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**BOARD OF ADJUSTMENT**  
**April 10th, 2012**  
**Minutes**

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Members Present: Wayne Bradshaw  
Scott Hay  
Roger Huber  
Col. Langholtz  
Bob Beerman

Staff Present: Zack Rainbow, Planner II  
Ben Bryner, Planning Services Manager  
Brad Stone, Planner II  
Ed McRoy, Assistant Director of Planning  
Kelley Messer, Attorney  
Debra Hill, Secretary II (recording)

Others Present: Jack McCarty 2048 Marshall  
Robert Kern 1225 Walnut  
Brian Hovey 750 Benelli  
Dale Edwards 4402 LaHaciende  
Lauren Clark 1465 Woodland Trail

**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 March 13th, 2012 meeting. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Hay, Huber, Bradshaw, Langholtz and Beerman) and none (0) opposed.**

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

**Mr. Huber motioned to remove item BA-2012-08 from the table. Col. Langholtz seconded the motioned and the motion carried unanimously.**

**Item Three: Special Exception:**

**a. BA-2012-08 (Tabled from 3/13/2012)**

A public hearing to consider a request from SO Oil Company, agent Robert Kern for a 20 foot variance to the maximum 10 foot sign height, and an 8 foot variance to the required 10 setback for a sign setback in HC/COR (Heavy Commercial/Corridor Overlay) zoning. Legal description being STONEGATE ADDN SEC 2, BLOCK 5, LOT 1. Located at 4202 Buffalo Gap Road.

Mr. Zack Rainbow presented the staff report for this case. The subject parcel is developed as an Exxon gas station. The Mall of Abilene is located to the south and west and United Grocery store to the east. The applicant requests the 20' variance to the (1) maximum 10' sign height and an (2) 8' variance to the 10' setback for signage in the Corridor Overlay. The applicants are wishing to use the existing pole sign in the same location that was constructed in 1997, before the property was in the Corridor Overlay. The pole sign is only 2' from the property line along Buffalo Gap and approximately 30' in height. According to the applicant, the proposed sign will be the same height as the existing sign but the sign area will be reduced by 40%. The Corridor Overlay also only allows for 1 sign per business. There is another sign on the north end of the property. The applicants state that if this variance is approved, that other sign will be removed.

In 2006 the City Council adopted the corridor overlay zone with the recommendation of the Planning and Zoning Commission and as recently as 2010 reaffirmed the requirements of the Corridor Overlay. This was due to property owners in this area requesting that the aesthetics and integrity of the area be protected. The overlay zone was applied to 600 feet east and west of the centerline of Buffalo Gap Road from Highway 83/ 84 to 500 feet south of Beltway South. The reason behind the corridor overlay was to keep Buffalo Gap Road an attractive entrance into the City. The corridor overlay requires commercial businesses to have screening of outdoor storage, landscaping, and reduced height and square footage of freestanding signs. When this corridor overlay was adopted, it was with the intent that when a sign was replaced or a site was redeveloped, it must be done to the regulations of the corridor overlay zone. If properties are not required to abide by the overlay regulations, this somewhat developed area will never materialize into what the citizen, Planning Commission and the City Council had envisioned.

The existing pole sign is located north of the northern most driveway along Buffalo Gap Rd. The driveway is located approximately 65' from the intersection. This is a non-conforming situation. The current driveway spacing requirement along arterial streets is 200'. This area has been a concern due to the large amount of accidents and congestion in the area. In addition, the location of the existing sign is very close to this driveway and shows signs of being hit by cars using this driveway. If the Board is inclined to grant the setback variance, staff asks that they do so with the condition that the north most driveway along Buffalo Gap Road is closed. This would reduce the likelihood of accidents related to this sign, would also eliminate a turning point of conflict, and hopefully help reduce potential accidents and congestion on Buffalo Gap Road.

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

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

Staff Position: In regards to the height variance staff could find no peculiarities to the subject property. In regards to the setback variance the property has a 40' parkway along Buffalo Gap Road. The large Mall of Abilene property only has a 27' parkway. In comparison, this could be considered a peculiarity affecting the property.

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

Staff Position: In regards to the height variance staff could find no hardship in this case. In regards to the setback variance staff could find no hardship in this case.

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

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

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.

Staff is recommending denial. Staff was unable to determine a peculiarity or a non-financial hardship in this case. If the Board is inclined to grant the variance, staff asks that they do so with the condition that the north most driveway along Buffalo Gap Road is closed.

Mr. Hay questioned the comparison to the signage located north of the freeway. Mr. Rainbow stated that the proposed signage would be allowed due to the difference in the zoning. Col. Langholtz questioned the opposition. Mr. Rainbow stated they were no comments for the opposition.

Mr. Rainbow stated that if this variance is approved, staff is strongly recommending the condition regarding the closing of the north most driveway along Buffalo Gap Road. Mr. Hay questioned the relationship between the driveway and the sign.

Mr. Bryner stated the reasoning for this condition is to prevent future traffic accidents related to the proposed signage. He added that the entrance to the north has been an issue with congestion and traffic accidents. Mr. Bryner stated the proposed signage would be located next to the north most driveway and staff feels it would divert driver attention away from surrounding traffic. Mr. Bradshaw agreed.

Mr. Bradshaw opened the public hearing.

Mr. Robert Kern (Acme Sign, agent for the applicant) spoke in favor of this request. Mr. Kern stated that the applicant, SO Oil, became the owner of this property in 1997. He added that at that time a variance was granted regarding the setbacks for this property. Mr. Kern stated that the previous variance was granted so there could be visibility from Buffalo Gap Rd. Mr. Kern described the remodel SO Oil has planned for this facility. He added it would include updating the sign located on Buffalo Gap Rd. Mr. Kern stated the facility is reducing the number of signs from two signs to one. He added the proposed sign would be 30 foot in height and a static LED light. Mr. Kern stated the regulation sign would not be sufficient for advertising due to the height restriction. He added the sign located along South Clack does not attract attention currently as it did in the past due to the exit from the highway has been moved further back. Mr. Kern stated that Buffalo Gap Rd is now the main source for advertisement for the site and the best visibility. He explained that due to the 42 foot setback the variance requested is to replace the existing sign at the same location.

Mr. Kern addressed the sign height, he stated the regulation for sign height would not be tall enough to be seen and react before traffic could get to the property. He added the new sign would be a static LED sign which would improve visibility at a distance if the sign was located at the 30 foot that is being requested. Mr. Kern addressed the driveway issue. He added that closing the driveway and the variance for this sign have no relations to each other. Col. Langholtz questioned the verbiage for the proposed sign. Mr. Kern stated the sign would display the name, price of gas and advertising for their car wash. Mr. Hay questioned if the applicant is aware of staff's recommendation concerning the conditions. Mr. Kern stated the applicant believes the closing of the driveway is irrelevant to the sign in this request.

Mr. Bradshaw closed the public hearing.

After discussion among the Board and staff, the following was agreed upon.

**Mr. Hay moved to approve BA-2012-08 in regards to the height variance and the setback variance noting: the peculiarity being the large setback at that location as indicated by the staff report; the non-financial hardship being that the proposed sign would increase interior traffic problems if the variance is not approved; and requiring the applicant to close the north-most driveway located on Buffalo Gap Rd. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Hay, Huber, Bradshaw, Langholtz and Berman) and none (0) opposed.**

**b. BA-2012-09**

A public hearing to consider a request from Jackie W. McCarty for special exception to locate a carport in the front yard building setback in RS-6 (Residential Single Family) zoning. Legal description being OVER PLACE, BLOCK 10, LOT EAST 150 SOUTH 1/2 LT 4. Located at 2048 Marshall Street.

Mr. Rainbow presented the staff report for this case. This property and most of the surrounding properties are developed with single family homes. The properties to the east and south are developed with a Church. The applicant is requesting a Special Exception to allow for a 19.5' x 20' carport extending from the existing garage. The carport would be 17 feet from the curb on Marshall Street. The parkway width on Marshall Street 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.

**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 multiple other front carports located in the surrounding area that appear to be 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.

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**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. Zero (0) comment forms were returned in favor and Zero (0) in opposition of the request.

Planning staff recommends approval as the request meets the criteria necessary to grant a Special Exception.

Mr. Bradshaw opened the public hearing.

Mr. Jack McCarty (applicant) spoke in favor of this request. Mr. Bradshaw questioned the use of the garage. Mr. McCarty stated the garage was built the early 1950's and the garage is 6'3" tall and his truck will not fit in the garage. He stated that one side of the garage is in use.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve BA-2012-09. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Hay, Huber, Bradshaw, Langholtz and Beerman) and none (0) opposed.**

**c. BA-2012-10**

A public hearing to consider a request from Dale Edwards for 3'2" variance to the 10' required interior side building setback in RS-12 (Residential Single Family) zoning. Legal description being TANGLEWOOD SECTION 1, BLOCK C, LOT 5. Located at 1430 Tanglewood Road.

Mr. Rainbow presented the staff report for this case. The subject parcel and the adjacent parcels are developed with large single-family homes. The applicant is requesting a 3'2" variance to the required 10' minimum interior side building setback in order to build an addition. The current house is 13 feet from the interior south side property line. The new addition would extend out from the rear of the house and would be setback from the interior side property line 6'10" at its closest point. The applicant states that the addition will be used as an open outdoor living area with a good view of the backyard and future swimming pool. There is approximately 130' from the existing house to the rear property line leaving adequate room for adding to the house without the need for a variance.

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

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

Staff could find no peculiarities to the property.

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

Staff could determine no hardship.

**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.

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

Planning staff recommends denial as staff could find no hardship or peculiarity to the lot in this case.

Mr. Bradshaw opened the public hearing.

Mr. Dale Edwards (applicant) spoke in favor of this request. Mr. Edwards stated he had purchased this property last year. He added that a survey was not requested due the future renovations planned for the property. Mr. Edwards stated the cement fence between his property and the adjacent property was not built on the property line. He added this was brought to his attention when the previous owners sent him a survey dated 1957 which showed the fence as not being the property line. Mr. Edwards stated this was after the plans for the addition had been prepared. He added the fence is actually 5'6" inside the adjacent property. Mr. Edwards stated this is the reasoning for this request.

Mrs. Lauren Clark (agent for applicant) spoke in favor of this request. Mrs. Clark described the addition and the renovations for this property. She added the location of the addition would only work for the flow of the house on the proposed side.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve BA-2012-10 with the condition peculiar to the land being the vegetation and shape of the lot and that the strict application of the regulation would result in a non-financial hardship due to placement of the addition opposite the garage would not be a practical solution. Mr. Hay seconded the motion and the motion carried by a vote of five (5) in favor (Hay, Huber, Bradshaw, Langholtz and Beerman) and none (0) opposed.**

**Item Four: Adjourn**

Mr. Bradshaw moved to adjourn the meeting.

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