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**BOARD OF ADJUSTMENT**

**June 12, 2007**

**Minutes**

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Members Present: David Hejl  
Morton Langholtz  
Scott Hay

Members Absent: Wayne Bradshaw

Alternates Present: Brad Carter

Staff Present: Dan Santee, Interim City Attorney  
Gloria Elder, Planner II  
Matt Jones, Planner I  
Rodney Fletcher, Residential Plans Examiner  
Larry Abrigg, Senior Planner  
Jeff Armstrong, Development Services Manager

Mr. Hay called the meeting to order at 8:40 AM and declared a quorum present.

The minutes of the May 8, 2007, meeting were unanimously approved.

**Agenda Item BA-2007-31, Request for a Special Exception to allow a carport in the front yard setback on property located at 850 Chaucer Drive.**

Ms. Elder presented the staff report. The applicant proposes to construct a 15' x 20' carport extending from the existing two-car garage. The carport would be 5 feet from the front property line and 15 feet from the curb on Chaucer Drive. Staff foresees no negative effects on public facilities from the request. There are no similar carports in the area, which does not make the request compatible or consistent with the intent of the regulation. Staff recommended denial of the request. Two comment forms were returned in favor and two in opposition.

Mr. Hay opened the public hearing. John Snyder, applicant, spoke in favor of the request. He stated that the existing garage was not large enough to accommodate his to large trucks. He was concerned about protecting his vehicles during hail storms. He said that he would have difficulty with a rear carport because of the narrow distance between his home and his side property lines. He stated that the carport would look nice and would not be negative to the neighborhood. He mentioned that he talked to some of his neighbors across the street and that they didn't have a problem with it. He stated that he did not know the two property owners who had written in opposition. Mr. Hay commented that there were two neighbors in opposition and that there don't appear to be any similar carports in the neighborhood.

Mr. Hay closed the public hearing. Mr. Hejl said that he agreed with Mr. Hay.

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

Compatibility With Surrounding Land Uses: There are no other similar 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 no other front carports, the proposal is not consistent with the intent of the regulation.

Mr. Hejl seconded the motion, which carried by a vote of four (4) in favor and none (0) opposed.

**Agenda Item BA-2007-32, Request for a Special Exception to allow a carport in the front yard setback on property located at 2309 Minter Lane.**

Ms. Elder presented the staff report. The applicant proposes to construct a 22' x 20' carport extending from an existing two-car garage. The proposed carport would be 5 feet from the front property line and 17 feet from the curb on Minter Lane. Staff foresees no negative effects on public facilities from the request. There are several 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. Hay opened the public hearing. No one spoke and Mr. Hay closed the public hearing. Mr. Langholtz commented that there were quite a few carports in the area.

Mr. Langholtz 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. Carter seconded the motion, which carried by a vote of four (4) in favor and none (0) opposed.

**Agenda Item BA-2007-33, Request for a 2' variance from the 3' side setback requirement on property located at 1542 S. 12<sup>th</sup> Street.**

Mr. Armstrong presented the staff report. The request is for a 2' variance from the 3' interior side setback requirement for a carport. The applicant has lived in the home for 50 years. Recently, severe weather damaged the existing carport was a legal non-conforming structure. It was built at a time when carports were permitted one foot from the property line. Since then, the ordinance was amended to require carports to be 3 feet from interior side and rear property lines that are not adjacent to alleys. Section 23-361.3.B of the Zoning Ordinance regulates non-conforming structures. It states that when such a structure is damaged, regardless of how the damage has occurred, the structure can be restored to its original configuration only if the damage does not exceed 50% of the value of the structure. If the damage exceeds 50%, replacement must meet all current requirements. The applicant's structure has been removed following the storm damage (100% of the value). Therefore, the carport must meet the current setback requirement of 3 feet. Staff does recommend approval of the variance.

One comment form was returned in favor and none in opposition.

Mr. Hay opened the public hearing. Jeff Bullock, agent, spoke in favor of the request. He stated that he moved into his home across from the applicant 6½ years ago and that he has looked after her for most of that time. She will be 92 this year and uses the carport to cover her vehicle. Her caregivers use the vehicle to drive her to appointments and on errands. The original carport was built within one foot of the property line and he wants to replace it in its previous location now that it has fallen into disrepair. The additional two feet of setback will make the carport unusable since it will be too narrow to access the vehicle. He said he had talked to the neighbor on that side and they didn't have a problem since the carport was already like that when they purchased their home.

Mr. Hay closed the public hearing.

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

Unique Conditions of the Property: A carport was in this same location prior to it being damaged in a recent storm. The carport location would be over an existing driveway and allow safe access to the home. The house is non-conforming in that it does not meet the current setback requirements along either street frontage.

Hardship From Strict Interpretation: There are concrete steps leading into the home that force vehicles away from the home and toward the property line. For a carport to cover a vehicle in the driveway, the additional 2 feet is necessary. The homeowner is 92 years

old and needs sufficient room to safely get in and out of the vehicle without stumbling on steps or having to navigate around the carport posts.

Effect on Public Health, Safety, and Welfare: The carport that was recently damaged by inclement weather has been at the proposed location for decades with no known effects on the public. The new carport is not likely to have any adverse effects on the public.

Mr. Hejl seconded the motion, which passed by a vote of 4 in favor and 0 opposed.

**Agenda Item BA-2007-34, Request for a variance to allow illumination of a sign in an RS-6 (Residential Single-family) zoning district on property located at 5283 Texas Avenue.**

Mr. Armstrong presented the staff report. The applicant is proposing to replace a sign for the church and add an electronic message center. The sign and message center would be on a pole along Texas Ave. The sign would be perpendicular to the street. The main sign would be 40 square feet in area and the message center would be 22 square feet in area. The top of the sign would be 18 feet 4 inches in height. The middle of the message center would be approximately 11 feet off the ground.

Illuminated signage is not permitted in RS zoning districts to prevent light from affecting the enjoyment of homes and to maintain the character of residential areas. Similar signs have been approved by the Board for churches and schools, but not where they would be as visible from residential properties as the sign proposed in this case.

The RM-2 zoning to the west may have illuminated signage. However, in RM zoning signs are limited to 10 feet in height and 20 square feet in area. Staff recommends denial. The request does not satisfy the required criteria.

Two comment forms were returned in favor and none in opposition. Mr. Langholtz asked if the recommendation for denial was based on the message center, or if it was just the illumination. Mr. Armstrong stated that illumination was a concern, but message centers may be more worrisome because of the flashing and animation features they typically offer. He said that conditions could be applied to address some of these concerns. Some of the recent cases with similar requests were in areas with less nearby residences and not in the line of sight for the proposed sign. Mr. Carter asked him to compare the size of the proposed sign to the existing one shown in the photograph presented with the staff report. Mr. Armstrong said he didn't know how tall the existing sign was and Mr. Hay said he guessed it to be around 9-10 feet tall. The proposed sign would be approximately twice as tall.

Mr. Hay opened the public hearing. Zane Dennis, agent, spoke in favor of the request. He stated that the primary purpose for upgrading the sign was to improve the aesthetics.

He said that he would be willing to work with conditions on the programming of the sign if the Board felt it was necessary. He provided a graphic to the Board showing the proposed sign superimposed in the proposed location. He said that the existing sign was already illuminated and that the existing parking lot lights were far brighter than they expected the new sign to be. There are three parking lot lights with 1000 watt high pressure sodium bulbs, which provide the security lighting for the parking area at night. Mr. Langholtz asked him when they are lit and Mr. Dennis said he turns them on every night for security. He said that the church had been vandalized recently and that the younger church members often return from trips later in the evening. Mr. Carter asked where the lights were located in the parking lot and Mr. Dennis indicated them on the aerial photography. Mr. Hay asked if he had any intention to use scrolling or blinking features on the message center. He said he planned primarily to use the scrolling feature to announce events, guest speakers, and meetings. Mr. Hay asked if he had any additional information in relation to the three criteria necessary to approve the variance and Mr. Dennis said that he did not. Mr. Hay explained that the neighboring residences were the primary concern of the Board. He commented that it would probably not be as bright as the parking lot lighting and that it would improve the appearance of the property as well.

David McMeekan, Acme Signs, spoke in favor of the request. He stated that he had been contracted to construct the sign and that he expected the new one to be a benefit to the church. He said that the message center they were purchasing could be programmed for content and timing of messages. He said it did not have animation features and it was limited to only one color.

Mr. Langholtz asked Mr. Armstrong to provide more information for the staff recommendation of denial. Mr. Armstrong stated that the church was located along an arterial, but that it was very close to residential properties also facing the arterial. Staff found nothing particularly peculiar about the situation since there are many churches near residences throughout the city. Mr. Santee commented that they currently have an illuminated sign and that because of the upgrade they will lose that ability. Mr. Armstrong stated that the current illumination may not be legal, but that the Board may see that as peculiar that they will lose their illumination. Mr. Santee stated that the message center was proposed to be 11 feet from the ground and asked if it would be visible from the adjacent homes over their existing privacy fences. Mr. Armstrong said that the homes across the alley would probably not be able to see it, but that it would be clearly visible from the homes along Texas Avenue. He stated that illumination of consistent intensity would not be as negative as if the sign made substantial changes in the color and intensity of the lights. Mr. Santee asked if the message center was permitted in the nearby Office zoning district and Mr. Armstrong confirmed that it was. Mr. Hay asked if the sign could control the brightness and Mr. McMeekan stated that it was designed to be dimmer at night since less illumination was necessary to make the message readable. He said that the sign could be moved down to the 8-foot minimum height required by the city if necessary.

Mr. Hay closed the public hearing. Mr. Langholtz commented that it was an unusual location and the width of the street made it appear almost commercial even though there were residences. Mr. Hejl mentioned that the parking lot lights were already providing illumination in the area. Mr. Carter said that he felt comfortable with two of the criteria for a variance, but he asked the other Board members if they had any thoughts on the presence of a hardship. Mr. Hay said that he felt it was a hardship for the church to lose its current illumination and that it may hamper their ability to communicate effectively with their members and the public. He said that the negative effects on public health, safety, and welfare could be mitigated through conditions placed by the Board. He also thought it may have a positive effect due to improved aesthetics and communication.

Mr. Hay made a motion to approve the variance, with the condition that no flashing is allowed after dark, based on the following findings:

Unique Conditions of the Property: The feel and appearance of the surrounding area is primarily commercial due to the width of Texas Avenue and some of the neighboring uses mixed among the residences.

Hardship From Strict Interpretation: The church would lose its current use of illumination on the existing sign and it would detract from their ability to effectively communicate with its members and the public.

Effect on Public Health, Safety, and Welfare: The negative effects associated with flashing have been addressed with the condition and there will be a positive impact from the improved appearance of the sign.

Mr. Langholtz seconded the motion, which passed by a vote of 4 in favor and 0 opposed.

**Agenda Item BA-2007-28, Request for a Special Exception for a 36 month extension of the time limit to obtain a building permit for a previously approved Special Exception to locate an electric substation in AO zoning on property located at the southeast corner of East Lake Road and CR 306.**

Mr. Armstrong presented the staff report. This request is for a Special Exception to locate an Electric Substation in an AO zoning district. The applicants have stated that this is an ideal location for an electrical substation is ideal because it has two high voltage distribution lines that currently pass over it. They also said they chose this land because of its remote location, which may be less controversial than other locations. Staff recommended approval of the request. No comment forms were returned in favor or in opposition.

Mr. Hay opened the public hearing. Tom Choate, agent, spoke in favor of the request. He stated that this was a unique request because they plan substation locations so far in advance. He said an optimal site would have close access to existing transmission lines and that this site was located under two existing lines. He said his client tries to project

where future needs will be since they do not have an option to serve all requesting parties, they are obligated by law to serve anyone who submits a request within their designated service area. He said that northeast Abilene appears to be experiencing growth and they would like to have a site ready to accommodate future requests in the area. Due recent events, such as Hurricane Katrina, service providers must plan far in advance to be able to obtain the necessary materials to construct substations and distribution lines. In the past, the process only lasted 4-6 months, but it is now closer to 1-2 years. The engineering and design time frames have increased as well. With regard to a hardship, the utility provider has no ability to refuse service, so they must forecast areas of future growth to meet the needs of customers as they arise. There will be no negative effect on public health safety or welfare due to the remote location of the property. The request is unique to the Board, but not within the industry. Mr. Choate said that had worked closely with staff and that they are recommending approval. Mr. Langholtz asked if he had any problems with the sign suggested in the staff recommendation and Mr. Choate stated that he did not.

Mr. Hay closed the public hearing. Mr. Armstrong reminded the Board that findings were not necessary as part of their motion since it was an extension of a previously approved Special Exception.

Mr. Langholtz made a motion to approve the 36 month extension with the following condition:

A sign shall be located on the site for the duration of the extension or until construction commences, whichever occurs first. The sign shall indicate the future use of the site as an electric substation and provide the property owner's contact information. All information on the sign shall be legible from East Lake Road.

Mr. Hejl seconded the motion, which carried by a vote of four (4) in favor and none (0) opposed.

There being no further business, the meeting was adjourned at 10:00 A.M.

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