



**AGENDA**  
**Prosper Board of Adjustment/Construction**  
**Board of Appeals**  
Prosper Town Hall, Council Chambers  
250 W. First Street, Prosper, Texas  
Monday, January 30, 2023  
**6:00 PM**

Welcome to the Prosper Board of Adjustment/Construction Board of Appeals Meeting.

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

Those wishing to address the Board of Adjustment/Construction Board of Appeals must complete the Public Comment Request Form located on the Town's website or in the Council Chambers.

**If you are attending in person**, please submit this form to the Town Secretary or the person recording the minutes for the Board/Commission prior to the meeting. When called upon, please come to the podium, and state your name and address for the record.

In compliance with the Texas Open Meetings Act, the Town Council/Board/ Commission may not deliberate or vote on any matter that does not appear on the agenda. The Council/Board/Commission, however, may provide statements of fact regarding the topic, request the topic be included as part of a future meeting, and/or refer the topic to Town staff for further assistance.

Citizens and other visitors attending Board of Adjustment/Construction Board of Appeals meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Town Council. Any person making personal, impertinent, profane or slanderous remarks or who becomes boisterous while addressing the Town Council or while attending the Town Council meeting shall be removed from the room, if so directed by the Mayor or presiding officer, and the person shall be barred from further audience before the Town Council during that session of the Town Council. Disruption of a public meeting could constitute a violation of Section 42.05 of the Texas Penal Code.

Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Board for items listed at 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 Commission when the item is considered by the Board of Adjustment/Construction Board of Appeals.

**Call to Order / Roll Call.**

1. Consider and act upon the minutes from the March 14, 2022, Board of Adjustment/Construction Board of Appeals meeting.
2. Conduct a Public Hearing, and consider and act upon a request for a Variance to the Zoning Ordinance, to allow a pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive. (V22-0004)

**Adjourn.**

## 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, January 27, 2023, 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 Town Council.

**NOTICE OF ASSISTANCE AT PUBLIC MEETINGS:** The Prosper Town Council meetings are 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.



**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, March 14, 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: Chair George Dupont, Vice-Chair CJ Alexander, Grant Mendeljian, Joe Tremblay, and Brad Black.

Board members absent: Kenneth Dugger (Alternate) and Cliff Freeman (Alternate).

Staff present: Brady Cudd, Building Official; Alex Glushko, Planning Manager; and Evelyn Mendez, Planning Technician.

**REGULAR AGENDA**

**2. Consider and act upon minutes from the January 10, 2022, Regular Board of Adjustment/Construction Board of Appeals meeting.**

Motion by Alexander, second by Mendeljian, to approve the minutes from the January 10, 2022, Regular Board of Adjustment/Construction Board of Appeals meeting. Motion approved 5-0.

**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).**

*Glushko:* Summarized the request and presented exhibits.

*Justin Jago (Applicant):* Provided information regarding the proposed variance to the Zoning Ordinance.

Motion by Alexander, second by Black. Motion approved 5-0.

**4. Adjourn.**

Motion by Alexander, second by Black, to adjourn, at 6:10 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: Brady Cudd, Building Official**

**Re: Board of Adjustment Meeting – January 30, 2023**

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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 pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive. (V22-0004)

**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 pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive. Article 3.16.002 of the Town of Prosper Code of Ordinance requires that *Pools and spas shall have a required minimum backyard setback of three feet*. Due to the unique characteristics of the lot, the applicant feels this results in an undue hardship and is requesting a variance in order to construct a pool within the backyard setback, but still 3' from the existing retaining wall located at the rear of the property. In particular, the applicant has stated they developed an initial vision for their proposed backyard modifications based on the assumption that the retaining wall was located on the property line. Given that the attached survey dated 12/12/18, which was supplied to the Town as a Final Grade Certificate at time of Final Inspection, does show the property line to be at the retaining wall, this assumption seems entirely reasonable. The adjacent property owner, the Villages of Star Trail Homeowners Association, supports this request as they do not intend on relocating the retaining wall that runs adjacent to, but several feet to the North of, the property line.

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.

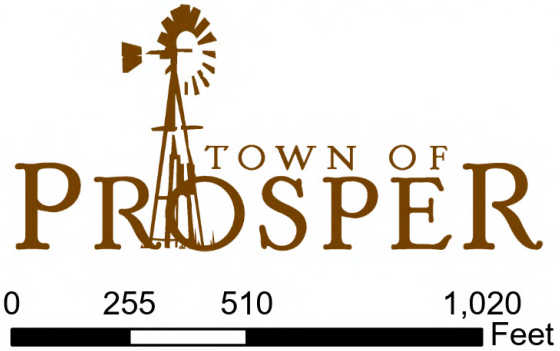
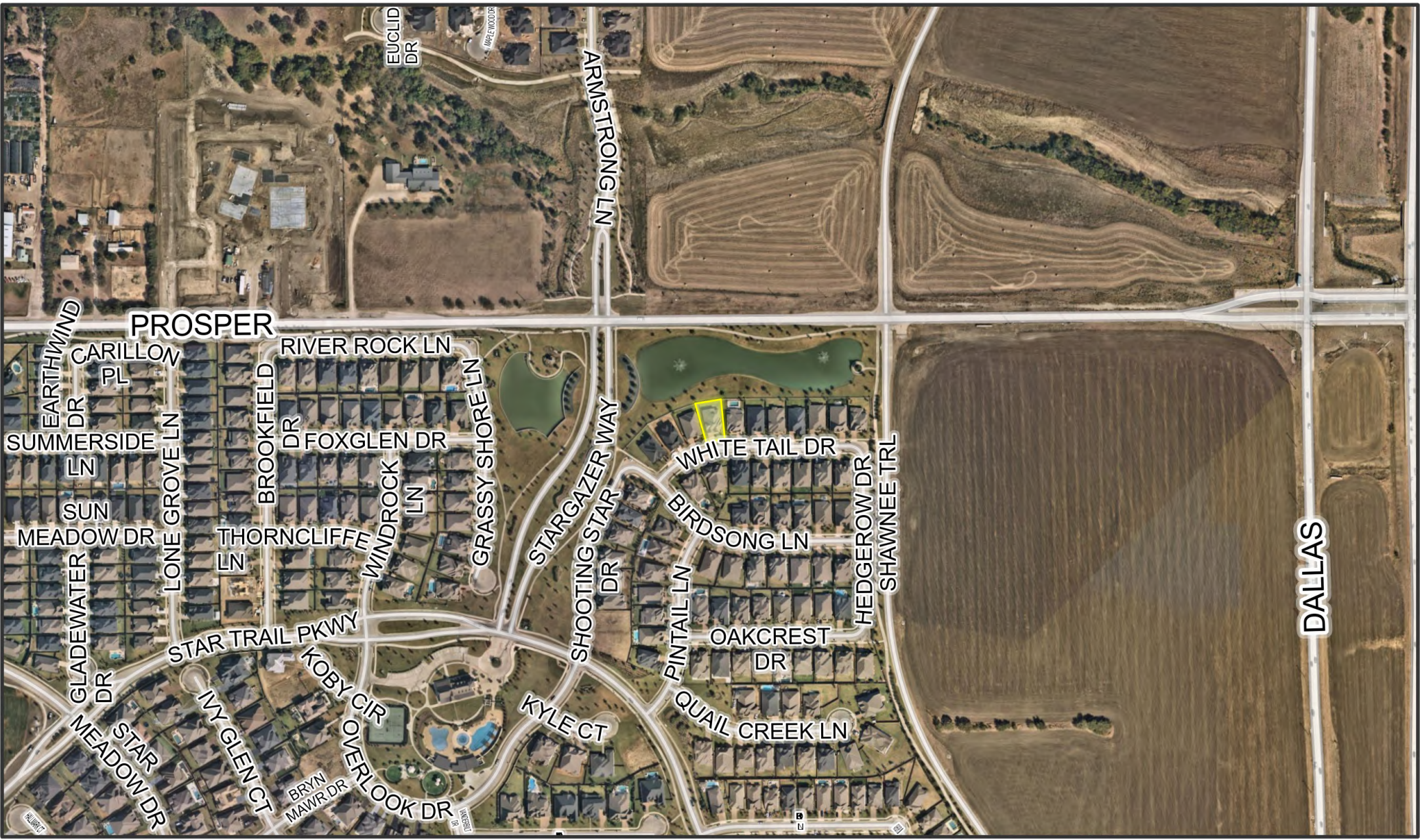
**Attached Documents:**

1. Location Map
2. Survey and Pool Layout
3. Letter of Intent
4. HOA Letter

**Staff Recommendation:**

Staff recommends the Board of Adjustment approve the request for a Variance to the Zoning Ordinance, to allow a pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive.



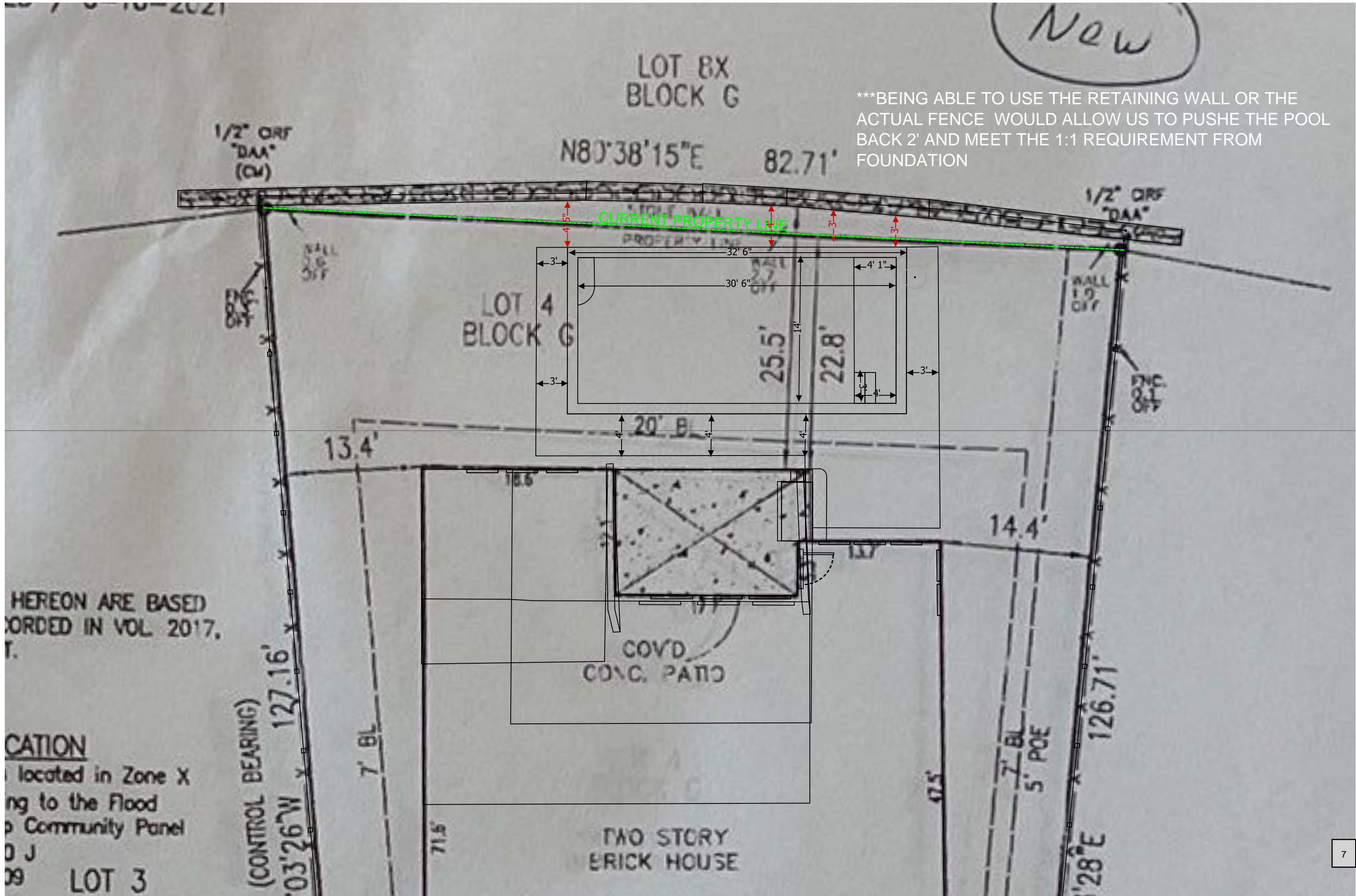


This map for illustration purposes only

V22-0004  
1310 White Tail Drive

Variance





\*\*\*BEING ABLE TO USE THE RETAINING WALL OR THE ACTUAL FENCE WOULD ALLOW US TO PUSHE THE POOL BACK 2' AND MEET THE 1:1 REQUIREMENT FROM FOUNDATION

Town of Prosper,

We are requesting a variance on our property located at 1710 White Tail Dr., Prosper, Texas 75078. (Lot 4, Block G of Star Trail Phase One A, Collin County)

The variance we request is in the rear of the lot. The plat that was submitted shows the property line in a straight line from corner to corner of the rear of the lot. The actual stone wall with an iron fence on top is bowed outward away from our house.

When buying the property we assumed the fence was the property line and took measurements based on that. The original plat showed the property line and wall to be on the same line so we did not think twice about our property actually not going all the way to the wall.

Skip ahead to the present as we have had pool companies give us bids on a pool and we find out the property line is different than expected.

I write this to ask the Town to grant us the variance to build the pool inside the property line but 3 feet away from the wall as shown in the pool layout/plat that was submitted. This would allow us to have the pool desired and allow the developer to move the wall in the future on their property without damaging the pool if needed. (See HOA letter of approval).

By granting the variance we would be able to utilize the entire space inside the fence or what we consider "our yard" without adversely affecting the land use around us. Actually all lots with the exception of ours and the neighbor to the West have the wall/fence as the property line.

One additional note: By granting the variance it will allow us to build a pool and it also keeps us at the 1:1 ratio on grade that would not require engineering. This is both beneficial for the town and for us.

Respectfully,

Matthew & Cristina Owens  
[RAIDERSDAD1@gmail.com](mailto:RAIDERSDAD1@gmail.com)  
972-802-4535

# Villages of Star Trail Homeowners Association

November 11, 2022

Matt Owens  
1710 White Tail Drive  
Prosper, TX 75078


RE: Pool Construction

Mr. Owens,

It is our understanding that a recent survey of your property indicates that the developer-constructed stone fence at the rear of your property does not follow the platted property line. This results in approximately three feet of additional property on your side of the fence. Furthermore, we understand that it is your desire to construct a pool in your back yard at this time. The plans that you have provided indicate that the proposed pool would be located entirely within your platted property and would be no closer than three feet from the existing stone fence at the rear of your property.

The board of directors of the Villages of Star Trail Homeowners Association have reviewed this situation and have concluded that we are not opposed to the construction of the pool as proposed above. Should the existing fence require any future repair or replacement, it is our position that it would be replaced in its existing location and the three feet of clearance from the pool would be adequate for such work.

Sincerely,



Wm. Scott Shipp  
Vice President

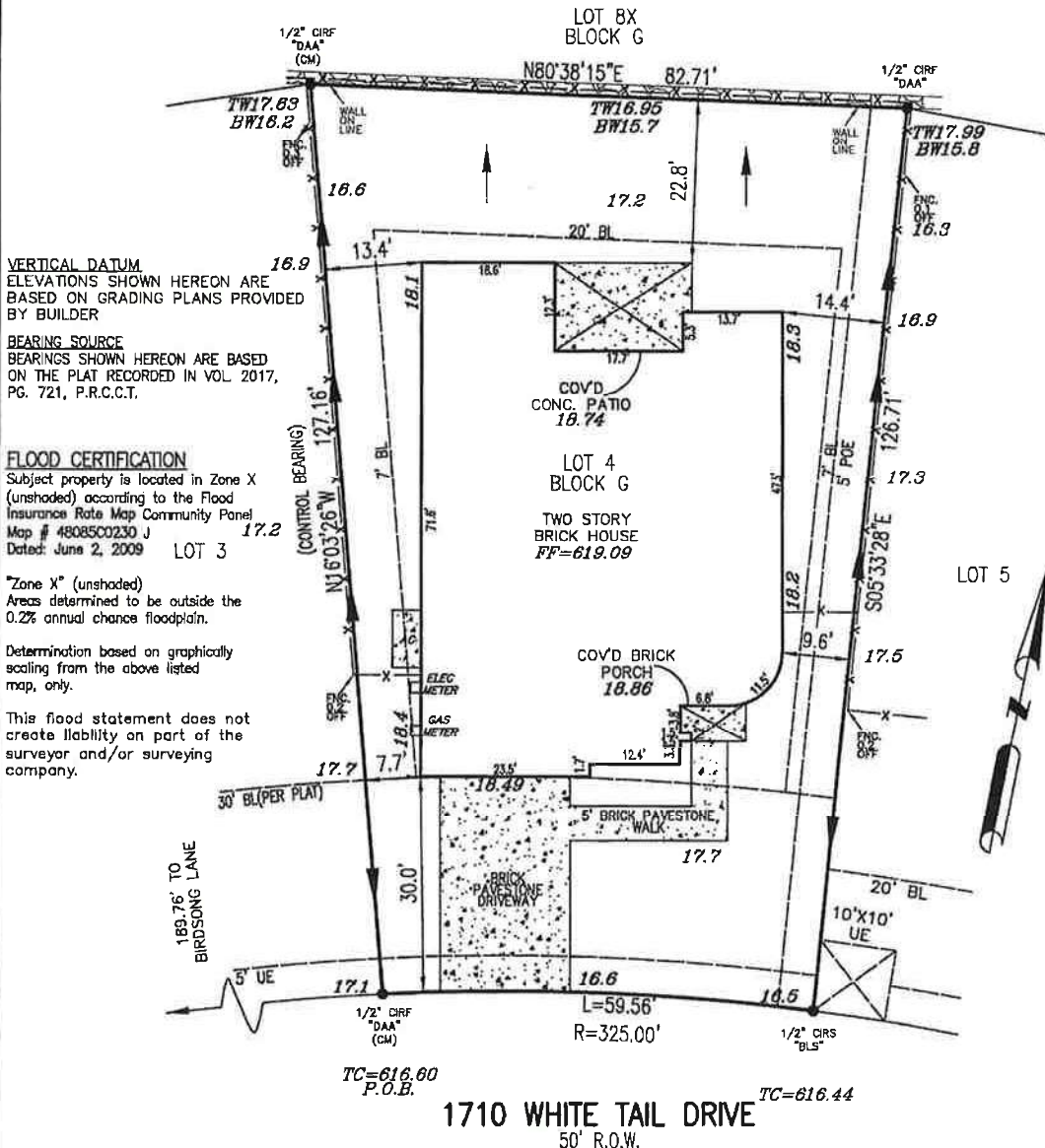
**Villages of Star Trail Homeowners Association**



# PLAT SHOWING

Being Lot 4, in Block G, of STAR TRAIL PHASE ONE A, an Addition to the Town of Prosper, Collin County, Texas, according to the Amended Plat thereof recorded in Volume 2017, Page 810, Plat Records, Collin County, Texas.

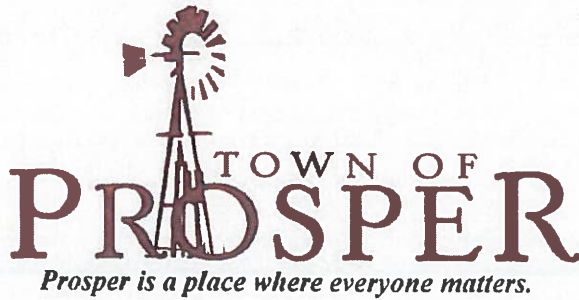
## 1710 WHITE TAIL DRIVE GRADE CERTIFICATE



**NOTES:**  
To the best of my knowledge and belief:

- 1) This survey was prepared in conjunction with a Title Commitment prepared by First American Title Guaranty Company and Republic Title of Texas, Inc; Title Commitment CF No. 1005-284135-RTT, Effective Date: 10/12/2018.
- 2) Subject to building lines and easements referenced and/or depicted in Vol. 2017, Pg. 810 P.R.C.T. and the aforementioned Title Commitment.
- 3) Easement recorded in Vol. 487, Pg. 345, R.P.R.C.T., does not appear to affect the subject property, by visible surface evidence, at the time of this survey. However, it appears to be a blanket type easement and no document(s) have been located to extinguish it. Thus it may still be in effect.
- 4) Easement recorded in Vol. 1149, Pg. 18, R.P.R.C.T., does not appear to affect the subject property, by visible surface evidence, at the time of this survey. The location of this easement at this time is insufficient by the wording of the document, at this time. No document(s) have been located to extinguish it. Thus it may still be in effect.
- 5) Easement recorded in cdf 93-0111912, R.P.R.C.T., does not appear to affect the subject property, by visible evidence, at the time of this survey.
- 6) Easements recorded in cdf 20170914001231220 & cdf 20170914001231280, R.P.R.C.T., do not appear to affect the subject property, by visible surface evidence, at the time of this survey.
- 7) Subsurface structure(s), utilities, and easements are beyond the scope of this survey.
- 8) Terms, provisions, stipulations, conditions, restrictions, drainage, minerals, covenants, ordinances, assessments, agreements, obligations, rights, privileges, immunities, and/or liens are beyond the scope of this survey.

	I, Ricky L. Gentry, hereby certify that the elevations and drainage pattern shown hereon, were developed from a survey of the above described property, performed on the ground, and accurately depict the elevations as they existed on the date of the survey. The relative elevations as depicted hereon, are accurate to the nearest 1/10 foot. The elevations as depicted hereon may change subsequent to the date hereof, due to the subsidence or upheaval of the soil, addition or removal of soil by acts of man, erosion by wind or water or other factors. Therefore, this survey may not accurately depict the elevations and drainage pattern of the above property after the date of survey.		
	SURVEY DATE: 12/12/2018		
	SCALE: 1" = 20'		
	DRAWN BY: JLH		
BL = BUILDING LINE UE = UTILITY EASEMENT DE = DRAINAGE EASEMENT PUE = PUBLIC UTILITY EASEMENT CM = CONTROLLING MONUMENT IRF = IRON ROD FOUND IRS = IRON ROD SET IR = IRON ROD -X- = FENCE -> = DIRECTION OF FLOW	ALH JOB # 063-041 BLS JOB # 1802228-04	Platting / Planning / Residential / Commercial 3970 Sandshell Drive FortWorth, Texas 76137 PHONE (817) 961-0082 FAX (817) 961-0086 FIRM REGISTRATION NO. 10183700	



**DEVELOPMENT SERVICES  
DEPARTMENT**  
250 W. First Street  
Prosper, TX 75078  
Phone: 972-346-3502

**REPLY FORM**

**SUBJECT:**

Variance Request V22-0004: Conduct a Public Hearing, and consider and act upon a request for a Variance to the Zoning Ordinance, to allow a pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive. (V22-0004)

**LOCATION OF SUBJECT PROPERTY:**

The property is located approximately on the southwest corner of Prosper Trail and Shawnee Trail.

- ☐ 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):

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SCOTT SHIPP (VILLAGES OF STAR TRAIL HOA)  
Name (please print)

[Signature]  
Signature

1851 STAR TRAIL PARKWAY  
Address

1/24/2023  
Date

PROSPER, TX 75078  
City, State, and Zip Code

sshipp@dallascountys.net  
E-mail Address

214-728-9274  
Phone Number