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**BOARD OF ADJUSTMENT**  
**November 12, 2008**  
**Minutes**

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

Staff Present: Kelley Messer  
Ben Bryner, Planning Services Manager  
Zack Rainbow, Planner I  
Matt Jones, Planner I  
Rodney Fletcher, Residential Plans Examiner  
James Prescott, Condemnation Officer  
JoAnn Sczech, Executive Secretary, Recording

Others Present: Paul Graham  
Brian Taylor  
John G. Thompson  
Manuel Perez  
Benito Cordova  
Robert Roadcap  
Bev Hohimer  
Brenda McDonald  
Ron Morton  
Miles Philley

**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 October 14, 2008, meeting. Mr. Huber seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Hay, Huber and Langholtz) to none (0) opposed.**

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

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

b. BA-2008-62

A public hearing to consider a request from JGT Custom Homes, agent John G. Thompson, for a 15' variance to the 25' rear setback in RS-8 Zoning. Legal description being Canyon Rock Lake Section 1, Block H, Lot 2, Abilene, Taylor County, Texas. Located at 5009 Canyon Rock Road.

Mr. Zack Rainbow presented the staff report for this case. The request is for a 15' variance to the required 25' rear setback (Originally granted 01-09-07, and 10-09-07). The subject parcel and the parcels to the east are vacant. All other parcels are developed with single-family homes. This lot and the adjacent lots were platted in the late 1970's and have remained vacant since that time. Most of the

other lots were developed with homes in the 1980's. Over the years, numerous people have considered building on the lot, until they learned of the restrictive easement on them. There is a 100' wide electrical transmission line easement that runs along the front property lines of these lots. The applicant wishes to build a home on the lot. He asserts that homes can only be built if they are allowed to be closer to the rear of the lot because the homes must be setback 50' from the front property lines. The front setback for this lot would be 20' if there were no easements on the properties.

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

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

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

This lot has an easement on it, which takes up a great portion of the property.

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

Under the current setback regulations, standard sized homes cannot be built on this lot because of the abnormally large easements.

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

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

Planning staff recommends approval as the request meets the criteria necessary to approve a variance. (This was originally granted by the Board of Adjustment in January and November 2007, but the applicant didn't apply for a building permit within the required 180 days. The two (2) lots to the south were approved again in September.)

Mr. Bradshaw opened the public hearing.

Mr. John Thompson stated that this request has been approved twice in the past; however, a permit was not obtained within the allotted timeframe. Mr. Thompson requested approval and stated that he will obtain a building permit if approved.

Mr. Bradshaw closed the public hearing.

**Col. Longholtz moved to approve BA-2008-62 based on the finding in the staff report. Mr. Huber seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Hay Huber and Langholtz) to one (1) abstention (Carter - Mr. Carter abstained as he arrived after the presentation of the staff report and the public hearing).**

a. BA-2008-61

A public hearing to consider a request from Harold Rogers, agent Brian Taylor for a 45 foot variance to the required 75 foot rear setback adjacent to residential on property zoned HI (Heavy Industrial). Legal description being Bowyer Subdivision, Block 10, Lot West Part of 101, Replat. Located at 1618 South Treadaway.

Mr. Zack Rainbow presented the staff report for this case. The request is for a 45' variance to the 75' rear setback along the west property line for the construction of a new commercial structure. The subject parcel is developed with a brick supply company. The parcel to the south is developed with an oilfield supply company and the parcels across South Treadaway Boulevard are developed with other heavy commercial uses. There is an established single-family residential neighborhood to the west and north. The applicant requests a variance to construct a 50'x 100' warehouse 30' from the rear property line. The proposed structure would be even with existing structures on the adjacent property to the south that received variances in December 2003 and November 2005. Only a chain link fence separates the subject parcel from the adjacent residential neighborhood. If approved, staff recommends conditions of approval to require screening and shielded security lighting to reduce the visual impact on the neighboring residential area.

Property owners within 200 feet of the request were notified. Two (2) comment forms were received in opposition of the request and three (3) received in favor of the request.

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

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

The subject property is approximately 8.41 acres. The applicant states that the proposed location is best suited for this building due to ground stability and "In order to conform to the provisions in the ordinance, proposed building would have to be erected on unstable ground using fill dirt as a foundation for heavy concrete slab, causing potential structure problems in the future."

Although ground stability could be a peculiarity and/or a hardship, the applicant has not provided any information to justify the claim. Staff has not seen any engineering data supporting the claim.

**2. HARDSHIP FROM STRICT INTERPRETATION:**

The proposed structure would be even with existing structures on the adjacent property to the south that received variances in December 2003 and November 2005. The applicant states that the rear portion of the parcel is already occupied with extensive outdoor storage of vehicles and equipment.

Staff was unable to determine a non-financial hardship in this case. There are many other locations on the subject property where the building could be built and still meet the required 75 foot setback.

The applicant states that other locations on the property are being used for storage space and vehicle parking areas. He also states that the proposed building would be located near 2 other buildings located on the adjacent property, and may be used by the same owner as the other 2 buildings. From viewing the site staff feels that there is still adequate room not being utilized by parking and storage to locate the building and still maintain the 75 foot separation from the residences.

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

The ordinance states, "Residential uses are not compatible with the environment created in the HI district, due to the character and high level of activity characterized by permitted use." The 75 foot required setback is required in order to give the adjacent residential properties a large separation from such heavy uses as allowed in Heavy Industrial Districts. Therefore, staff feels that allowing the building to be built within the required 75 foot building setback would have a negative affect on the health, safety and welfare on the adjacent residential properties.

Planning staff recommends denial. Although ground stability could be a peculiarity and/or a hardship, the applicant has not provided information to justify this and therefore staff was not able to determine a non-financial hardship. If the Board does choose to grant this variance, staff recommends the following conditions:

1. The applicant provides privacy slats in the existing chain link fence or some other form of six-foot opaque screening along the rear property line; and,
2. Security lighting is shielded to illuminate only the subject parcel and avoid spillover onto neighboring residential properties.

Mr. Carter asked if the proponent could place the building anywhere on the property if this variance is denied and fencing and screening would not be required (as long as setback requirements are met).

Mr. Rainbow stated that this is correct.

Mr. Bradshaw opened the public hearing.

Mr. Brian Taylor, agent for Mr. Paul Graham who has owned this property since the 1950s, stated that since the property slopes from the west to the east, the property was graded and a pad constructed for the building. If the building was to be moved 75 feet from the property line, the building would be in the area of the "fill dirt" from the grading and the ground would not be as stable.

Mr. Bradshaw asked Mr. Graham if the fencing requirement to shield this building from the residential neighborhood would be a problem.

Mr. Taylor responded that this would not be a problem.

Mr. Hay asked Mr. Taylor if he has engineering data verifying the instability of the ground.

Mr. Taylor stated that they do not.

Mr. Miles Philly asked if the homes adjacent to this property would be affected, i.e., is the only change a chain link fence between this building and the adjacent residential area.

Mr. Rainbow stated that the residential properties in the area would not be affected. State law requires those property owners within 200 feet of the request must be notified and this is the reason Mr. Philly and other family members were notified.

Mr. Rodney Boden stated that he lives on Locust Street where this road becomes a dead-end street. Mr. Boden stated that his concern is traffic; particularly if a gate is installed and traffic to this business enters and exits through this portion of Locust Street.

Mr. Rainbow stated that the alley to the north is a dedicated alley.

Mr. Hay stated that if the area is a dedicated public right-of-way, the proponents have every right to utilize it.

Col. Langholtz asked Mr. Rainbow if the two comment forms in opposition stated their reason(s) for opposition.

Mr. Rainbow stated that one comment form had the following comment: "I think the request 75 foot should be used."

Mr. Bradshaw closed the public hearing

**Col. Langholtz moved to approve the Special Exception for BA-2008-61 based on the finding in the staff report and with the conditions that (1) The applicant provides privacy slats in the existing chain link fence or some other form of six-foot opaque screening along the rear property line; and, (2) Security lighting is shielded to illuminate only the subject parcel and avoid spillover onto neighboring residential properties. 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.**

c. BA-2008-64

A public hearing to consider a request from Mary Gonzales, for a special exception to locate a carport in the front yard setback on property zoned RS-6. Legal description being Elmwood West Section H, Block 4, Lot 9. Located at 241 Hawthorne Street.

Mr. Zack Rainbow presented the staff report for this case. The request is for a Special Exception to locate a carport in the front yard setback. The applicant is requesting a Special Exception to construct a 12' x 20' carport extending from the existing garage. The carport would be about 3.5 feet from the side property line, 5 feet from the front property line and 20 feet from the curb on Hawthorne Street. The parkway on Hawthorne Street is 15 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 225, 258, 309, 310 and 317 Hawthorne Street that appear to be within the front building setback. There are also many other carports in the general vicinity of 241 Hawthorne Street.

**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.

Planning staff recommends approval as the request meets the criteria necessary to grant a special exception.

Property owners within 200 feet of the request were notified. One (3) comment form was received in favor and three (1) in opposition.

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

**Col. Langholtz moved to approve Special Exception BA-2008-64 based on the findings in the staff report. 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.**

d. BA-2008-65

A public hearing to consider a request from Steven Harrell, agent Robert S. Roadcap for a 1 foot variance to the required 3 foot interior side building setback for patio covers, and a 1 foot variance to the 7 foot maximum fence height on property zoned RS-12. Legal description being Lytle Shores Section 1, Block D, Lot 4. Located at 2117 Shoreline Drive.

Mr. Zack Rainbow presented the staff report for this case. The requests are:

- (1) The applicant is requesting a 1' variance to the required 3' minimum setback for carport/patio covers in order to construct a 24'3" x 11'4" portico in the backyard. The applicant states that the reason for the variance is that the existing pool is close to the south property line, and the 1' variance is necessary to get a portico with at least 11' floor width between the pool and the fence.
- (2) The applicant is requesting the 1' height variance in order to construct an 8' masonry wall, as measured from the base of the wall around the subject property's rear yard. The wall would serve to secure the pool that is located in the back yard and ensure privacy for the residents that live at 2117 Shoreline Drive.

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

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

- (1) Most of the rear yard is covered by a swimming pool. Staff feels that this is a condition that is peculiar to the property, in regards to the location of the portico.
- (2) The alley in the rear of the property is 10-12" elevated above the backyard, staff feels that this is a peculiarity/hardship in regards to the fence height variance request.

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

(1) Staff was unable to determine a non-financial hardship in regards to the setback variance request.

(2) The alley along the rear property line is elevated 10-12'' above the backyard. This does not allow for the fence to be the maximum height of 7' that it would otherwise be allowed to be. Staff feels that this is a hardship. Staff would also agree with the applicant that the 1' foot variance to the maximum fence height would help to better secure the pool.

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

Staff does not anticipate any negative effects on the public.

Planning staff recommendations regarding these variances are:

(1) Denial of the setback variance - Although staff was able to determine peculiarities to the subject property, staff was unable to determine a non-financial hardship in this case.

(2) Approval of the variance request as the request meets the criteria necessary to grant the 1' variance to the 7' maximum fence height.

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

Mr. Bradshaw opened the public hearing.

Mr. Robert Roadcap, architect and agent, stated that his client recently purchased this property and retained his firm to landscape the back yard. The current fence is a cedar fence seven (7) feet in height; however, the alley is approximately one (1) foot higher than the remainder of the yard. The height of the fence will be maintained at seven (7) feet along the alleyway; however, in order for the fence to be the same height along the side yard, an eight (8) foot fence will be required (to avoid a "step-down" to the fence.

Mr. Roadcap stated that the distance from the edge of the pool to the edge of the portico is less than five (5) feet. The applicant is requesting a 1' variance to the required 3' minimum setback for carport/patio covers in order to construct a 24'3'' x 11'4'' portico in the backyard.

Col. Langholtz asked the impact of denial of the setback requirement – width of 10 feet as opposed to 11 feet.

Mr. Roadcap stated that this would make the area a little tight. The portico is elevated and there is a step down to the pool deck. The proponent would like to have an area large enough to entertain approximately 20 individuals.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve the one (1) foot height variance for the fence based on the findings in the staff report. 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.**

**Mr. Hay moved to approve the one (1) variance to the required three (3) foot minimum setback for the interior side based on the finding in the staff report with the exception of the hardship. Mr. Hay stating that not allowing the variance would result in the portico being too narrow to be used – in particular, the elevation of the portico causes a safety issue. Col. Langholtz 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.**

e. BA-2008-66

A public hearing to consider a request from Edgar Benito Cordova for a 1.5 foot variance to the required 5 foot interior side building setback on property zoned RS-6. Legal description being Parkside Place Subdivision Section 1, Block I, Lot 104 Replat, Acres .151. Located at 5525 Yellow Brick Road.

Mr. Zack Rainbow presented the staff report for this case. The request is for a 1.5' variance from the required 5' interior side setback. The applicant received a building permit to construct a single family residence at 5525 Yellow Brick Road. The applicant submitted a site plan showing the south side interior setback to be at 10 feet. The minimum interior side setback in RS-6 is 5 feet. Based on the information provided, staff signed off on the building permit. The building permit was finalized on 09-25-08. When the applicant had a title survey done it was realized that the house was only 3.5' from the interior side property line. The applicant states that he purchased 5 other lots in this particular neighborhood all of which were 64.4 feet wide. This lot in question is only 60 feet wide. Based on the previous lots he had built homes on he was under the impression that this lot was the same dimensions. Therefore the information he provided on his site plan for the building permit showed the setbacks based on a 64.4 foot wide lot. The subsequent home was constructed under this assumption as well, which led to the home being built with the non-conforming setback. The house is setback approximately 10.5 feet from the northern interior property line.

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

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

Staff Position: The home was permitted to have a 5 foot interior side setback, but when built it was discovered in a title survey that the house was only 3.5 feet from the interior side property line. From a strict interpretation there are no peculiarities to the subject property.

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

Staff Position: Staff could find no non-financial 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.

Although the house is completed and has a final building permit, staff does recommend denial. From a strict interpretation of the ordinance, staff could find no non-financial hardship or peculiarities to the subject property.

Property owners within 200 feet of the variance 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. Edgar Cordova stated that he has purchased many lots in this area and he assumed that this lot was 64 feet wide. Upon completion of the home, a survey was completed and at that time it was discovered that the house was too close to the property line.

Ms. Gloria Caldwell stated that she is a realtor and listed this property. Another agent sold the home and when the survey of the property was concluded the lot width discrepancy was discovered. The owners of the home closed on the house with Security Title and signed a form to accept the property "as is."

Mr. Rainbow stated that the final building permit has been received and the necessary requirements have been completed with the City. Mr. Rainbow stated that there is no other option to remedy this problem than to request a variance.

Mr. Bradshaw closed the public hearing.

**Mr. Hay moved to approve the 1.5 foot variance from the required five (5) foot interior side setback for BA-2008-66 based on the findings in the staff report. Mr. Hay stated that Mr. Santee has mentioned the principle of diminimis and believes this principle applies in this case. Mr. Hay stated that this is the correct solution and the right thing to do in this case. Col. Langholtz 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.**

f. BA-2008-67

A public hearing to consider a request from Brenda McDonald for a 1 foot variance to the required 3 foot interior side building setback for carports, and a special exception to locate a carport in the front yard setback on property zoned RS-6. Legal description being Elmwood West Section P, Block 2, Lot 20 Replat Blocks 1 & 2. Located at 714 S. San Jose Drive.

Mr. Zack Rainbow presented the staff report for this case. The requests are:

- (1) **Special Exception:** The applicant constructed a 23' x 23' front carport without a building permit. When the applicant came in to get a permit it was discovered that the carport did not meet the required setbacks. The applicant states that the carport follows the shape of the curved driveway and provides cover for the vehicles because there is no garage on the property. The parkway on S. San Jose is 15 feet. The carport is about 9 feet from the front property line and 24 feet from the curb.
- (2) **Variance:** The carport sits over the existing curved driveway and is setback 2 feet from the side property line. The applicant is requesting a 1' variance to the 3' interior side setback in order to keep the carport in its current location.

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

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

There are other front carports located at 710, 713, 722, 802, 810, 818 and 817 S. San Jose 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.

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

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

There are carports in the immediate vicinity that were permitted and built with a 0 foot setback from the interior side property line. The carports located at 713 S. San Jose and 834 La Salle were both permitted many years ago, and built with a 0' interior side setback. Staff feels that this condition is a peculiarity to the subject property.

**2. HARDSHIP FROM STRICT INTERPRETATION:**  
Staff could not find a non-financial hardship in this case.

**3. 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 RECOMMENDATION:**

(1) Approval of the carport, the request meets the criteria necessary to approve a Special Exception.

(2) Staff recommends denial on the variance for the interior side setback. Although staff was able to determine the peculiarity of the other permitted carports in the area, staff was unable to determine a non-financial hardship in this case.

Property owners within 200 feet of the Special Exception and Variance requests were notified. Three comment forms were returned in favor (one (1) from the property owner) and none (0) in opposition.

Mr. Bradshaw opened the public hearing.

Ms. Brenda McDonald, proponent, stated that they were misled by their contractor regarding the need for a permit. Ms. McDonald stated that that they did not knowingly neglect to obtain the proper permit – they simply were not aware of the need for a permit.

Mr. Hay asked Ms. McDonald if she could provide a reason for a non-financial hardship if this request was not granted.

Ms. McDonald stated that the homes in this area only have enough room for one (1) car. There is no way to construct a two (2) car carport without extending into the side yard. There is a tree on this property that causes a problem with sap and bird droppings. Parking a vehicle on the street is dangerous due to vehicular damage and inclement weather.

Mr. Ron Morton stated that he is Ms. McDonald’s neighbor and the carport extends over toward his property line. Mr. Morton stated that they have no problem with the carport.

Ms. Beverly Hohimer stated that her automobile was vandalized and because of this and the fact that Ms. McDonald is a very good neighbor she approves of this carport.

Mr. Bradshaw closed the public hearing.

**Mr. Hay moved to approve the Special Exception for BA-2008-67 based on the findings in the staff report. Col. Langholtz 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.**

**Col. Langholtz moved to approve the Variance for BA-2008-67 based on the fact that a “standing water” problem would result if this variance was not granted and the carport was located differently. 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 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 9:35 a.m.

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