

---

**BOARD OF ADJUSTMENT**  
**December 11, 2007**  
**Minutes**

---

Members Present: Wayne Bradshaw  
Scott Hay  
Morton Langholtz  
Roger Huber

Alternates Present: Rick Waldruff  
Robert Beermann

Staff Present: Jon James, Director of Planning & Development Services  
Kyle Thomas, Assistant City Attorney  
Matt Jones, Planner I  
Zack Rainbow, Planner I  
Rodney Fletcher, Residential Plans Examiner  
JoAnn Szech, Executive Secretary (Recording)

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

Mr. Bradshaw called the meeting to order at 8:35 AM and declared a quorum present.

**Item Two: Approval of the Minutes**

The minutes of the November 27, 2007, meeting were unanimously approved.

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

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

a. BA-2007-58

A public hearing to consider a request from Alpine Self Storage, agent Jay Reed Pettingill, for a Special Exception to locate single family homes on properties zoned LI (Light Industrial). Legal description being Abilene Industrial District Sec 1, Block G, Lot E500.7, Abilene, Taylor County, Texas. Legal description being Abilene Industrial District Sec 1, Block G, Lot W99.3 OF E600, Abilene, Taylor County, Texas. Legal description being Master Corporation Sub, Block G, Lot,1 Abilene, Taylor County, Texas. Located at 2201, 2149, and 2001 S. 41<sup>st</sup> Street.

Mr. Zack Rainbow presented the staff report for this case. This property and most of the surrounding properties are zoned as light industrial and the property to the north is Cooper High School. The applicant wishes to construct one (1) home on each of the three (3) properties to be used for security, office, and residential purposes. The proposed homes would be used in conjunction with the large warehouse located at 2001 South 41<sup>st</sup> Street. The proposed residences are permitted with a special exception granted by the Board of Adjustment. Considering the previously mentioned lower intensive LI uses in this area, the request to allow single family residences on these particular lots seems to be a reasonable request.

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:**

**1. THE PROPOSED USE IS COMPATIBLE WITH THE AREA:**

The proposed request to allow single family homes is compatible with the area. There is a large single family neighborhood 1 block to the west, and the property to the north is Cooper High School. Although the property is zoned LI, the lower intensity of the surrounding properties make it reasonable to allow a single family home.

**2. THERE WOULD BE NO SIGNIFICANT NEGATIVE EFFECT ON PUBLIC FACILITIES:**

Staff anticipates no negative effects on public facilities at this location.

**3. THE REQUEST IS IN HARMONY WITH THE INTENT OF THE REGULATIONS:**

The ordinance states that single family homes are allowed in LI with a Special Exception granted by the Board of Adjustment. The intent is to keep single family homes away from the more intense uses associated with LI zoning, still allowing them when areas zoned LI have lower intensive uses. Considering the land uses around the subject property this request seems to be in agreement with the regulations.

Property owners within 200 feet of the Special Exception request were notified. Four (4) comment forms were returned in favor and one (1) was returned in opposition (no comment).

Staff recommends approval of the request as it meets the criteria necessary to approve a special exception due to the light intensity of the land uses in the area.

Mr. Bradshaw opened the public hearing.

Mr. Jay Reed Pettingill stated that he also placed the three (3) single family homes on the property on North 1<sup>st</sup> Street (the property where the K-Mart store was previously located). Mr. Pettingill stated that he proposes to complete the same type of project on the property south of Cooper High School. Mr. Pettingill stated that he believed that placing homes on this property would provide security for the area. He has encountered no security problems with the North 1<sup>st</sup> Street property.

Mr. Jerry Mash, with Panian and Mash Realtors, spoke in favor of this request. Mr. Mash stated that he has worked with the proponent in putting this project together. Mr. Mash stated that the proponent's projects are "first class" and would improve the appearance of the site.

Mr. Bradshaw closed the public hearing.

**Mr. Hay moved to approve the Special Exception based on the finding in the staff report. Mr. Waldraff seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldraff) to none (0) opposed.**

b. BA-2007-66

A public hearing to consider an appeal by John L. Iman, of an Administrative Decision. Legal description being Highland Addition Continuation 5, Block A, Lot S47 of Lot 8&N28 Feet of Lot 9, Abilene, Taylor County, Texas and located at 1001 Sayles Boulevard.

Mr. Dan Santee, City Attorney, welcomed Mr. Huber and Mr. Beermann as members of the Board of Adjustment. Mr. Santee stated that what the Board is to consider today is an appeal to an administrative decision. This is somewhat of a different situation which is addressed in the Zoning Ordinance (Mr. James has provided the Board members with copies of the provision). This section of the Zoning Ordinance allows the Planning Director to make determinations if a use does not directly fit into a specific classification (zoning classification, use, etc.). The Planning Director is empowered to make a determination as to under which category this use, classification, etc., falls. As with any decision made by the Planning Director, there is an appeal process for this determination or decision. The Board of Adjustment hears such appeals. To assist the Board in ruling on this administrative appeal, Mr. Santee stated that the Board is not hearing a "Special Exception." The Board's decision is whether or not they agree with the decision that has already been made administratively (that is, that this particular use is not a bed and breakfast establishment under the City's Zoning Ordinance – it might share characteristics or may be similar to a bed and breakfast; however, under the Zoning Ordinance for the City of Abilene, as currently written, Mr. James has determined that the use is not for a bed and breakfast). Mr. Santee stated that this does not mean that this will always be the case and the Ordinance might never be changed. This is not what is before this Board today and not within the authority of this Board to determine. The issue before this Board today is whether to agree with the administrative decision made by the Planning Director or will this Board substitute their own decision. Mr. Santee stated that in order to do this (substitute), the Board must examine that provision of the Zoning Ordinance provided by Mr. James and then make the determination that they disagree with the interpretation. Mr. Santee stated that in order to reverse this decision, four (4) affirmative votes will be required.

Mr. Jon James, Director of Planning and Development Services, stated that the agent for the owner of the property at 1001 Sayles Boulevard (also known as Sayles Ranch) formally requested in writing from him (Mr. James) a determination as to the use of this property. That is, whether or not under the current Zoning Ordinance the use came under the classification of a Bed and Breakfast, a single family residence, or possibly something else. Mr. James stated that following detailed research into the language contained in the Zoning Ordinance and discussion among Planning staff, Mr. James made the determination that, based on the definitions in the current ordinance, the property in questions meets the definition of a single family home. The way the Ordinance is currently written, it does not distinguish between the term of the rental. Renting a home for a week, a weekend or a month is no different from renting a home for six (6) months, one (1) year, or five (5) years – the ordinance does not make this distinction. This is basically what the decision came down to – there was no distinction there. As Mr. Santee mentioned, many characteristics of this use closely match the criteria for a bed and breakfast and, in fact, meets many of the provisions in the definition of a bed and breakfast in the ordinance. It (the property) does not, however, match the definition of a bed and breakfast as closely as it does a single family home. Mr. James reiterated that the Board's decision today is to either agree with staff's interpretation as to how the ordinance should be applied in this particular case or overrule staff's decision and rule in favor of the proponent. Mr. James provided the Board members with a letter from Mr. James to Mr. Tom Choate, agent for the property owner, which explains in detail what staff's rationale for arriving at their decision. The Board members were also provided with a letter from the applicant who is appealing the decision. These documents explain both sides of the issue.

There were no questions from the Board members for Mr. James at this time; however, Mr. Bradshaw requested the opportunity to address questions to Mr. James after this item has been heard.

Mr. Bradshaw opened the public hearing and asked the proponent to come to the podium.

Mr. John Iman stated that he filed the letter of appeal regarding Mr. James' decision on this matter.

Mr. Bradshaw informed Mr. Iman that he would be allowed five (5) minutes to speak to this issue.

Mr. Iman presented to Mr. James the letters of opposition from the area of 200 feet around the so-called Sayles Ranch at 1001 Sayles Boulevard. Mr. Iman provided the Board with a brief history of the neighborhood's opposition to the ruling made by Mr. James. The neighborhood does not see this property as a bed and breakfast but rather a commercial encroachment with transitory visitors. Mr. Iman stated that the Sayles Ranch began in 2003. For several months there was no problem with this property; however, next an additional space at the back of 1001 Sayles was listed separately. In August of this year, the Amarillo-Highland Neighborhood Association met and this issue (the property at 1001 Sayles Boulevard) was discussed at the business meeting. The Association voted on the matter and the vote was 38-8 against such activities as this. This location is advertised in the Texas Directory of Bed and Breakfasts as the Sayles Ranch.

Mr. Bradshaw informed Mr. Iman that his time is for speaking had expired.

Mr. Iman asked if someone would like to give him their time. Someone from the audience responded affirmatively.

Mr. Bradshaw stated that the time limit would be three (3) minutes.

Included in a brochure listing accommodations in Abilene are the Sayles Ranch Guest House, the Ranch House; the Falling Star; the Hide-Out; and Cabin Fever, the latest one. Mr. Iman stated that the neighborhood has also heard that there are other places under consideration within this area

Mr. Bradshaw asked if anyone else would like to speak in favor of this appeal.

Ms. Carol Chisum stated that she is discussing her home and her neighborhood - not a vacation community. Currently there are four (4) units in the neighborhood and possibly more on the way. Ms. Chisum stated that these are neighborhoods, they have a neighborhood association, and have tried neighborhood watches; but, how can you have a neighborhood watch if you don't know who is living next door.

Mr. Bradshaw asked Ms. Chisum how long she has resided at this address.

Ms. Chisum responded that they have lived there nine (9) years.

Mr. Bradshaw asked Ms. Chisum where exactly she lived in relation to the property being discussed at this meeting.

Ms. Chisum responded that they live on the corner of South 8<sup>th</sup> and Highland – one (1) block in and about two (2) blocks down. Ms. Chisum stated that she was not in the notification area (200 feet from the property in question). Notification letters were sent to 14 properties.

Mr. Bradshaw asked Ms. Chisum to explain to him what has happened here in the past that she does not like.

Ms. Chisum stated that when you make an exception like this it is unknown how many units may end up in the neighborhood

Mr. Bradshaw asked Ms. Chisum if she approved of the Bed and Breakfast on the corner of South 7<sup>th</sup> and Sayles Boulevard.

Ms. Chisum stated that she is opposed to this bed and breakfast. The neighborhood association had a meeting about this and was against it. The neighbors were told that it was not going to be allowed to be a bed and breakfast and then silently it happened.

Mr. Huber asked Ms. Chisum if it was her opinion that this really did not start out this way – it's kind of just grown over time

Ms. Chisum stated that it appears to have happened that way.

Mr. Huber stated that Mr. Iman stated earlier that a neighborhood meeting was held some time ago at which the association voted 38-8 to oppose this particular situation and asked Ms. Chisum if she was present at this meeting.

Ms. Chisum responded affirmatively

Mr. Huber asked Ms. Chisum if she thought it had been stated clearly at that meeting what was to be discussed and what decision was to be made.

Ms. Chisum stated that if the meeting had been more organized and more people had attended, the vote would have indicated even more opposition because many of the neighbors were not there – neighbors adamantly opposed.

Mr. Bradshaw asked if anyone else would like to speak in favor of this appeal.

Mr. David L. Collins indicated that he wished to speak.

Mr. Bradshaw informed Mr. Collins of the three minute time limit.

Mr. Collins stated that Terry Browder who owns the Sayles Ranch lives right next door to him and the Sayles Ranch is on the other side of him. Mr. Collins stated that Mr. Browder approached him some time back and said that instead of leasing his house by the year he wanted to turn that house into kind of a guest house for church friends when they came to town. Mr. Collins stated that his impression at that time was that it was only going to be used maybe a couple of days a month. However, the property is occupied most of the time by transients and several months back, one of

the local women's stores had a showing there. Mr. Collins stated that this is not a case of a bed and breakfast – these properties are being utilized as motels. Mr. Collins stated that these properties are causing a devaluation of his property.

Dr. Robert Williams stated that he learned from the City that Mr. Browder did not obtain any permits from the City. Dr. Williams stated that the original question posed to the City pertained only to the Sayles Ranch. Now there are five (5) units. Dr. Williams stated that he made the proposal at the neighborhood association meeting to consider these properties. Mr. Iman presented the information to association members and the members were provided with a paper ballot to vote on this issue. Parking has become a problem on Sayles Boulevard and the other streets on which the homes owned by Mr. Browder are located.

Mr. Jack Gilreath stated what this situation comes down to is a commercial venture in a single family neighborhood. Mr. Gilreath read the definition of a single family residence and provided facts and figures regarding the number of individuals who could occupy these structures and the parking problems. Mr. Gilreath stated that he sent letters to the Mayor, the City Manager and Mr. James on September 11, 2007. Mr. Gilreath stated that he has not received a response to his letter from any of these individuals.

Mr. Larry Robertson stated that he was the attorney present in these Chambers requesting that the structure at South 7<sup>th</sup> Street and Sayles Boulevard be classified as a bed and breakfast. Mr. Robertson stated that that request was denied (not by the Board of Adjustment) by the City Council. Mr. Robertson stated that since that time he has “changed sides.” Mr. Robertson stated that what is unfair about this entire situation is that the neighborhood has the “burden of proof.” Mr. Robertson stated that this is not a single family residence and has destroyed the neighborhood.

Mr. Tim Yandell stated that he not concerned that the residences being discussed today will bring down the value of his property or the traffic. Mr. Yandell stated that what saddens him is that because of the nature of the stay for the house on Santos, it is not possible to always know your neighbors, and that the residents are not permanent.

Mr. K.O. Kellian stated that he has resided at his home on Amarillo Street for 40 years. His concern is the traffic - the City will need to widen this street and pave the alley. The traffic is terrible and something must be done about the parking.

Dr. Williams stated that these structures are advertised as “unattended bed and breakfast” and listed as a single family dwelling. What the neighborhood wants is for this Board to vote so that the City would have to make a clear definition.

Ms. Rosemary P. Thomas stated that this is turning into a commercial venture whether it comes under the specifics of the law or not. Ms. Thomas is concerned with commercial ventures encroaching onto the residential neighborhoods.

Ms. Marti Lanier stated that the home on the corner of Santos was purchased last year by the Browder's and she was informed that this home would be converted to a bed and breakfast. Ms. Lanier stated that this is a large house with a swimming pool. The distance between her house and this house is probably less than 15 feet. Ms. Lanier stated that Mr. James mentioned earlier that

there had been no cases brought before the Board of Adjustment for a Bed and Breakfast in the past, and this is just not true. On March 13, 2007, a public hearing to consider a request for a Special Exception to locate a bed and breakfast in a single family residential neighborhood from a Mr. Monty Merritt was brought before this Board. The request was approved by this Board citing the distance between the homes, the vegetation on the property and being situated on a very large lot that backed up to the creek. Ms. Lanier stated that this neighborhood is situated on very narrow lots in an older neighborhood. Ms. Lanier stated that Mr. Merritt had to appear before this board requesting a Special Exception for a Bed and Breakfast. Ms. Lanier stated that the Zoning Ordinance states that sufficient parking spaces must be provided for an establishment such as a bed and breakfast.

Mr. Bradshaw informed Ms. Lanier that this Board is not making a determination as to whether this is a bed and breakfast. This Board is to decide if the Administrative Decision of staff is correct.

Ms. Lanier stated that staff did not make a correct decision because this issue did not come before this Board.

Mr. Bradshaw stated that this issue was not required to come before this Board.

Ms. Lanier stated that Mr. Merritt was required to come before this Board.

Mr. Bradshaw stated that Mr. Merritt's request was for a bed and breakfast.

Ms. Lanier stated that is correct but it is also a single family residence.

Mr. Phillip Craik stated that not having gone through this procedure before (when the bed and breakfast issue was before this Board) he is unsure of the type of clientele that will be housed in this bed and breakfast. Mr. Craik stated that his concern regards "definition" and the fact that this meeting is being held seems to indicate that the definitions need to be more clearly spelled out; i.e., what is corporate housing and what is a bed and breakfast so that this type of meeting is not necessary. Mr. Craik stated that he resents that one man made the decision and it seems to him like "bait and switch." Mr. Craik stated that he believed that the decision was made on the best information available at the time; but, if this is the law that this is allowed then it needs to be handled on that level – it does not need to be handled with this. It either is or it is not. Mr. Craik stated that he would encourage the Board on whatever course they take that the definition is tighter so that this does not happen in the future.

Larry Robertson stated that what concerns him is if a tight decision is made today, then, that is giving the person who started this thing the right to have this "program" and nobody else. Mr. Robertson stated that this is a can of worms and it started when the neighborhood was not involved at the very beginning. Mr. Robertson stated that he felt Mr. Browder should have to straighten this out rather than everyone else.

Ms. Desa Lee Laird stated that she lives directly across the street from the Sayles Ranch. Ms. Laird stated that she realizes that Sayles Boulevard is a busy highway but this is more than busy – it becomes a one-way street when parties happen across the street. Ms. Laird stated that she canvassed the neighborhood and one resident, Rosella May Hill, was enraged that what could be

called a motel was located in their neighborhood. Ms. Hill tried to sign the form but could not and her daughter signed the petition for her. Ms. Larid stated that she feels the same way – she doesn't know that anyone would want to live across the street from a motel.

Mr. Bradshaw asked if anyone else wished to speak in favor of the appeal. No one came forward and Mr. Bradshaw asked if anyone wished to speak in opposition of the appeal.

Ms. Sue Ball stated that she is the Branch Manger of Countrywide Home Loans and as such would like to provide the definition of a bed and breakfast: "A bed and breakfast is when the owner usually lives on the premises or arranges for a host or a manager to be present on the property at all times. A bed and breakfast has guess services, such as at least one meal per day, usually breakfast, maid service, linen service, and it is other than just a place to sleep. A bed and breakfast rents rooms or a portion of the premises to multiple, unrelated guests at the same time and usually has a common area or seating area available to unrelated guests that they can utilize for relaxation, or to watch television, or to visit. A bed and breakfast is purely a commercial venture and not considered to be a residential property. A mortgage lender, such as Countrywide, is not allowed to finance a bed and breakfast because they finance one to four family residential properties and the intent is for owner occupancy or non-owner occupancy, which then is in a class of investment property." Countrywide does many rental properties. Ms. Ball stated that they have reviewed the property in question and have actually financed some of the properties for Mr. Browder; they have looked at the appraisal on this property; the intended use of this property and under their applicable lending guidelines it was determined that this is a single family residence available for rent as a home. Ms. Ball stated that this property is not a bed and breakfast since it does not meet the definition. Ms. Ball stated that the length of the rental term does not have any bearing upon their lending guidelines.

Ms. Billie Proctor Shaw stated that she is present at this meeting in support of Mr. James' assessment that this is a single family residence because a bed and breakfast is a facility where a room can be rented or several people can live or stay there and there is a meal provided. Ms. Proctor Shaw stated that by definition this is a rental. Ms. Proctor Shaw stated that she is a broker (not practicing at the present time) but it cannot be legislated that an individual cannot buy properties and turn them into rentals. Ms. Proctor Shaw stated that she can appreciate the fact that the homeowners in the Amarillo-Highland area have a concern about their properties. Ms. Proctor Shaw stated that she believed that everyone in the area would admit that Mr. Browder has enhanced the value of the properties. Ms. Proctor Shaw stated that the issue before the Board today has to do with whether or not this is classified as a bed and breakfast or a single family residence. It is a rental – it is an alternative form of rental – but by the City's own definition it is not a bed and breakfast.

Ms. Dani Ramsay stated that she lives in this neighborhood, she is a member of the Board of Adjustment, and is a commercial lender. Ms. Ramsay stated that this is an older neighborhood and the driveways are narrow and many cars must be parked on the street. Ms. Ramsay stated that the entrance to her carport is via the alley (which is not paved). Ms. Ramsay stated that she passes two of Mr. Browder's properties every day on her way to and from work and has never had to change her route due to cars parked in the street. Ms. Ramsay stated that she has seen appraisals for homes in her neighborhood, is aware of sale prices and stated that she would sell her home today for the price of the square footage of homes in her neighborhood – it is at an all-time high. Ms. Ramsay

stated that the Browders have made significant investments in these properties that have benefited the resale of her house.

Ms. Sharon Miller stated that she lives next door to the Sales Ranch. Ms. Miller stated that she and her husband are delighted that the Browders have purchased the home next to their home – the house is pristine, the yard is immaculate, the people who rent this residence are superb. Ms. Miller stated that she can tell no difference in the traffic on Sayles Boulevard. Ms. Miller stated that the thing to be done at this meeting is “to do the right thing.” Ms. Miller stated the Mr. Browder told her that he checked with City officials prior to renting this house and was told that it was okay. Ms. Miller stated that Mr. Browder has had to spend a lot of money on lawyer fees to represent him at this meeting.

Ms. Linnie Ray mentioned that it has been stated that there is currently a bed and breakfast at South 7<sup>th</sup> and Sayles and asked the location of this structure.

Mr. Bradshaw stated that the bed and breakfast is located at the Old Sayles House.

Ms. Ray stated that this is where she currently resides and it is not a bed and breakfast.

Mr. Bradshaw stated that a bed and breakfast was approved for this address.

Ms. Ray stated that she would be honored to have a house next door to her that Mr. Browder has purchased and rehabilitated. Ms. Ray stated that parking and traffic on Sayles Boulevard will always be a problem.

Ms. Latimer Bowen Ramsey stated that she has leased property from Mr. Browder. Ms. Ramsey stated that there is parking space in the rear and in the front of the residence. Ms. Ramsey stated that at no time was she offered a scone, a biscuit, or breakfast while staying at this residence. Ms. Ramsey stated while she was leasing this property, she asked if she could make some improvements to the property (which she did). Ms. Ramsey stated that she found the property elegant, comfortable and lovely. Ms. Ramsey stated that she felt it a privilege to be able to utilize this property and would be a privilege to have guests stay at one of Mr. Browder’s units. Ms. Ramsey stated that she viewed Mr. Browder’s other properties last week and feels the same way about these properties.

Ms. Cindi Richmond stated that she lived in this neighborhood about five years ago. Ms. Richmond stated that she would love to live next door to one of Mr. Browder’s homes. Ms. Richmond stated that Mr. Browder has done nothing but improve the property and increased the value of this property. Ms. Richmond stated that we cannot choose our neighbors and some people come into a neighborhood and do horrible things to a house – Mr. Browder has not done this and Ms. Richmond stated that it would be a tragedy for this to end.

Ms. Latimer Bowen Ramsey stated that she had no knowledge of the Neighborhood meeting that was held to discuss this issue.

Ms. Amy Smith stated that she has lived in this neighborhood for about six years and has been to a neighborhood association meeting in the past; however, she was not aware of the meeting held to discuss this particular issue. She is renting one of Mr. Browder’s properties for a gentleman and his

family working at the same company as her. She stated that it has been a blessing for this family to be able to rent in this area since they have lived in this neighborhood in the past. Ms. Smith stated that she believed that this family will want to purchase a home in the neighborhood once their home sells.

Ms. Terrie Bennett stated that she also did not know about the neighborhood meeting at which this issue was discussed. Ms. Bennett reiterated that a property owner does not get to choose their neighbors and she would feel privileged to have the Browder's property next to them.

Ms. Pebbles Lee stated that for almost nine years she was the executive director of the Downtown Homeowners Association. When she lived in this area she lived just down the street from the two bed and breakfast establishments in this area. Ms. Lee stated that these establishments were the show places of the neighborhood. Ms. Lee stated that the show places of many historic districts are the bed and breakfast establishments or even vacation homes. Ms. Lee stated that there are many communities in American that mix rental properties and vacation homes with residential homes. Ms. Lee stated that she can see both sides of this issue; however, the fact is that these are beautiful properties and we should find a way to encourage investment in this neighborhood.

Ms. Virginia Connally stated that she has lived on Sayles Boulevard for 57 years. Although she could not hear everything being said today, but we have listened to history, been presented with the present, now, what about the future? The neighbors have been trying to develop "community" within this area and how are we going to develop community when we have a number of bed and breakfast establishments in the neighborhood. Ms. Connally stated that we must think about the future – do we want commercial – do we want Sayles Boulevard to change?

Mr. Bill Minter, Executive Director of the Abilene Preservation League, wanted to make it clear to this Board that he is not speaking for the Preservation League at this meeting. Mr. Minter stated that the Sayles Ranch and the idea of the guest homes is very good in his opinion. The investment in the neighborhood is good.

Ms. Jana Thacker stated that she does not live in the Amarillo-Highland neighborhood but one of her daughters does. Ms. Thacker stated this is where her grandchildren live and can honestly say that if the Browder's were renting a unit near her grandchildren, she would be fine with her grandchildren living across from those to whom the Browder's choose to rent. Ms. Thacker stated that this is an emotional issue and stated that she would have no problem with having one of these rental units on her street.

Ms. Roxanne Spradlin stated a year ago on New Year's Eve weekend her Mother and children came to Abilene for the holiday and is very grateful and appreciative to the Browders for the Sayles Ranch for lodging for her family. Ms. Spradlin stated that she is grateful for anything that brings value back into the neighborhood and makes it a better place to live.

Ms. Audrey Perry stated that in her neighborhood there are many rental properties and many garage apartments. These properties are beautiful and Ms. Perry stated that she is present at this meeting in support of the administrative decision made by the Planning Department.

Ms. Sandy Freeman stated that she is grateful for what the Browders are doing. Ms. Freeman stated that the undertakings of the Browders are enhancing the neighborhood. Ms. Freeman stated that she is not concerned about security due to the use of the properties owned by the Browders and would be honored to live next door to one of their properties.

Mr. Jim Tallant stated that the Browders' properties are, as everyone has agreed, quality properties. Mr. Tallant stated that he has been asked how he would feel if one of these properties was located next to him. Mr. Tallant responded that he would like to say that that would be fine. Mr. Tallant provided some insight into the Neighborhood Association meeting when this issue was discussed and neither he nor Mr. Iman has been empowered by the neighbors to speak on their behalf (Mr. Tallant is the current President of the Amarillo-Highland Neighborhood Association). Mr. Tallant stated that he did not believe that there was any advance notice of the meeting agenda. Mr. Tallant stated that he did not believe that it was the Association's position as a separate entity to make a decision. It was decided to send a letter to the City expressing the Association vote on this matter. Mr. Tallant stated that he also encouraged everyone present to contact the City to express their feeling regarding this situation. Mr. Tallant stated that these properties are extraordinary.

Mr. Tom Choate, Attorney for the Browders, stated that the Browders are not the applicants not questioning staff's interpretation. He stated that he would like to, however, clear up a couple of issues:

1. Mr. Choate stated that he was the attorney who represented Taylor Electric Coop when they appealed to the Board of Adjustment and this issue is nothing like that issue. This situation is completely different from that case.

2. Regarding the issue of the occupancy tax, Mr. Choate stated that document is available if anyone wished to review it – he would not be discussing this matter at this meeting. Mr. Choate state that the Occupancy Tax as enforced by the Comptroller of the State of Texas is not based on the characteristics or the definition of the property. It is based on the length of stay. Mr. Choate stated that this issue has nothing to do with the nature or character of these properties.

3. Mr. Choate stated that they have filed a protest and objection to this appeal prior to today's meeting. Mr. Choate stated that the Zoning Ordinance requires that a formal appeal to an administrative decision of a City official (such as this one made by Mr. James) be filed and the filing fee be paid within 5 days of the date of the decision. This decision was made on October 11, 2007, and the appeal was filed and the fee paid on November 8, 2007, 28 days after the deadline timeframe.

Mr. Choate stated that the reason for this issue being discussed at this meeting is to determine if Mr. James' determination and decision was correct. Mr. Choate stated that issue is not whether Mr. Browder will comply, whether or not ample parking is provided, the number of rental properties Mr. Browder owns in this neighborhood, the neighborhood association's interpretation of the Zoning Ordinance or whether the Zoning Ordinance satisfies the neighbors. If these issues are of concern, then the neighborhood needs to be working to change the Zoning Ordinance. Mr. Choate stated that the Board is being asked to take an unprecedented action – the Board is being asked to overturn the decision and interpretation that Jon James has made regarding the Zoning Ordinance. Mr. Choate stated that this does not mean that the Board cannot do this; however, that is unprecedented and has never been done. Mr. Choate stated that in this regard, Mr. James' outstanding knowledge of the Zoning Ordinance, his education and background, his years of experience in this job, and his expertise in the interpretation of zoning laws is relevant and should be considered. Not all the

neighbors in close proximity to this property are against this use. There are letters in the file from Mr. Fitzhugh who lives across the street from the property; from Mr. Galloway who lives a half a mile away, and from Mr. Scarborough who is an attorney and a member of the neighborhood association. Fitzhugh and Galloway state that there is not problem with this property – it has not created a nuisance, it has not created excess traffic – and they are fully in support of Mr. James' decision. Mr. Scarborough, as an association member and at Mr. Choate's request, looked at the statute and reviewed Mr. James' letter and has written a letter (included in the Board's packet) stating that he completely supports the decision that Jon James has made – that this is not a Bed and Breakfast under the Zoning Ordinance – it is a single family dwelling, as determined. The term of the rental changes nothing – this is just a rental property. Mr. Choate stated that Ms. Latimer Bowen Ramsey even stated that she made leasehold improvements when she was a renter of the property. Whether the unit is rented for a couple of days, a week, a month, or a year does not change the nature of it being rental property. The background on this issues is that Mr. Browder did call the City and spoke with Mr. Abrigg regarding his ideas before a dime was spent, before a stone was turned he received approval to do this. He did it openly, without any kind of secrecy. He opened it – approval number one. Secondly, in September he called to talk about this again. He met with Mr. James and Mr. Santee – the October 11<sup>th</sup> letter is the result of this meeting. The City has twice approved what is going on – now we are here for the third time to talk about this same issue. Mr. Choate stated that he did not know what else Mr. Browder can do. He has done everything required of him. Mr. Choate stated that he would not repeat all the reasons this is not a Bed & Breakfast – the Board has heard this. Mr. Choate asked those in attendance (and have not gotten an opportunity to speak since this meeting has run so long) to stand if they support Mr. James' decision). A number of individuals stood to show support for Mr. James decision and interpretation of the Ordinance.

Mr. Choate thanked the Board and asked if there were any questions.

Mr. Bradshaw closed the public hearing.

Mr. Beermann asked for clarification as to the decision the Board is being asked to make at this meeting, i.e., determination as to whether this is a Bed & Breakfast or a rental property.

Mr. Bradshaw responded that the Board's decision today is whether they consider this property to be a rental property or a Bed & Breakfast – it has nothing to do with the parking or the activities that occur on these premises. Mr. Bradshaw stated that the Board's responsibility is to determine if Mr. James' decision that this is a (single family residence) rental property is correct.

Mr. Hay stated that Mr. James made the correct decision in this matter.

Mr. Huber stated that he concurred. Mr. Huber stated that at the beginning of this meeting he was unsure of Mr. James' decision but at this time he believes Mr. James made the correct decision.

Mr. Beermann stated that Mr. James made the correct decision regarding this matter and he would uphold this decision.

**Mr. Hay moved to uphold staff's decision in this matter. Mr. Beermann seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldraff) to none (0) opposed.**

c. BA-2007-70 (tabled from November 27, 2007)

A public hearing to consider a request from Robert P. Terry for a 15' variance from the 15' exterior side setback to locate a carport on property zoned RS-6. Legal description being Highland Addition Cont. 4, Block 37, Lot 4 & 5, Abilene, Taylor County, Texas, and located at 942 Ross Avenue.

Mr. Hay moved to remove this item from the table. Mr. Huber seconded the motion and the motion carried unanimously.

Mr. Zack Rainbow presented the staff report for this case. This property, as well as the surrounding properties, is being used as single family residences. The original building and accessory structures were built in 1922. The applicant wishes to construct a 27 foot carport extending from the existing 1500 square foot accessory building to the property line, and tying into his brick wall. The carport would be built with materials consistent with the current building. He originally wanted to add an addition to the accessory building, but the maximum square footage of accessory structures is 1200 square feet. The square footage of carports does not count in calculating the maximum area of accessory structures.

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:**

**1. THERE ARE CONDITIONS PECULIAR TO THE LAND:**

Staff Position: Staff could find no peculiarities to the land.

**2. STRICT APPLICATION OF THE REGULATION WOULD RESULT IN A NON-FINANCIAL HARDSHIP:**

Staff Position: Strict application would not result in a non-financial hardship.

**3. APPROVAL OF THE REQUEST WOULD NOT HAVE A NEGATIVE EFFECT ON THE PUBLIC HEALTH, SAFETY, OR WELFARE:**

Staff Position: Staff anticipates no effect on the general public from this request.

**STAFF RECOMMENDATION:** Denial. Staff could find no hardship or peculiarity to the lot in this case.

Property owners within 200 feet of the request were notified. Ten (10) comment forms were returned in favor of the request and none (0) in opposition.

Mr. Bradshaw opened the public hearing.

Ms. Annie Terry spoke on behalf of her father who is in the military and could not be present at this meeting. The carport is being requested in order to have a safer environment in which to park their cars. The carport would have the same pitch as the existing garage and would improve the aesthetics of the area.

Mr. Hay asked Ms. Terry if she could determine any type of hardship that might be caused to the family if this request was denied.

Ms. Terry responded that she would feel safer if she could park her car in this area since their home has been broken into a couple of times (security issue).

Mr. Bradshaw closed the public hearing.

**Mr. Waldraff moved to approve BA-2007-70 based on the following findings:**

- 1. Location of the existing garage and the size of the lot are unique conditions**
- 2. Agree that there is no non-financial hardship**
- 3. Agree with staff's position that there would no effect on the general public**

**Mr. Beermann seconded the motion.**

**Mr. Hay stated that he would have seconded the motion, but the Board must find a non-financial hardship. Mr. Hay stated that he would accept the security issue as a non-financial hardship.**

**Mr. Waldraff amended his motion to include Mr. Hay's non-financial hardship finding.**

**The motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldraff) to none (0) opposed.**

d. BA-2007-72 (tabled from 11-27-2007)

A public hearing to consider a request from Andrew Zamudion for a Special Exception to locate an indoor shooting range on property zoned AO. Legal description being A0003 Sur 44 John Adams, Tract N/E part of 2 Acres Tract, Acres 1, and located at 5948 Hwy 277 South.

Mr. Hay moved to remove this item from the table. Mr. Huber seconded the motion and the motion carried unanimously.

Mr. Zack Rainbow presented the staff report for this case. This property was previously used as an auction house. There are a couple of single family residences to the South of the property and there is a church and a cemetery 600 feet to the north of the property. The rest of the surrounding properties are being used as either for agricultural or rural residential purposes. The applicant proposes to put an indoor shooting range in an area designated as agricultural open space zoning. The applicant has to meet all of the conditions stipulated within the City Ordinance in regards to indoor gun ranges. Most of these conditions deal with the amount of noise and decibel levels that are discernible from outside the facility. The owner is also responsible for providing noise surveys, indicating that they are in compliance with the City Ordinance. They must also provide a site plan, and conform with all of the requirements set forth in the Municipal Code.

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:**

**1. THE PROPOSED USE IS COMPATIBLE WITH THE AREA:**

Indoor shooting ranges are allowed in AO zoning with a special exception from the Board of Adjustment, and because of the low intensity of the surrounding properties staff feels the proposed use is compatible with the area.

**2. THERE WOULD BE NO SIGNIFICANT NEGATIVE EFFECT ON PUBLIC FACILITIES:**

Staff anticipates no negative effects on public facilities from an indoor shooting range at this location.

**3. THE REQUEST IS IN HARMONY WITH THE INTENT OF THE REGULATIONS:**

The intent of this regulation is to allow indoor shooting ranges in AO zoning only with special exceptions from the Board of Adjustment. This provides for allowing the use while ensuring the compatibility of such facilities with the other surrounding uses. Being that the proposed location is surrounded by rural residential uses and agricultural open space, staff feels that the indoor gun range would be a compatible use.

**STAFF RECOMMENDATION:** Approval, with conditions that the owner complies with the conditions set forth in the City Ordinance. Staff believes that this is a good location for an indoor gun range due to the location, and the low intensity of the surrounding properties. The request does meet the criteria necessary to approve a special exception.

Property owners within 200 feet of the request were notified. Three (3) comment forms were returned in opposition (Mr. Rainbow read statements from those forms returned in opposition) and two (2) returned in favor.

Mr. Bradshaw opened the public hearing. No one come forward and the public hearing was closed.

**Mr. Hay moved to approve BA-2007-72 based on the finding in the staff report. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldraff) to none (0) opposed.**

e. BA-2007-77

A public hearing to consider a request from Juan & Rosenda Sanchez, for a Special Exception to locate a carport in the front yard setback. Legal description being Holiday Hills Section 1 Continuation, Block G, Lot 14, Abilene, Taylor County, Texas, and located at 5418 Congress Avenue.

Mr. Matt Jones presented the staff report for this case. This property and the nearby properties are developed with single-family homes. The applicant proposes to construct a 26' x 20' carport extending from the existing garage. The carport would be about eight (8) feet from the front property line and about 20 feet from the curb on South Jefferson.

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:**

**1. THE PROPOSED USE IS COMPATIBLE WITH THE AREA:**

There are carports located at 5310, 5341, 5350, 5351, 5409, 5433, 5534, 5542 and 5541 Congress Ave. that appear to be within the front setback. There are also many other carports located within the general vicinity of 5418 Congress Ave.

**2. THERE WOULD BE NO SIGNIFICANT NEGATIVE EFFECT ON PUBLIC FACILITIES:**

Staff anticipates no negative effects on public facilities from a carport at this location.

**3. THE REQUEST IS IN HARMONY WITH THE INTENT OF THE REGULATIONS:**

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.

**STAFF RECOMMENDATION:** Approval, the request meets the criteria necessary to approve a special exception.

Property owners within 200 feet of the request were notified. One (1) comment form was returned in favor of the request and none (0) were returned in opposition.

Mr. Bradshaw opened the public hearing. No one came forward and the public hearing was closed.

**Mr. Hay moved to approve the Special Exception for BA-2007-77 based on the findings in the staff report. Mr. Waldruff seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldruff) to none (0) opposed.**

f. BA-2007-78

A public hearing to consider a request from the Junior League of Abilene, agents Old Town Abilene Neighborhood Association and City of Abilene Solid Waste Department, for a Special Exception to locate a recycling drop off on property zoned RM-3. Legal description being S126 161 2-E1/3 Old Town Abilene, Abilene, Taylor County, Texas, and located at 774 Poplar Street.

Mr. Zack Rainbow presented the staff report for this case. The property is being used as a parking lot for the Junior League of Abilene Building, and the nearby properties are zoned multi-family. Many of the adjacent RM-3 lots are vacant with the exception of the property to the West. The HC lots are being used for commercial uses. At the request of the Junior League of Abilene and the Old Town Neighborhood Association, the City of Abilene Solid Waste division is requesting a Special Exception to locate a recycling collection point on property zoned RM-3. The property is currently used as a parking lot for the Junior League of Abilene, the zoning of the actual building is HC. Because of the fact that many of the adjacent residential lots are vacant, and other surrounding land uses are commercial, staff feels that this would be a good location for a recycling collection point.

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:**

**1. THE PROPOSED USE IS COMPATIBLE WITH THE AREA:**

Staff feels that the use is compatible with the surrounding areas, being that it is surrounded by numerous vacant lots, some multi family dwellings, and heavy commercial uses. This location would be a good location for these residents and businesses to have a recycling collection point.

**2. THERE WOULD BE NO SIGNIFICANT NEGATIVE EFFECT ON PUBLIC FACILITIES:**

Staff anticipates no negative effects on public facilities from a recycling collection point at this location.

**3. THE REQUEST IS IN HARMONY WITH THE INTENT OF THE REGULATIONS:**

The intent of this regulation is to allow recycling drop off points at locations “deemed compatible with the surrounding area as determined by the Board of Adjustment. The Board should also place appropriate conditions on the approval as necessary to mitigate negative impacts on the surrounding properties...”. Such conditions can be screening, landscaping, size and number of containers. Per the ordinance, “These facilities are generally not appropriate within the districts that require a Special Exception and should only be granted...where impacts on surrounding properties is minimal or can be adequately mitigated through appropriate conditions...” Due to the surrounding land uses, staff feels a recycling collection point is compatible and the affects would be minimal, provided that appropriate conditions are in place.

**STAFF RECOMMENDATION:** Approval, staff feels that the request meets the criteria necessary to approve a special exception, with the condition that a landscaping buffer is provided along 8<sup>th</sup> and Poplar Streets, and the actual containers are screened by a solid fence from the residential lot to the North.

Property owners within 200 feet of the Special Exception were notified. One (1) comment form was returned in opposition (no comments) and no comment forms were returned in favor of the request.

Mr. Hay asked Mr. Rainbow the policy or procedure for policing recycling areas. Mr. Hay stated that the reason he is asking is that there is a recycling point in his neighborhood and he is glad that it is in this location; however, the containers are not emptied often enough and people stack materials outside the container. Also, there is no trash receptacle on the premises.

Mr. Rainbow stated that the Solid Waste Division Manager is present and can address these concerns.

Mr. Bradshaw opened the public hearing.

Dr. Lydia Long, President of the Old Town Abilene Neighborhood Association, stated that she is appearing at this meeting representing the neighborhood association. Dr. Long stated that she can address many of the Board’s questions, because as a neighborhood they are concerned. Dr. Long stated that for the past year the neighborhood association has been searching for a location for a recycling drop off point, for which the neighborhood would be responsible. They have formed an “Adopt A Spot” committee of about six members who walk the streets every day – working to keep the neighborhood clean. Dr. Long stated that recycling is extremely important and extremely underused in Abilene; therefore, the neighborhood came up with this concept. This endeavor has

the support of the Butternut Association, the Junior League, the Abilene Garden Club (providing funds for landscaping, the City of Abilene (also assisting with landscaping) and Keep Abilene Beautiful, Southside Baptist Church, even the neighbors from the Amarillo-Highland area are excited about this drop-off point rather than driving to HEB to drop off recyclables. Dr. Long stated that the neighborhood has spent funds to clean up the area – the only issue is the condition requiring fencing. Dr. Long stated that the neighborhood does not have the funds to place a solid wooden fence in this area. Landscaping will provided, no containers will be placed against the house – all containers will be placed on the South 8<sup>th</sup> Street side and the area will be kept clean. Dr. Long stated that they have an agreement with the Junior League that if the area is not property maintained, the City is to remove this recycling point.

Mr. Mike Wegner, Solid Waste Manager for the City of Abilene, asked Mr. Hay in what neighborhood he lives. Mr. Wegner stated that they are addressing the issue of cardboard outside the containers and are looking at placing an additional container at this site. Mr. Wegner stated that all eight (8) recycling sites within the City are inspected daily and will respond to phone calls when these sites become a problem.

Mr. Waldruff asked why the City is not providing funds for this site.

Mr. Wegner stated that the City will place the containers on this site. The only issue not discussed is the fence and the Solid Waste Division cannot afford to place a wooden fence on this site.

Ms. Fern Barnsley stated that they own three (3) properties in this area and these properties are becoming infested with mice and rats from the trash receptacle on the property owned by the Junior League. Ms. Barnsley stated that she wants this dumpster out of the neighborhood. Ms. Barnsley asked what could be done about the rats.

Mr. Wegner stated that the dumpster is emptied twice a week, the City ordinance requires garbage to be bagged and tied, but the City does not have a program for controlling rats.

Mr. Harry Barnsley stated that this proposed in zoning is in the middle of a residential area and feels that a recycling operation should be done in manufacturing or industrial areas. Mr. Barnsley stated that he would like to see an additional recycling center but not at this location.

Mr. Bradshaw closed the public hearing.

Mr. Jon James stated that the Board can place a condition on this location to make this a temporary use and this issue would have to come back before the Board (perhaps in one year). In this way it could be determined if the recycling area is working and if complaints have been received from the neighbors. If the cost of the fence is of concern to the Board members, this item could go forward without the fence, the area could be monitored and the issue could be brought back before the Board in one year.

Mr. Beermann recommended that the timeframe be six (6) months rather than one year.

Mr. Bradshaw reopened the public hearing and asked Dr. Long to return to the podium to answer questions from Mr. Huber.

Mr. Huber stated that he heard during Dr. Long's presentation that they looked all over the neighborhood for another location and this was the only one that was appropriate.

Dr. Long stated that is correct. This location was chosen because it is bordered by heavy commercial and central business zoning. Dr. Long stated that they were looking for a location on the very fringe of the neighborhood so that the neighbors felt ownership. Dr. Long stated that the location was not an issue until it was discovered that the property was zoned heavy commercial – if the property had been zoned commercial, this would not have been an issue. Dr. Long stated that they are very conscience of the neighbors and the neighborhood and likes the suggestion of a six-month time period.

Mr. Hay stated that he would like to clarify that some speakers have mentioned a change in zoning for this area – this Board is not discussing a zone change – this Board is considering a Special Exception to allow the location of this recycling center on this piece of property.

Mr. Bradshaw closed the public hearing

**Mr. Hay moved to approve the Special Exception for BA-2007-78 based on the findings in the staff report with the conditions:**

- 1. That the facility be in place for six (6) months at which time this Board will readdress this issue to determine if it is operating as envisioned by the Board**
  - 2 Condition this with recommendations provided by staff with the exception of the solid fence to screen the north property. The landscaping outlined in the staff's recommendation should be utilized. If this does not work out it may require the fence to be installed in the future.**
- Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldruff) to none (0) opposed.**

g. BA-2007-79

A public hearing to consider a request from Ricarda P. Ortiz, agent Roy B. Galbraith, for a Special Exception to locate a carport in the front yard setback on property zoned RS-6. Legal description being Sayles of Fair Park, Block 6, Lot S34 Lot 4 & N32 Lot 5, Abilene, Taylor County, Texas, and located at 826 Davis Drive.

Mr. Zack Rainbow provided the staff report for this case. This property and the nearby properties are developed with single-family homes. The applicant proposes to construct a 20' x 12' carport extending from the existing garage. The carport would be about 13 feet from the front property line and 20.8 feet from the curb on South Jefferson.

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:**

**1. THE PROPOSED USE IS COMPATIBLE WITH THE AREA:**

There was one other front carport located at 865 Davis Dr. that was granted a Special Exception in 1999. There are also a few other front carports located within the general vicinity of 826 Davis Dr. as well as a few rear carports.

**2. THERE WOULD BE NO SIGNIFICANT NEGATIVE EFFECT ON PUBLIC FACILITIES:**

Staff anticipates no negative effects on public facilities from a carport at this location.

**3. THE REQUEST IS IN HARMONY WITH THE INTENT OF THE REGULATIONS:**

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 carports, the proposal is consistent with the intent of the regulation.

**STAFF RECOMMENDATION:** Approval, the request meets the criteria necessary to approve a special exception.

Property owners within 200 feet of the request were notified. Five (5) comment forms were returned in favor and none (0) in opposition.

Mr. Bradshaw opened the public hearing.

Mr. Roy Galbraith stated that the concrete and curb cuts are in place at this address. The garage has been enclosed. The proposed carport, which is a metal structure, will be 12 feet wide and extend 20 feet toward the street. The length of the structure encroaches into the front yard setback. Mr. Galbraith stated that they also considered the possibility of installing the carport on the north side of the structure but there is a setback issue in this area as well.

Mr. Bradshaw closed the public hearing.

**Mr. Waldraff moved to approve the Special Exception for BA-2007-79 based on the finding in the staff report. Mr. Hay seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldraff) to none (0) opposed.**

h. BA-2007-80

A public hearing to consider a request from Donald H. & Esther Q. Batts for a 2' variance from the 10' interior side setback to build an addition on property zoned RS-12. Legal description being Lytle Shores East Section 2, Block F, Lot 15, Abilene, Taylor County, Texas, and located at 2502 Christopher Drive.

Mr. Zack Rainbow presented the staff report for this request. The applicant proposes to build a 7 foot addition to the south side of his house, in order to extend the master bedroom and bath. The reason for the addition is so the bathroom can be built to accommodate walkers and wheelchairs. His home is currently 15 feet from the side property line. The minimum setback in RS-12 zoning is 10 foot from interior property lines. The proposed addition would still be within the rear setback, but needs a variance to the side setback requirement in order to construct the proposed addition. The parcel, as well as the surrounding parcels, is being used as single family residences.

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:**

**1. THERE ARE CONDITIONS PECULIAR TO THE LAND:**

Staff Position: Staff could find no peculiarities to the lot.

**2. STRICT APPLICATION OF THE REGULATION WOULD RESULT IN A NON-FINANCIAL HARDSHIP:**

Staff Position: Staff could find no hardship in this case.

**3. APPROVAL OF THE REQUEST WOULD NOT HAVE A NEGATIVE EFFECT ON THE PUBLIC HEALTH, SAFETY, OR WELFARE:**

Staff Position: Staff anticipates no effect on the general public from this request.

**REQUEST ANALYSIS:**

**STAFF RECOMMENDATION:** Denial, staff could find no peculiar conditions to the property or a hardship in this case.

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

Mr. Bradshaw opened the public hearing.

Mr. Don Batts stated that his wife had knee surgery earlier this year and upon returning home discovered that a walker or a wheel chair would not fit through the doors of their current bathroom facility. Mr. Batts stated that this request for the 2-foot variance is to widen the door to allow a walker or wheelchair through the doorway as his wife will require further surgery. Mr. Batts stated that they will also be constructing a walk-in shower. Mr. Batts stated that he feels these are reasonable requests for only a two-foot variance.

Mr. Bradshaw closed the public hearing.

**Mr. Hay moved to approve the variance request for Z-2007-80 based on the following:**

**1. Condition peculiar to the land is the odd-shaped lot and the south boundary line where the extension to the building is necessary and will require the two (2) foot variance from the ten (10) foot setback (which is not a significant variance to the setback);**

**2. The nonfinancial hardship would be the need accommodate the disabled in the house and make the facilities within the residence such as they can accommodate ADA accessibility requirements; and,**

**3. Agree with staff report that there will be no negative effects on the general public from this request.**

**Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Hay, Huber and Waldruff).**

**Item Four: Adjourn**

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

Mr. Bradshaw adjourned the meeting at approximately 11:40 a.m.

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