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**BOARD OF ADJUSTMENT**

**August 14, 2007**

**Minutes**

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Members Present:      Scott Hay  
                                 Morton Langholtz  
                                 Wayne Bradshaw

Members Absent:      David Hejl

Alternates Present:      Rick Waldraff

Staff Present:      Kelley Messer, Assistant City Attorney  
                                 Larry Abrigg, Senior Planner  
                                 Matt Jones, Planner I  
                                 Rodney Fletcher, Residential Plans Examiner  
                                 Zack Rainbow, Planner I  
                                 Jon James, Director of Planning & Development Services  
                                 JoAnn Sczech, Executive Secretary, Recording

**Item One: Call the Meeting to Order:**

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

**Item Two: Approval of the Minutes**

The minutes of the July 10, 2007, meeting were unanimously approved.

Mr. Bradshaw read the opening statement for the Board of Adjustment.

**Item Three: Special Exception/Variance Requests:**

a.      BA-2007-39

A public hearing to consider a request from Jack Crawford, agent, Abilene Portable Buildings for a Special Exception to locate a carport in the front yard setback of a single family residence. Legal description being the north 44 feet of Lot 31 and south 7.6 feet of Lot 32, Block H. Elmwood West, Abilene, Taylor County, Texas, and located at 1305 South San Jose Drive.

Mr. Larry Abrigg presented the staff report. The applicant proposes to construct a front carport (12'x 20'). Mr. Abrigg stated that a permit for a carport at this location was approved in 2004. The project was not complete and the time frame allowed for the permit lapsed. Therefore, the proponent was required to request a Special Exception from this Board. The parkway of San Jose is 12' and the setback requirement is 20' requiring the structure to be 32' from the curb. As proposed the carport will be located 22' from the curb.

The majority of the houses along San Jose were built with one-car garages. The applicant has an existing one-car garage. There is an alley located at the rear of the applicant's house. However, in order to meet the requirements for a special exception the applicant must prove

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the carport will be compatible with the surrounding area. There are at least three other front carports along this block of San Jose Drive.

Approval of the request would not have a negative effect on the public health, safety, or welfare. Nine (9) comment forms were returned in favor of the request (with no comments) and none (0) in opposition. Staff recommended approval of the request.

Mr. Bradshaw opened the public hearing.

Mr. Ray Young, agent, stated that Abilene Portable Buildings will be constructing this carport. As mentioned earlier, the request was considered and approved by the Board at a previous meeting. The applicant requires a space in which to park his car.

Mr. Bradshaw 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 other front carports in the vicinity of the request.

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

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

Mr. Hay seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Hay, Langholtz, and Waldraff) to none (0) opposed.

b. BA-2007-40

A public hearing to consider a request from Billie Fender, agent Kim Vacca, for a Special Exception to locate a Bed and Breakfast in an RM-2 H Zoning District. Legal description being Lots 5,6, Block 150, Old Town Abilene, Taylor County, Texas, and located at 508 Mulberry Street.

Mr. Larry Abrigg presented the staff report. Recently, staff submitted a rezoning request to the Planning and Zoning Commission for Central Business District (CB) zoning. The neighbors were not in favor of CB zoning and the City Council rezoned the property to RM-2(H). Two (2) comment forms were returned in favor of the request (one comment form with the statement: *In regard to this case as to whether to allow a bed and breakfast, the respondent is in favor, resides across the street from the property being considered. The structure has been a Bed and Breakfast in the past and it would be good if it were allowed to continue as a Bed and Breakfast*) and none (0) in opposition. This property has previously been utilized as a Bed and Breakfast establishment.

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Mr. Abrigg stated that the request meets all the requirements for a Special Exception and staff recommends approval.

Mr. Bradshaw opened the public hearing.

Ms. Kim Vacca with Remax of Abilene stated that she is appearing before this Board on behalf of Ms. Fender. Ms. Vacca stated that the structure is a large historical home and would be an idea location for a Bed and Breakfast rather than sitting vacant as it is at present.

Mr. Langholtz asked about the parking area for this establishment. Ms. Vacca responded that there is a two-car garage, two spaces for parking in the driveway and on-street parking for additional automobiles.

Mr. Bradshaw closed the public hearing.

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

Compatibility with Surrounding Land Uses: The proposed use is compatible with the area due to the presence of adjacent residences. The subject property was once a bed and breakfast before the ordinance changes in 1998. After 1998 it was not a bed and breakfast for more than 6 months and needs the special exception to open again as a bed and breakfast.

Effect on Public Facilities: Staff anticipates no effects on public facilities from a bed and breakfast.

Relationship to the Intent of the Regulation: The intent of this regulation is to allow bed and breakfasts in areas where such usage would not affect in a negative way the health, safety or welfare of neighbors.

Mr. Waldraff seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Hay, Langholtz, and Waldraff) to none (0) opposed.

c. BA-2007-41

A public hearing to consider a request from Jose Rodriguez, for a 24 foot variance from the 50 foot rear setback to allow a carport in a HC Zoning District. Legal description being Jalonick 1st, Block A, Lot 7 & S10 of 6, Abilene, Taylor County, Texas, and located at 942 Butternut Street.

Mr. Zack Rainbow presented the staff report for this case. The applicant constructed a 75' x 20' non-enclosed building (without a permit) located in front of the primary structure and is not attached. By definition, it then becomes a building. The building would be 26 feet from the back property line and 22 feet from the curb on Butternut Street. The primary structure already there is within in the 50 foot setback because it

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predates the ordinance. If the non-enclosed building was attached to the primary structure it would still be an enlargement to the non-conforming building in the setback.

Mr. Rainbow stated that four responses were received regarding this variance – one was received in favor of the request; three were received in opposition, including a letter from the Butternut Association. Portions of this letter read: “*We have had complaints about parking; late night parties, etc., around and on this property; alley parking and obstruction adjoining drives owned by others being used for parking; the building was built without a permit; does not meet the setback requirements. They are requesting a variance for the unauthorized building.*”

Mr. Rainbow stated that if the structure had been smaller in size, there are locations on the lot where the building would have been permitted within the setback requirements. Staff recommends denial of the request since this case does not meet the necessary criteria to approve a variance and there is no hardship in this case because the building could have been reduced in size, located at another location and been within the setback requirements.

Mr. Waldraff asked if it was the front setback or the side setback that was not being met.

Mr. Rainbow responded that the building would not meet the rear setback because the setback would be 50 feet when abutting a residential zoning district.

Mr. Hay asked what staff’s position would have been if this building had been attached to the existing building. Mr. Rainbow responded that staff’s recommendation would still be denial because the addition is more than 50% of the nonconforming structure currently located on this lot (which is a legal nonconforming structure.)

Mr. Bradshaw opened the public hearing.

Mr. Jose Rodriguez, proponent, stated that the carport was constructed to provide shade and protection from the elements while mechanical work is being performed on cars at this location. Mr. Rodriguez stated that he did not know it was necessary to obtain a permit and apologized for not obtaining the permit.

Mr. Langholtz asked who constructed the carport. Mr. Rodriguez stated that he did the construction. Mr. Waldraff asked how long the structure has been on the site. Mr. Rodriguez responded the structure has been on the property four or five months. Mr. Hay asked Mr. Rodriguez if there is anything unusual about the property that would validate a Special Exception (situation peculiar to the property). Mr. Rodriguez stated that if the structure must be taken down or if there is a fine he will consider this and work with the City.

Mr. Neal Hall with the Butternut Association stated that the problem with allowing this variance is that that the back building needs to be moved to allow room for parking because currently they are parking in the alley and obstructing the alley, especially at

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night. Several of the homeowners across the alley from this business are having problems with this. Also, the driveway for the business next door is being utilized for parking by this business. Mr. Hall stated that in order for all of the employees and customers to be able to park at this business the variance is needed in order to not be obstructive to others and their property. Mr. Waldraff asked Mr. Hall if this was the same situation prior to construction of the carport. Mr. Hall stated that they evidently did not have a business at this location prior to construction of the carport (they did not see any activity anyway). Mr. Langholtz asked if the activity started when the structure was constructed. Mr. Hall stated that this is his understanding. Mr. Waldraff asked Mr. Hall what business was located on this property one year ago. Mr. Hall stated that he believe it was a lot with cars parked on it – he did not notice any activity at all.

Dr. Lydia Long stated that she is president of the Old Town Neighborhood Association that begins on Poplar Street and extends west to Vine Street. Dr. Long stated that a Neighborhood Association meeting was held Tuesday evening and discussed this property. Several residents from Poplar Street attended this meeting to complain specifically about this property. Dr. Long provided background information for the Board members:

- Their neighborhood and Butternut Street are both undergoing revitalization
- Mr. Rodriguez has had this property for five (5) years
- Mr. Rodriguez had an auto body shop up the street (South 5<sup>th</sup> Street) – this property was also unkempt and junked vehicles remain on this property
- The property being discussed at this meeting also had many junked vehicles
- The neighborhood has been complaining about the junked vehicles for years

Dr. Long stated that it is her understanding that under the Heavy Commercial zoning this type of business can be located at this address; however, fencing requirements should have been met. Dr. Long stated that approximately six (6) months ago, Mr. Rodriguez moved everything from his previous location on Butternut Street to the current address. At this time the property in questions contained many junked vehicles and Mr. Rodriguez moved everything from the previous location to the new location. At the same time Mr. Rodriguez began construction of the carport. Dr. Long stated that she called the City to determine if the proper documentation had been obtained. Mr. Rodriguez had not obtained a building permit for the carport structure nor a certificate of occupancy for his business. Dr. Long stated that all mechanic work is being done under this carport and the neighbors must put up with the noise, the junked vehicles, and the auto repair business which goes on at all hours. Dr. Long stated that many of the neighbors were fearful of attending or speaking at this meeting.

Ms. Norma Jones, a member of the Old Town Neighborhood Association, stated that she learned about this business at the last Neighborhood Association meeting (Tuesday night). Ms. Jones stated that she and her husband drove by this business to see for themselves the type of business and the appearance of the property. Ms. Jones stated that she is very excited about the recent renovation of Butternut Street; however, the property

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on which this garage is located looks more like a junk yard or used auto parts supply and that this type of business should be located on the highway (out of town). Ms. Jones stated that for these reasons she is opposed to this request and believes that granting the request will hinder the redevelopment of Butternut Street.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to deny BA-2007-41 based on the following criteria:

There are Conditions Peculiar to the Land: There are no peculiarities to the lot. The primary building is closer to the residential zoning district because it predates the ordinance.

Strict Application of the Regulation Would Result in a Non-Financial Hardship:

The applicant built a non-enclosed building in front of the existing building, and within the 50 foot rear setback. The applicant could reduce the building size from 75 feet in length to 55 feet, and move it to a different place on the property and still meet the minimum setback requirements. With the building at its current size, it would not meet the setback requirements anywhere on the property.

Approval of the Request Would Not Have a Negative Effect on the Public Health, Safety, or Welfare: Staff anticipates no negative effect on the general public from this request.

In addition, Mr. Hay recommended denial due to the overwhelming neighborhood objections.

Mr. Waldraff seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Hay, Langholtz and Waldraff) to none (0) opposed.

d. BA-2007-42

A public hearing to consider a request from Rachel Reyes, agent Tim Faulkner, for a Special Exception to locate a carport in the front yard setback of a single family residence. Legal description being Northwood Sec 2, Block 13, Lot 35, Abilene, Taylor County, Texas, and located at 3642 Ambler Avenue.

Zack Rainbow presented the staff report for this case. The applicant proposes to construct a 12' x 22' carport extending from the existing garage. The carport would be seven (7) feet from the front property line and 27 feet from the curb on Ambler Avenue. Mr. Rainbow stated that there are many front carports in the area which do not meet setback requirements.

Staff recommends approval as the request does meet the criteria necessary to approve a special exception. Property owners within 200 feet of the proposed Special Exception were notified. One (1) response was returned in favor (no comments attached) and none (0) were received in opposition.

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Mr. Bradshaw opened the public hearing for individuals to speak in favor or in opposition of this request. No one came forward and the public hearing was closed.

Mr. Langholtz moved to approve BA-2007-42 based on the following criteria:

Compatibility with Surrounding Land Uses: There is one other carport on the same side of Ambler Avenue at 3674 that does not comply with the setback requirements. There are also four front carports on the Janice Lane directly behind the property, at 3865, 3725, 3673, and 3666 Janice Lane, which do not appear to meet the setback requirements.

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: The intent of this regulation is to allow carports in front yards only in areas where such structures already exist. This provides for uniform and consistent development in areas with no front carports while providing an opportunity for property owners in areas with carports to make similar improvement to their properties. Since this proposed carport is in an area without similar front carports, the proposal is not consistent with the intent of the regulation.

Mr. Hay seconded the motion and the motion carried by a vote of four (4) in favor (Bradford, Hay, Langholtz and Waldraff) to none (0) opposed.

e. BA-2007-43

A public hearing to consider a request from Dudley Mason, agent David Todd, for a Special Exception to allow a child care center in a Shopping Center (SC) and Office (O) Zoning District. Legal description being A0980 Sur 23 L A L NE/4, Acres 9.1, Abilene, Taylor County, Texas, and located at 7700 U.S. Highway 83-84.

Mr. Zack Rainbow presented the staff report for this case. The applicant proposes to construct a child care center in an area designated as office zoning. Most of the surrounding area is zoned as agricultural open space, with the south parcel being zoned as a shopping center.

Property owners within 200 feet of the proposed Special Exception were notified. Five (5) comment forms were received in opposition to the request and none (0) were received in favor. Of primary concern was the safety of the children at the proposed day care center from the livestock located on the Agricultural Open Space area adjacent to the property. Mr. Rainbow stated that the surrounding property owners stated that they would withdraw their opposition if the owner constructed an eight (8) foot opaque fence along the property lines adjoining AO zoning.

Staff recommends approval with the condition that the owner constructs a solid fence on the rear and sides of the property abutting agricultural uses or requires children's play areas have a minimum setback of 5 feet from such uses.

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Mr. Bradshaw opened the public hearing.

Mr. David Todd, agent for the proponent, asked the Assistant City Attorney for clarification as to whether or not one of the members of the Board should abstain from voting on this issue. Mr. Todd stated that if this is the case (abstention), he requested that this item be tabled until next month.

Ms. Kelley Messer, Assistant City Attorney, asked for clarification as to the conflict that would require a Board member to abstain.

Mr. Todd stated that, legally, he is an employee of the firm of which Mr. Hay is one of the owners.

Ms. Messer stated that in this case, tabling this item until next month would be the most appropriate action.

Mr. Hay moved to table this item until the September meeting of the Board of Adjustment. Mr. Langholtz seconded the motion and the motion carried by (voice vote) four (4) in favor to none (0) opposed.

f. BA-2007-44

A public hearing to consider a request from Valentin Avila, agent Priscilla Delagarza, for a Special Exception to locate a carport in the front yard setback of a single family residence. Legal description being Crescent Heights, Block J, Lot 8, Abilene, Taylor County, Texas, and located at 1425 Burger Street.

Mr. Zack Rainbow presented the staff report for this case. The applicant proposes to construct a 20' x 25' carport extending from the existing converted garage. The carport would be four (4) feet from the front property line and 22 feet from the curb on Burger Street.

Property owners within 200 feet of the request were notified. Four (4) comment forms were returned in favor and none (0) in opposition.

Staff recommends approval of the request as it does meet the criteria necessary to approve a special exception

Mr. Bradshaw opened the public hearing.

Ms. Priscilla Delagarza, proponent, stated that she canvassed the neighborhood regarding this carport. Ms. Delagarza stated that her original request was for a 25 x 25 foot carport due to the fact that they own two large trucks that would be parked under this carport. Ms. Delagarza stated that because she believed that she would not be approved for the larger carport, the size was reduced to 20 x 25. Ms. Delagarza stated that it would be better if the 25 x 25 foot carport was approved.

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Mr. Bradshaw stated that the Board could approve a reduction in size; however, could not approve a size greater than the request.

Mr. Bradshaw asked Mr. Rodney Fletcher if he wished to speak either in favor or in opposition of this request. Mr. Fletcher stated that he did not.

Mr. Bradshaw closed the public hearing.

Mr. Langholtz moved that Z-2007-44 be approved based on the following staff report findings:

Compatibility with Surrounding Land Uses: There are other carports extending into the front setback of other properties in the immediate area. There is one front carport on the same side of the street at 1465 Burger Street that does not comply with the setback, and there is a side carport at 1481 Burger Street that also does not appear to comply with setbacks. Additionally, there are two front carports across the street at 1418 and 1410 Burger Street that also do not appear to meet the setback requirements.

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: The intent of this regulation is to allow carports in front yards only in areas where such structures already exist. This provides for uniform and consistent development in areas with no front carports while providing an opportunity for property owners in areas with carports to make similar improvement to their properties. Since this proposed carport is in an area with similar front carports, the proposal is consistent with the intent of the regulation.

Mr. Waldraff seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Hay, Langholtz, and Waldraff) to none (0) opposed..

Mr. Langholtz moved to adjourn the meeting and the motion carried unanimously.

Mr. Bradshaw adjourned the meeting at approximately 9:40 AM.

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