



**AGENDA**  
**Meeting of the**  
**Prosper Board of Adjustment/**  
**Construction Board of Appeals**  
Prosper Town Hall  
Council Chambers  
250 W. First Street, Prosper, Texas  
Monday, March 14, 2022, 6:00 p.m.

**Notice Regarding Public Participation**

Welcome to the Prosper Board of Adjustment/Construction Board of Appeals meeting. Individuals may attend the meeting in person, or access the meeting via videoconference, or telephone conference call.

**To access the videoconference online, follow these instructions:**

Join the Zoom Meeting by clicking on the following link: <https://us02web.zoom.us/j/83833239947>

Enter Meeting ID: 838 3323 9947

To request to speak, click on "Participants" at the bottom of the screen, and click "Raise Hand." The meeting moderator will acknowledge your request and allow you to speak.

To join the meeting by phone, dial any one of the following numbers: +1 346 248 7799

Enter Meeting ID: 838 3323 9947

To request to speak, enter \*9. The meeting moderator will acknowledge your request and allow you to speak.

**Addressing the Board of Adjustment/Construction Board of Appeals:**

- Those wishing to address the Board must complete the [Public Comment Request Form](#) located on the Town website or in Council Chambers.
- **If you are attending in person**, please submit this form to the Board Chair or a staff member prior to the meeting. When called upon, please come to the podium and state your name and address for the record.
- **If you are attending online/virtually**, please submit this form prior to 5:00 p.m. on the day of the meeting. Please ensure your full name appears on the screen and you are unmuted so the meeting moderator can recognize you and allow you to speak. The Chat feature is not monitored during the meeting. The Town assumes no responsibility for technical issues that are beyond our control.

**If you encounter any problems joining or participating in the meeting, please call our help line at 972-569-1191 for assistance.**

Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Board for items listed as public hearings will be recognized when the public hearing is opened. For individuals wishing to speak on a non-public hearing item, they may address the Board when the item is considered by the Board.

1. Call to Order / Roll Call
2. Consider and act upon minutes from the January 10, 2022, Regular Board of Adjustment/Construction Board of Appeals meeting.

3. Conduct a Public Hearing, and consider and act upon a request for a Variance to the Zoning Ordinance, to allow a structure to encroach a rear yard setback, located in the Falls of Prosper subdivision, at 2211 Whetstone Way. (V22-0001).
4. 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 at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on Friday, March 11, 2022, and remained so posted at least 72 hours before said meeting was convened.

\_\_\_\_\_  
Michelle Lewis Sirianni, Town Secretary

\_\_\_\_\_  
Date Notice Removed

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

#### **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.

<b>NOTICE OF ASSISTANCE AT PUBLIC MEETINGS:</b> The Prosper Town Hall is wheelchair accessible. For special services or assistance, please contact the Town Secretary's Office at (972) 569-1011 at least 48 hours prior to the meeting time.
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**MINUTES**  
**Regular Meeting of the**  
**Board of Adjustment/**  
**Construction Board of Appeals**

Prosper Town Hall  
Executive Conference Room  
250 W. First Street, Prosper, Texas  
Monday, January 10, 2022, 6:00 p.m.

**Regular Meeting of the Board of Adjustment/Construction Board of Appeals**

**1. Call to Order / Roll Call.**

The meeting was called to order at 6:00 p.m.

Board members present: CJ Alexander, Brad Black, Cliff Freeman (Alternate), Grant Mendeljian, and Joe Tremblay.

Board members absent: George Dupont.

Non-participating Board members in attendance: Kenneth Dugger (Alternate)

Staff present: Trish Eller, Code Enforcement Officer; and Michael Martin, Deputy Town Attorney

Staff present via teleconference: Khara Dodds, Director of Development Services; Mary Branch, Health & Code Supervisor; Brady Cudd, Building Official; Alex Glushko, Planning Manager; and Evelyn Mendez, Planning Technician.

**REGULAR AGENDA**

**2. Consider and act upon the appointment of a Chair and Vice-Chair.**

Motion by Alexander, second by Black, to appoint George Dupont as Chair. Motion approved 5-0.

Motion by Black, second by Freeman, to appoint CJ Alexander as Vice-Chair. Motion approved 5-0.

**3. Consider and act upon minutes from the February 25, 2019, Regular Board of Adjustment/Construction Board of Appeals meeting and Joint Meeting of the Prosper Board of Adjustment/Construction Board of Appeals and the Prosper Planning & Zoning Commission.**

Motion by Black, second by Tremblay, to approve the minutes from the February 25, 2019, Regular Board of Adjustment/Construction Board of Appeals meeting. Motion approved 5-0.

**4. Conduct a public hearing concerning a substandard structure located at 2060 Dove Creek Circle in the Town of Prosper, and thereafter discuss, consider, and take action regarding said substandard structure.**

*Martin and Eller*: Presented information regarding the proposed request and structure.

*Dirk Leidecker (Property Owner)*: Provided information regarding the structure and associated improvements.

The public hearing was opened, and with no requests to speak, the public hearing was closed.

Motion by Black, second by Alexander, to determine the structure located at 2060 Dove Creek Circle, Prosper, Texas is a substandard structure and further order the property owner demolish the structure, in accordance with all applicable codes, by February 9, 2022. Motion approved 5-0.

**4. Adjourn.**

Motion by Tremblay, second by Black, to adjourn, at 6:50 p.m. Motion approved 5-0.

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**Evelyn Mendez, Planning Technician**

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**Chairman/Vice-Chairman**





## DEVELOPMENT SERVICES

**To:** Board of Adjustment

**From:** Alex Glushko, AICP, Planning Manager

**Through:** Khara Dodds, Director of Development Services  
Brady Cudd, Building Official

**Re:** Board of Adjustment Meeting – March 14, 2022

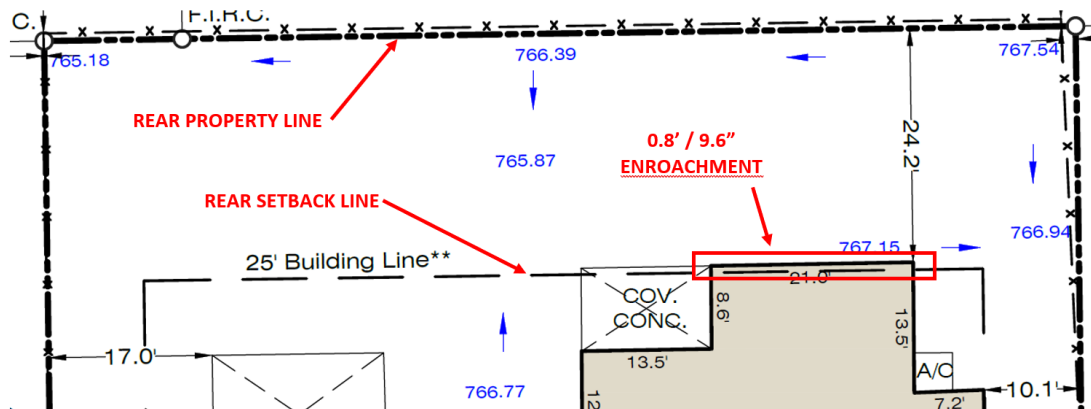
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### Agenda Item:

Conduct a Public Hearing, and consider and act upon a request for a Variance to the Zoning Ordinance, to allow a structure to encroach a rear yard setback, located in the Falls of Prosper subdivision, at 2211 Whetstone Way. (V22-0001).

### Description of Agenda Item:

The Town has received a request of the Board of Adjustment (BOA) to consider a request for a Variance to allow a structure to encroach a rear yard setback, located in the Falls of Prosper subdivision, at 2211 Whetstone Way. The subject property is zoned Planned Development-70, which has a minimum required rear yard of twenty-five feet (25'). This request is specifically to allow for a recently constructed house to remain as is with an encroachment of 0.8 feet or 9.6 inches over the rear building line, as shown below.



A timeline of events is as follows.

On January 21, 2021 Harwood Homes/First Texas Homes applied for a building permit (H21-0089) to construct a house on the subject property. The permit was approved on February 2, 2021. The approved permit did not show the encroachment of the structure over the rear building line. On February 12, 2021, the permit was issued to the builder for construction of the home. Following issuance of the permit, inspections resulted in the following:

- March 11, 2021, a plumbing rough-in inspection was disapproved for multiple reasons, including the required paperwork not being located onsite as required;
- On March 15, 2021, a plumbing rough-in inspection was scheduled, but subsequently canceled;
- On March 16, 2021, a plumbing rough-in inspection was disapproved for multiple items; however, the required paperwork, including a Form Board Survey, was accepted; and
- On March 18, 2021, a plumbing rough-in inspection was approved.

The Form Board Survey noted above that was accepted on March 16, 2021, depicted the 0.8 feet or 9.6-inch rear yard building encroachment. That survey was accepted and approved by Town Staff, in error. It should be noted, that while the surveyor identified and depicted the forms being over the building lines, no notable notations or indications were made on the survey to alert either the builder or inspector of the issue.

The Town was notified of the error in mid-December 2021, during the course of a conversation with the builder for First Texas, Karl Dawson. Mr. Dawson had been made aware of the issue by the surveyor performing the final grade survey. On February 11, 2022, an initial Building Final inspection of the house was performed. As of March 1, 2022, all items identified during that inspection have been addressed, with the exception of the subject encroachment. The request, if approved, would allow the house to be finalized and the buyers to occupy the residence.

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. 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 of the Variance was provided in accordance with the Zoning Ordinance. To date, staff has not received any responses to the request.

**Attached Documents:**

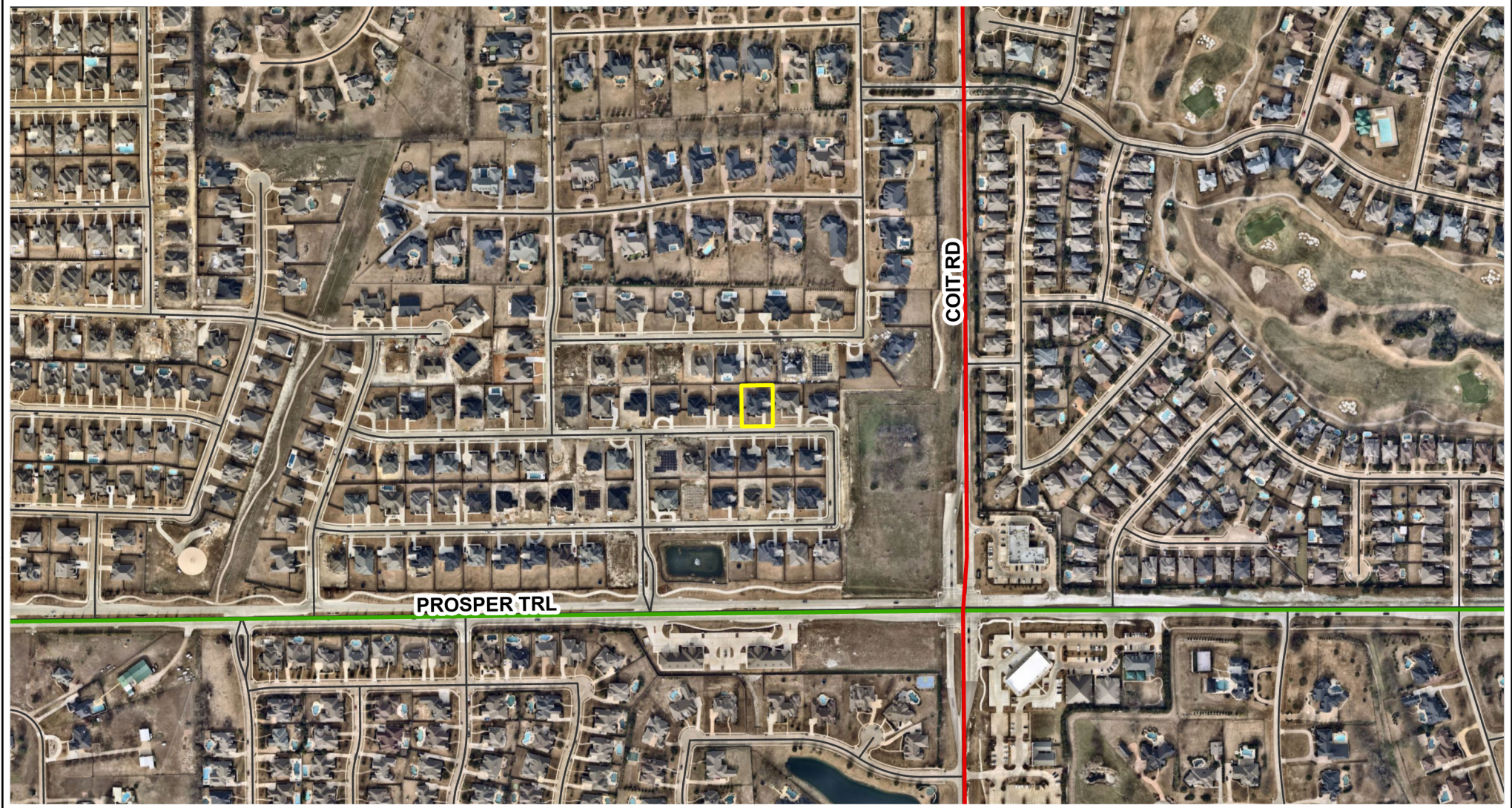
1. Location Map
2. Property Survey
3. Variance Request Letter

**Staff Recommendation:**

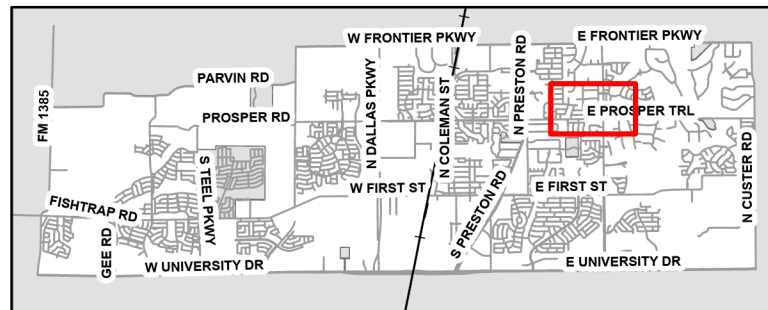
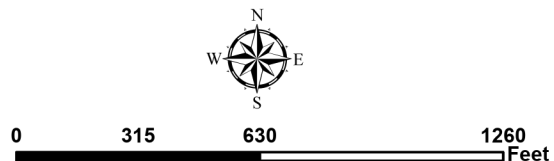
Staff recommends the Board of Adjustment approve the request for a Variance to the Zoning Ordinance, to allow a structure to encroach a rear yard setback, located in the Falls of Prosper subdivision, at 2211 Whetstone Way.



# V22-0001 - 2211 Whestone Way

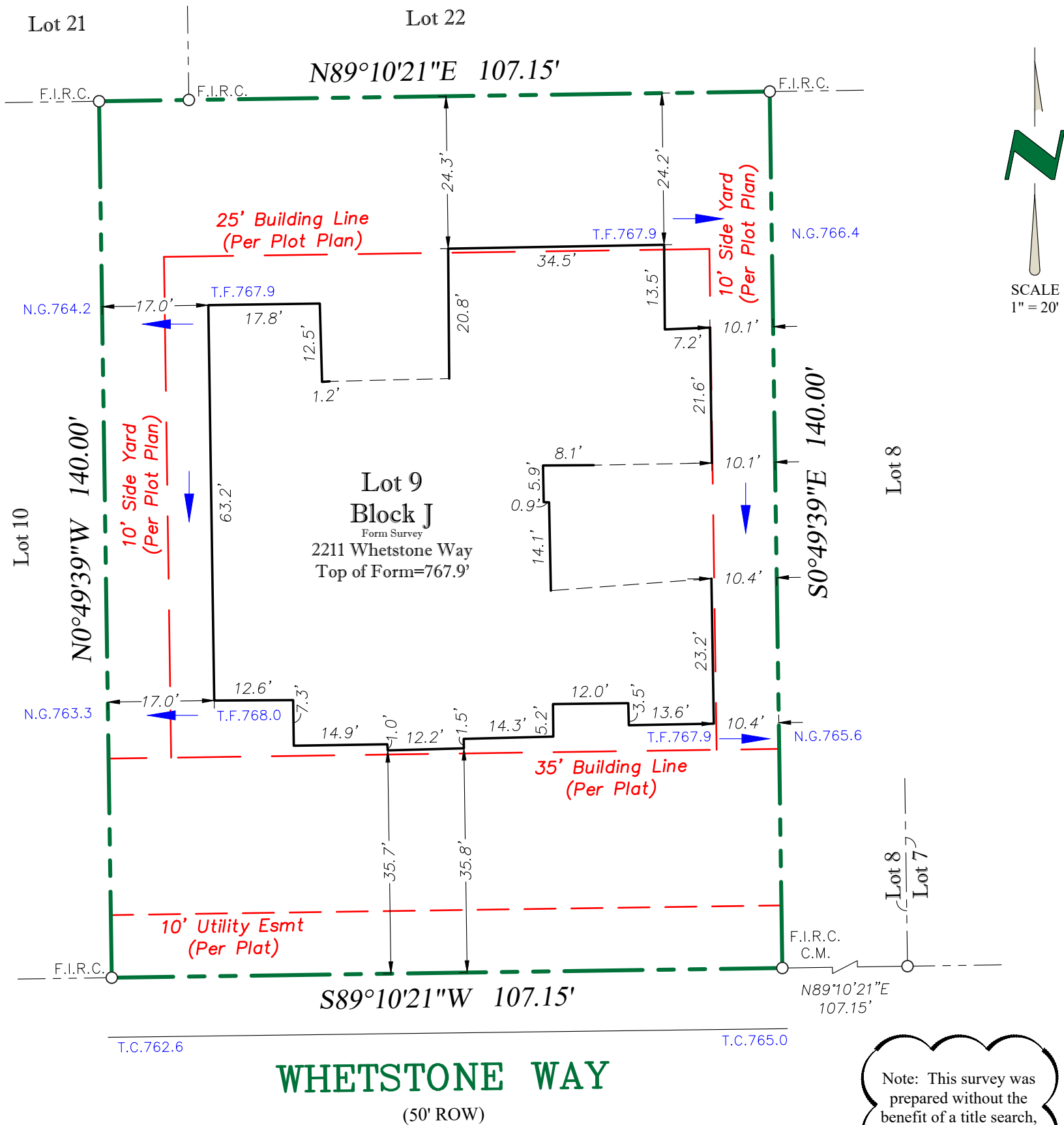


This map is for illustration purposes only.





2211 WHETSTONE WAY



Updates/Revisions	Field Date	Survey Date
Form board survey	1/14/2021	1/18/2021
Final Survey	—	—
Added Title Note	—	—

PROPERTY DESCRIPTION

LOT 9, BLOCK J OF FALLS OF PROSPER PHASE 2, AN ADDITION TO THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN DOCUMENT NO. 2019-599, OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS.

The undersigned have/has received and reviewed a copy of this survey.

X

X

Date:

Field Date :	1/14/2021
ASC No.	F2101.2304-FM
Buyer:	
Client	HARWOOD HOMES
G.F. No.	N/A
Drafter/Field Crew	C. . / N.F.

**LEGEND** - C.M. = Controlling Monument; Fnd. = Found; I.R. = Iron Rod; I.P. = Iron Pipe  
OHE = Overhead Electric; I.R.S. = Set Iron Rods 1/2" diameter with yellow cap stamped  
"Arthur Surveying Company". All found iron rods are 1/2" diameter unless otherwise noted.  
(fence/post) — x — centerline — (overhead electric) — OHE — OHE —

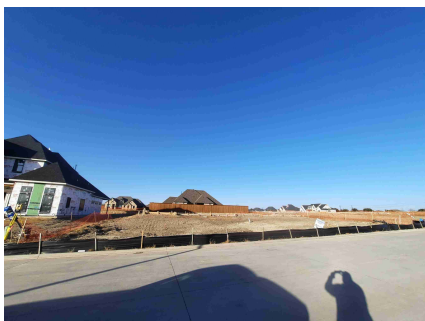
**FLOOD NOTE:**  
BY PERFORMING A SEARCH WITH THE LOCAL GOVERNING MUNICIPALITY OR WWW.FEMA.GOV, THE PROPERTY APPEARS TO BE LOCATED IN ZONE X, PER 480130 0235, DATED: JUNE 2, 2009.

**SURVEYORS CERTIFICATION:**  
The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct and to the best of my knowledge there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights of way that I have been advised of except as shown hereon. The bearings shown hereon are based on the above referenced recorded map or plat unless otherwise noted.

ISSUE DATE: 1/18/2021

**HARWOOD  
HOMES**

HARWOOD HOMES  
500 CRESCENT COURT, SUITE 350  
DALLAS, TEXAS 75201



2211 WHETSTONE WAY  
PROSPER, TEXAS 75078

**ARTHUR**  
LAND SURVEYING

AN EXACTA COMPANY  
220 Elm Street, Suite 200 | Lewisville, TX 75057  
972-221-9439 TFRN# 10063800  
arthursurveying.com



Updates/Revisions	Field Date	Survey Date
Final Survey	12/13/2021	12/14/2021
Added Title Note	—	—



**\*\* PER PLOT PLAN**

LOT 9, BLOCK J OF FALLS OF PROSPER PHASE 2, AN ADDITION TO THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN DOCUMENT NO. 2019-599, OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS.

The undersigned have/has received and reviewed a copy of this survey.

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X

Date: \_\_\_\_\_

ASC No.	FPR02-0J09-FIG
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<i>Client</i>	HARWOOD HOMES
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Drafter/Field Crew	C.B. / B.K.
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Drafter/Field Crew	C.B. / B.K.
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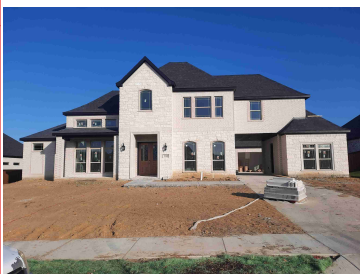
Drafter/Field Crew	C.B. / B.K.
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**LEGEND** - C.M. = Controlling Monument; Fnd. = Found; I.R.= Iron Rod; I.P = Iron Pipe  
OHE = Overhead Electric; I.R.S. = Set Iron Rods 1/2" diameter with yellow cap stamped  
"Arthur Surveying Company". All found iron rods are 1/2" diameter unless otherwise noted.  
(fence/post) — x — centerline — (overhead electric) — OHE — OHE —

BY PERFORMING A SEARCH WITH THE LOCAL GOVERNING MUNICIPALITY  
OR WWW.FEMA.GOV, THE PROPERTY APPEARS TO BE LOCATED IN ZONE X,  
PER 480130 0235, DATED: JUNE 2, 2009.

The undersigned, being a Registered Professional Land Surveyor in the State of Texas, does hereby certify that the Plat or Survey hereon correctly represents the results of an actual survey made on the ground under my direction and meets the standards of practice promulgated by the Texas Board of Professional Engineers and Land Surveyors.

ISSUE DATE:12/15/2021



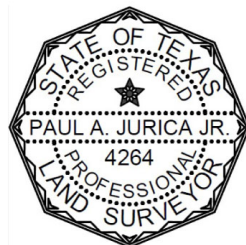
2211 WHETSTONE WAY  
PROSPER, TEXAS 75078



**EXACTA**  
Land Surveyors, LLC

**Headquarter's Office**  
o: 866.735.1916 | f: 866.744.2882  
1955 Lakeway Drive | Ste 220  
Lewisville, TX 75057  
*Firm No: 10063800*

**Branch Office**  
o: 866.735.1916 | f: 866.744.2882  
11111 Richmond Ave | Suite 150  
Houston, TX 77082  
*Firm No: 10194357*



PLAK

# HARWOOD HOMES

HARWOOD HOMES  
500 CRESCENT COURT, SUITE 350  
DALLAS, TEXAS 75201

1. *The requested variance does not violate the intent of the Zoning Ordinance or its amendments;*

**Response:** The home was placed .8' behind the front build line and .8' over the rear build line. The intent was to ensure the home was behind the front build line.

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;*

**Response:** The zoning for SF15 general guild lines stated in Chapter 4 Section 9.3 and 9.4 of Zoning Ordinance Town of Prosper that: "the minimum front yard setbacks for all lots fronting onto the same street along a block shall be staggered such that one-third of the lots have a front yard setback that is reduced by five feet, one-third of the lots have a front yard setback as defined in Chapter 2, and one-third of the lots have a front yard setback that is increased by five feet. Not more than two lots in a row may incorporate the same front yard setback. The average setback along the block shall equal the required setback for the particular zoning district. The lots with an increased front building line may also decrease the rear building line by five feet to maintain the necessary building pad depth".

[https://library.municode.com/tx/prosper/codes/zoning\\_ordinance?nodeId=PRZOCO\\_CH4DERE\\_S9ADSU\\_9.4SIREYA](https://library.municode.com/tx/prosper/codes/zoning_ordinance?nodeId=PRZOCO_CH4DERE_S9ADSU_9.4SIREYA)

3. *The hardship is in no way the result of the applicant's own actions; and*

**Response:** During construction the plumbing rough inspections are where the survey and plot plan are reviewed by the Town of Prosper building inspection department and either approved or disapproved. The applicant passed necessary Town of Prosper inspections during plumbing rough inspections on 3/18/21.

The screenshot displays a web application interface for permit management. On the left is a sidebar with navigation links: My Dashboard, Permits (with sub-links for Search Permit, Pay Fees, and Issued Permits Report), Projects (with sub-links for Search Projects and Pay Fees), Contractor (with sub-link for Search Contractors), Properties (with sub-link for Search Property), Inspections (with sub-links for Schedule, Cancel, and Scheduled), Violations (with sub-links for Search and Pay Fees), Shopping Cart (with sub-links for Pay All Fees and Paid Items), and Contact (with sub-link for Contact us).

The main content area is titled "Permit Search" and includes a search bar with "Address" selected, a "Contains" dropdown, and the value "2211". A "SEARCH" button is present. Below the search bar, a "Search Results" section shows "Permit #H21-0089". A modal window titled "Inspection - PLUMBING ROUGH-IN" is open, displaying the following details:

- Inspection Type: PLUMBING ROUGH-IN
- Order#: 0
- Result: APPROVED
- Scheduled Date: 3/18/2021
- Scheduled Time:
- Completed Date: 3/18/2021
- Completed Time:
- Inspector: JEFF CROUSE-3797
- Remarks: eTRAKT Inspection Request
- Notes: 3/17/2021 6:14 PM HARWOOD HOMES

Below the notes, contact information is listed: Contact Name: HARWOOD HOMES, Site Address: 2211 WHETSTONE WAY, Phone: 2142964399, e-Mail: AGUTIERREZ@FIRSTTEXASHOMES.COM. A "CLOSE" button is at the bottom of the modal.

In the background, a table titled "Inspections(38)" is visible, showing columns for "Completed", "Time", and "More Info". The table lists several inspection dates from 8/1/2021 to 3/11/2021, each with a "More Info" link.

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.*

**Response: The applicant interprets the provisions in the Zoning Ordinance that Prosper's desire to maintain spacious distance between homes and streets. By having this home back 0.8' behind the front build line maintains the spirit of the ordinance and will not have a negative impact on any of the surrounding homes in the neighborhood.**

Justin Jago  
Community Sales Counselor  
First Texas & Harwood Homes  
Tanners Mill, Falls of Prosper and Cambridge Estates  
1310 St. Peter Lane  
Prosper, TX 75078  
Office: 972.346.2647  
Days off: Thursday/Friday