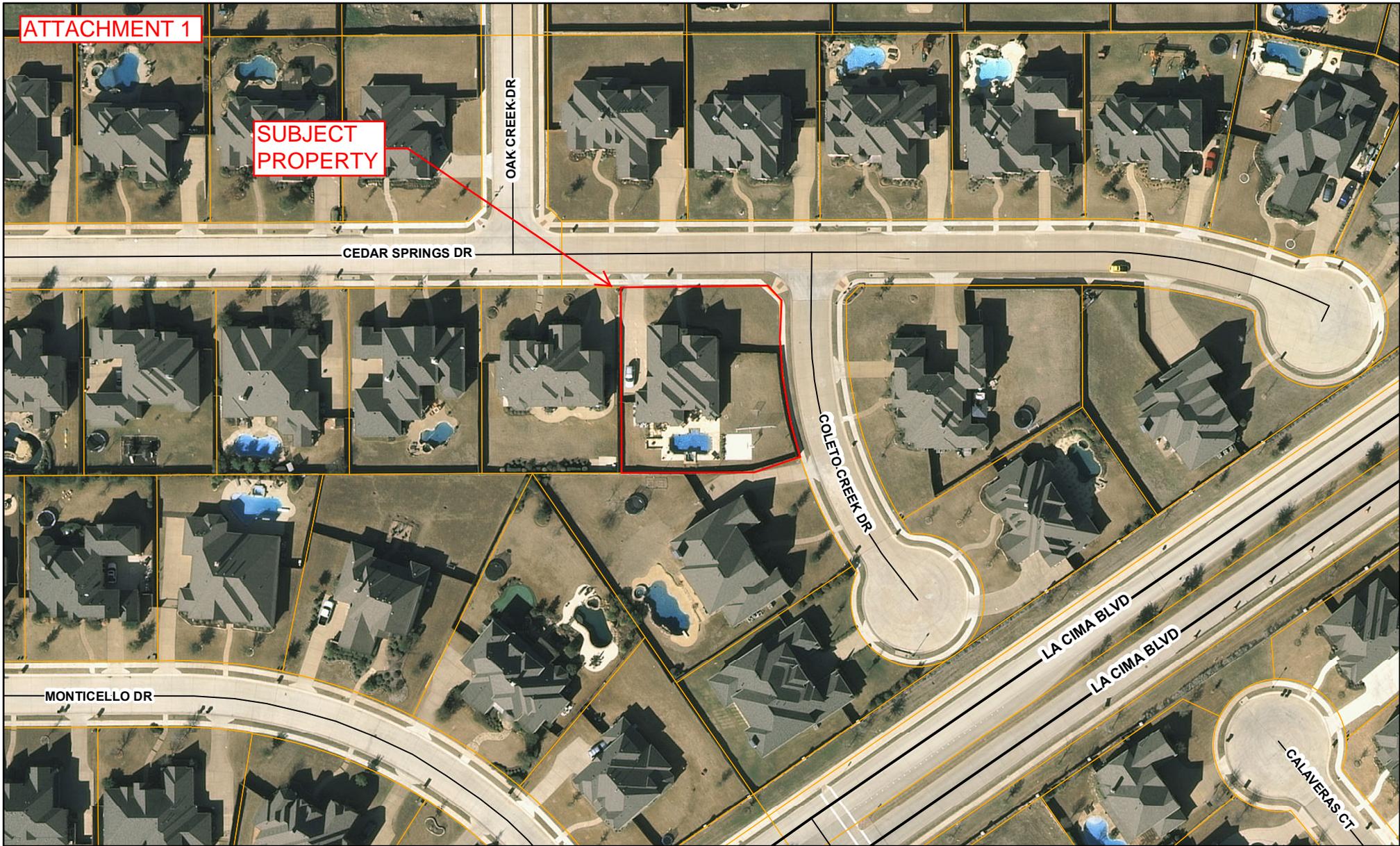
Town staff recommends the Board of Adjustment deny the request for a Variance to the Zoning Ordinance to allow for a fence exceeding four feet in height and encroaching into a side yard setback of a key lot, located at the southwest corner of Cedar Springs Drive and Coletto Creek Drive (1820 Cedar Springs Drive).

SUBJECT
PROPERTY



ATTACHMENT 1

SUBJECT
PROPERTY



Town of Prosper



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14.14'

R=325.00' L=98.24'

S 71°30'09" W
37.60'

S 88°49'19" W 99.30'

N 88°49'19" E 110.45'

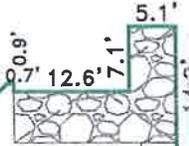
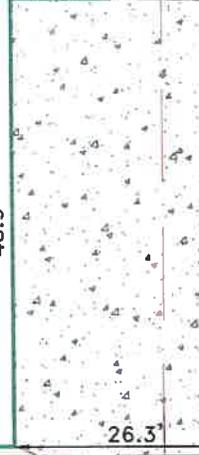
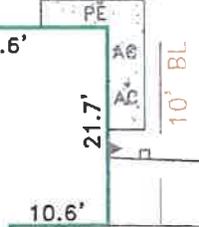
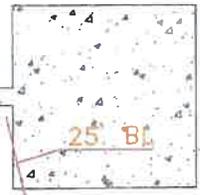
N 01°10'41" W 140.00'

LOT
26

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24

TWO STORY
BRICK, FRAME
AND STONE



SUBJECT
FENCE

1.0' STONE
RETAINING WALL

DENOTES
HOUSE DIRECTION
FACES

0.9' OFF
0.3' ON

0.4' ON

1.3' OFF

0.2' ON

0.2' ON

30' BL

10' BL

30' BL

0.4' ON

5' UTILITY
ESMT.

5.4'
2.7'
1.9'
2.9'

4.5'

15.5'

5.6'

4.2'

22.6'

21.7'

10.6'

48.9'

31.0'

21.3'

26.3'

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2.0'

2.8'
4.4'

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12.6'

7.1'

5.1'

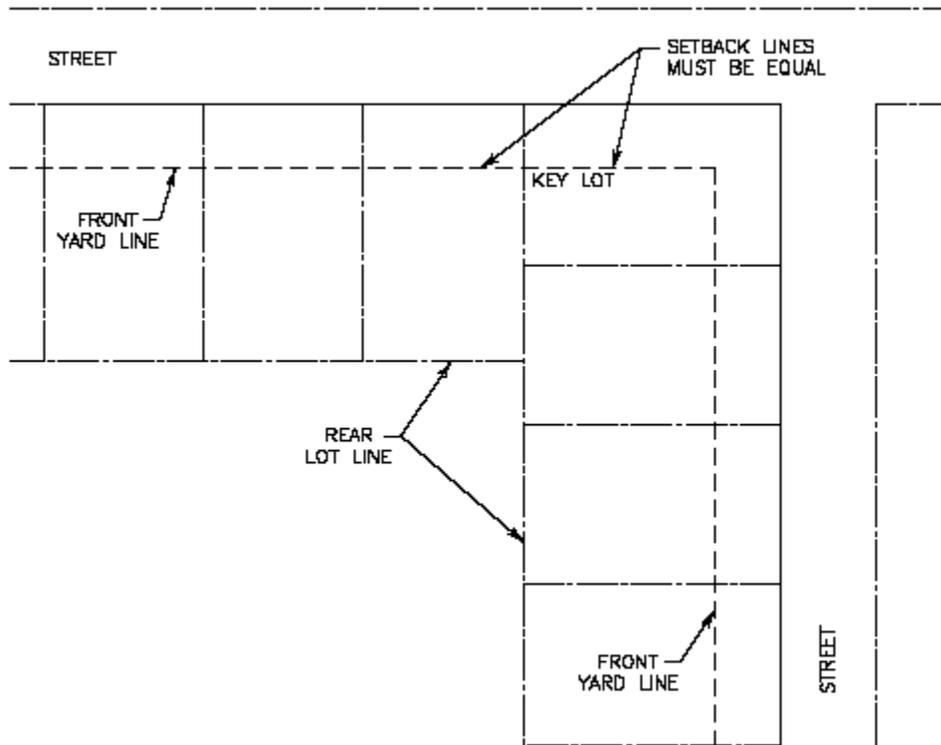
14.9'

44.2'





O. Key Lot Setbacks



1. For an outside swing-in garage provided the wall of the garage that faces the street contains a glass pane window with a minimum size of three (3) feet by five (5) feet and the height of the garage does not exceed one (1) story; or
2. For a non-enclosed porch, stoop, or balcony, or an architectural feature, such as bay window without floor area or chimney; or
3. For a non-enclosed porch and the main structure provided:
 - a. the height of the main structure does not exceed one (1) story;
 - b. the porch has a minimum dimension of seven (7) feet in depth measured from stud to the front edge of the porch floor and a minimum width of twenty (20) feet; and
 - c. the minimum front yard for a front entry garage is increased one (1) foot for every one (1) foot the minimum front yard for the main structure is reduced.

9.4 **SIDE AND REAR YARDS:**

- A. On a Key Lot used for one or two-family dwellings, both street exposures shall be treated as front yards (See Chapter 5, Section 2.3 Illustration O) on all key lots except where one street exposure is designated as a side yard and separated from the adjacent lot by an alley (See Chapter 5, Section 2.3 Illustration P). In such case, a building line shall be designated on the plat approved by the Town of Prosper containing a side yard of fifteen (15) feet or more. On lots that were official lots of record prior to the effective date of this Ordinance, the minimum side yard adjacent to a side street shall comply with the minimum required side yard for the Zoning District.
- B. Every part of a required side yard shall be open and unobstructed from the ground upward except for accessory buildings as permitted herein and the ordinary projections of window sills, belt courses, cornices, and other architectural features not to exceed twelve (12) inches into the required side yard, and roof eaves projecting not to exceed thirty-six (36) inches into the required side yard. Air conditioning compressors and similar appurtenances are permitted in the side yard.
- C. Side yard setbacks in the R, C, and CC Districts may be waived for a building when attached to an adjacent building and is shown on a site plan approved by the Planning & Zoning Commission. (Z07-8)
- D. The face (meaning garage door) of a garage that faces a side yard (a swing-in garage) must be setback twenty-four feet (24') from the side property line. (Z10-0013)
- E. Non-residential uses that are permitted within a single family Zoning District (such as a day care, school, or church) shall maintain a forty (40) foot side and rear building setback when adjacent to a property that is zoned or designated on the Future Land Use Plan for residential uses.

9.5 **SPECIAL HEIGHT REGULATIONS**

Water stand pipes and tanks (excluding Town owned and/or operated water tanks), church steeples, domes, spires, school buildings, and institutional buildings may be erected to exceed three (3) stories in height, provided that one (1) additional foot shall be added to the width and depth of front, side, and rear yards for each foot that such structures exceed three (3) stories.

Ornamental features in all non-residential Zoning Districts may exceed the maximum building height provided that the ornamental feature does not contain floor area and provided the required setbacks for the ornamental feature are increased by two (2) feet for every one (1) foot that the ornamental feature exceeds the maximum height. Ornamental features include, but are not limited to towers, spires, steeples, and cupolas.

9.6 **MEASUREMENTS:**

All measurements of setback requirements shall be made according to Chapter 5, Section 2.3, Illustrations Q-U.

- height of the wall to visually screen the dumpster or compactor.
- G. Where any alley intersects with a street, no fence or plant taller than two and one-half (2½) feet may be placed within a sight visibility triangle defined by measuring five (5) feet down the alley right-of-way line and measuring fifteen (15) feet down the street right-of-way line, then joining said points to form the hypotenuse of the triangle.
- H. In any residential Zoning District, or along the common boundary between any residential and non-residential district where a wall, fence, or screening separation is provided, the following standards for height, location, and design shall be observed:
1. Any fence or wall located to the rear of the minimum required front yard line shall not exceed eight (8) feet in height above the grade of the adjacent property. Where a fence intersects a screening wall and the height of the fence exceeds the height of the screening wall, the height of the fence shall transition to the height of the screening wall over a distance of twenty (20) feet.
 2. The maximum height of a fence or wall in a required front yard of a single family or duplex shall not exceed four (4) feet. Combinations of berms and fences shall not exceed four (4) feet in height. Ornamental metal fencing that is attached to required screening walls as defined in Subdivision Ordinance No. 03-05, as it currently exists or may be amended, may be constructed up to eight (8) feet in height in the front yard of cul-de-sac lots for only the side of the lot that is adjacent to a street with a right-of-way width of sixty (60) feet or greater. The height of this fence shall not exceed the height of the adjacent required screening wall.
 3. The maximum height of a fence in a required front yard of a single family lot that is one (1) acre or larger may exceed the four (4) foot height limit established above, provided that said fence shall not exceed eight (8) feet in height and shall be constructed of wrought iron or decorative tubular steel.
- I. Screening shall be required between residential lots and adjacent right-of-ways as required by Subdivision Ordinance No. 03-05, as it currently exists or may be amended.
- J. All mechanical equipment shall be screened from view at a point six (6) feet above ground level at the property line. If a parapet does not accomplish this screening, a screening wall equal to the height of the equipment shall be provided. Buildings adjacent to single family zoned property or property that is designated as single family on the Future Land Use Plan shall provide a screening wall equal to the height of the equipment on all sides that face the residential property.
- K. A six (6) foot irrigated living screen shall be required when parking is located adjacent to residential in the Downtown Commercial District (DTC), Downtown Retail District (DTR), or the Downtown Office District (DTO).
- L. Air conditioning units and pool equipment shall be entirely screened from view from adjacent public right-of-way by a living screen consisting of evergreen shrubs, a solid privacy fence, or through building orientation.

ATTACHMENT 3



1014 Twin Oaks Dr
Prosper, Texas
Street View - Sep 2013

La Cima Subdivision -
Key lot side yard with
ornamental metal fencing

ATTACHMENT 3



Del Carmen Dr
Prosper, Texas
Street View - Sep 2013

La Cima Subdivision -
Key lot side yard with
ornamental metal fencing

ATTACHMENT 3



La Cima Subdivision -
Key lot side yard with
ornamental metal fencing

ATTACHMENT 3



La Cima Subdivision -
Key lot side yard with
ornamental metal fencing

ATTACHMENT 3



La Cima Subdivision -
Key lot side yard with
fence setback to side yard

Application for Variance by Richard Davidson 1820 Cedar Springs Drive

May 8, 2015

This letter is written to provide an explicit typewritten statement as to the nature and intent of the variance we are requesting to be reapproved for Richard & Stephanie Davidson. Original purchasers of the property located at 1820 Cedar Springs Drive.

Purpose of the request:

Requesting approval to replace the existing fence in the exact same location with a new fence, the original fence was approved by the city on 7/12/2010 by Chad Wortham. Also to note the property directly across from us, also designated a key lot, was given a permit for the same type of fence when their home was built and so there is a precedence that it has been given to others.

Based upon the original approval granted in 2010 we have made improvements to our property and specifically the backyard based upon the originally approved location of the fence. A pool has been added along with a basketball court and an outdoor kitchen and patio cover to fully optimize the backyard space. The effects of not getting this variance will impact the value of the home,

We are not requesting anything beyond what was originally approved when we purchased the home, other than we would like to update the appearance of the fence. Updating the fence helps with the overall appearance of the neighborhood and would be to the benefit of our neighbors.

The current approved fence has been in place for 5 years and has not negatively impacted our neighbors and we currently are working with our neighbor who is next door and he has no concerns with replacing it in the same place. There have been three families that have resided in the house directly behind this property and none of them have ever said anything about the fence impacting their property.

It would be unreasonable and cause a financial impact on our family if after 5 years we needed to move the fence just to improve its appearance. It would now cut through the basketball court, pets would not be contained, sprinkler systems would need to be moved and all new landscaping would need to be added for privacy.

Our request is not unreasonable nor is there a negative impact on anyone by allowing us to replace the currently approved fence with an updated one for appearance purposes.



Permit Search > F10-0214

1820 CEDAR SPRINGS DR, PROSPER

F10-0214

[Inspections](#)
[Contacts \(3\)](#)
[Fee Details](#)

[Reviews \(1\)](#)
[More Info \(1\)](#)
[Attachments](#)

Description: **FENCE PERMIT**
Type: **FENCE**
Sub-Type:
Expires:
Applied: **07/06/2010**
Status: **FINALED**
Notes:
Approved: **07/12/2010**
Issued: **07/15/2010**
Finaled: **08/31/2010**
Parcel #: **C2613534**
Fees Due: **\$ 0.00**

Back

4/28/2015

prosperbx.crw.com/PDA/ReviewDetails.aspx?RecordID=CW:1007120417170058



Search > F10-0214 > Reviews > BUILDING

1820 CEDAR SPRINGS DR, PROSPER

F10-0214

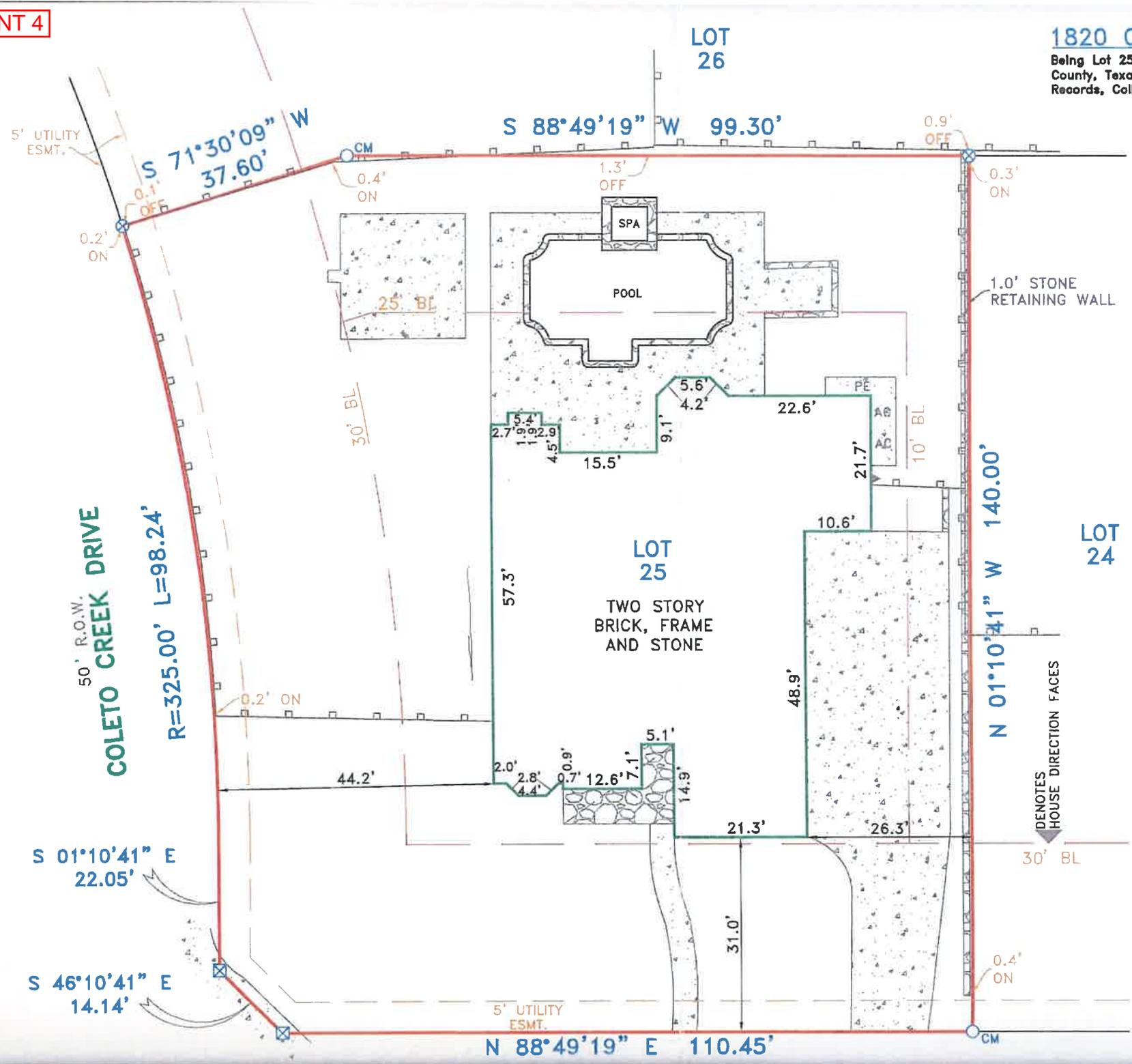
Review Type: **BUILDING**
Reviewer: **CHAD WORTHAM**
Sent Date: **7/6/2010**
Due Date: **7/13/2010**
Returned Date: **7/12/2010**
Remarks:
Status: **APPROVED**
Notes:

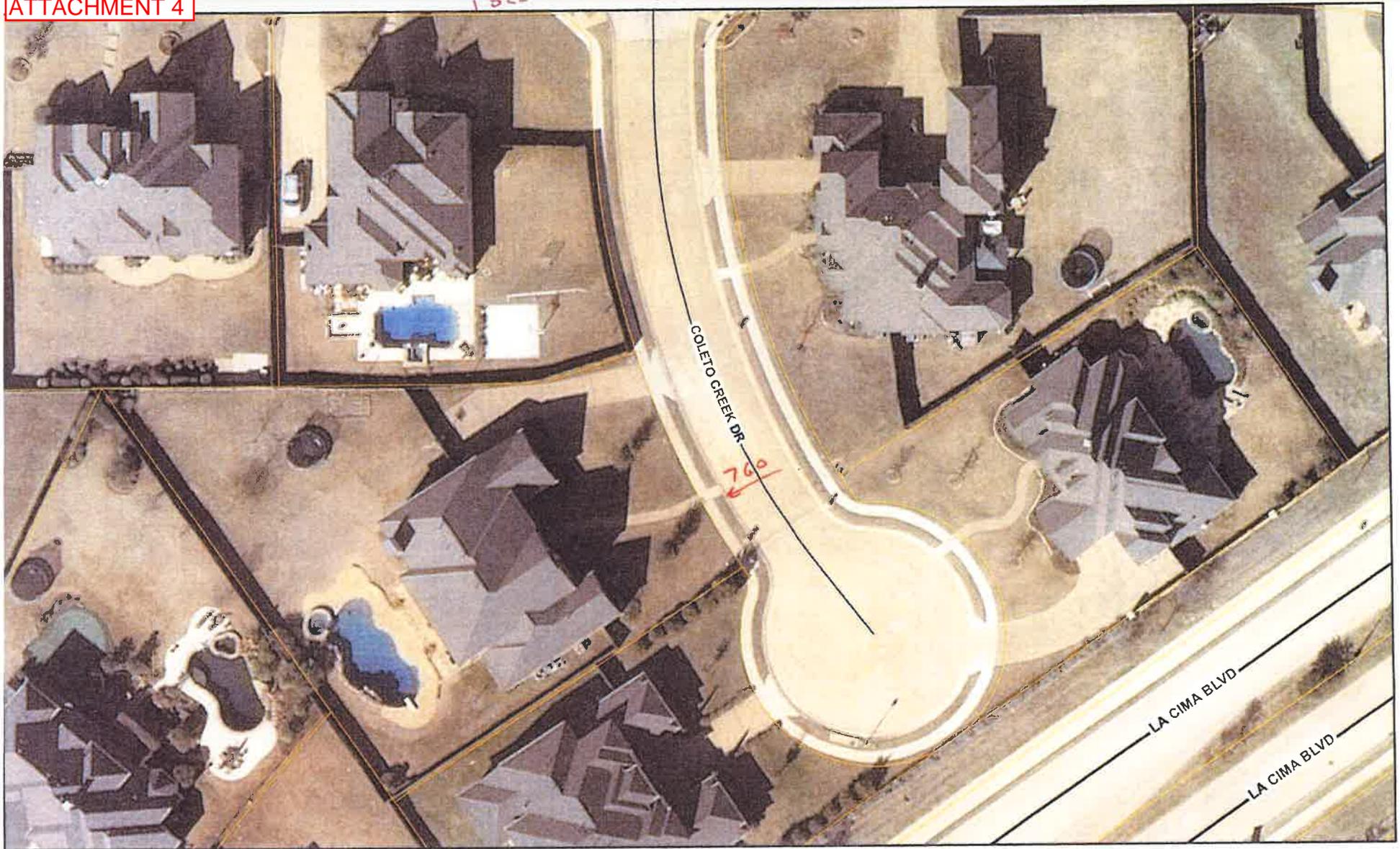
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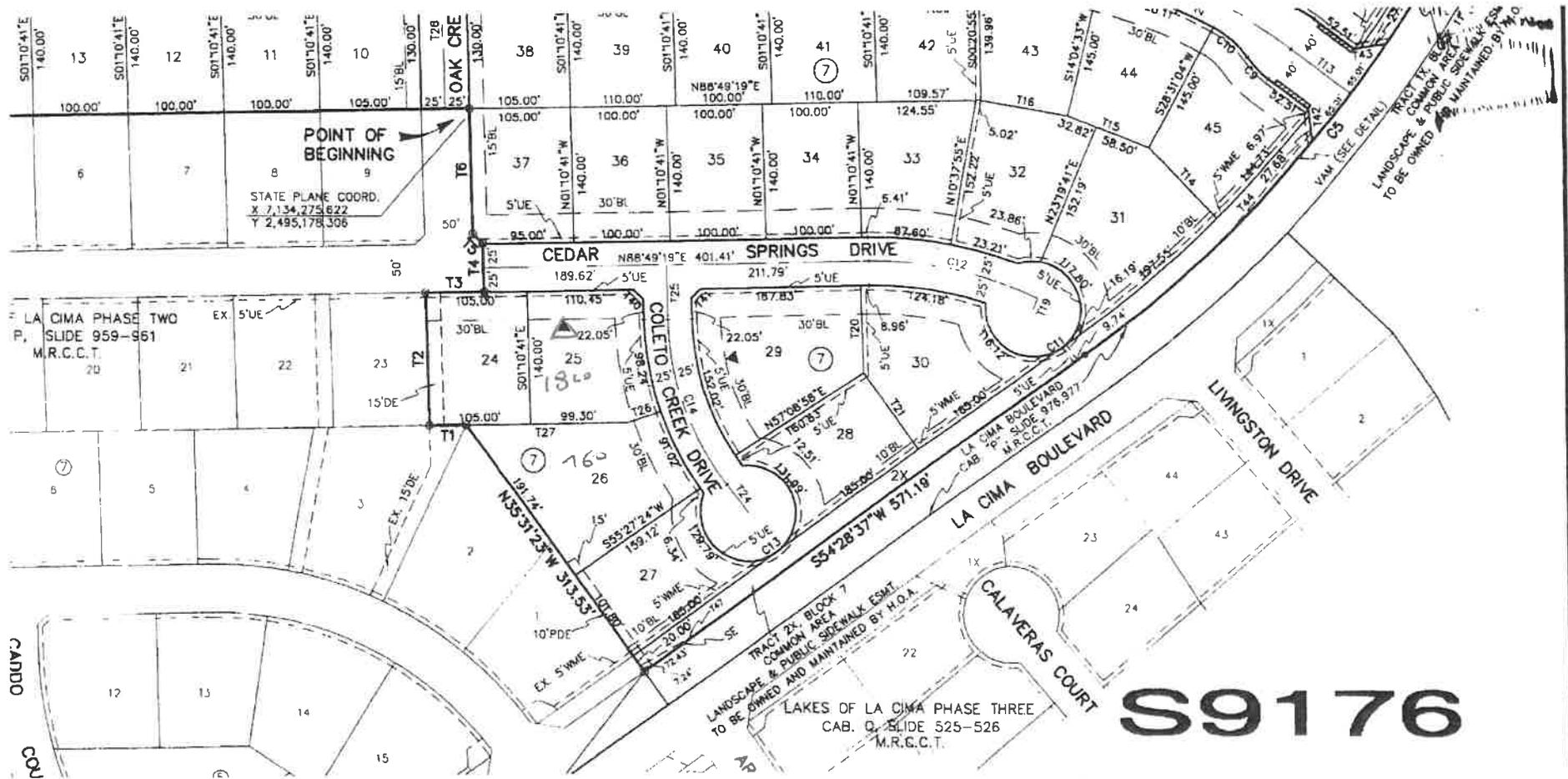




Town of Prosper



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S9176

ATTACHMENT 5



**DEVELOPMENT SERVICES
DEPARTMENT**
P.O. Box 307
Prosper, TX 75078
Phone: 972-346-3502
Fax: 972-347-2842

REPLY FORM

SUBJECT:

Variance case V15-0002: The Town of Prosper has received a request for a Variance to the Zoning Ordinance to allow for a fence exceeding four feet in height and encroaching a side yard setback of a key lot.

LOCATION OF SUBJECT PROPERTY:

The property is located on the southwest corner of Cedar Springs Drive and Coletto Creek Drive (1820 Cedar Springs Drive).

DESCRIPTION OF THE REQUEST:

The Variance is in regards to a fence exceeding four feet in height and encroaching a side yard setback of a key lot.

I OPPOSE the request as described in the notice of public hearing. If in opposition, please provide a reason for opposition.

I DO NOT OPPOSE the request as described in the notice of public hearing.

COMMENTS ATTACH ADDITIONAL SHEETS IF NECESSARY: _____

JOHN SOVEREIGN
Name (please print)

[Signature]
Signature

1401 CEDAR SPRINGS Dr.
Address

JUNE 3, 2015
Date

PROSPER TX 75078
City, State, and Zip Code

jsovereign@gmail.com
E-mail Address



**DEVELOPMENT SERVICES
DEPARTMENT**
P.O. Box 307
Prosper, TX 75078
Phone: 972-346-3502
Fax: 972-347-2842

REPLY FORM

SUBJECT:

Variance Case V15-0002: The Town of Prosper has received a request for a Variance to the Zoning Ordinance to allow for a fence exceeding four feet in height and encroaching a side yard setback of a key lot.

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I **OPPOSE** the request as described in the notice of public hearing. If in opposition, please provide a reason for opposition.

I **DO NOT OPPOSE** the request as described in the notice of public hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY): _____

RONALD HAROUFF
Name (please print)

Ronald Harouff
Signature

1900 CEDAR SPRINGS DR.
Address

JUNE 1, 2015
Date

PROSPER TX 75078
City, State, and Zip Code

E-mail Address