

**BOARD OF ADJUSTMENT**

**August 9, 2005**

**Minutes**

Members Present: Rick Waldruff  
Scott Hay  
Morton Langholtz  
Jim Salisbury

Members Absent: Wayne Bradshaw

Alternates Present: Brenda Coleman

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

The minutes of the July 12, 2005 meeting were unanimously approved.

**Agenda Item BA-2005-43, Request for a Special Exception to locate a carport in the front yard setback at 1702 Crooked Branch Circle.**

Mr. Fortney presented the staff report. The applicant wanted to construct a carport over the existing driveway up to their home. The proposed carport would be 9 feet from the front property line and 19 feet from the curb on Crooked Branch Circle. There are no front carports in the area so the request does not meet the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended denial of the Special Exception. 14 comment forms were returned in opposed to the request and none in favor.

There were no questions.

Mr. Hay opened the public hearing. George M<sup>c</sup>Millan, applicant, spoke in favor of the request. He stated that he had more cars than the garage will hold and needs to protect them.

Mr. Hay commented that there seems to be a lot of resistance from his neighbors. He asked Mr. M<sup>c</sup>Millan if he has spoken to his neighbors about the carport. Mr. M<sup>c</sup>Millan said that he had not.

Mr. Langholtz asked Mr. M<sup>c</sup>Millan how large was his garage was and how many drivers he had. Mr. M<sup>c</sup>Millan said that he has a two-car garage and there are four drivers.

Mr. Hay mentioned that this proposed carport does not look compatible and asked Mr. McMillan if he had anything to add. Mr. McMillan stated that he did not think there would be as much opposition as there was.

Mr. Hay closed the public hearing.

Mr. Waldruff mentioned that it was clearly not compatible.

Mr. Salisbury made a motion to deny the request based on the following findings:

Compatibility With Surrounding Land Uses: There are no front carports in the vicinity of the request.

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

Relationship to the Intent of the Regulation: This request is in an area with no other front carports so it is inconsistent 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-2005-44, Request for a Special Exception to locate a carport in the front yard setback at 3210 Wenwood Drive.**

Mr. Fortney presented the staff report. The applicant wanted to construct a carport over the existing driveway up to their home. The proposed carport would be 8 feet from the front property line and 20 feet from the curb on Wenwood Drive. There are several front carports in the area so the request does meet the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. 5 comment forms were returned in favor of the request and none in opposition.

There were no questions.

Mr. Hay opened the public hearing. There were no speakers.

Mr. Hay closed the public hearing.

Mr. Hay stated that this request seemed to be compatible with the surrounding land uses.

Mr. Langholtz confirmed that they had approved special exceptions in the past without the applicant being present.

Mr. Langholtz 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 a front carport in this location.

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

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

**Agenda Item BA-2005-45, Request for a Special Exception to locate a carport in the front yard setback at 4057 Richmond Street.**

Mr. Fortney presented the staff report. The applicant wanted to construct a carport over the existing driveway up to their home. The proposed carport would be 8 feet from the front property line and 20 feet from the curb on Richmond Street. There are several front carports in the area so the request does meet the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. 4 comment forms were returned in favor of the request and 1 in opposition.

There were no questions.

Mr. Hay opened the public hearing. Charles D. Shoemaker Sr., applicant, spoke in favor of the request. He stated that he had noticed a nice carport down the street of metal construction. They own 2 pickup trucks and it is difficult to fit them into the garage. He wants to protect them from the elements.

Mr. Hay closed the public hearing.

Mr. Waldruff stated that this request seemed to be compatible with the surrounding land uses.

Mr. Salisbury 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 a front carport in this location.

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

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

**Agenda Item BA-2005-46, Request for a Special Exception to locate a carport in the front yard setback at 2417 Palm Street.**

Mr. Fortney presented the staff report. The applicant wanted to construct a carport over the existing driveway up to their home. The proposed carport would be 6.5 feet from the front property line and 21.5 feet from the curb on Palm Street. There are several front carports in the area so the request does meet the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. 6 comment forms were returned in favor of the request and none in opposition.

There were no questions.

Mr. Hay opened the public hearing. Martha Sellers, applicant, spoke in favor of the request. She stated that they would like to upgrade the appearance of the house and protect their vehicle. Their house faces west and the sun makes it become very hot. This carport would help shade the house from the sun to lower energy costs.

Mr. Salisbury asked if they had built a new driveway. Martha Sellers said that it was.

Mr. Hay closed the public hearing.

Mr. Langholtz 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 a front carport in this location.

Relationship to the Intent of the Regulation: This request is in an area with other front carports so it is 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-2005-47, Request for a Special Exception to locate a carport in the front yard setback at 2609 S 21<sup>st</sup> Street.**

Mr. Fortney presented the staff report. The applicant wanted to construct a carport over the existing driveway up to their home. The proposed carport would be 5 feet from the front property line and 15 feet from the curb on South 21<sup>st</sup> Street. There are several front carports in the area so the request does meet the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. 4 comment forms were returned in favor of the request and none in opposition.

There were no questions.

Mr. Hay opened the public hearing. Tim Falkner, agent, spoke in favor of the request. He stated that the carport would be of all steel construction similar to the others in the area.

Mr. Hay closed the public hearing.

Mr. Waldraff asked if the neighboring property had a front or a side carport. Justin Fortney stated that the carport was a side carport and it should not be considered for compatibility.

Mr. Hay stated that the proposed carport is still compatible because of all of the other carports in the neighborhood.

Ms. Coleman 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 a front carport in this location.

Relationship to the Intent of the Regulation: This request is in an area with other front carports so it is 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-2005-48, Request for a Special Exception to locate a carport in the front yard setback at 1425 Clinton Street.**

Mr. Fortney presented the staff report. The applicant wanted to construct a carport over the existing driveway up to their home. The proposed carport would be 5 feet from the front property line and 20 feet from the curb on Clinton Street. There are several front carports in the area so the request does meet the criteria of compatibility. Although it appears that cars are being parked over an unimproved surface, some type of a driveway must be built before a carport-building permit can be finalized. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. 4 comment forms were returned in favor of the request and none in opposition.

Mr. Hay stated that it looks like the cars are not parked on an improved surface. Justin Fortney agreed.

Mr. Hay opened the public hearing. Jeanne Harendt, applicant, spoke in favor of the request. She stated that the garage has been enclosed and she would have to build the carport in the backyard without the Special Exception.

Mr. Salisbury asked if the cars are parked in a driveway. Jeanne Harendt replied, there is just space to park them side-by-side.

Mr. Hay asked is she had known that she must have an improved surface under the proposed carport. She replied no, but she would. Mr. Hay asked if she would have to remove any trees, she replied no, there is space available and she would pour a driveway.

Mr. Salisbury asked why she does not want to build the carport in the backyard. Jeanne Harendt replied, I live alone and it is safer to come in the front of the house.

Mr. Hay closed the public hearing.

Mr. Salisbury asked if others thought they should include pouring a driveway as a contingency on the Special Exception

Mr. Hay stated that the proposed carport is still compatible because of all of the other carports in the neighborhood. Others, -no

Mr. Langholtz 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 a front carport in this location.

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

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

**Agenda Item BA-2005-49, Request for a Special Exception to locate a carport in the front yard setback at 834 Westmoreland Street.**

Ms. Brownell presented the staff report. The applicant wanted to construct a carport in the front yard over an existing driveway. The proposed carport would be 10 feet from the front property line and 25 feet from the curb on Westmoreland 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. Eight comment forms were returned in favor and none in opposition.

Mr. Hay opened the public hearing. Paul Rogers, the applicant, spoke in favor of the request. He stated that his wife's leg had been amputated and that they needed a covered ramp for her to access the home.

Paula Beal, contractor, spoke in favor of the request. She stated that the carport would be 10' x 20', not 10' x 10' as shown in the staff presentation, and that it would be the same distance from the street as the one shown in the presentation.

Mr. Hay closed the public hearing. Mr. Salisbury 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 a carport 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.

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

**Agenda Item BA-2005-50, Request for a Special Exception to locate a carport in the front yard setback at 813 Crestwood Drive.**

Ms. Brownell presented the staff report. The applicant wanted to construct a carport in the front yard over an existing driveway. The proposed carport would be 12 feet from the front property line and 24 feet from the curb on Crestwood Drive. 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. Three comment forms were returned in favor and none in opposition.

Mr. Hay opened the public hearing. Rod Bruce, the applicant, spoke in favor of the request. He stated that the carport would be 20' x 20', not 10' x 10' as shown in the staff presentation, although the setbacks were still correct. Ms. Brownell asked the applicant if the carport would still meet the 3' side setback since the driveway appeared to be against the property line. The applicant confirmed that the driveway was against the property line and that he could accommodate the minimum 3' setback along that side. Mr. Langholtz asked if staff's recommendation would change with the new information and Ms. Brownell stated that the size of the carport did not affect the compatibility with the area. The carport would need to meet the minimum setback requirements of 5' from the front property line and 3' from the side property line in order to receive a permit.

Mr. Hay closed the public hearing. Mr. Waldruff made a motion to approve the request, with the condition that the minimum setbacks be met (5' from the front property line and 3' from the side property line) 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 a carport 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. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

**Agenda Item BA-2005-51, Request for a 2' variance from the 15' exterior side setback requirement at 701 South Pioneer Drive.**

Ms. Brownell presented the staff report. The applicant was proposing to expand an existing church facility to increase educational space. The addition would extend approximately 1'4" into the exterior side setback along Potomac Avenue and be even with the second floor of the existing structure. The addition would be enclosed only on the second floor and would leave the bottom portion open for covered parking underneath. The applicant was also requesting a thoroughfare closure for a platted 20' alley and easement releases for two easements north of the proposed addition. The Planning and Zoning Commission had recommended approval of the thoroughfare closure and the case would be heard by City Council on August 25, 2005. The applicant would be required to relocate all utilities in the easements and alley prior to any permits being issued for the addition. Staff could find no hardship or peculiarity of the property and, therefore, recommended denial of the request. One comment form was returned in favor and none in opposition.

Mr. Hay opened the public hearing. Jack Harkins, agent, spoke in favor of the request. He stated that there was a hardship in the fact that the addition could not be moved further north due to the location of the support columns. The space between the columns and the existing structure was not sufficient to allow enough space for vehicle maneuvering. Ms. Coleman asked if the architecture would be consistent with the rest of the structure. Mr. Harkins replied that it would be similar but more durable than the existing material. It would include a white band similar to the one found on the existing structure. Mr. Waldraff asked for clarification of the vehicle maneuvering problem. Mr. Harkins explained that the columns, if moved, would not allow a large enough turning radius.

Fred Aycock of Pioneer Drive Baptist Church, applicant, spoke in favor of the request. Mr. Hay asked for his opinion on the traffic issue. Mr. Aycock stated that the Child Development Center was very busy and that the children were dropped off and picked up every weekday, creating a need for smooth traffic flow. Ms. Coleman asked him if the plans would change if Council did not approve the thoroughfare closure and he confirmed that they would. Mr. Waldraff asked if the existing building was parallel with the property line. Mr. Aycock stated that the building was originally built slightly askew from the property line and that the addition would follow the line of the building and also be slightly askew.

Mr. Hay closed the public hearing. Mr. Hay commented that the layout of the buildings was peculiar because they were not square. Mr. Langholtz stated that he understood staff's recommendation but felt that it did not completely fit the situation. Ms. Coleman said that she saw a hardship in the traffic situation. Mr. Waldraff made a motion to approve the request based on the following findings:

Unique Conditions of the Property: The existing structure already encroaches into the exterior side setback and is not parallel with the property line.

Hardship From Strict Interpretation: The traffic situation created by the reduced spacing between the addition and the existing structure causes a hardship if the addition were moved to the north.

Effect on Public Health, Safety, and Welfare: There will be no negative effect.

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

**Agenda Item BA-2005-52, Request for (1) a 16' variance from the 35' height requirement and (2) a 48.7' variance from the 135' separation requirement from RS zoning districts for off-site signage at 3254 South 14<sup>th</sup> Street.**

Ms. Brownell presented the staff report. The applicant proposed to relocate an existing billboard to a parcel approximately 200 feet further west than its current location along South 14<sup>th</sup> Street. The current location is considered a legal nonconforming use due the height of the sign and its proximity to a single-family residential zoning district. The relocation would require a 16 feet variance from the current height requirement of 35 feet to allow the proposed height of 51 feet. The subject parcel is adjacent to single-family residential zoning along the north property line and would necessitate a variance from the 135' of required separation. The subject parcel is slightly substandard in lot width, but that would not affect this request since the depth of the lot is sufficient for SC zoning. Staff did not predict any negative effects on public health, safety, or welfare from a billboard at this location. The parcel lies completely within the floodway and the sign would require a Floodway Development Permit, but it would be a fairly simple process for this type of structure. Staff was concerned about the visual encroachment of a large billboard so close to an established neighborhood. Any reduction in the height of the sign to make it more compatible would block on-site signage on the neighboring properties along S. 14<sup>th</sup> Street. Furthermore, the Comprehensive Plan calls for a reduction of sign clutter throughout the city. South 14<sup>th</sup> Street has been repeatedly mentioned as one of the worst examples in town. The approval of the variances would allow a new nonconforming use in an area with existing sign clutter. Staff recommended denial of both requests. Two comment forms were returned in favor and one in opposition in opposition.

Mr. Salisbury asked how far the sign would be from S. 14<sup>th</sup> Street. Ms. Brownell stated that the outermost edge would be 20 feet from the curb on S. 14<sup>th</sup> Street and the other side would extend 8 feet past the front of the existing building. Mr. Salisbury asked how the use would fit with the recommendations of the Comprehensive Plan. Ms. Brownell stated that the Comprehensive Plan

calls for a reduction in sign clutter in general, but does not give specific recommendations. She added the existing sign was a legal nonconforming use and could not be replaced in its current location without variances for height, separation from residential zoning, and separation from other off-site signage. The proposed sign would meet the requirements for separation between off-site signage, but still needed a variance from the other two requirements. Mr. Waldraff asked how the proposed sign compared to the new billboard along Buffalo Gap Road. Mr. Armstrong stated that the two signs represented two different outdoor advertising businesses. The existing sign on Buffalo Gap Road barely met the separation and height requirements and was in compliance with all current regulations.

Mr. Hay opened the public hearing. Mark Bunsey of Lamar Outdoor Advertising, agent, spoke in favor of the request. He stated that the proposed location would improve the spacing problems between off-site signage along S. 14<sup>th</sup> Street. He added that he would not have come before the Board if the other sign had not previously been located so close to the subject parcel. The existing sign had been up for approximately ten years and he requested just moving 200 feet from its current location. Mr. Hay asked if he still proposed remove the sign if the request was denied. Mr. Bunsey replied that it would not necessarily be removed if an agreement could be reached with the property owner. The location was agreed upon when the sign was originally built but has since become a point of discussion.

Joe Spano, Sr., applicant, spoke in favor of the request. He stated that the on-site signage on his parcel was to be removed and attached to the billboard if the variances were approved. This would combine two existing signs along S. 14<sup>th</sup> Street and help reduce the clutter.

Tim Ritter of Lamar Outdoor Advertising, offered to answer any further questions from the Board. Mr. Salisbury asked if he was committed to the removal of the sign regardless of the Board's decision. Mr. Ritter stated that he was not sure. The land was leased from the property owner and current circumstances have made an agreement difficult.

Mr. Hay closed the public hearing. Mr. Langholtz stated that approval would create another nonconforming use. Mr. Salisbury said that the smaller signs created more clutter than the proposed sign. Mr. Langholtz said that he saw no outstanding reason to approve a nonconforming use.

Mr. Hay reopened the public hearing. Mr. Bunsey again spoke in favor of the request. Mr. Salisbury asked if the proposed sign would be further from S. 14<sup>th</sup> Street and Mr. Bunsey confirmed that it would be setback 4 more feet.

Mr. Hay closed the public hearing. Mr. Hay stated that the proposed sign would improve the situation by bringing the spacing between off-site signage into compliance. Mr. Langholtz said that the Board had the chance to eliminate an ugly sign.

Mr. Hay reopened the public hearing. Mr. Bunsey stated that Lamar had removed at least 20 signs and built only two during the last few years. He said that the main problem was the on-site signage for tobacco and nail studios, not the quality signs his company builds.

Mr. Hay closed the public hearing. Mr. Santee asked if staff had discussed recommending a smaller sign. Mr. Armstrong stated that even a smaller sign would not meet the separation requirement. The request for the height variance allowed them to use the existing sign without altering the pole and a reduced height would not affect staff's recommendation. He stated that the Board could limit the amount of square footage or deny the height request in order to reduce the size. Mr. Santee asked if the setback was measured to the pole and Mr. Armstrong stated that the setback and the separation were measured to any portion of the sign and that the parkway was 20 feet wide at that location. Mr. Hay asked how many feet would be left after the 135' separation. Mr. Armstrong stated that the lot was 121 feet deep and that it would not have enough space for a sign of any size.

Mr. Hay reopened the public hearing. Mr. Bunsey came forward to answer questions from the Board. Mr. Hay asked about the impact of a smaller sign at that location. Mr. Bunsey explained that the proposed sign was a standard size and the next smaller size would not be much of a change at 14' x 48' (as opposed to the 12' x 50' being proposed). He added that the next smaller size after that would be very small and would add to the sign clutter already along S. 14<sup>th</sup> Street. He restated that they planned to move a sign that had been there for several years already. He also said that he would be willing to reduce the height of the sign by a maximum of 5 feet.

Mr. Armstrong stated that this particular sign was taller than those around it but that the neighboring businesses were allowed to have signs up to 50 feet tall at any time. An on-site sign that tall would be completely within compliance and could block the billboard even if it was meant to be above everything else. Ms. Coleman asked if the request fit with the goals of the Comprehensive Plan. Mr. Armstrong explained that the Comprehensive Plan gave no specific guidance for billboards; it merely called for a reduction of sign clutter. He added that the Planning Department was currently writing new regulations regarding community appearance but that they would not be in place until the Planning and Zoning Commission and City Council approved them. Mr. Santee asked if off-site signage was allowed by right in SC zoning and Mr. Armstrong confirmed that it was as long as it met the requirements for separation and size. Mr. Hay asked if on-site signage was allowed to be taller than off-site signage and Mr. Armstrong confirmed that was correct. This was consistent with all other zoning districts off of an interstate or primary roadway and added that off-site signs were permitted to be substantially larger. Mr. Waldraff asked if there were separation requirements for on-site signage and Mr. Armstrong said that there were not. Mr. Hay commented that the regulation seemed backwards.

Mr. Hay closed the public hearing. Mr. Waldraff said that they had the possibility of eliminating the sign. Mr. Langholtz made a motion to deny the request for a variance from the height requirement for off-site signage based on the following findings:

Unique Conditions of the Property: Although the parcel has slightly substandard lot width, the depth of the lot meets the design requirement for property in SC zoning and does not affect the request.

Hardship From Strict Interpretation: There is no hardship.

Effect on Public Health, Safety, and Welfare: There will be no negative effect.

Ms. Coleman seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

Mr. Langholtz made a motion to deny the request for a variance from the 135' separation requirement from RS zoning for off-site signage based on the following findings:

Unique Conditions of the Property: Although the parcel has slightly substandard lot width, the depth of the lot meets the design requirement for property in SC zoning and does not affect the request.

Hardship From Strict Interpretation: There is no hardship.

Effect on Public Health, Safety, and Welfare: There will be no negative effect.

Mr. Waldruff seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

**Agenda Item BA-2005-53, Request for a Special Exception to locate a single-family dwelling in HC zoning at 1266 Butternut Street.**

Ms. Brownell presented the staff report. The applicant proposed to locate a single-family residence in an existing structure that had once been used as a church. The residence would occupy only a portion of the building and the rest would be used as a retail game business with an attached game room. The structure already contained many of the amenities required in a single-family residence. Heavy Commercial zoning allows multi-family dwellings, duplexes, and residential hotels by right. The Butternut corridor has been mentioned as a prime candidate for down zoning since the majority of land use does not require Heavy Commercial zoning. The building in question was surrounded by uses that would be permitted in less-intense zoning districts where single-family dwellings would be allowed by right. The parcel also abutted residential development to the west across the alley. Staff felt that the use was compatible and consistent with the intent of the regulation. Staff did not foresee any negative effects on public facilities and recommended approval of the request. One comment form was returned in favor and one in opposition. The property owner in opposition was concerned with the level of maintenance for a residence at this location and did not want to see an eyesore adjacent to his business.

Mr. Hay opened the public hearing. Carl Ferrell, applicant, spoke in favor of the request. He stated that he wanted to be closer to his business. He said that he had talked with the opposing neighbor and that he had been concerned with slums and tenants and had allayed his fears because he would be the business owner and would not be renting to anyone. Mr. Waldruff asked what the business would be and Mr. Ferrell replied that it was a retail software business. Mr. Langholtz asked if it was already in the building and Mr. Ferrell stated that it was not but would be relocating there very soon. They were previously located at 2234 South 14<sup>th</sup> Street.

The manager of Software Asylum spoke in favor of the request. He stated that he also planned to live there because of a weak heart. He could be closer to the business and needed a roommate

to help him with his condition. Mr. Waldraff asked if there were any concerns with a residence being in the same building as a business. Mr. Armstrong stated that any separation issues would be handled through the Building Inspection Department. Mr. Waldraff stated that they should try to consider all the possible issues involved and that he did not see the request as a completely positive situation. Mr. Salisbury stated that he did not see anything positive about the request and asked what would happen if ownership of the parcel changed.

Mr. Hay closed the public hearing. Mr. Santee asked how the Comprehensive Plan addressed mixed use. Mr. Armstrong stated that it would allow it, although it typically calls for a business to occupy the first floor with residential space above it. In this case it would be the same principal but it would be the front and rear portions of the building instead. The Comprehensive Plan encourages neighborhood commercial uses to be mixed with a variety of residential options to reduce transportation costs, traffic, and commute time in appropriate areas. Mr. Santee asked if this was considered an appropriate area. Mr. Armstrong stated that the area was not designated as a major activity center but may be designated as a superneighborhood or enhancement corridor in the future. Those types of areas would require further study to determine whether mixed use was compatible. Mr. Langholtz asked about the restrictions of single-family dwellings. Mr. Armstrong stated that any use would require a Certificate of Occupancy. He added that the Zoning Ordinance protects residential zoning through setbacks and other separation requirements, but the zoning would not be changing so it should not have any negative effect on surrounding businesses.

Mr. Hay asked if it was appropriate to restrict the Special Exception to this particular owner. Mr. Santee stated that Special Exceptions usually pertained to the land, not the owner. He added that the decision was based on compatibility with surrounding land uses and that would not change with the ownership. Mr. Hay stated that he would want the next owner to make the same request. Mr. Santee said that the Board would then be basing the decision on the property owner and not the use. Mr. Langholtz asked if they could limit occupancy of the residence to the business owner so that the space could not be rented. Mr. Armstrong confirmed that they could limit it to the owner or an employee of the business. Mr. Santee agreed that the limitation was permissible. Mr. Waldraff asked if they could limit the amount of square footage to be used as the residence. Mr. Armstrong said that they could and that it could be enforced through occupancy permits. Mr. Waldraff asked if the downtown dwellings had required Special Exceptions and Mr. Armstrong clarified that they did not because they were not in a Heavy Commercial zoning district. Mr. Santee asked if there were very many Heavy Commercial uses in the area. Mr. Armstrong responded that the overwhelming majority of uses along the corridor would be permitted in a General Commercial zoning district. Mr. Santee asked if the area was targeted for rezoning in the future. Mr. Armstrong explained that it would probably coincide with the rewriting of the Zoning Ordinance and that would take approximately one to two years. He added that the current zoning was a problem for some property owners because of the substantial setback required for properties adjacent to residential zoning. Mr. Hay asked if the request would still be required if the property was rezoned. Mr. Armstrong confirmed that was true but added that there was no guarantee that the rezoning would take place.

Mr. Langholtz made a motion to approve the request based on the following findings:

Compatibility With Surrounding Land Uses: There are existing single-family homes to the west and the neighboring businesses along Butternut Street will not be negatively affected.

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

Relationship to the Intent of the Regulation: A residence is compatible at this and, therefore, consistent with the intent of the regulation. The surrounding land uses would be permitted in a less intense zoning district, which would also allow a single-family dwelling by right instead of with a Special Exception.

Mr. Hay reopened the public hearing. Ms. Coleman asked about the demographic of the clients of the store. Mr. Ferrell stated that customers were of all ages. The manager of Software Asylum added that the age range included mainly boys who were 8 years old up to college-age playing in the game room. He said that there was nothing for them to do in the evenings and weekends and that the game room provided a safe place for them to spend time where their parents would not have to worry about them.

Mr. Hay closed the public hearing. Mr. Langholtz withdrew his motion. Mr. Waldruff asked if they should limit the percentage of square footage used for residential purposes and stated that if the area were ever rezoned this request would not be an issue. Mr. Santee stated that if the request were denied the applicant would still have the option of requesting rezoning. Mr. Waldruff made a motion to approve the request based on the following findings:

Compatibility With Surrounding Land Uses: There are existing single-family homes to the west and the neighboring businesses along Butternut Street will not be negatively affected.

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

Relationship to the Intent of the Regulation: A residence is compatible at this and, therefore, consistent with the intent of the regulation. The surrounding land uses would be permitted in a less intense zoning district, which would also allow a single-family dwelling by right instead of with a Special Exception.

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

There being no further business, the meeting was adjourned at 10:30 A.M.

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