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**BOARD OF ADJUSTMENT**

**July 13, 2010**

**Minutes**

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

Staff Present: Kelley Messer, Assistant City Attorney  
Ben Bryner, Planning Services Manager, Recording  
Zack Rainbow, Planner II  
Ed McRoy, Assistant Director of Planning and Development Services  
Jon James, Director of Planning and Development Services

Others Present: Paul Johnson  
Kevin Phillips  
Kevin Burton

**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 June 08, 2010, 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.**

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

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

a. **BA-2010-11**

**Col. Langholtz moved to remove this item from the table. 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.**

A public hearing to consider a request from Myra Johnson, Agent Paul Johnson, for a 25' variance to the front, rear, and exterior side building setbacks on property zoned LI (Light Industrial) zoning district. Legal description being OT ABILENE, BLOCK 38, LOT 7-12 TIF#1. Located at 401 Plum Street.

Mr. Rainbow presented the staff report for this case. The Sections being varied are Section 23-312: "Setback from rear boundary adjacent to other lot boundary =25 feet in HC zoning"  
Section 23-313.2 A(4): "Setback from boundary adjacent to minor street=25 feet"

The applicant requests the variance to the front, exterior side, and rear setbacks in order to construct a 36,000 sq. ft. building. The applicants are wishing to use the existing pad from the previous building that was recently destroyed by a fire. The previous building had been constructed with 0' setbacks on the front, rear, and northern exterior side. The south exterior side of the property is parking spaces. If approved the new building would also be built at these 0' front, exterior, and rear side setbacks. The applicant stated that the cost of removing the rubble exceeded \$80,000 and that the existing slab could be used for the new building.

The South Downtown plan identifies this area as transitioning away from Light Industrial type uses to a more of mixed use type uses such as retail and residential.

The subject parcel is currently vacant with most of the surrounding properties being Light Industrial/warehousing type uses.

In the opinion of staff, approval of this variance would be second-guessing the prior zoning decisions of the City Council and tantamount to a legislative action. The Council-adopted Zoning Ordinance creates a Central Business District, where buildings can be built to the property line with no setbacks, but that district has certain requirements, among them that industrial and warehousing uses are not permitted. The Zoning Ordinance also includes a Light Industrial District that allows industrial and warehousing uses, but requires minimum building setbacks to mitigate possible negative impacts and to provide open space and room for maneuvering of vehicles and large trucks, etc. What the proponent is asking for is for this Board to allow him to build a building within an LI district, without meeting the standards that the City Council has adopted for that district. The staff recommends that the more appropriate remedy for this situation is either a legislative change to the zoning ordinance approved by the City Council or a Planned Development District for this site that would also get City Council approval. The mere fact that the applicant wishes to re-use the pre-existing foundation is not a hardship, as required by the zoning ordinance, but rather is a classic case of a nonconforming structure. The zoning ordinance contains specific provisions for nonconforming structures and under those provisions this site would need to come into compliance. This is not a unique situation, but one specifically envisioned by and addressed by the zoning ordinance adopted by the City Council.

While the staff recommends denial of this request for the reasons noted above, we recognize that the Board may choose to grant this request. The zoning ordinance allows the Board to place conditions on such approval. If the Board chooses to grant the request, staff strongly recommends that the Board attach the following conditions to any approval, in order to mitigate possible negative impacts and to address the vision for this area outlined in the South Downtown Master Plan:

1. Any street frontages with any portion of a structure built between the otherwise required building setback line and the property line shall include streetscaping consistent with the recommendations of the Downtown Streetscape Master Plan and the South Downtown Master Plan as determined by the Planning Director. In no case shall any development on this site have sidewalks adjacent to a street less than 8 feet in width. Intersection bulbouts, enhanced lighting

fixtures, street furniture and similar streetscape features shall also be provided to conform to any approved City plan.

2. Building materials along these street frontages shall be higher quality materials, as required in the Central Business District for non-industrial uses. At a minimum these materials should be used to a height of 10 feet to create a pedestrian friendly street wall. In addition, large blank walls shall be avoided through the use of building articulation or the variation of building materials, colors, and/or textures to create visual interest along large facades.
3. Loading docks shall be accessed from the alley or shall provide sufficient maneuvering area such that loading and unloading of trucks will not interfere with traffic on the adjacent public streets.
4. Per the recommendations of the City's Comprehensive Plan and South Downtown Plan, all public street frontages in this area shall be designed to safely and appropriately accommodate pedestrian activity and nothing in the design of the site, including parking and maneuvering areas, loading docks, or storage or display of materials, shall interfere with this.
5. Compliance with these conditions shall be determined through the site plan review process. Additional information, beyond that normally required for site plan review, including, but not limited to, architectural renderings or elevation drawings may be required in order to verify compliance.

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

Staff Recommends denial, staff was unable to determine a peculiarity or a non-financial hardship in this case.

Mr. Rainbow stated that no comments were on the opposition letters, but Mr. Luther spoke last time.

Mr. Carter asked if City Council changed the Master Plan to allow for warehousing.

Mr. Rainbow stated that the use is allowed, but there is no justification for the variance.

Mr. Bradshaw opened the public hearing.

Mr. Paul Johnson, 22 Augusta, stated that Mr. Luther is now in favor and that the Planning and Zoning Commission is okay with warehousing.

This building would be a 36,000 sq. ft., clear span building that has a 26' eave height and costs \$400,000 to buy. If this was denied there would be unintended consequences such as lost tax revenue and have an ugly pad there.

The building has been designed by an architect with architectural features, paint, etc. and may add more such as masonry.

Mr. Carter asked if they were going to add a walkway along the sides of the property.

Mr. Paul Johnson stated that they would add a walkway if they had enough room.

Mr. Carter asked if they had 15' then wouldn't they instead need a 10' variance.

Mr. Johnson stated that changes will have to be made.

Col. Langholtz asked if Mr. Johnson had any problems with the points made by staff.

Mr. Rainbow reread the points.

Mr. Johnson stated that they intended to do such things. He indicated that he has added masonry standards.

Mr. Bradshaw asked if Mr. Johnson intending to use the northwest interior loading dock.

Mr. Johnson stated the main loading dock would be along the east.

Mr. Huber asked if he was going to lose his driving dock on the front with the variance request. Will you remove a portion of the building?

Mr. Johnson stated that along the west side they can just load into the interior dock.

Mr. Huber asked how that would leave room for maneuvering.

Mr. Carter asked how, if the building was built to the property line how do you intend to leave a 15' minimum strip of landscaping, and asked who was responsible for maintaining the sidewalks and landscaping in the parkway.

Mr. Hay asked Mr. Johnson how high he intended to go up with the masonry.

Mr. Johnson stated that he intended to put masonry up to the existing slab.

Mr. Johnson referred back to the exhibit he provided and stated that it was just an example of what he was wanting to do.

Mr. Bradshaw asked if he had already bought the building.

Mr. Johnson stated that he had.

Mr. Kevin Phillips, Harris Acoustics, stated that the pre-fabricated building could be attached to the existing pad to allow for the 15' walkway, and that it would be possible to offset the building.

Mr. Hay stated that it would be expensive and if they approved the 0' setbacks, they wouldn't get what they see in the picture.

Mr. Ed McRoy, Assistant Director of Planning and Development Services, stated that there was no valid justification or hardship to approve the requested variance. A better option would be through a Planned Development zoning district.

There is no basis to grant the variance. This request should be accomplished through a legislative process- rezoning- where both P&Z and City Council make the decision on whether this use is appropriate.

Mr. Johnson stated that no one had talked to him about the PD zoning.

Mr. Bradshaw closed the public hearing.

**Mr. Carter moved to deny BA-2010-11 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, Hay, Huber, Carter and Langholtz) to none (0) opposed.**

**b. BA-2010-14**

A public hearing to consider a request from Sergio Hernandez, for a Special Exception to locate a carport in the front yard building setback in a RS-6 (Residential Single Family) zoning district. Legal description being GREEN ACRES SEC 1, BLOCK 5, LOT 7. Located at 1437 Mimosa Drive.

Mr. Rainbow presented the staff report for this case.

The applicant is requesting a Special Exception to allow for a 19' x 19' carport extending from the existing garage. The carport would be at least 3 feet from the side property line and 17 feet from the curb on Mimosa Drive. The parkway width on Mimosa Drive is 12'. The Board of Adjustment has the authority to grant a special exception for a front carport up to 5' from the front property line. Therefore, if the special exception is granted the carport must be a minimum of 17' from the curb.

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

There are other front carports located at 1436, 1461, 1536, 1572, 1600 and 1601 Mimosa Drive that appear to be within the front building setback. There are also many other carports in the general vicinity of 1437 Mimosa Drive.

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. The request meets the criteria necessary to grant a Special Exception.

Mr. Bradshaw opened the public hearing.

Seeing no one, Mr. Bradshaw closed the public hearing.

Mr. Carter asked if there were any comments on the response in opposition.

Mr. Rainbow stated there were none.

**Col. Langholtz moved to approve BA-2010-14 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, Hay, Huber, Carter and Langholtz) to none (0) opposed.**

**c. BA-2010-16**

A public hearing to consider a request from Donald Miller, agent Kevin Burton, for a Special Exception to locate a carport in the front yard building setback in a RS-8 (Residential Single Family) zoning district. Legal description being RICHLAND ACRES, BLOCK N, LOT 24. Located at 1401 Rosewood Drive.

Mr. Rainbow presented the staff report for this case.

The applicant is requesting a Special Exception to allow for an 30' x 20' carport extending from the existing garage. The carport would be 9 feet from the side property line and 21 feet from the curb on Rosewood Drive. The parkway width on Rosewood Drive is 12'. The Board of Adjustment has the authority to grant a special exception for a front carport up to 5' from the front property line. Therefore, if the special exception is granted the carport must be a minimum of 17' from the curb.

Property owners within 200 feet of the request were notified. Six (6) comment forms were returned in favor and none (0) in opposition of the request.

There are other front carports located at 1410, 1417, 1450, 1474 and 1481 Rosewood Drive that appear to be within the front building setback. There are also many other carports in the general vicinity of 1401 Rosewood Drive.

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. The request meets the criteria necessary to grant a Special Exception.

Mr. Bradshaw opened the public hearing.

Mr. Kevin Burton, 4953 Rustic Trail, Midland, Texas, stated that the carport would be used to cover the vehicles. Stated that the materials will be the same as the house.

Mr. Bradshaw closed the public hearing.

**Mr. Carter moved to approve BA-2010-16 based on the findings in the staff report with the condition that the materials used are the same as the house. Mr. Hay seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Hay, Huber, Carter and Langholtz) to none (0) opposed.**

**d. BA-2010-17**

A public hearing to consider a request from Zacarias Serrato, for a 6 foot variance to the required 15 foot front yard building setback in a MD (Residential Medium Density) zoning district. Legal description being D A WINTERS OF CANNON, LOT NORTH 80' OF LOT 2. Located at 1757 N 8<sup>th</sup> Street .

Mr. Rainbow presented the staff report for this case.

Section and Requirement of the Land Development code being varied:  
Table 2-2: "Setback from boundary adjacent to subcollector or minor street = 15 feet"

Property owners within 200 feet of the request were notified. zero (0) comment forms were returned in favor and One (1) in opposition of the request.

The subject property and the most of the surrounding properties are developed with single and multi-family residences.

Most of the surrounding houses have a consistent building line closer to the street than the current setbacks allow. The requested variance would not be out of character with the surrounding properties. Staff felt that this is a peculiarity to the property.

The house on the subject property was condemned in March of 2008. The applicant is currently working with the City to make the necessary repairs in order to bring it out of condemnation. During the course of inspections by the Condemnation Officer it was discovered that the front patio cover had been extended and enlarged without a building permit. That is when it was discovered that it had been built to close to the street than what was allowed. The patio cover is approximately 8'X10' extending out from the front of the house. The applicant is requesting a 6 foot variance to the 15 foot front building setback in order to keep the patio cover and bring it into compliance. The patio cover would be about 9 feet from the front property line, and 24 feet from the curb on N. 8<sup>th</sup> Street.

From a strict interpretation, staff could determine no non-financial hardship.

Staff recommendation: Denial. Although staff was able to find a peculiarity to the property, we were unable to find a hardship in this case. Therefore the request does not meet the criteria necessary to approve a variance.

Mr. Bradshaw opened the public hearing.

Mr. Bradshaw closed the public hearing.

**Mr. Carter moved to deny BA-2010-17 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, Hay, Huber, Carter and Langholtz) to none (0) opposed.**

**Item Four: Adjourn**

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

Mr. Bradshaw adjourned the meeting at approximately 9:38 a.m.

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