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**BOARD OF ADJUSTMENT**

**April 10, 2007**

**Minutes**

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Members Present: David Hejl  
Morton Langholtz  
Wayne Bradshaw  
Scott Hay

Members Absent: Brenda Coleman

Alternates Present: Rick Waldraff

Staff Present: Dan Santee, Interim City Attorney  
Gloria Elder, Planner II  
Justin Fortney, Planner II  
Rodney Fletcher, Residential Plans Examiner  
Trish Aldridge, Assistant City Attorney  
Jeff Armstrong, Development Services Manager

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

The minutes of the March 13, 2007, meeting were unanimously approved.

**Agenda Item BA-2007-15, Request for a Special Exception to allow a carport in the front yard setback on property located at 658 Woodlawn Drive.**

Justin Fortney presented the staff report. The applicant wishes to construct a 20' by 20' carport up to their home over an existing driveway. The proposed carport would be 10 feet from the front property line and 20 feet from the curb. Staff foresees no negative effects on public facilities from the request. There are other front carports in the area, which makes the request compatible and consistent with the intent of the regulation. Staff recommended approval of the request. Six comment forms were returned in favor and none in opposition. Mr. Bradshaw asked if there were any other carports along Woodlawn Drive and Mr. Fortney explained that there were not, but that there were others in the immediate area.

Mr. Bradshaw opened the public hearing. Mildred Lea Smith, applicant, spoke in favor of the request. Mr. Bradshaw asked if there were an existing garage and she stated that there was not. She said that she had lived there for nine years and that the garage had been enclosed before she purchased the home.

Mr. Bradshaw closed the public hearing.

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

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

Effect on Public Facilities: There will be no negative effects on public facilities from a carport at this location.

Relationship to the Intent of the Regulation: Since this proposed carport is in an area with other front carports, the proposal is consistent with the intent of the regulation.

Mr. Hejl seconded the motion, which carried by a vote of five (5) in favor and none (0) opposed.

**Agenda Item BA-2007-16, Request for a Special Exception to allow a carport in the front yard setback on property located at 1526 Roanoak Drive.**

Mr. Fortney presented the staff report. The applicant wishes to construct a 24' by 21' carport up to their home over an existing driveway. The proposed carport would be 14 feet from the front property line and 26 feet from the curb. Staff foresees no negative effects on public facilities from the request. There are no other carports in the immediate area, which makes the request incompatible and inconsistent with the intent of the regulation. Staff recommended denial of the request. Three comment forms were returned in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Harvey Zimpel, applicant, spoke in favor of the request. Mr. Bradshaw asked if he could use the existing garage and Mr. Zimpel stated that he could, but that none of his vehicles could fit inside. Mr. Langholtz asked if it had two separate doors and Mr. Zimpel confirmed that it did. Mr. Langholtz asked when the home was built and the applicant explained that he wasn't sure, but that he had lived there for the past 27 years. Mr. Waldruff asked if there were any other carports in the area that staff may have missed. Mr. Zimpel said that there were some further away on Delwood and Richland, but that he knew of no others in the immediate area. Mr. Bradshaw asked if rear entry was a possibility and Mr. Zimpel replied that there were too many trees to make it feasible. Mr. Bradshaw explained the applicant that he was concerned about allowing this carport and opening the door to others in the future. Mr. Zimpel asked why that would be a negative thing and stated that it was his home and that he would ultimately bear the burden of any lost value. Mr. Santee further explained that the proposed structure would impact the surrounding properties and that it was the Board's responsibility to ensure compatibility to protect their property values as well. Mr. Zimpel stated that he was displeased with the procedure and felt that he should be permitted to build the carport as he desires. Mr. Hay asked if he had visited with any of the neighbors to gauge their reaction to the proposal. Mr. Zimpel said that he had only spoken with one neighbor who had approached him because he had gone through this procedure in the past for another request. Mr. Hay commented that he would like to help the applicant, but that the request did not appear to meet the criteria to approve a Special Exception. He added that he would feel better if there was wider neighborhood support,

but that the three responses are not enough to justify the compatibility in his mind. Mr. Zimpel said that people are busy and they probably didn't take the time to mail the comment form back to the city and that it was not fair to assume that meant that they are opposed. Mr. Hay said that he might feel differently if more people responded in favor of the request and that the applicant should attempt to gather more opinions from the neighboring properties that would be affected. Mr. Zimpel asked if he would be required to begin the whole process again and Mr. Langholtz explained that the Board could table the request to allow it to remain open for future consideration. Mr. Zimpel agreed that he could try to contact more of the neighbors and provide their responses. Mr. Waldruff asked Mr. Hay to clarify the area of concern and Mr. Hay stated that there was no set area, but that it should extend further south than just the current notification area. He added that he was mainly concerned if anyone opposed the request instead of being in favor or ambivalent.

Mr. Bradshaw closed the public hearing.

Mr. Hay made a motion to table the request. Mr. Hejl seconded the motion, which carried by a vote of five (5) in favor and none (0) opposed.

**Agenda Item BA-2007-17, Request for a Special Exception to allow a carport in the front yard setback on property located at 4117 Waldemar Street.**

Mr. Fortney presented the staff report. The applicant wishes to construct a 22' by 20' carport up to their home over what will be an improved surface. The proposed carport would be 14 feet from the front property line and 24 feet from the curb. Staff foresees no negative effects on public facilities from the request. There are other carports in the area, which makes the request compatible and consistent with the intent of the regulation. Staff recommended approval of the request. Three comment forms were returned in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Tim Falkner, representative for the applicant, spoke in favor of the request. He stated that the applicants work full time and were unable to attend the meeting. They want the carport to protect their two vehicles and motorcycle and the house appears to have been built without a garage. He stated that they plan to pave the area under the proposed carport and it will be located where the curb is already cut.

Mr. Bradshaw closed the public hearing. Mr. Hejl commented that the carport and improved driveway would likely enhance the appearance of the home.

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

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

Effect on Public Facilities: There will be no negative effects on public facilities from a carport at this location.

Relationship to the Intent of the Regulation: Since this proposed carport is in an area with other front carports, the proposal is consistent with the intent of the regulation.

Mr. Hejl seconded the motion, which carried by a vote of five (5) in favor and none (0) opposed.

**Agenda Item BA-2007-18, Request for a Special Exception to allow a carport in the front yard setback on property located at 5210 Twylight Trail.**

Mr. Fortney presented the staff report. The applicant wishes to construct a 24' by 20' carport up to their home over what will be an improved surface. The proposed carport would be 5 feet from the front property line and 17 feet from the curb. Staff foresees no negative effects on public facilities from the request. There are other carports in the area, which makes the request compatible and consistent with the intent of the regulation. Staff recommended approval of the request. Three comment forms were returned in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Marcene Crunk, applicant, spoke in favor of the request. She asked if the Board had any questions for her and Mr. Bradshaw commented that the request appeared to be compatible because of all the other carports in the area.

Mr. Bradshaw closed the public hearing.

Mr. Hay made a motion to approve the Special Exception based on the following findings:

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

Effect on Public Facilities: There will be no negative effects on public facilities from a carport at this location.

Relationship to the Intent of the Regulation: Since this proposed carport is in an area with several other front carports, the proposal is consistent with the intent of the regulation.

Mr. Langholtz seconded the motion, which carried by a vote of five (5) in favor and none (0) opposed.

**Agenda Item BA-2007-19, Request for a Special Exception to allow a carport in the front yard setback on property located at 1326 Ross Avenue.**

Mr. Fortney presented the staff report. The applicant wishes to construct a 20' by 10' carport up to their home over an existing driveway. The proposed carport would be 5 feet from the front property line and 17 feet from the curb. Staff foresees no negative effects on public facilities from the request. There are other carports in the area, which makes the request compatible and consistent with the intent of the regulation. Staff recommended approval of the request. No comment forms were returned in favor or in opposition.

Mr. Bradshaw opened the public hearing. No one spoke. Mr. Hejl asked Mr. Fortney to explain the justification for the staff's recommendation. Mr. Fortney stated that the staff usually considers the request compatible if there are similar improvements along the same streets and visible from the subject property or if there are others in the 200-foot notification area. Mr. Hejl asked if the other carport north of the request had been permitted since it was the only other one in the area. Mr. Fortney replied that he had not verified its legality. Mr. Santee suggested that the Board could table the request until the information could be provided.

Mr. Bradshaw closed the public hearing.

Mr. Hejl made a motion to table the request. Mr. Langholtz seconded the motion, which carried by a vote of five (5) in favor and none (0) opposed.

**Agenda Item BA-2007-20, Request for a Special Exception to allow a carport in the front yard setback on property located at 1101 Yorktown Drive.**

Mr. Fortney presented the staff report. The applicant wishes to construct a 20' by 12' carport up to their home over an existing driveway. The proposed carport would be 5 feet from the front property line and 17 feet from the curb. Staff foresees no negative effects on public facilities from the request. There are other carports in the area, which makes the request compatible and consistent with the intent of the regulation. Staff recommended approval of the request. No comment forms were returned in favor or in opposition.

Mr. Bradshaw opened the public hearing. Barbara Martin, applicant, spoke in favor of the request. She stated that she had converted the garage to living space right after she moved into the home. She just bought a new car and wants to protect it from hail and the sap from the pecan trees in the front yard. The carport will also provide shade for the front of the home since it faces west. Mr. Bradshaw explained that the Board could not consider financial issues, just compatibility with the surrounding area. Mr. Hejl asked about placing the carport in the rear and Ms. Martin stated that there were trees, a utility pole, and a storage shed that block any alternate locations.

Mr. Bradshaw closed the public hearing. Mr. Waldraff stated that there were no other carports on Yorktown, but that it was a short street and that the three in the immediate area made it seem compatible. Mr. Hay commented that he agreed.

Mr. Waldraff made a motion to approve the Special Exception based on the following findings:

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

Effect on Public Facilities: Staff anticipates no negative effects on public facilities from a carport at this location.

Relationship to the Intent of the Regulation: Since this proposed carport is in an area with other front carports, the proposal is consistent with the intent of the regulation.

Mr. Hay seconded the motion, which carried by a vote of five (5) in favor and none (0) opposed.

**Agenda Item BA-2007-21, Request for a Special Exception to locate a Single-family Residence in a Light Industrial zoning district on property located at 1901 E. Highway 80.**

Jeff Armstrong presented the staff report. The subject property is vacant. The property to the south has crossed this property as a means of access to E. Highway 80. The property to the south is divided into two parcels, one is vacant and one has a single-family home on it. Other parcels in the area are vacant or developed with heavy and other commercial uses. There do not appear to be any industrial uses in the area. Across E. Highway 80 the HC zoned areas are mostly vacant with a few lighter commercial uses. Beyond the HC zoning is a residential subdivision, located less than 500 feet from the subject property. The applicant proposes the construction of a single-family residence on the property. Staff foresees no negative effects on public facilities from the request. There are other residences in the area and the request appears to be compatible and consistent with the intent of the regulation. Staff recommended approval of the request. No comment forms were returned in favor or in opposition. Mr. Waldraff asked about the nature of the businesses in the surrounding area and Mr. Armstrong stated that they appeared to be of a Heavy Commercial character because they were truck-oriented and had outdoor storage of materials.

Mr. Bradshaw opened the public hearing. Danielle Delhomme, applicant, spoke in favor of the request. She stated that she planned to build a research and development facility in a 40' x 70' building on the 3.1-acre parcel. It will include different stations for welding, woodwork, and sailmaking to manufacture her inventions. She currently lives in an apartment and wishes to have a small apartment on the property to provide security for the equipment stored in the building. Mr. Bradshaw asked if the apartment would be located in the building or in a separate structure nearby. The applicant wasn't sure where

it would be yet but wanted to provide some kind of living quarters for someone to protect her equipment.

Stuart Lindley, 1802 Sandy Street, spoke in opposition to the request. He stated that he was concerned about the residence being separate from the structure because it might look like a single-family home on a commercial area. Mr. Waldruff asked how that would negatively affect him and he said that he was worried about affecting his property value as a commercial property. Mr. Waldruff asked what he use he had on his property and Mr. Lindley stated that he lived in the existing home. Mr. Waldruff asked for further clarification and Mr. Lindley explained that he bought the property for future commercial use. He said that he had watched the previous cases and that carports were allowed where there were already other carports in the area. He was worried that this would allow additional residences in the future.

Mr. Bradshaw closed the public hearing. Mr. Hejl commented that it doesn't make very much difference if the residence is located inside or outside of the primary structure. Mr. Armstrong clarified for the benefit of the audience that they were not rezoning the property and all of the permitted uses would remain in place with or without an approval for a residence. Mr. Santee recommended that a member of the Planning or Building Inspection Staff inform the applicant of the requirements for locating a residence in conjunction with a nonresidential use. Mr. Bradshaw stated that they only needed to consider the use. Mr. Waldruff asked if there was a way to stipulate placement of the residence since that seemed to be a concern. Mr. Armstrong explained that the Board could apply conditions to a motion for approval that would make that determination. Mr. Santee cautioned that they should word the conditions so a residence is not required, but merely an option in conjunction with the nonresidential plans for the property. Mr. Waldruff commented that if it was just a house it would seem incompatible with the area because no other homes in the area have frontage on E. Highway 80. The Highway forms a barrier between this property and the Pasadena Heights neighborhood to the north. Mr. Langholtz commented that the proposed use would be better than leaving the property vacant. Mr. Hay said that the use appeared to be compatible.

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

Compatibility With Surrounding Land Uses: There is an existing house to the south on property zoned HI. The Pasadena Heights Subdivision is less than 500 feet to the north. With these existing uses and the lack of any true industrial in the immediate area, the proposal is compatible.

Effect on Public Facilities: One residence at this location will have no noticeable effect on public facilities.

Relationship to the Intent of the Regulation: The intent of the regulation is to limit residential uses in industrial areas where residents could be subject to various nuisances caused by the industrial activities. The ordinance allows for single family residences in

industrial zoning with case-by-case review to allow them where they may be acceptable or needed. Although there are currently no industrial uses in the area, such a use could locate in the area at any time with the LI and HI zoning. Therefore, in many cases the zoning itself would be enough to not find the request compatible. However, in this case there are numerous other homes in the area, so this would not be unique. In the past, the Board has approved similar requests in areas that are developed with homes already.

Mr. Hay seconded the motion, which carried by a vote of four (4) in favor and one (1) opposed.

**Agenda Item BA-2007-23, Request for a 20' variance from the 25' rear setback requirement on property located at 4600 Pine Street.**

Mr. Armstrong presented the staff report. This same request was approved by the Board in November 2004. The applicants obtained two 6-month extensions to obtain a permit: one in May of 2005, the other in December 2005. The second extension expired and the applicant is making a new request. It should be noted that this is a new request and there is no requirement or necessity to take the same action. The Board should view this case as any new request. That being said, staff has provided the historic information related to the previous request.

Allsup plans to demolish their existing store and construct a new, modern, convenience store. They propose providing more space for larger vehicles to maneuver in and around the fuel pumps that currently exists. To accommodate this, they have requested a 20' variance from the 25' rear setback requirement. This would place the building 5 feet from the rear property line. However, the applicant has acquired the adjacent parcel to the north, where they intend to place their truck fuel facilities. This may reduce their need for maneuvering space in front of the store. Staff anticipates little or no effect on the general public from this request. This is a commercial area and to the rear of the property are an alley and then more HI zoning. The applicant has stated that the 150' deep lot is not sufficient depth for a 30' front setback, a 25' rear setback, parking and the fuel islands, particularly since the business regularly provides fuel to larger commercial vehicles from nearby businesses. However, it is staff's opinion that there is sufficient width to the property to provide parking to the sides of the building, leave the same space as proposed available for maneuvering around the fuel pumps, and still meet the rear setback requirement. The applicant simply wants to place all of this in front of the building. Therefore, there is no hardship. Furthermore, the lot is of sufficient size to comply with current zoning standards and appears to have no peculiarities. Mr. Armstrong stated that the agent had mentioned a regulation requiring 60' spacing between gas pumps and associated structures for safety reasons. He had attempted to verify the requirement, but could find nothing in the applicable state or local laws.

Staff recommended denial of the variance. One comment form was received in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Eddie Chase, agent, spoke in favor of the request. He stated that the construction delay occurred after Allsup's acquired all of the local Texacos postponed any new construction projects. He explained that the proposed layout was different than in the past because they had purchased the adjacent lot to the north to accommodate the diesel fuel pumps for larger trucks. He said that the building needed to be shifted toward the rear property line so that the attendant inside could see both the passenger vehicle and truck refueling stations at the same time to prevent drive-offs. He added that the proposed location would allow construction of the new facilities while the existing structure was still being used to avoid any interruptions in service to their current customers. Mr. Santee asked about the possible 60' spacing and Mr. Chase said he thought it was for insurance purposes because the builder had mentioned it at another proposed location.

Mr. Bradshaw closed the public hearing. Mr. Hay commented that the request still appears to meet the criteria for a variance even though the plans have been modified from previous requests. He said that the lots still seemed to be shallow and that moving the building closer to the rear would improve the use of the site. He felt it was important to improve the safety of the site, even if the separation was voluntary for insurance purposes.

Mr. Hay made a motion to approve the variance based on the following findings:

Unique Conditions of the Property: The depth of the lot is more shallow than many similar commercial properties.

Hardship From Strict Interpretation: The strict interpretation of the ordinance would inhibit the most efficient use of the site and reduce the protection of the customers and users by placing the structure closer to the gas pumps.

Effect on Public Health, Safety, and Welfare: The variance will have a positive effect by separating the pumps from the associated structure.

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

**Agenda Item BA-2007-24, Request for a 15' variance from the 25' rear setback requirement on property located at 1241 Walnut Street.**

Mr. Armstrong presented the staff report. The applicant operates the Thrift Store on the subject property and is proposing to increase the building area by constructing an addition. The addition would be 10 feet from the rear property line instead of the required 25 feet. The existing building is 10 feet from the rear property line and the addition would be in line with it. The existing building on the site does not comply with current setback requirements. The site is developed much like property in the Central Business District where the buildings are built with little or no setback from property lines. Many of the buildings along Walnut St. are built similarly. The addition could be reduced in length to 47.8 feet (573.6 sq. ft.) and meet the setback requirement. However,

if the proposed square footage is necessary for their business, there is no other location on the lot that an addition could be made without violating a setback requirement to a greater extent than the existing building already does. The addition is not likely to have any adverse effects on the public.

Staff recommended approval of the variance if the applicant can provide justification for the additional 15 feet. If there is no necessity, a shorter addition could be constructed that meets the setback requirement. Two comment forms were received in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Al Rubillard, agent, spoke in favor of the request. He stated that the addition would be primarily used for storage in conjunction with the thrift store in the existing building. He stated that they wanted the addition to be even with the rear of the existing building and that it shouldn't cause any problems for visibility for his neighbors backing into the alley.

Mr. Bradshaw closed the public hearing.

Mr. Hejl made a motion to approve the variance based on the following findings:

Unique Conditions of the Property: The existing building on the site does not comply with current setback requirements. The site is developed much like property in the Central Business District where the buildings are built with little or no setback from property lines. Many of the buildings along Walnut Street are built similarly. The addition would be no closer to the rear property line than the existing building.

Hardship From Strict Interpretation: There is no other location on the lot that an addition could be made without violating a setback requirement to a greater extent than the existing building already does.

Effect on Public Health, Safety, and Welfare: The addition is not likely to have any adverse effects on the public.

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

**TABLED ITEM: Agenda Item BA-2007-19, Request for a Special Exception to allow a carport in the front yard setback on property located at 1326 Ross Avenue.**

Mr. Waldraff moved to remove the item from the table. Mr. Hay seconded the motion, which passed unanimously.

Mr. Fortney stated that the property at 1257 Ross Avenue received a variance for the existing carport because it was constructed prior to the change in the regulations that allowed carports to be considered under the procedures of a Special Exception. Therefore, when it was approved in 2003 it was not reviewed for compatibility with the surrounding neighborhood. Mr. Armstrong added that the current request was not to

reconsider the appropriateness of that carport, but to determine if the proposed one at 1326 was compatible today. Mr. Waldraff commented that it was just outside the notification area on the same street, which appeared to represent some compatibility.

Mr. Hay made a motion to approve the Special Exception based on the following findings:

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

Effect on Public Facilities: Staff anticipates no negative effects on public facilities from a carport at this location.

Relationship to the Intent of the Regulation: Since this proposed carport is in an area with other front carports, the proposal is consistent with the intent of the regulation.

Mr. Waldraff seconded the motion, which failed by a vote of three (3) in favor and two (2) opposed.

There being no further business, the meeting was adjourned at 9:55 A.M.

Approved: _____, Chairman
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