

BOARD OF ADJUSTMENT

July 12, 2005

Minutes

Members Present: Rick Waldruff
Scott Hay
Morton Langholtz
Wayne Bradshaw
Jim Salisbury

Alternates Present:

Staff Present: Jeff Armstrong, Development Services Manager
Gloria Brownell, Planner I
Dan Santee, City Attorney
Rodney Fletcher, Permit Specialist
Larry Abrigg, AICP, Senior Planner
Jon James, AICP, Director
Jerry Prince, Code Compliance Officer
Justin Fortney, Planner I

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

The minutes of the June 14, 2005 meeting were unanimously approved.

Agenda Item BA-2005-39, Request for a Special Exception to locate a mobile home (accessory for care of elderly/infirm) in an AO zoning district at 2950 Shirley Road.

Ms. Brownell presented the staff report. The applicant was requesting to use a mobile home as a secondary dwelling unit that is to be accessory to an existing single-family home. The applicant was recently diagnosed with cancer and her sister proposes to provide care while occupying the mobile home. The situation meets all of the conditions listed in the Zoning Ordinance for the permitted use of a mobile home as an accessory residence for care of the elderly/infirm. The property is over 30 acres and the proposed location of the mobile home will not be visible from the public right-of-way of Shirley Road. Furthermore, the subject property is very close to the city limits and there are several mobile homes placed outside those limits further west on Shirley Road. For these reasons staff felt that the use was compatible and consistent with the intent of the regulation. Staff recommended approval of the Special Exception. No comment forms were returned in favor and one in opposition.

Mr. Bradshaw asked if the 2-year time limit was enforceable and Ms. Brownell confirmed that it was because it was a condition in the Zoning Ordinance. Mr. Salisbury asked how the Planning Department typically handles enforcement. Ms. Brownell explained that due to the limited staff most enforcement issues were addressed after a complaint had been received. Mr. Bradshaw registered a complaint regarding a soccer field that was not fenced as required and Ms. Brownell

made a note to investigate the issue. Mr. Salisbury suggested that the Planning Department create a calendar and mark the expiration dates of the temporary permits and special exceptions to help with enforcement. Ms. Brownell agreed to do so.

Mr. Bradshaw opened the public hearing. Carla Clifford, agent, spoke in favor of the request. Mr. Bradshaw asked if the applicant was her sister and she confirmed that she was. Mr. Bradshaw asked her about the 2-year time limit and Ms. Clifford stated that she had planned to stay there indefinitely. Mr. Waldraff asked if she expected that her sister would need daily care forever and Ms. Clifford said that she had been diagnosed in May and had already undergone two rounds of chemotherapy. Mr. Bradshaw asked how far the mobile home would be from the lady who sent a comment form in opposition. Ms. Clifford stated that there would be more than 200 feet of separation and that there was an old mobile home with tall grass and tires outside of it at the south end of Shirley Road. Mr. Langholtz asked what she would do if the 2-year period expired and the Special Exception was not extended. Ms. Clifford stated that this was the first she had heard of a 2-year time limit and that she was not sure what she would do. Mr. Langholtz asked why she had chosen a mobile home instead of a more permanent structure and she said that it was due to affordability. Mr. Hay asked her if she had visited with the opposing neighbor. She stated that she had not and that there was a man that lived closer to the proposed site than the lady who sent the comment. She stated that their property was mowed and well maintained and that the lady's neighboring property was not. Mr. Hay said that as a good neighbor Ms. Clifford should probably visit with her to discuss any of her concerns.

Mr. Bradshaw closed the public hearing. Mr. Salisbury made a motion to approve the request based on the following findings:

Compatibility With Surrounding Land Uses: The property is near the city boundary and there are several other mobile homes on parcels along Shirley Road outside the city limits.

Effect on Public Facilities: There are no negative effects on public facilities from a mobile home in this location.

Relationship to the Intent of the Regulation: This request meets all the conditions listed in the Zoning Ordinance and is therefore consistent with the intent of the regulation.

Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-40, Request for a Special Exception to locate a patio cover in the front yard setback at 1457 Burger Street.

Mr. Fortney presented the staff report. The applicant wanted to construct an open patio cover in the front yard over the entry to their home. The proposed patio cover would be 17 feet from the front property line and 32 feet from the curb on Burger Street. There are several front carports in the immediate area so the request meets the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. Two comment forms were returned in favor and none in opposition.

Mr. Santee asked if the patio cover would be over grass and Mr. Fortney stated that a patio cover will be eight feet off of the front of the house and it must be located over an improved surface.

Mr. Bradshaw opened the public hearing. No one spoke

Mr. Bradshaw commented that he prefers the applicant to be present. And asked staff if Mr. Herrera was aware of this hearing. Mr. Fortney and Ms. Brownell both stated that he was made aware of it. Mr. Waldraff stated that Mr. Herrera might have had to work.

Mr. Bradshaw closed the public hearing. Mr. Waldraff made a motion to approve the request based on the following findings:

Compatibility With Surrounding Land Uses: There are several front carports in the immediate vicinity of the request.

Effect on Public Facilities: There are no negative effects on public facilities from an open patio cover in this location.

Relationship to the Intent of the Regulation: This request is in an area with several other front carports so it is consistent with the intent of the regulation.

Mr. Salisbury seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-41, Request for (1) a Temporary Permit for a 12-month Temporary Security Residence and (2) a variance to the condition pertaining to locating a Temporary Security Residence in a 100-year flood hazard area on property located at 6102 West Lake Road.

Ms. Brownell presented the staff report. The applicant was requesting to use a motor home as a temporary residence to secure the building materials on his property along West Lake Road. The applicant was rebuilding a structure on property that he had acquired through a tax sale. The structure was condemned in 2001 and the applicant had received an extension from the Board of Building Standards to bring it into compliance with the Building Code by October 31, 2005. The structure sits very close to West Lake Road and there are no neighbors near to the subject property. These factors make it difficult for the applicant to secure his building supplies. With regard to the second portion of the request, the subject property lies entirely within the floodway so there is no alternate location that could comply with the regulation. After the structure is complete and occupied, the applicant will be able to store the motor home on the subject property without any further approval. The footprint within the floodway would be the same whether the applicant occupies the motor home or the existing structure. Staff felt that the residence would facilitate the construction process and recommended approval of both requests. One comment form was returned in favor and none in opposition. Mr. Santee asked if Ms. Brownell understood that the entire property was condemned and she said that she had not. Mr. Santee asked what would happen if the Board of Building Standards did not extend the allotted time to bring the structure into compliance after the October 31 deadline. Ms. Brownell

explained that the Zoning Ordinance only allows a Temporary Security Residence on active construction sites and that it would have to be removed if construction ceased. Mr. Santee asked about a condition to require current registration and insurance for the motor home. Ms. Brownell explained that the applicant had stated the costs associated with that condition were substantial and that the money could be put to better use if it were spent on bringing the condemned structure into compliance.

The Board requested that Jerry Prince, Code Compliance Officer, come forward to answer some questions. He explained that the structure had been condemned for several years and that the applicant has made some progress since he purchased it. He stated that the Board of Building Standards had ordered that all junk and debris be removed from the property. He stated that consistency was important when dealing with condemned properties. Electrical service would have to be supplied on a temporary basis and there was no verification of adequate sewer service. Mr. Bradshaw asked if condemned properties were permitted to have another residence and Mr. Prince explained that different divisions have different requirements. Mr. Prince stated that the residence should be used for security purposes only, and not for recreation or anything else. Mr. Langholtz asked if it was possible to bring the existing structure up to code. Mr. Prince further clarified that there were two buildings on the parcel and the one to the rear was completely open. The structure in the front was dilapidated and would require complete rewiring and new plumbing because it was previously a bait store. Mr. Santee asked if there was active water and sewer service to the parcel. Mr. Prince stated that there was not and that he thought there was an old septic system there. Mr. Salisbury asked if the septic system would have to be recertified and Mr. Prince confirmed that it would. Mr. Santee asked if he had any concerns about screening of the property. Mr. Prince stated that the screening could be used to hide future violations and may make code enforcement more difficult and that the City could end up with the associated clean-up costs. Mr. Bradshaw asked if there would be many more hoops for the applicant to jump through if the Board was to approve the request. Mr. Prince confirmed that there would be and that any utilities supplied to the property would have to be in a registered contractor's name.

Mr. Bradshaw opened the public hearing. Steve Yuen, applicant, spoke in favor of the request. He stated that he had been working very hard to clean up the property and bring the structure into compliance. He said that there was an existing temporary power pole located on the southeast corner of the parcel that provided electrical service for construction. He stated that everything in the motor home was operational except the refrigerator and he planned to replace it. Mr. Bradshaw asked if it was drivable and Mr. Yuen explained that it overheats but can be started and moved. He said that it would cost approximately \$600 to insure the vehicle and that he planned to construct a privacy fence to screen the vehicle from the public right-of-way. He stated that he could stop the fence halfway across the property if it would be easier for code enforcement. He said that his fencing materials had been stolen two weeks before and that he could obtain temporary plates from a dealer to take the motor home to KOA to dump the waste. Mr. Waldruff stated that he should register the vehicle. Mr. Bradshaw asked if AEP (American Electric Power) would connect service to the property and Mr. Yuen stated that Stallings Electric provided temporary service for a few months. Mr. Bradshaw asked how long the RV had been there and Mr. Yuen replied that it had been 3-4 months. Mr. Hay asked how he planned to handle waste disposal. Mr. Yuen said that he eventually planned to put in a new septic system

but that it was expensive. Mr. Hay stated that he knew that it was expensive but he was going to need it eventually so he should put it in sooner rather than later. Mr. Yuen said that his primary concern was to get the structure up to code and that the septic system could wait. Mr. Hay stated that he needed to obtain utilities and sewer because he could not legally drive the vehicle with borrowed plates to dispose of the sewage. Mr. Yuen said that he would be legal with the borrowed dealer plates. Mr. Santee stated that the dealer could not legally give him the tags to use for that purpose. Mr. Yuen said that he needed to secure the property because he had spent \$6000 on improvements in the last 35 days. He stated that the owls that occupied the rear structure were federally protected and that it had hindered his progress for getting the debris cleaned up near the structure. They recently moved out so he could demolish that building.

Mr. Bradshaw closed the public hearing. Mr. Waldraff asked if a mobile home could be used instead of the motor home as the Temporary Security Residence. Mr. Santee replied that a mobile home would require a septic tank. Mr. Langholtz stated that they should give the applicant some leeway because the City had already allowed the structure to not be demolished. Mr. Santee stated that there were 138 condemned properties in Abilene and none of them had a Temporary Security Residence. The motor home was technically a junk vehicle at the time of the hearing and the Board of Building Standards had placed conditions on the removal of debris that had so far not been met. Mr. Salisbury asked how the Temporary Security Residence would affect compliance with FEMA regulations. Mr. Santee explained that staff was not concerned with the effect because the footprint in the floodway would be the same whether they were storing the vehicle or living in it. Mr. Hay stated that the first concern should be to get utilities out to the property if it was to be used as a residence. Mr. Waldraff stated that it was important to bring the existing structure up to Code.

The Board asked Mr. Prince to come forward to answer more questions. Mr. Prince stated that no demolition had been ordered for this property. He said that there were many construction sites all over the city and the building should be secured so the materials could be stored inside. Utility rough-ins were required before the interior could be finished, but the exterior could provide enough security. Mr. Hay asked about the violations on the property. Mr. Prince said that there was a chest-high pile of debris on the property and the building was not secure. Mr. Hay stated that the applicant gave the impression that he had been cleaning up the debris and Mr. Prince confirmed that some debris had been removed from the property. He said that he had been out to the property two weeks before and there was still visible debris. Mr. Santee asked when the Board of Building Standards had heard the case and how long they had given the applicant to comply with their conditions. Mr. Prince stated that he was not certain of the date of the meeting but he estimated that it was sometime in March and that they had given him 10 days to come into compliance with the junk and debris regulations. Mr. Waldraff asked for clarification that he had been given 10 days and had taken four months. Mr. Prince confirmed the statement. Mr. Langholtz asked if there was still progress being made on the property and Mr. Prince confirmed that there was. Mr. Santee stated that the property was condemned and there was a possible threat to health, safety, and welfare if the waste was not disposed of properly. Mr. Waldraff stated that he was not comfortable with granting a full year and suggested that a condition upon approval be that the Temporary Permit expires on October 31, 2005 to coincide with any decisions made by the Board of Building Standards. Mr. Hay stated that he must meet all the requirements placed on him so far and that the costs associated with

refurbishing a condemned structure should not have come as a surprise. Mr. Salisbury stated that he was concerned with the placement in the floodway. Mr. Waldruff asked about the enforcement of the current conditions. Mr. Santee stated that Municipal Court would handle the motor home as a junk vehicle if it continued to be in violation. Mr. Langholtz asked if he was comfortable with the conditions of time limitation and registration of the motor home and Mr. Santee confirmed that he was.

Mr. Hay made a motion to approve the request for a Temporary Permit, with the conditions that the applicant comply with all conditions placed by the Board of Building Standards, the Temporary Permit expire on October 31, 2005, and that the applicant register the motor home.

Mr. Waldruff seconded the motion, which failed by a vote of 3 in favor and 2 opposed.

Agenda Item BA-2005-42, Request for a 22' variance to the 30' front setback requirement at 809 EN 16th Street.

Mr. Fortney gave the staff report. The applicant wanted to construct an office space addition on this property that was rezoned from RM-3 to CU in April of this year. The applicant requested rezoning in order to expand what was considered a nonconforming use in a RM-3 zone that had been present for about three years. The applicant submitted a site plan showing the addition extending 21' 10" into the front yard setback requirement. Even though the addition does not extend into the setback further than the preexisting building it would still not meet current setback requirements. Staff recommended approval of the variance with the condition that it would only apply to the addition. No comment forms were returned in favor or in opposition.

Mr. Bradshaw opened the public hearing. Mr. Harkins, agent, passed out additional graphics to the board members and stated that the University Church of Christ is 9 ½ feet from EN 16th Street property line. The other side of EN 16th Street is ACU (Abilene Christian University) [property]. All of the dorms on that side of the street are set back more than 100 feet, which keeps an open area through the corridor. The addition is in line with the existing building and is not quite to the alley as stated. It will actually be 5-6 feet from the alley. Mr. Bradshaw asked what is this [addition] for. Mr. Harkins replied, for Alumni Association offices. Mr. Bradshaw stated that they would still need a 7 ½ foot variance if the addition were moved all the way to the rear property line. Mr. Harkins stated that they would not want to adversely affect the neighbor.

Mr. Bradshaw closed the public hearing. Mr. Hay made a motion to approve the request, with the condition that the variance only applies to the addition based on the following findings:

Unique Conditions of the Property: The lot is 150' x 50', which meets the minimum lot length of 100' but not the minimum lot width of 60' for this zoning district. The deficiency of the lot's width is exacerbated by the 30' setback required for a lot boundary adjacent to a collector street. This was formerly a private residence built in 1951, and is currently 21' 10" into the front yard setback requirement.

Hardship From Strict Interpretation: Having a lot so peculiarly sized that the owner would have great difficulty in meeting setback requirements and yet erect a suitable building.

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Effect on Public Health, Safety, and Welfare: There will be no direct effect; the addition would not extend far enough toward the corner to cause any substantial reduction to visibility.

Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

There being no further business, the meeting was adjourned at 9:45 A.M.

Approved: _____, Chairman