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**BOARD OF ADJUSTMENT**

**August 12, 2008**

**Minutes**

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Members Present: Wayne Bradshaw  
Brad Carter  
Scott Hay  
Morton Langholtz  
Rick Waldruff

Staff Present: Daniel Santee, City Attorney  
Kelly Messer, Assistant City Attorney  
Ben Bryner, Planning Services Manager  
Zack Rainbow, Planner I  
Rodney Fletcher, Residential Plans Examiner  
JoAnn Sczech, Executive Secretary, Recording

Others Present: Ted Evans, Jr.  
Ron Smith  
Don Harrison  
Charles Zimmer  
Willie Loewen/Paul Hamilton  
Russ Seay  
James Griffith  
Dick Harris  
Kevin Watson  
Sally W. Bien  
Johnny Jennings  
Bruce Davis  
Nick Coates  
Delfina Moreno  
Troy Elias  
Beebe Eason Voyles  
Frank Peck  
David D. Beard

**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**

**Col. Langholtz moved to approve the minutes of the July 9, 2008, meeting. Mr. Waldruff seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldruff) to none (0) opposed.**

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

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

a. BA-2007-33

A public hearing to consider a request from Charles F. Riggs, agent Manny Castro, for a 3 foot variance to the 20 foot rear setback on property zoned RS-6 (Residential Single-Family). Legal description being Buffalo Gap Road Estates Section 1, Block 5, Lot 8. Located at 2725 Robertson Drive. **(Tabled from 06-10-2008 and 7-08-2008)**

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

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a 3 foot variance to the required 20 foot rear building setback to build an addition to the rear of his house. The proposed addition would be approximately 825 sq. ft., and would extend 3 feet into the rear setback. The applicant currently has a covered patio that will be removed to make room for the proposed addition. The applicant states that the new addition is needed to enlarge the dining room, and the Master Bath to accommodate for a disability.

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

- 1. CONDITIONS PECULIAR TO THE LAND:**  
Staff feels the shape of the lot and the layout of the home on the lot are peculiar.
- 2. HARDSHIP FROM STRICT INTERPRETATION:**  
Staff could find no non-financial hardship in this case.
- 3. EFFECTS ON THE HEALTH, SAFETY AND WELFARE:**  
Staff anticipates no negative effects on public facilities from a variance at this location.

Staff recommends denial. Although in some cases a disability can be a reason for a variance, the applicant in this case has not provided justification that the proposed addition is needed to accommodate the disability. Staff was able to find peculiarities to the property, but we were unable to find a hardship in this case. Therefore the request does not meet the criteria necessary to approve a variance.

Property owners within 200 feet of the variance request were notified. Three (3) comment forms were returned in favor and none (0) in opposition.

Mr. Bradshaw opened the public hearing.

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

**Mr. Hay moved to deny variance BA-2007-33. Mr. Waldraff seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

b. BA-2008-37

A public hearing to consider a request from Delfina G. Moreno for a Special Exception to locate a carport in the front yard setback, and a variance to the maximum fence height on property zoned RS-6 (Residential Single-Family). Legal description being Alameda Addition Section 5, Block S, Lot 17. Located at 5374 Laguna Drive.

Mr. Zack Rainbow presented the staff report for this case. The request is as follows:

- (1) **Special Exception:** The applicant had a carport constructed without a permit and received a stop work order. When the applicant came in to apply for a permit it was discovered that she would need a Special Exception to have the carport located at its existing location. The Special Exception is for approximately a 20' x 22' carport extending from the existing garage. The garage has been enclosed and the carport provides cover for the vehicles. The parkway on Laguna Drive is 12 feet. The carport would be about 6 feet from the front property line and 18 feet from the curb on Laguna Drive.
- (2) **Variance:** The applicant constructed a 7 foot fence extending from the side yard of the property into the front yard along the west property line. The maximum fence height at the front building line can be 7 foot and then must begin sloping down at that point in a line not to exceed 2.5 feet at the front property line. In this case the applicant's fence is 7 feet high extending about 6 feet beyond the front building line and then begins to slope down to 2.5 feet.

Staff recommends:

- (1) Approval of the carport, the request meets the criteria necessary to approve the special exception.
- (2) Staff recommends denial on the variance for the fence height. Staff was unable to find a peculiarity or a hardship in this case.

Mr. Santee, City Attorney, requested clarification regarding the referencing of Section 23-306.5, *Opaque Fences, Walls and Hedges*, staff has stated that the carport must be open on 2-3/4 sides. Does the current configuration of the carport constitute an opaque wall and would it not have to comply with the same provision regarding the sloping of the wall?

Mr. Bryner stated that his interpretation of the ordinance is that 3/4 of the wall must be open but the ordinance does allow for a maximum of a two (2) foot extension from the roofline.

Mr. Santee stated that the proponent needs to be clear as to whether or not Section 23-306.5 also applies to the opaque wall of the carport.

Mr. Bryner stated that the proponent would be required to remove 3/4 of the wall from the front of the carport toward the house and allow for two feet of wall extending down from the roofline.

Mr. Bradshaw opened the public hearing.

Ms. Delfina G. Moreno stated that they have been advised (by the City) regarding the fence and the carport. Ms. Moreno stated that the fence has been altered to meet the specifications provided by the City's Zoning Inspector. The carport was constructed as it is to protect family members from inclement weather. Ms. Moreno stated that the fence and carport were constructed to protect her family members and her property from neighbors. Ms. Moreno stated that there are many carports and fences in the area do not meet the code. Ms. Moreno stated that she does not mind bringing her fence and carport into compliance; however, everyone else on the street should also be made to come into compliance.

Mr. Bradshaw stated that the Board of Adjustment does not have jurisdiction over the carport wall and the wall must be brought into conformance with the ordinance.

Mr. Bradshaw closed the public hearing.

Mr. Bradshaw asked staff if they were aware of the other violations in the neighborhood.

Mr. Rainbow stated that Mr. Perez, Zoning Inspection, has been working to note all violations on this street but there are many.

Mr. Hay stated that if there are other violations in the area, the Moreno's make a valid point that enforcement should be equitable.

Mr. Waldruff requested that staff update this board at the September meeting regarding the status of complaints/violations in this neighborhood.

**Mr. Hay moved to approve Special Exception BA-2008-37 (to locate a carport in the front yard setback) based on the findings in the staff report. Mr. Carter seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldruff) to none (0) opposed.**

**Mr. Hay moved to deny the Variance request for BA-2008-37 and that the fence is reconfigured so as to be in compliance with the Ordinance (as indicated by a red line on the slide provided to the Board members). Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldruff) to none (0) opposed.**

c. BA-2008-40

A public hearing to consider a request from James Griffith for a 25 foot variance to the 25 foot exterior side building setback on property zoned O (Office). Legal description being Boulevard Park, Block 1, Lot 6. Located at 142 Sayles Boulevard.

Mr. Zack Rainbow presented the staff report for this case. The applicant constructed an approximately 140 square foot addition to the side of the existing house without a building permit and a stop work order was issued. When the applicant came in to get a permit for the construction, it was discovered that the new addition was too close to the exterior side property line. The new addition was built in line with the existing house which sits 0' from the side property line. The house was built in 1945 before the current setback regulations, and is therefore a legal non-conforming structure. The addition still meets the required front setback, but needs a variance to the exterior side setback requirement in order to remain.

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

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

The existing house was built in 1945 and is setback 0 feet from the exterior side property line.

Although the current home is legally non-conforming in this regard, Staff does feel this is a peculiarity to the property.

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

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 anticipates no effect on the general public from this request.

Staff recommends denial. Although staff did find certain conditions that were peculiar to the property, we were unable to determine a non-financial hardship in this case.

Property owners within 200 feet of the variance request were notified. Three (3) comment forms were received in favor of the request and one (1) in opposition

Mr. Bradshaw opened the public hearing.

Mr. James Griffith, proponent, stated that he visited with the Building Official prior to construction, all permits and fees paid and work completed by registered contractors to City code specifications. Mr. Griffith stated that this addition houses two realtors and a work space for him. The addition is located in the only available space available and does not extend beyond the current structure. Mr. Griffith stated that he is no closer to the street than other structures in the area. Mr. Griffith stated that it would be harmful to him if not allowed to have the two realtors in this space.

For clarification, Mr. Rainbow stated that Mr. Griffith did not obtain the required building permits for this structure. Therefore, a “stop work” order was issued and permits are pending this Boards decision.

Mr. Griffith stated that the cedar wall complete with roof was in place – all modifications was completed on the inside of the structure – nothing was done to the exterior.

Mr. Bradshaw stated that he understood that there is probably no plumbing in this area; however, electrical work was completed and asked if permits were obtained for the electrical work.

Mr. Griffith stated that electrical permits were not obtained.

Mr. Hay asked Mr. Griffith the reasons that prevented him from expanding his office on other portions of the property.

Mr. Griffith stated that the fence to the north is pretty much on the property line and because this section of the building had the roofline this was the most feasible portion of the building for expansion.

Ms. Beebe Eason Voyles stated that she is the owner of the property to the north. Ms. Voyles stated that her home is the last remaining residential structures – all of the other structures in the area are commercial properties. Ms. Voyles stated that Mr. Griffith and his wife spoke with Ms. Voyles prior to construction and has no objection to the work completed by Mr. Griffith. Ms. Voyles stated that it is her belief that the situation is a misunderstanding and asked the Board to consider this request favorably.

Mr. Bradshaw closed the public hearing.

**Mr. Hay moved to approve a BA-2008-40 based on the hardship that there is no other room on the property to construct this expansion; the expansion only utilizes the available space and is in harmony with the neighborhood. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

d. BA-2008-45

A public hearing to consider a request from Mable Carter, agent Abilene Portable Buildings, for a Special Exception to locate a carport in the front yard setback on property zoned RS-6 (Residential Single-Family). Legal description being Bel Air Addition Section 2, Block K, Lot 23. Located at 3537 North 9<sup>th</sup> Street.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to construct a 12' x 20' carport extending from the existing garage. The parkway on North 9th Street is 12 feet. The carport would be approximately 12 feet from the front property line and 24 feet from the curb on North 9th Street.

**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 other front carports located at 3501, 3525, 3524, 3548, 3624, 3732 and 3748 N 9th Street that are within the front building setback. There are also many other carports within the vicinity that are within the front building setback.

**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 recommends approval as the request meets the criteria necessary to approve a Special Exception.

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

Mr. Bradshaw opened the public hearing.

Mr. Charles Zimmer with Abilene Portable Buildings stated that he is representing the property owner and is requesting the Board's approval to install the requested carport.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve Special Exception BA-2008-45 based on the findings in the staff report. Mr. Carter seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

e. BA-2008-46

A public hearing to consider a request from Mary Miller, agent Abilene Portable Buildings, for a Special Exception to locate a carport in the front yard setback on property zoned RS-6 (Residential Single-Family). Legal description being Brookhollow Section 1, Block 19, Lot 55. Located at 2132 Glenwood Drive.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to construct an 18' x 24' carport extending from the existing garage. The garage has been enclosed and the proposed carport would provide cover for the vehicles. The parkway on Glenwood Drive is 12 feet. The carport would be 5 feet from the front property line and 17 feet from the curb on Glenwood Drive.

**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 other front carports located at 2100 and 2101 Glenwood Drive that are within the front building setback. There is also a carport on the adjacent street at 3357 South 20<sup>th</sup> Street that is also within the front building setback.

**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 recommends approval as the request meets the criteria necessary to approve a Special Exception.

Property owners within 200 feet of the variance request were notified. One (1) comment form was received in favor of the request and one (1) in opposition.

Mr. Bradshaw opened the public hearing.

Mr. Charles Zimmer with Abilene Portable Buildings stated that he is representing the property owner and requests the Board approves this Special Exception for a carport.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve BA-2008-46 based on the findings in the staff report. Mr. Carter seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

f. BA-2008-47

A public hearing to consider a request from Gary and Chareila Bien for a Special Exception to locate a carport in the front yard setback on property zoned RS-6 (Residential Single-Family). Legal description being Baker Heights Addition Section 1, Block 1, Lot 6. Located at 1701 Sherman Drive.

Mr. Zack Rainbow presented the staff report for this case. The applicant began construction of a 12'x 26' front carport without a building permit and was issued a stop work order. When the applicant came in for the building permit staff determined that a Special Exception would be required from the Board. The carport is built into the roofline of the house extending from the existing garage. The parkway on Sherman Drive is 12 feet. The carport appears to extend 1 foot into the parkway on Sherman Drive. The Board of Adjustment can only grant a carport within 5 feet of the front property line. Therefore, the closest the carport can be to Sherman Drive is approximately 17 feet.

**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 other front carports located at 1749 and 1717 Sherman Drive that are within the front building setback. There are also carports at 5209, 5210 and 5234 Belton Street that are also within the front building setback.

**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 recommends approval, with the condition that the carport maintains a 5 foot setback from the front property line (approximately 17 feet to Sherman Drive curb/edge of pavement).

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

Mr. Bradshaw opened the public hearing.

Mr. Gary Bien stated that the carport was constructed due to the evening sun and to protect his vehicles from inclement weather. Mr. Bien stated that he is willing to reduce the size of the carport in order to meet the setback requirements.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve Special Exception BA-2008-47 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 (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

g. BA-2008-49

A public hearing to consider a request from Ted Evans, Jr., for a Special Exception to locate a carport in the front yard setback on property zoned RS-6 (Residential Single-Family). Legal description being Brookhollow Section 5, Block 25, Lot 5. Located at 2333 Crescent Drive.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to construct a 20' x 18' carport extending from the existing garage. The garage has been enclosed, and the proposed carport would provide cover for the vehicles. The parkway on Crescent Drive is 12 feet. The carport would be 5 feet from the front property line and 17 feet from the curb on Crescent Drive.

**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 other front carports located at 2425 Sylvan Drive, and 2333 South Elmwood Drive. The carport at 2425 Sylvan Drive was granted a Special Exception on 5-09-2006. The carport at 2333 S. Elmwood Drive was constructed in 1975 before the current setback regulations were in place. There was a similar request at 2318 Crescent Drive to locate a carport in the front yard setback that was denied on October 14, 2003.

**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.

Property owners within 200 feet of the request were notified. Four (4) comment forms were received in favor of the request and one (1) in opposition ("The people that live at 2318 requested to locate a carport on their property and it was opposed, so I think this request should be opposed also.")

Staff recommends approval, with the condition that the carport is built into the roofline of the house with similar materials matching that of the house.

Mr. Bradshaw opened the public hearing.

Mr. Ted Evans, proponent, stated that he certainly does not want to do anything that will harm the neighborhood; however, a carport will protect his vehicles from the trees and birds on his property and inclement weather. The carport will be constructed into the roofline and the driveway will be replaced. Mr. Evans stated that he has spoken with neighbors on either side of him and they are in favor of this request.

Mr. Bradshaw closed the public hearing.

There was discussion among Board members regarding setting precedence in this area if this Special Exception for a carport is granted since there are no other carports within the notification area.

Mr. Santee stated that it is fair to assume that the Board is setting precedence if a Special Exception is granted for this carport. However, the precedence being set is whether or not the carport is compatible, which includes restrictions and/or conditions placed on the Special Exception by this Board. Mr. Santee stated that this is the big difference between a Variance process and a Special Exception - the issue of compatibility.

**Col. Langholtz moved to approve Special Exception 2008-49 based on the findings in the staff report with the condition that the carport is built into the roofline and of similar materials as the structure. Mr. Hay seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

h. BA-2008-50

A public hearing to consider a request from AT&T Wireless and Abilene Christian University for a Special Exception to locate an antenna tower on property zoned CU (College-University). Legal description being ACU Addition Section 1, Block A, Lot 1, Acres 99.27. Located at 1949 ACU Drive.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting to co-locate an antenna on the roof of the Hunter Welcome Center on ACU's campus in a CU zone. The zoning ordinance allows such antennas in LI and HI zones by right. Antennas locating on properties zoned GC, HC, MU, CU, and AO require a Special Exception from the Board of Adjustment. This is so the Board of Adjustment can determine if the applicant has met the burden of proving that building a new tower in one of these zones is a last resort for locating a new antenna. The applicant provides wireless communication services and strives to locate on existing structures when possible. According to the information provided, this location seems to be the best given that there are existing antenna towers and it is an allowed zoning district.

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

**1. COMPATIBILITY WITH SURROUNDING LAND USES:**

Section 23-306.5.J(6)(d)(2) requires that new antennas be designed to "blend into the character and environment of the area in which they are located." The applicant submitted a site plan showing that the antenna will be camouflaged into the roofing materials on the building. Also, the proposed antennas will not be visible from the ground level and the building is over 700 feet from North Judge Ely Boulevard.

**2. EFFECTS ON PUBLIC FACILITIES:**

There would be no effect on public facilities.

**3. RELATIONSHIP TO THE INTENT OF THE REGULATION:**

The Zoning Ordinance specifically addresses several conditions that the tower must meet to be located in the city limits. Below you will find some of the issues that should be considered with the Special Exception request and the City's plans for accommodating them:

**23-306.5.J(6)(a)** “The locations for siting antennas or antenna towers are listed below in order of decreasing preference: (1) Existing or approved towers (2) Existing alternative tower structures in allowed zones (3) Approved City-owned or other local-government owned land”

The applicant provides documentation that Sprint is already located at this location. It is also in CU zoning which is an approved zoning district.

**23-306.5.J(6)(k)** “No new antenna tower exceeding fifty (50) feet in height shall be permitted unless the tower is designed and constructed to accommodate co-location.”

The proposed antennas do not exceed 50 feet.

Property owners within 200 feet of the Special Exception request were notified. One (1) comment form was received in favor and none (0) opposed.

Staff recommends approval as the request meets the requirements for granting a Special Exception.

Mr. Bradshaw opened the public hearing.

Mr. Russell Seay stated that he is present at this meeting to support AT&T's endeavor with the iPhone program at ACU. Mr. Seay stated that aesthetics was a big concern of ACU, therefore, the antenna is being blended behind the screening wall at the Welcome Center.

Mr. Kevin Watson with ACU stated that the antenna will not be visible from the surrounding area. As the University begins the new service with iPhones it is important to have adequate coverage.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve Special Exception 2008-50 based on the findings in the staff report. Mr. Waldraff seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

i. BA-2008-51

A public hearing to consider a request from John Poor, agent Paul Hamilton, for a Special Exception to locate a carport/cover in the front yard setback on property zoned GC (General Commercial). Legal description being Western Heights Replat, Block K, Lot N25.9 7 & All 8 & S9.4 9. Located at 925 North Mockingbird.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to construct a 50' x 24' carport extending from the existing building. The carport/cover would be used as shade for an employee break area. The parkway on North Mockingbird Lane is 20 feet. The carport would be about 10 feet from the front property line and 30 feet from the curb on North Mockingbird Lane.

**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 other front carports/covers located on many of the surrounding buildings on N. Mockingbird. Therefore staff feels that a carport/cover at this location is compatible with the surrounding area.

**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 and covers, the proposal is consistent with the intent of the regulation.

Staff recommends approval as the request meets the criteria necessary to approve a special exception.

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

Mr. Bradshaw opened the public hearing.

Mr. Willie Loewen stated that he will be speaking on behalf of Mr. Paul Hamilton who could not attend this meeting due to a flight delay. Mr. Loewen stated that this will be a free-standing carport. The concrete slab was poured without a permit so the posts are now being removed in order to rectify the situation.

Mr. Rainbow stated that the Ordinance requires the carport to be attached in the front.

Mr. Bradshaw closed the public hearing.

**Mr. Hay moved to approve Special Exception 2008-51 based on the findings in the staff report. Mr. Carter seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

j. BA-2008-52

A public hearing to consider a request from Gayle Hetzel, agent Tim Faulkner, for a Special Exception to locate a carport in the front yard setback on property zoned RS-6 (Residential Single-Family). Legal description being Lytle Shores South Section 2, Block D, Lot 39. Located at 3610 Varsity Lane.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to construct a 22' x 17' carport extending from the existing garage. The proposed carport would be 5 feet from the front property line, 4.6 feet from the side property line, and 17 feet from the curb on Varsity Lane. The parkway width on Varsity Lane is 12 feet.

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

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

There is one other front carport located at 3609 Varsity Lane that was granted a Special Exception on 5-13-2008. However there are other carports on the surrounding streets, most of which received Special Exceptions from the Board of Adjustment. Some appear to have been built illegally without a permit. The following have received Special Exceptions from the Board: 3766, 3742, 3657, and 3742 Auburn, 3626 Duke, and 3617 Georgetown.

**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 recommends approval as the request meets 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 favor of the request and none (0) opposed.

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

**Col. Langholtz moved to approve Special Exception 2008-52 based on the findings in the staff report. Mr. Hay seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

k. BA-2008-53

A public hearing to consider a request from Stephen and Gayna Johnson for a 5 foot variance to the required 10 foot interior side building setback and a 6.5 foot variance to the required 25 foot building setback on property zoned RS-8 (Residential Single-Family). Legal description being Brookhollow Section 6, Block 29, Lot 4. Located at 2016 Crescent Drive.

Mr. Zack Rainbow presented the staff report for this case. The applicant proposes to construct a 19.4 x 18.4 ft. garage addition to the side of the house extending from the existing garage. The proposed addition would be 5 feet from the side property line and 18 feet from the rear property line. The applicants states that the proposed addition would provide better security for the occupants of the home by creating sheltered access to the inside of the home.

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

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

Staff could find no peculiarities to the subject property.

**2. HARDSHIP FROM STRICT INTERPRETATION:**

Staff could find could not find a non-financial or self-created hardship in this case.

**3. EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:**

Staff foresees no negative effects on public health, safety, or welfare from variances at this location.

**STAFF RECOMMENDATION: Since the applicant did not satisfy all of the conditions necessary for a variance, staff recommends denial. However, if the Board approves the request, staff recommends that the variance applies only to the proposed addition.**

Property owners within 200 feet of the request were notified. Four (4) comment forms were returned in favor and one (1) in opposition.

Mr. Bradshaw opened the public hearing.

Mr. Stephen Johnson, proponent, stated that they are requesting a variance in order to construct a garage which would be attached to the house and constructed of similar materials as those of the home. The garage would provide sheltered access to the rear entry of the home in addition to increasing the value of the home. Mr. Johnson provided pictures of similar properties located on two alleyways to which garages have been added and appear to be in the 10 foot interior side building setback. Therefore, the requested garage would not be out of character for the neighborhood. Mr. Johnson stated that he has met with his neighbors and all seem very supportive of this project.

Mr. Johnny Jennings stated that he is present at this meeting to support Mr. Johnson and his family regarding this request. The issues of security and safety for the family and the placement of their vehicles support the construction of this garage.

Mr. Bradshaw closed the public hearing.

**Mr. Hay moved to approve both requests listed in BA-2008-53: the five (5) foot variance to the required 10 foot interior side building setback and a 6.5 foot variance to the required 25 foot building setback on property zoned RS-8. Conditions peculiar to the land include the existing building constructed in compliance with the current code. Another peculiarity is the rear and side setback both bordering alleys. The hardship is the ability to provide additional security to the rear entry to the house with the garage and this is the only available space on the property to provide this shelter for the vehicles and the space for the garage. Mr. Hay agreed with #3 in the staff report – no negative effects on public health, safety, or welfare from variances at this location. Mr. Hay stated that a condition for approval is that the approval only applies to the proposed addition. Col Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

**1. BA-2008-54**

A public hearing to consider a request from Lamar Outdoor Advertising, agent Ron Smith-Precision Unlimited, for a 35 foot variance to the 60 foot minimum lot width, and a 60 foot variance to the 100 foot minimum lot depth on property zoned GC (General Commercial). Legal description being Stonegate Addition Section 1, Block 3, Lot 25X40 OF 202 Replat. Located at 4410 S. Clack.

Mr. Zack Rainbow presented the staff report for this case. Mr. Smith, who owns the adjacent property, received a demolition permit to demolish half of the existing carwash facility he had on his property with the intent of building a new 4,000 square foot commercial building. When Mr. Smith came in to apply for a

building permit, it was discovered by staff that the property needed to be platted due to the fact that it had previously been subdivided in an illegal manner by the previous property owner.

A plat requires that no remainder lots be created and that no substandard lots are created. Being that both of the subject parcels were once platted as 1 whole lot, both need to be replatted together as a whole lot or as 2 separate lots. Since the parcels are under separate ownership the applicants wished to plat the lots as separate parcels. This brings up the issue of the substandard 25'x 40' lot size on the parcel owned by Lamar Outdoor Advertising and the reason for the variance.

In order for Mr. Smith to receive a building permit on his property, both of the parcels need to be replatted to remedy the illegal subdivision. The variance is required on the parcel owned by Lamar so that said plat does not create any substandard lots.

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

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

The subject parcel was divided off creating the substandard 25'x 40' lot of a platted lot and deeded to Lamar Outdoor advertising by a metes and bounds description. Any subdivision of land requires a plat to be filed with the City and in this case a plat was not filed. This subdivision of land was done in 1984 by the previous land owners. This substandard lot not only affects development on the subject property but the adjacent property as well because both of the properties were part of 1 original lot. In order to receive a building permit, a lot must be a duly recorded lot of record. And, because these properties were subdivided in the manner that they were, they cannot receive permits until a plat is approved and filed creating these 2 lots. Therefore, any development on the adjacent lot is affected by this lot.

**2. HARDSHIP FROM STRICT INTERPRETATION:**

Staff could determine no physical hardship associated with this request.

**3. EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:**

Staff foresees no negative effects on public health, safety, or welfare from variances at this location.

Staff recommendation: Staff feels that because the non-conforming issue was not a self-created problem it is a peculiarity to the property. Staff also feels that the substandard lot is prohibitive to development of the adjacent property making it a peculiarity to the property as well. Staff is recommending approval of the variance request due to these specific peculiarities to the property.

Mr. Santee asked for clarification from Mr. Rainbow regarding "no physical hardship" associated with the request; however, Mr. Rainbow described, at length, a hardship and asked if the staff report was incorrect.

Mr. Ben Bryner stated that if staff applied a strict interpretation of a physical hardship, there would be no justification for a true variance justification. With the peculiarities to the land included (subdivided in 1984 prior to Mr. Smith owning the property and with the existing conditions of Mr. Smith's property, i.e., the unlikelihood of being able to create a standard lot) these peculiarities, in staff's opinion warrant approval.

Mr. Santee stated that the Board of Adjustment must make a decision based on a hardship. If the Board makes a decision based on the finding in the staff report, a hardship cannot be determined - it is a hardship not created by the current applicant.

Mr. Bryner stated that there are hardships; however in light of the information provided by Mr. Santee, the staff report is incorrect (the only hardship is a physical hardship).

Mr. Santee asked if it is correct that the ordinance does not specify the type of hardship (other than a non-financial hardship).

Mr. Bryner stated that he would research this – if the ordinance states “no physical hardships” this would be true but there other hardships in question regarding this case.

Property owners within 200 feet of the request were notified. Two (2) comment forms were received in favor of the request and one (1) in opposition.

Mr. Bradshaw opened the public hearing.

Mr. Ron Smith, owner and president of Precision Unlimited, stated that at the request of the City staff he is present to represent Lamar Sign Company and to request that the Board grant a variance for Lamar. Mr. Smith stated that he is attempting to upgrade the land that he has owned for 20 years. Mr. Smith did call attention to the fact that the site owned currently owned by Lamar Sign Company was originally purchased in 1982. Mr. Smith stated that he has been trying to make improvements to his property since March of this year and recently discovered that the greatest “snag” was the illegal lot located at the corner of his property. Mr. Smith stated that his property and the property owned by Lamar have been replatted. Mr. Smith stated that due to the length of time it has taken to begin construction on his property, it has cost him approximately \$120,000 to \$150,000 in revenue.

Mr. Don Harrison reiterated Mr. Smith’s statement that his (Mr. Smith’s) property is in compliance with the regulations for construction of this business expansion and will greatly enhance the area. Mr. Smith has gone above and beyond what is required of him to attempt to rectify this situation and Lamar has been gracious in providing Mr. Smith with a power of attorney for their property. Mr. Harrison thanked Mr. James, Mr. Bryner and Mr. Rainbow for their assistance.

Mr. Nick Coates spoke in favor of Mr. Smith’s project – which is very much needed on the south side of town. Mr. Coates stated that the current condition existed long before Mr. Smith acquired the property and hopes that the request is approved.

Dr. Bruce Davis stated that he owns a home built for him by Mr. Smith. Dr. Davis stated that Mr. Smith is a reputable businessman and his request should be given favorable consideration.

Mr. David Beard, General Contractor, stated that his company will be completing a portion of Mr. Smiths project and has some concerns regarding the process involved – regulatory issues in Abilene. Mr. Beard stated that it is asking a great deal to ask a property owner to take care of a neighbor’s problems before they can build on this property. Mr. Beard encouraged the Board members to do all they can within the parameters of their jurisdiction to ensure that this situation does not occur again.

Mr. Bradshaw closed the public hearing.

Mr. Santee provided the following clarification regarding a statement made at this meeting. This is not a staff issue and not a City regulation issues – it is individuals’ illegally subdividing property. Property can be sold by metes and bounds, filed at the Courthouse, but at some point these properties must be platted and must comply with the Subdivision Regulations and the platting regulations. This situation was not the fault of either Mr. Smith or Lamar Outdoor Advertising – this situation occurred years ago. The building permit application process triggered the replatting process (due to a substandard lot). As long as individuals illegally subdivide property, this situation will occur.

**Mr. Hay moved to approve both variance requested in BA-2008-54 based on the findings in the staff report with the exception of a hardship (stated as having no hardship in the staff report). This is a hardship in that the physical peculiarities associated with the transactions of this property that occurred prior to the present owner’s ownership, result in a hardship. Col Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Langholtz and Waldraff) to none (0) opposed.**

**Item Four: Discussion Item**

Discussion of possible ordinance amendments regarding carports.

Mr. Zack Rainbow stated that staff is seeking input from the Board to be included in the new Land Development Code in order to streamline carport approval. The proposal is to allow staff to approve carports that meet all criteria to eliminate bringing these cases before the Board of Adjustment.

Mr. Carter stated that he would very much appreciate the “straightforward” cases being approved by staff.

Mr. Waldraff asked if an appeal process (to the Board of Adjustment) would be established for those cases denied by staff.

Mr. Santee stated that any change to the current ordinance would be reviewed by the Board prior to forwarding to the Planning and Zoning Commission for adoption

Mr. Santee stated that a process currently exists that any administrative decision may be appealed to this Board.

Mr. Waldraff asked if in determining a “clear cut” case would the criteria be that if other carports are within the notification area, the request can be approved by staff.

Mr. Rainbow stated that this is the type of conditional approval being sought by staff at this meeting, e.g., 300 foot boundary area; 200 foot notification area; carports in the area, etc.

Mr. Santee stated that this Board could set the criteria; i.e., determine the minimum number of carports within the notification area.

Mr. Carter stated that he would recommend a higher standard (building materials, etc.) for carports. Mr. Carter stated that the Board could not make this retroactive, however, this would be a starting place for standards criteria.

Mr. Santee stated that one of the challenges that might evolve from increasing the aesthetic and architectural value of these structures is that nonconformance with these standards would result in a variance not a special exception.

Mr. Hay stated that he fully supports this concept and asked Mr. Rainbow if they currently check on the validity of building permits for adjacent carports – does staff check to ensure that all carports have obtained the required permits.

Mr. Rainbow stated that he does not check for a permit for every carport. If there seems to be a peculiarity, it is investigated.

Mr. Rainbow asked the Board members to email to him all ideas regarding this possible ordinance amendment.

**Item Five: Adjourn**

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

Mr. Bradshaw adjourned the meeting at approximately 10:40 a.m.

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