

**BOARD OF ADJUSTMENT**

**April 12, 2005**

**Minutes**

Members Present: Rick Waldruff  
Scott Hay  
Morton Langholtz  
Wayne Bradshaw

:

Members Absent: Jim Salisbury

Alternates Present: David Hejl

Staff Present: Shannon Meinhold, Planner II  
Jeff Armstrong, Development Services Manager  
Dan Santee, City Attorney  
Rodney Fletcher, Permit Specialist  
Gloria Brownell, Planner I  
Jon James, AICP, Director  
Elizabeth Grindstaff, AICP, Assistant Director  
Larry Abrigg, AICP, Senior Planner

Mr. Bradshaw, Chair, called the meeting to order at 8:30 AM and declared a quorum present.

The minutes of the March 8, 2005 meeting were unanimously approved.

Agenda Item BA-2005-8, Request for (1) a 16% variance from the 35% maximum lot coverage requirement for RS8 zoning, and (2) a Special Exception to locate a carport in the front yard setback at 737 Crestwood Drive.

Mr. Armstrong presented the staff report. The applicant wanted to add a carport to the front of her home. The structure would extend 22' from the existing home and be 8'8" from the front property line. There were several other front carports in the area so the request was compatible with surrounding land uses. The lot in question has an area of 7,704 square feet, which is substandard for RS8 zoning. Prior to this request, a 20' variance to the rear setback had been granted in June 2000 to allow the enclosure of a swimming pool. Although the issue was not addressed at the time, the addition exceeded the maximum lot coverage requirements for RS8 zoning. The current request would further exceed those requirements. Two comments were returned in favor, none in opposition. Staff recommended denial of the variance due to lack of a hardship and approval of the Special Exception because the request meets the criteria of compatibility.

Mr. Bradshaw opened the public hearing. Mr. Spykes, agent, spoke in favor of the request. He stated that his cars cost as much as his house and they needed to be covered. Mr. Bradshaw informed him that their decisions could not be based on financial hardship. Mr. Hay asked the applicant to state the hardship. Mr. Spykes replied that there was no hardship but that

everyone else on his street already had a carport and he should be allowed to have one too. He said that it would be covering an existing concrete driveway and they would not be adding any more concrete. Mr. Bradshaw said that the lot coverage was the main issue. Mr. Armstrong explained that the lot coverage limits were in place to preserve the character and “open space” in residential districts. Mr. Hay asked the applicant his opinion on lot coverage. Mr. Spykes replied that all of the development until now had been to the rear of the home and the front still appeared residential. He said the previous additions had been done in a very professional manner and that his neighbors were in favor of the carport addition. Mr. Bradshaw asked what the neighbors on each side think of the request. Mr. Spykes replied that the neighbors to the north would want to have a similar addition enclosing their pool.

Mrs. Spykes, applicant, also spoke in favor of the request. She stated that at the time of the first variance request city personnel measured her property and never mentioned that this would preclude any future additions. Mr. Santee questioned if she had asked the personnel about it and she stated that she had not because it had not occurred to her. Mr. Bradshaw closed the public hearing. Mr. Langholtz stated that the new structure would not be changing the lot coverage because it was being built over an existing driveway. Mr. Santee reminded the Board that Mr. Spykes had stated that there was no hardship. Mr. Waldraff indicated that there is no hardship. Mr. Langholtz made a motion to approve the variance request but it failed for lack of a second. Mr. Waldraff made a motion to deny the variance request. Mr. Hejl seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

Agenda Item BA-2005-11, Request for a Special Exception to locate a carport in the front yard setback at 2497 Glendale Drive.

Mr. Armstrong presented the staff report. The applicant wanted to construct a 19’ x 19’ carport over the existing driveway in front of the home at the corner of Glendale Drive and Vogel Street. The proposed structure would come to 5’ from the front and exterior side property lines and 17’ from the curbs on Glendale Drive and Vogel Street. There was an existing carport at the property that did not appear to be in compliance with the current regulations. Three comment forms were returned in favor, none in opposition. There were several other carports in the area and the staff recommended approval on the basis of compatibility.

Mr. Bradshaw opened the public hearing. Tim Falkner, agent, spoke in favor of the request. He stated that he was the contractor for the applicant and that the existing carport would be removed prior to construction. The proposed carport would be made of steel and would comply with all current regulations. Mr. Bradshaw closed the public hearing. Mr. Hejl made a motion to approve, with the condition that the existing carport must be removed. Mr. Hay seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-12, Request for a Temporary Permit to locate a Subdivision Sales Office in Residential Zoning at 6610 Hampton Hills.

Mr. Armstrong presented the staff report. The applicant, who is the developer of the Hampton Hills subdivision, wanted to locate a sales office within an existing home in the subdivision. The lot in question had a new home where the applicant had temporarily converted the garage into an

office. He proposed to use the structure as a model home for the duration of the permit and then convert the office back to a garage in order to sell it as a home. The temporary permit would expire after 12 months. No comment forms were returned in favor, one in opposition. Mr. Armstrong summarized the letter attached to the opposing comment form. The applicant owned 15 of the 22 properties notified stated that he was in favor of the request. Staff recommended approval of the request. Mr. Langholtz asked if the applicant had been granted a similar permit in the past but no one could confirm the information.

Mr. Bradshaw opened the public hearing. Trey Thornton, agent spoke in favor of the request. He stated they had been granted a Temporary Permit 10 months before to locate a sales office in a trailer. At the time they had stated that they planned to build a house to replace the trailer. Mr. Bradshaw asked if the agent would need the permit for longer than the 12 months allowed. Mr. Thornton stated that the applicant owned all the land from the highway to the base and that he planned to develop all of it. He stated that they chose the property for its proximity to the entrance of the subdivision in order to minimize the impact on current residents. Mr. Bradshaw closed the public hearing. Mr. Langholtz stated that this was a necessary evil and made a motion to approve the request. Mr. Hejl seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-13, Request for a 7' variance to the 25' rear setback requirement at 3550 Cerromar Court.

Mr. Armstrong presented the staff report. The applicant wanted to build a new house that would extend 7' into the rear setback, which would come to 18' from the rear property line. The property has a 10' drainage easement that cuts across the southwest portion of the lot, which reduces the area on which a house can be built. The configuration presented showed the proposed structure abutting the front setback line, the northern side setback line, and the drainage easement to the south. One comment form was returned in favor and two in opposition. Mr. Armstrong read the additional comments attached to two of the comment forms. Staff recommended approval because the request meets all the criteria to approve a variance.

Mr. Bradshaw opened the public hearing. Bob Byne, agent, spoke in favor of the request. He stated that nearly a quarter of the lot had been taken by the drainage easement and that his client had requested that particular design for the home. Mr. Waldraff asked how large the structure was proposed to be and Mr. Byne said it would be 2150 square feet. Mr. Hay asked if there were any other vacant lots in the area and Mr. Byne stated there was one directly to the east of the subject property. Mr. Bradshaw asked the agent to address the comments that were returned in opposition. Mr. Byne stated that he thought the first opponent had confused the setback line with the 10' utility easement along the rear property line. The proposed structure would be 18' from the rear property line and would not encroach upon the 10' easement. The other comment mentioned that the land sloped and they were concerned about drainage issues. Mr. Byne stated that he was unaware of significant sloping that would affect any surrounding properties. Mr. Bradshaw asked if it related to the water coming off of a taller structure and if a two-story home would have that effect. Mr. Byne stated that the house was proposed to be single story and that it should not affect any surrounding properties. Jeff Cantu, owner, also spoke in favor of the request. He stated that there was only a slight slope, if any, and that it would not affect the home two houses away. Mr. Bradshaw closed the public hearing. Mr. Langholtz made a motion

to approve, with the condition that structure must be a single story. Mr. Hejl seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-14, Request for a 45' variance to the 50' setback requirement for a commercial structure at the southeast corner of Ambler Avenue and Pine Street.

Mr. Armstrong explained that a written request to table the issue had been received from the applicant. They had recently become aware of an additional easement on the subject property that may affect the layout of their site. Mr. Armstrong presented a brief overview of the staff report and suggested that a public hearing be opened for any one to speak.

Mr. Bradshaw opened the public hearing. No one appeared to speak so Mr. Bradshaw closed the public hearing. Mr. Langholtz made a motion to table the request. Mr. Hejl seconded the motion, which passed by a vote of 4 in favor and 0 opposed. Mr. Waldruff abstained.

Agenda Item BA-2005-15, Request for an 11' variance to the 25' front setback requirement for a commercial addition at 3349 North 12<sup>th</sup> Street.

Mr. Armstrong presented the staff report. The applicant wanted to construct an addition to an existing funeral home. The proposed structure would be 12' from the property line and 23' from the curb on North 12<sup>th</sup> Street. There was a substantial amount land available for development on the south side of the structure. No comment forms were returned in favor or opposition. Staff recommended denial due to lack of a hardship. Staff also recommended, should the Board approve the request, that the variance only apply to the proposed addition. Mr. Hejl asked if the church nearby along North 12<sup>th</sup> had been built closer to the road. Mr. Armstrong replied that he had found no record of a variance granted for the location. He speculated that the church might have been built before the current regulations were in place. Mr. Langholtz asked if the request could pose a safety concern for visibility. Mr. Armstrong stated that the visibility triangle, the typical test for required visibility, had not been violated and therefore did not pose any risk.

Mr. Bradshaw opened the public hearing. Jeff Fuqua, applicant, spoke in favor of the request. He stated that the proposed addition would expand the existing 50' x 33' chapel that was in the north one-third of the structure. By moving the site of the addition they would have to build a separate chapel. The setbacks would not accommodate an addition to the west side. The south side faced the parking lot and served as the main entrance to the existing business. Customers would have to pass through the chapel to access the rest of the business. Mr. Fuqua stated that no contract or professional design work had been done yet but that the proposed addition would preserve the flow of the building. Mr. Hejl asked if there had been an old alley on the property and if had been abandoned. Mr. Fuqua confirmed the abandonment.

Mr. Bradshaw closed the public hearing. Mr. Langholtz speculated that the applicant might benefit from having some design work done before approval of the request. Mr. Hay agreed and added that a designer might be able to stay within the requirements while still accommodating the needs of the business.

Mr. Bradshaw reopened the public hearing at the request of the applicant. Mr. Fuqua stated that some research had been done before coming to the conclusion of requiring a variance. He stated that the existing chapel had 18' pews, a 6' center aisle, and 3' side aisles. They had to account for all of these measurements when deciding where to add on to the existing structure.

Mr. Bradshaw closed the public hearing and stated that an engineer's opinion would not change the request. Mr. Waldraff said that the internal configuration should not be the basis for a hardship. Mr. Langholtz stated that he would want to be sure what other options were available and that he would only want to grant the request if it was the best alternative. Mr. Hay asked if this variance would be similar to the nearby church or if anyone knew how far that was from North 12<sup>th</sup> Street. Mr. Armstrong stated that he did not have that information at the time, but if the case were tabled he would have it available at the next meeting. Mr. Waldraff stated that tabling would not change the request. Mr. Hay asked if tabling might resolve any issues for any of the other members. Mr. Waldraff said that the applicant might be able to request a smaller variance if they wait and have some design work done. Mr. Hay made a motion to table the request. Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-16, Request for a 15' variance to the 27' side setback requirement at 3825 Caldwell Road.

Ms. Brownell presented the staff report. The applicant wanted to add a utility/storage room addition to the side of an existing house. The subject property was carved out of a 20-acre tract of land and purchased in 1991. The house existed prior to the parcel being created. At the time, the owner was unaware of the setback requirements for the property and the north lot line was placed only 20' from the existing structure, which was 7' closer than allowed by the Zoning Ordinance. The proposed addition would extend 8' further into that same setback, bringing the structure to 12' from the property line. An addition could be placed on any other side of the structure and still comply with all existing setback requirements. Although the proposed addition would be in the 100-year floodplain, it would be less than 50% of the existing structure's value and therefore would be exempt from further requirements. One comment form was returned in favor and none in opposition. Staff recommended denial due to lack of a hardship. Mr. Waldraff asked for identification of the blue line on the aerial map presented. Ms. Brownell explained that it was a creek just east of the subject property.

Mr. Bradshaw opened the public hearing. Andrew Ladyman, applicant, spoke in favor of the request. He stated that the house had been built in the 60's without a utility room. The garage had been converted so he proposed to add the utility room. Mr. Bradshaw questioned whether the addition could be placed on the other side of the house in order to comply with current regulations. Mr. Ladyman explained that access would become an issue because of the layout of the home. Mr. Waldraff commented that the remaining 12' setback still provided open space and that the placement of the property line so close to the existing structure created a hardship. Mr. Waldraff made a motion to approve the request. Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-17, Request for a 12' variance to the 30' rear setback requirement at 2401 Christopher Drive.

Ms. Brownell presented the staff report. The applicant wanted to construct a recreation room addition and patio cover over an existing 20' x 17' patio behind the home. The enclosed addition would have 17' along the south side of an existing carport and extend 10' southward. The southern half of the patio would be covered with a 10' x 17' extension of the same roof that would be open on the sides. If the applicant rotated the proposal 90 degrees and built the longest side of the enclosed portion along the rear of the existing home, the variance request could be reduced. The applicant could then extend the patio cover over the east portion of the patio while still meeting required setbacks. The enclosed portion would still require a variance to achieve the requested square footage, but the amount would be greatly reduced. Mr. Bradshaw asked what "F" represented on the site plan presented. Ms. Brownell stated that it was the existing open carport. Mr. Waldraff asked if the slab already existed and Ms. Brownell confirmed that it was. No comment forms were returned in favor and one was returned in opposition. Staff recommended denial due to the lack of hardship and the possibility of an alternative layout that would reduce the request.

Mr. Bradshaw opened the public hearing. E. Forrest Herndon, applicant, spoke in favor of the request. He stated that he planned to construct a hip roof over the entire existing patio. There were two large windows along the existing rear wall of the home and they would be enclosed if the addition was reoriented as staff suggested. The proposed covered patio would overlook a larger portion of the backyard. If the enclosed portion of the addition were to meet all current guidelines it could only be built 7 feet deep. Mr. Bradshaw closed the public hearing. Mr. Santee asked if the carport would still be in compliance if the addition enclosed the southern side. Mr. Armstrong explained that a carport can only be enclosed on 1-1/4 sides and still be considered "open." If more sides were enclosed it would have to comply with the setback requirements for an enclosed structure. Mr. Santee stated that the request would need to be changed to include the existing carport if the addition was built as proposed. He suggested tabling the case in order to allow a notification of the new request. Mr. Hejl made a motion to table the request. Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-18, Request for a Special Exception to locate a carport in the front yard setback at 2058 Meadowbrook Drive.

Ms. Brownell presented the staff report. The applicant wanted to construct a 20' x 20' steel carport over an existing driveway. The carport was proposed to be 5' from the front property line and 17' from the curb on Meadowbrook Drive. Although there were some carports along nearby streets, there were none along Meadowbrook Drive. Four comment forms were returned in favor and none in opposition. Staff recommended denial due to lack of compatibility in the immediate vicinity.

Mr. Bradshaw opened the public hearing. Tim Falkner, agent, spoke in favor of the request. He stated that the carport would be constructed completely of steel. Mr. Hejl asked if he had considered a rear entry as an alternative. Mr. Falkner replied that the applicant had not been

interested in that option. Mr. Waldraff asked about the compatibility and Mr. Falkner stated that there were other carports on adjacent streets. Mr. Falkner stated that he recalled the backyard of the property being fairly small. Mr. Bradshaw closed the public hearing. Mr. Langholtz stated that there were others in the general area. Mr. Hay agreed that if the adjacent streets were in the notification area they should be included in the area considered for compatibility. Mr. Waldraff made a motion to approve the request. Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-19, Request for a Special Exception to locate a carport in the front yard setback at 2010 Fannin Street.

Ms. Brownell presented the staff report. The applicant wanted to construct a carport over an existing driveway and extend a 6'-wide patio cover across the front of the existing home. The proposed structure would be 13' from the front property line and 25' from the curb on Fannin Street. There were 8 other carports in the immediate vicinity along Fannin Street. Three comment forms were returned in favor and none in opposition. Staff recommended approval due to compatibility.

Mr. Bradshaw opened the public hearing. Jesse Hernandez, agent, spoke in favor of the request. He stated that he was representing his sister and that they need the carport for their mother who lives on the subject property. She has a wheelchair and the carport would provide shelter when getting in and out of the vehicles. Mr. Bradshaw closed the public hearing. Mr. Hay made a motion to approve the request. Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-20, Request for (1) a 1' variance to the required 6' fence height and (2) a variance from the opaque fence requirement, both for a proposed swimming pool along the east property line at 1618 Lakeshore Drive.

Mr. Armstrong presented the staff report. The applicant wanted relief from the screening requirement along the east property line because there was a pool on the adjacent property. He would be required to construct a second fence to screen his pool from the other pool, which he considered aesthetically unappealing and redundant. The applicant was previously granted a similar variance on July 13, 2004. The contractor did not obtain permits within the required 180-day limitation. In early 2005 the contractor began construction without any permits, which was stopped by City personnel after becoming aware of the situation. Because the previous variance had expired, the applicant requested a new variance in order to obtain the proper permits. Two comment forms were returned in favor and none in opposition. Staff recommended approval because the request met all criteria required for a variance.

Mr. Bradshaw opened the public hearing. Geoffrey Gilbert, applicant, spoke in favor of the request. The Board had no questions for him. Mr. Bradshaw closed the public hearing. Mr. Langholtz made a motion to approve the request. Mr. Hejl seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Executive Session; possible action.

Following the Executive Session, the Board reconvened in open session and Mr. Bradshaw stated that there was no action taken and concluded the meeting.

There being no further business, the meeting was adjourned at 10:45 AM.

Approved: \_\_\_\_\_, Chairman