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**BOARD OF ADJUSTMENT**  
**January 8<sup>th</sup>, 2013**  
**Minutes**

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

Staff Present:                Zack Rainbow, Planner II  
                                      Ben Bryner, Planning Services Manager  
                                      Dan Santee, City Attorney  
                                      Debra Hill, Secretary II (recording)

Others Present:             Garlon Dale Freeman  
                                      Brian Rumsey  
                                      Alfonso G. Hernandez

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

Mr. Wayne Bradshaw called the meeting to order at 8:30 A.M. and declared a quorum present.

**Item Two:    Approval of the Minutes**

**Col. Langholtz moved to approve the minutes of the December 18th, 2012 meeting. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Hay, Huber, Langholtz, Bradshaw and Beerman) and none (0) opposed.**

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

**Item Three:   Variance:**

**a.        BA-2012-25**

A public hearing to consider a request from Alfonso G. Hernandez for a variance to the exterior side and interior side building setbacks, variances to the maximum lot coverage, variance to the maximum area of accessory structures and maximum height for carport/patio covers in MD (Medium Density) zoning. Legal Description being COWDEN HEIGHTS, BLOCK C, LOT 12. Located at 901 Vine Street.

Mr. Zack Rainbow presented the staff report for this case. The applicant's property is 7035 sq. ft. in area, and is developed with a 1268 sq. ft. single-family home. There is also a detached garage that is approximately 1120 sq. ft. that doesn't appear to have ever been permitted. It came to the attention of the City of Abilene that a carport/patio cover had been constructed connecting these 2 structures as well as covering most of the side and rear yards and a Stop Work Order was issued (4-23-2012). The carport/patio cover appears to be setback 0' from the interior property line and within the 5' building setback of the exterior side property line. Therefore, the reason for the setback variance requests.

The applicant states that the structure is 900 sq. ft. in area. From what staff can determine, it appears that the new structure is much larger. The Land Development Code has a maximum sq. footage for an accessory building(s) of 10% of the lot area, and maximum lot coverage for all structures of 50% of the lot area. With an area of 7035 sq. ft. for the applicants' lot, the maximum size of all accessory structures total would be 703 sq. ft. With the addition of the unpermitted carport/patio cover there appears to be well over 2000 sq. ft. of accessory structures on the property.

The Land Development Code also has maximum lot coverage for all structures on a lot zoned RS to not exceed 50% of the lot area. Based on what staff could determine, it appears that the structures on this lot exceed the 50% lot coverage of 3517.5 sq. ft.

Finally, the applicant is seeking a variance to the maximum 12' in height for a carport/patio cover. Based on observations by staff, the structure appears to exceed this height.

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

- (1) Section 2.4.4.2 (b) (1): Exterior side setback for a carport/patio cover = 5'
- (2) Section 2.4.4.2 (b) (2): Interior side setback for a carport/patio cover = 3'
- (3) Section 2, Table 2-13: Maximum sq. footage for accessory structure = 10% of lot area
- (4) Section 2, Table 2-2: Maximum Lot Coverage (% of area) = 50%
- (5) Section 2.4.4.2 (d): Maximum height of carports/patio covers = 12'

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

Staff was unable to determine a peculiarity in this case for any of the variance requests.

#### **2. HARDSHIP FROM STRICT INTERPRETATION:**

Staff could not find a non-financial hardship in this case for any of the variance requests.

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

Staff foresees that a 0' setback from the neighboring property does have possible negative effects on public health, safety, or welfare from a variance at this location. These effects would be fire separation and possible runoff issues onto the adjacent property.

**Staff is recommending denial for all of the variances requested. Staff was unable to determine any peculiarities or a non-financial hardship in this case. Staff also determined negative effects on public health, safety, and welfare.**

Mr. Bradshaw opened the public hearing.

Mr. Alfonso Hernandez (applicant) spoke in favor of this request. Mr. Hernandez stated the company that completed the patio and carport cover did not obtain a permit. He added he had purchased this property approximately a year ago and the exterior structures already existed.

Mr. Beerman questioned the purpose of the carport. Mr. Hernandez stated he owns a bakery and uses part of his property for storage for tables, chairs and supplies. He added he needs the covered patio and carport for his vehicles during bad weather for loading the supplies for his business.

Mr. Huber questioned if the applicant lives at this location. Mr. Hernandez stated he did.

Mr. Hernandez stated the carport has rain gutters installed and the downspout is located in the front of his property. He added he has talked with his neighbor to the south of his property and the neighbor is in favor of the repairs and modifications he has done to the property.

Mr. Garland Freeman (902 Vine) spoke in favor of this request. Mr. Freeman stated Mr. Hernandez has made many improvements to the property since he has purchased it. Mr. Freeman stated the parking arrangement Mr. Hernandez has implemented has improved the ease of parking on the street, since Vine is a narrow street. He added the improvements Mr. Hernandez has completed, he feels, would only improve the property values of this area.

Mr. Beerman questioned if the carport is a benefit to the property to decrease the parking in the street. Mr. Freeman agreed, stating that Vine is such narrow street.

Mr. Bradshaw closed the public hearing.

Col. Langholtz questioned Mr. Rainbow the options for the board. Mr. Rainbow explained the options of each of the variances listed.

Mr. Hay questioned if the work was completed when the stop work order was issued. Mr. Rainbow stated the work had already been completed.

The Board members discussed the negligence of the contractor to inform the homeowner of the need for a permit and problems this has incurred. The Board also discussed the existing accessory structures and the length of their existence.

Mr. Bradshaw reopened the public hearing.

Mr. Hay asked Mr. Hernandez if he has spoken with his neighbor to the south of his property regarding the extension of the carport. Mr. Hernandez stated he had and the neighbor is in favor of the addition.

Mr. Santee expressed the importance of the permitting process. He also discussed the possibility of Mr. Hernandez using his commercial lot for storage instead of his residence. Mr. Santee stated that each variance in this request would need to be treated as a separate variance and voted on accordingly.

Mr. Bradshaw closed the public hearing.

Mr. Hay inquired on the contractor for this project.

Mr. Bradshaw reopened the public hearing.

Mr. Hay questioned Mr. Hernandez who the contractor for this project was. Mr. Hernandez stated it was Margereto Garcia with Metal Crafters and never discussed needing a permit. Mr. Bradshaw asked if Mr. Hernandez had completed payment for the carport. Mr. Hernandez stated he had and that in fact, the contractor owes him money.

Mr. Bradshaw closed the public hearing.

Mr. Hay stated he believes that if this request had been presented before it was completed it would have been denied.

Mr. Bradshaw asked if the contractor was bonded and licensed. Mr. Rainbow stated staff is discussing the possibility of bringing this to Building Inspections attention.

Mr. Hay asked clarification on the actions before the board.

Mr. Rainbow explained each variance and the responsibilities of each action.

The Board discussed the options for the applicant and the various structures on this property.

Mr. Hay asked clarification of the effect of denial would have on each variance. Mr. Rainbow stated he was unsure of the affect as staff was not able to obtain viable information.

**Mr. Hay moved to table BA-2012-25 to the next regular scheduled meeting and requested the applicant to provide staff with more detailed information. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.**

**b. BA-2013-01**

A public hearing to consider a request from Cross Plains, LP, agent Brian Rumsey for a 6'7" variance to the 15' exterior side building setback on property zoned RS-6 (Residential Single-Family) zoning district. Legal description being Lot 3 (West 40'), Block 7, Sears Park Addition, City of Abilene, Taylor County, Texas. Located at 2466 Ambrocio Flores Jr. Drive.

Mr. Rainbow presented the staff report for this case. The parcel is zoned as residential single family. There are currently no buildings located on the property. Properties to the north and east are multi-family housing developments. The properties to the south and west are zoned for single-family uses. The applicant is requesting a 6'7" variance from the required 15' exterior side street setback in order to construct a 1165 sq. ft. house on the subject property. The current lot only has a width of 40'. Without the approval of a variance, there would only be 19' wide building envelope. The proposed house would still meet the 6' interior side building setback and would be setback 8'1" from the exterior side 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: There are peculiarities to the lot. The lot is roughly 40ft x 125ft, and is a substandard lot size for RS-6. The lot was originally platted with 50' of width. An additional 10' was acquired by the City of Abilene as additional right-of-way width. The current ordinance requires a minimum 60' of width in RS-6 zoning districts.

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

Staff Position: The applicant wants to build a single family house on a substandard platted lot. You may consider the substandard lot size a 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. The proposed house would be consistent with the surrounding properties.

**Staff is recommending approval as the variance to the setback would not have a negative effect on any of the adjacent properties. Also, the substandard lot size can be considered a hardship in building a house.**

Mr. Beerman questioned the ownership of the lot to the west. Mr. Rainbow stated he believed the ownership is the Housing Authority.

Mr. Bradshaw opened the public hearing.

Mr. Brian Rumsey (applicant) spoke in favor of this request. Mr. Rumsey explained the location of this property and the proposed home to be built on this lot. Col. Langholtz asked the purpose of the home. Mr. Rumsey stated the owners of the facility adjacent to the property would consider using it for a temporary dwelling or a rental property.

Mr. Bradshaw closed the public hearing.

**Col. Langholtz moved to approve BA-2013-01 based on the findings of staff. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.**

**Item Four: Adjourn**

Mr. Bradshaw moved to adjourn the meeting.

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