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**BOARD OF ADJUSTMENT**  
**September 9, 2008**  
**Minutes**

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Members Present: Wayne Bradshaw  
Brad Carter  
Scott Hay  
Roger Huber  
Morton Langholtz

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

Others Present: Randahl Lohse  
Frank Montoya  
Jack Dunn  
Samuel Kay  
Trisha Nelson

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

Mr. Bradshaw called the meeting to order at 8:32 AM and declared a quorum present.

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

**Item Two: Approval of the Minutes**

**Col. Langholtz moved to approve the minutes of the August 12, 2008, meeting. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Huber and Langholtz) to none (0) opposed.**

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

a. BA-2007-55

A public hearing to consider a request from Samuel L. Kay, for a special exception to locate a carport in the front yard setback on property zoned RS-8 (Residential Single-Family). Legal description being Richland Acres, Block N, Lot 4. Located at 1426 Marsalis Drive.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to construct a 25' x 20' carport extending from the existing garage. The carport would be about 13 feet from the side property line, 4.3 feet from the front property line and 16.3 feet from the curb on Meander Street. The parkway on Marsalis Drive is 12 feet, and the Board of Adjustment can only approve a front carport up to 5 feet from the front property line. Therefore, if approved the carport would have to be a minimum of 17 feet from the curb on Marsalis 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 1410, 1441, 1474, and 1481 Marsalis Drive that appear to be within the front building setback. There are also many other carports in the general vicinity of 1426 Marsalis Drive.

**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 is setback 5' from the front property line and no closer than 17 feet from the curb on Marsalis Drive.

Property owners within 200 feet of the variance request were notified. Nine (9) comment forms were returned in favor and none (0) in opposition.

Mr. Bradshaw opened the public hearing.

Mr. Samuel Kay, proponent, spoke regarding this request.

Col Langholtz asked Mr. Kay if he understood and was agreeable to the setback restrictions presented by Mr. Rainbow.

Mr. Kay stated that he understood the restrictions and was agreeable to the restrictions presented by staff.

Mr. Bradshaw closed the public hearing

**Col. Langholtz moved to approve Special Exception BA-2008-55 with the provision that the carport is set back five (5) feet from the property line and no closer than 17 feet from the curb on Marsalis Drive. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Huber and Langholtz) to none (0) opposed.**

b. BA-2008-56

A public hearing to consider a request from Bo Shomansuroff for a Special Exception to locate a mobile home (permanent security residence) on property zoned HI (Heavy Industrial). Legal description being H&W Tool Co., Section 2, Continuation 2, Block A, Lot 11. Located at 4742 Derrick Drive.

Mr. Zack Rainbow presented the staff report for this case. The applicant proposes to use a mobile home as a permanent security residence in order to prevent theft and ensure greater security for the repossessed mobile homes that are stored on the lot. Staff feels that the mobile home for a security residence would be appropriate for this location due to the surrounding zoning and land uses. The subject property is used as a mobile home repossession storage lot. The surrounding properties are either vacant or developed with industrial type commercial businesses.

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

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

The property is surrounded entirely by industrial zoning districts where storage of outdoor materials and equipment such as mobile homes is allowed. The property is not visible from any major thoroughfare and most of the nearby properties are vacant. Also with the property being used as mobile home storage, staff feels that an additional mobile home being used as a security residence would not have a negative impact on the surrounding properties.

**2. EFFECTS ON PUBLIC FACILITIES:**

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

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

The intent of the regulation is to allow the use of a mobile home as a security residence: "To ensure greater security from theft for equipment and materials stored out-of- doors, the Board of Adjustment may authorize the placement of a mobile home in certain districts where not otherwise permitted, as long as conditions specified herein are met." Some of the conditions are:

- a.) To be used as an accessory residence on any tract of land where permitted by Section 23-306.4 as long as the principal use of such tract shall be commercial, industrial, or mineral extraction.
- d.) Only one (1) such mobile residence shall be permitted on any one or more contiguous lots in common ownership.
- e.) Shall be separated by no less than ten (10) feet from any existing structure or property boundary.
- g.) Other requirements as the Board of Adjustment may deem necessary.

Property owners within 200 feet of the request were notified. Two (2) forms were returned in opposition of the request and none (0) were returned in favor.

Mr. Rainbow stated that he has spoken with Mr. Bruce Bixby, owner of several lots in the area. Mr. Bixby has voiced strong objections to a mobile home on this property being utilized or appear to be utilized as a residence. Mr. Bixby asked that the conditions include screening, possibly by other mobile homes, and that the mobile home be located at the rear of the property so as not to give the impression that this is a residence – the unit should be utilized only for security purposes. The appearance that this unit is being utilized as a single family residence could affect the sale of the industrial property in the area. A property owner to the east also sent in a comment form expressing concerns about the use.

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

Mr. Rainbow stated that if the Board grants the Special Exception, with conditions, the site must be inspected annually by the Planning Director or his designee. If the conditions are not being met, the Special Exception can be immediately revoked.

Mr. Santee cautioned the Board regarding placing restriction as to whom or who cannot live on this property. Mr. Santee stated that he does not believe this is stated in the ordinance. Mr. Santee stated that he would caution the Board not to place this condition on the Special Exception.

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

**Mr. Huber moved to table this item. Mr. Carter seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Huber and Langholtz) to none (0) opposed.**

c. BA-2008-57

A public hearing to consider a request from Paul and Melody McBurney, agent Jack Dunn, for a 5 foot variance to the 20 foot front building setback on property zoned MH (Mobile Home). Legal description being Lot 37, Block P, Section 3, Holiday Hill Subdivision. Located at 1025 Plaza Street.

Mr. Zack Rainbow presented the staff report for this case. The applicant was issued a building permit with the 20 foot front setback indicated. The mobile home was placed on the lot meeting the required 10 foot rear building setback, but was unable to meet the required 20 foot front building setback. Therefore, the applicant is requesting a 5 foot variance to the 20 foot front building setback in order to make the home legally conforming.

The Section and Requirement of Zoning Ordinance being varied is:

Section 23-313.2: "Setback from boundary adjacent to sub-collector or minor street - 25 feet"

The lot in question meets the following exception:

"On any lot platted of record prior to the effective date of this Ordinance, construction may be completed per building lines indicated on the recorded plat; however, in all cases, an exterior side yard of not less than fifteen (15) feet, a front yard of not less than twenty (20) feet, and a rear yard of not less than twenty (20) feet shall be required."

This lot was platted with a 15 foot building line. Therefore, they can be no closer than 20 feet to the property line.

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

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

Most of the surrounding houses are placed 15 feet from the front property line which is closer to the street than the current setbacks allow. The requested variance would allow this house to be built in conformance with the existing setback of surrounding properties. Also, the plat for this property was filed in 1959 and has a platted building line of 15 foot. Staff feels that these issues are peculiarities to the property.

**2. HARDSHIP FROM STRICT INTERPRETATION:**

Many of these mobile home subdivisions were platted 30 to 40 years ago when the mobile homes being manufactured were smaller in size. The subdivisions were laid out in accordance with these homes. Most of the lots in mobile home subdivisions are 50' X 110'. The current setbacks are 25 feet in the front, 15 feet in the rear, and 7.5 feet for the interior sides. That only leaves room for a

70 foot mobile home to be placed on the property. According to Trinity Homes and Palm Harbor Homes, greater than 80% of the single wide mobile homes they sell are 72-76 feet in length. According to the Texas Manufactured Homes Association, approximately 20% of all of the mobile homes sold in 2007 were comprised of one model that measures 16' x 76'. With the trend in the mobile homes being produced and the depth of the current mobile home zoned lots, staff feels that this is a hardship.

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

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

Staff recommends approval as the request meets the criteria necessary to approve the variance request.

Property owners within 200 feet of the variance request were notified. Two (2) comment forms were received in favor of the request and one (1) in opposition (J. Hite Homes addresses the fact that they have met the 25 foot setback on some of their homes, but are unable to use much of their property in this subdivision and other subdivision for the larger mobile homes. Their position is that the request should be denied based on their having to meet the setbacks and this lot should as well).

Mr. Bradshaw opened the public hearing.

Ms. Patricia Nelson stated that she owns property in this area and if this request is granted how will it affect other property in the area.

Mr. Bradshaw stated that this request should not affect her at all – this request is for one specific location.

Mr. Jack Dunn with Trinity Homes, representing Mr. & Mrs. McBurney, stated that as mentioned by Mr. Rainbow all of the existing homes have a 15 foot setback and this was the general understanding by everyone regarding this older subdivision. The section being discussed today (on Plaza Street and the street to the east) was never replatted. The 25 foot building line in the 1959 replat was never addressed in subsequent replats for some streets in the subdivision. Mr. Dunn stated that mobile homes are larger – 72-76 foot range – which renders most of the lots in this subdivision unsalable. Mr. Dunn stated that they feel it is in the best interest of the citizens and the community to adhere to the original 15 foot setback.

Mr. Bradshaw closed the public hearing.

**Col Langholtz moved to approve variance BA-2008-57 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, Huber and Langholtz) to none (0) opposed.**

d. BA-2008-58

A public hearing to consider a request from Frank Montoya, for a Special Exception to locate a carport in the front yard setback on property zoned MH (Mobile Home), and a 3 foot variance to the required 3 foot interior side setback. Legal description being Southern Sands Addition, Section 2, Block 2, Lot 17. Located at 5334 Twylight Trail.

Mr. Zack Rainbow presented the staff report for this case. The request analysis 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 18' carport extending over the existing driveway. Being that this is a mobile home, there is no garage and the carport will provide cover for the vehicles. The parkway on Twilight Trail is 12 feet. The carport is 2'4" from the front property line and 14'8" feet from the curb on Twilight Trail. 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 Twilight Trail is approximately 17 feet.)

**THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE A SPECIAL EXCEPTION:**

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

There are other front carports located at 5350 and 5302 Twilight Trail that were permitted. There are also many other carports in the general 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.

**(2) Variance:** The carport sits over the existing driveway which is approximately 1 foot off of the side property line. The applicant is requesting a 3' variance to the 3' interior side setback in order to keep the carport at its current location.

**SECTION AND REQUIREMENT OF ZONING ORDINANCE BEING VARIED:**

Section 23-317.4: Interior side setback for a carport/patio cover = 3'

**CONDITIONS PECULIAR TO THE LAND:**

The existing driveway on the subject property, and most of the surrounding properties, is 1 foot off of the side property line. And most of the properties have carports that are located 1 foot off of the side property line covering their driveways. Staff feels that these conditions on the property and the surrounding properties are peculiarities.

**HARDSHIP FROM STRICT INTERPRETATION:**

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

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

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

Staff recommends:

- (1) Approval of the special exception, with the condition that the carport extends no closer than 5' to the property line. (Approximately 17 foot to the curb.)
- (2) Staff recommends denial on the variance for the interior side setback. Although staff was able to determine peculiarities such as the location of the driveways and the setbacks of surrounding carports, staff was unable to determine a non-financial hardship in this case.

Property owners within 200 feet of the Special Exception request were notified. Two (2) comment forms were received in favor of the request and none (0) in opposition.

Mr. Bradshaw opened the public hearing.

Mr. Frank Montoya, proponent, stated that he constructed the carport.

Mr. Hay asked Mr. Montoya if this request originated as a result of constructing the carport without a permit.

Mr. Montoya stated that he had asked around and was told that as long as the carport was not attached to the mobile home, he would not need a permit. Mr. Montoya stated that it was his understanding that a permit would be required if he was constructing a large structure such as a garage.

Col. Langholtz asked Mr. Montoya the impact to him by the Board requiring the setbacks be met?

Mr. Montoya stated that it would be hard but if it had to be done he would.

Mr. Bradshaw closed the public hearing.

**Mr. Carter moved to approve Special Exception BA-2008-58 based on the findings in the staff report and with the condition that 2 feet 8 inches be removed from the front of the carport. Mr. Hay seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Carter, Hay, Huber and Langholtz) to none (0) opposed.**

Mr. Hay asked Mr. Santee if the existing driveway could be interpreted as a non-financial hardship, i.e., the fact that the driveway has been in place and used as such.

Mr. Santee stated that the peculiarity of the land, as indicated by staff, can amount to a hardship – this is a decision to be made by this Board. Mr. Santee stated that a question for Mr. Rainbow is the percentage of existing carports that are the same distance to the adjacent property. Mr. Santee stated that if carports in the area straddle driveways installed by the developer, does it amount to a hardship to make one individual construct a carport to different setbacks.

Mr. Rainbow stated that most of the carports and driveways in the area do straddle the property line.

**Mr. Hay moved to approve variance BA-2008-58 based on the findings in the staff report with the exception of the hardship being that requiring the proponent to conform to the strict letter of the law when the remainder of the neighborhood is situated as it is would be a hardship. Col.**

**Langholtz seconded the motion and the motion carried by a vote of five in favor (Bradshaw, Carter, Hay, Huber and Langholtz) to none (0) opposed.**

Mr. Rainbow explained to Mr. Montoya that the Board can only grant a variance for the carport 17 feet from the curb – the current carport is 14 feet 8 inches from the curb. Therefore, the carport must be moved back or shortened.

**Item Four: Discussion Item**

Discussion regarding zoning violations in the general vicinity of Laguna Drive.

Mr. Ben Bryner, Planning Services Manager, stated that following last month’s meeting of the Board of Adjustment, Planning staff toured this neighborhood to identify nonconforming uses on adjacent properties. Mr. Bryner stated that he drove five or six streets in this neighborhood and identified over 50 violations. Mr. Bryner provided pictures of the violations – particularly fences extending beyond the property line.

Mr. Bryner stated that most of the fences have been in place for as long as 20 to 30 years. Due to the volume of violations, this is not a situation where enforcement is feasible. Mr. Bryner stated that a determination has been made to consider these situations as “nonconforming.” New fences constructed in the neighborhood would be required to meet all regulations.

Mr. Santee asked how staff would know when a new fence was constructed since only fences over seven (7) feet in height require a permit.

Mr. Bryner stated that as with the situation considered by the Board last month, staff will work on a complaint basis and coordinate with Code Enforcement officers in the Community Enhancement Division to identify violations.

Mr. Ed McRoy, Assistant Director of Planning and Development Services, provided clarification regarding enforcement practices to be implemented from the zoning perspective. Mr. McRoy stated that the information and directive to staff provided by Mr. Bryner waives the City’s right with regard to the right-of-way should the area be required for road extension, utilities, etc.

**Item Five: Adjourn**

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

Mr. Bradshaw adjourned the meeting at approximately 9:20 a.m.

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