

MINUTES OF THE REGULAR MEETING OF THE BOARD OF ADJUSTMENT  
OF THE CITY OF ROWLETT, TEXAS HELD IN THE ROWLETT  
MUNICIPAL CENTER, 4000 MAIN STREET, ROWLETT, TEXAS  
AT 6:15 P.M., November 22, 2010

**PRESENT:** Chairman Jerry Galloway; Vice-Chairman Juan Vasquez; Members, Raymond Moyer, Charles Lee; Alternate (voting member), Edra Brashear

**ABSENT:** Member Michael Lucas, Alternate Andrew Hall, Alternate Kennedy Bruce, Alternate Jarvis Morgan

**STAFF PRESENT:** Erin Jones, Planning Manager; Marc Kurbansade, Planner II; Stacey Chadwick, Deputy City Secretary

**1. Call to Order.**

Chairman Jerry Galloway called the meeting to order at 6:16 p.m.

**2. Consider approval of the minutes of the Regular Meeting of The Board of Adjustment from November 1, 2010.**

Member Raymond Moyer made a motion to approve the minutes of the Regular Meeting of The Board of Adjustment from November 1, 2010. Member Charles Lee seconded the motion. Motion carried with a 5-0 vote.

**3. Conduct a public hearing and consider evidence to determine if there was a clear intent not to abandon the non-conforming structure located at 3806 Melcer Drive. The subject property is further described as Block 5, Lot 6 of the Rowlett Business Park 2 Addition.**

Erin Jones, Planning Manager, came forward to present the case. Ms. Jones began by providing a brief background of the case including the property location and site photographs. Ms. Jones provided additional background information, including the date of foreclosure and the approximate time of property vacation by previous tenant based upon City utility accounts. Ms. Jones then provided the Board of Adjustment with the applicable Rowlett Development Code Sections (Sec. 77-902.F and Sec. 77-901). Ms. Jones then explained the additional materials that were provided to the Board in the Work Session. The main component of the additional materials that was highlighted was the timeline provided from November 1, 2008 until present. Ms. Jones then provided information regarding public notification, stating that eighteen notices were mailed, with two being returned—one in favor and one opposed.

Chairman Jerry Galloway asked Ms. Jones if the use was considered abandoned based upon the utility cutoff in March 2009. Ms. Jones stated, "yes".

Chairman Jerry Galloway asked Ms. Jones if building was empty from March 2009 until October 2009. Ms. Jones stated that she believed that this was the case.

Member Juan Vasquez asked Ms. Jones if building became nonconforming in August 2009. Ms. Jones stated that the building had been "non-conforming" prior to August 2009, but that is when the six-month timeframe would have become applicable.

Chairman Jerry Galloway opened the public hearing and swore in anyone wishing to speak.

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Mr. Castillo, 1819 South Buckner, Dallas, Texas, 75217, came forward to speak. Mr. Castillo stated that he was the current listing agent for the property. Mr. Castillo provided a timeline history of the property as outlined in the additional handout materials provided to the Board. Mr. Castillo provided a background of the foreclosure process for this property and how that related to occupancy status of the subject property. Member Raymond Moyer asked Mr. Castillo if previous tenants conducting business from this site. Mr. Castillo stated that he did not have direct contact with the previous tenants and that all communication was to have gone through their broker. Member Ray Moyer then asked what the nature of the eviction was. Mr. Castillo stated that after several attempts to contact the previous owner a certified letter was mailed to Florida. Chairman Jerry Galloway asked Mr. Castillo if on October 6, 2009, he witnessed any activity on the site. Mr. Castillo stated that he noticed a "for sale" sign. Mr. Castillo also stated that he does not know if the building was used for any purpose other than storage. Chairman Jerry Galloway asked Mr. Castillo what was moved out of the site and what contributed to the cleanup costs of approximately \$11,000. Mr. Castillo stated that the prior tenant utilized chemical colorings for stonework for their operation and an environmental cleanup firm needed to be contracted in order to properly dispose of the chemicals. Mr. Castillo added that there were also several pieces of equipment to remove including a fork lift. Member Juan Vasquez asked Mr. Castillo when he first spoke to Mr. Raines (the previous listing agent). Mr. Castillo stated it was October 2009. Member Juan Vasquez then followed up with a question if there were any leads for the property. Mr. Castillo stated that there were not any leads and that everyone thought it was overpriced. Member Juan Vasquez asked Mr. Castillo if the property was maintained other than "for sale" signs in order to be considered to be in "marketing" condition. Mr. Castillo stated that the property was maintained and there were no visible signs of damage or neglect.

Mr. Kevin Mitchell, applicant, 2340 FM 740, Heath, Texas, came forward to speak. Mr. Mitchell stated that he was Director of Archer OPTX. Mr. Mitchell provided a background of his company and that they would like to expand their current operations in the existing building that they are occupying, but that would displace the other tenant in the building – Steps Dance Studio. Mr. Mitchell then stated that he has looked for several places that the Steps Dance Studio could relocate to, and the building at 3806 Melcer seemed like a good option. Member Raymond Moyer asked Mr. Mitchell if he has made previous offers on other locations. Mr. Mitchell stated that he had made previous offers at other locations, including 3313 Enterprise Drive. Alternate Edra Brashear, asked Mr. Mitchell if he tried to purchase the property previously. Mr. Mitchell stated in the affirmative.

Ms. Shannon DeWeese, 3409 Enterprise Drive, Rowlett, Texas, came forward to speak as the real estate agent representing Mr. Kevin Mitchell. Ms. DeWeese stated that in speaking with prior listing agent for subject site, the intent was not to abandon the business, but economic conditions preventing this from happening. Chairman Jerry Galloway asked Ms. DeWeese when she first visited the building. Ms. DeWeese stated that she visited the site in mid to late January 2010, and remembered a crew being there as well as electricity being turned on. Ms. DeWeese further stated that the next time they visited the site was March 2010, and that Mr. Castillo stated the electricity was turned off at this time to save money on bills.

With no other speakers Chairman Jerry Galloway closed the public hearing.

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Member Juan Vasquez asked Ms. Erin Jones to confirm if water was shut off in March 2009. Ms. Jones replied in the affirmative. Member Raymond Moyer asked Ms. Erin Jones what level of activity allows a Certificate of Occupancy to remain active. Ms. Jones stated that staff initially looks at City utility bills to verify if property is actively being used, but that there are other signs of activity.

The Board then collectively discussed the issue at hand. Vice Chairman Juan Vasquez stated that the previous business chose to close the Rowlett location and move to Florida; the property subsequently went into foreclosure. Chairman Jerry Galloway then reiterated the timeline provided by the applicant.

Chairman Jerry Galloway then re-opened the public hearing in order to allow one additional speaker to provide a point of clarification. Ms. Shannon DeWeese stated that Mr. Raines was actively marketing the property in the past. Chairman Jerry Galloway confirmed that that was his understanding.

Chairman Jerry Galloway then re-closed the public hearing.

Member Raymond Moyer made a motion to approve the reinstatement of the non-conforming status of the structure as presented. Motion died for a lack of a second. Member Juan Vasquez made a motion to deny the reinstatement of the non-conforming status of the structure as presented. Member Charles Lee seconded the motion. Motion carried with a 4-1 vote.

- 4. Conduct a public hearing and consider evidence to determine if there was a clear intent not to abandon the non-conforming structure located at 5001 Gordon Smith Drive. The subject property is further described as Block 4, Lot 19 of the Toler Industrial Park 2 Addition.**

Marc Kurbansade, Planner II, came forward to present the case. He began by providing a brief background including the property location and a site photograph. Mr. Kurbansade then explained Section 77-902.F of the Rowlett Development Code as being the applicable section of the Code pertaining to abandonment of use. Mr. Kurbansade then provided a background of the occupancy history of the site, stating the site was most recently occupied as a woodworking/cabinet production use until October 2009 according to City utility bills and information provided by applicant/property owner. Mr. Kurbansade then reiterated the applicant's statement as provided in the application that the intent was not to abandon the use. Mr. Kurbansade then stated that the Board should consider the lapse of occupancy of the site from October 2009 until present. Mr. Kurbansade then concluded by providing a summary of the public hearing notices that were returned—one in favor and one against.

Chairman Jerry Galloway asked if staff knows the date of death of the previous owner.

Chairman Jerry Galloway opened the public hearing and swore in anyone wishing to speak.

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Dave Casey, 7108 Claybrook, Dallas, Texas, came forward to speak as applicant of the request. Mr. Casey provided a background of the history of occupancy of the site as well as attempts at obtaining tenants. Mr. Casey explained the maintenance/clean-up efforts that were necessary to make the property marketable. Mr. Casey then made a note of a potential tenant that was not granted a Certificate of Occupancy in approximately June 2009 because the use had ceased occupancy for a period of greater than 180 days. Alternate Edra Brashear asked Mr. Casey when he placed a Lease Sign on the property. Mr. Casey stated that the sign was placed in October 2009. Ms. Brashear asked Mr. Casey how long clean up of the property had taken. Mr. Casey stated that it took approximately 1 ½ months because the individual they contracted with only did the work on weekends and part-time. Mr. Casey stated that clean-up started before Christmas at which point he removed the lease sign (for three weeks) until January 2010. Member Juan Vasquez asked Mr. Casey what proof he had about cleaning or about placement of lease sign. Mr. Casey stated that he hired an individual on a "barter" basis and does not have proof of placement of the lease sign. Chairman Jerry Galloway stated that he believed we need to take the applicant at his word as he is under oath. Chairman Jerry Galloway asked Mr. Casey when the previous tenant (Mr. Presley) passed. Mr. Casey stated that he believed in was the first half of October 2009. Chairman Jerry Galloway then asked what steps he had taken in October 2009 to lease property. Mr. Casey stated that they place a lease sign in the end of October 2009 in order to try to lease property. Chairman Jerry Galloway asked when cleaning up started. Mr. Casey stated before Christmas 2009. Chairman Jerry Galloway then provided a recap of the powers of the Board of Adjustment.

With no other speakers Chairman Jerry Galloway closed the public hearing.

The Board commenced deliberation. Member Charles Lee made a motion to approve the reinstatement of the non-conforming status of the structure as presented. Member Raymond Moyer seconded the motion. Motion carried with a 5-0 vote.

- 5. Conduct a public hearing and take appropriate action on a variance request. The applicant requests a variance from the limitation of the number of driveway connections permitted per single-family residential lot, per the requirements found in Section 77-505.F.1(a)(1) of the Rowlett Development Code, to allow for one additional driveway cut in excess of the maximum of one that is currently allowed. The subject property is located at 5506 Fairmont Drive, being Lot 4, Block 11 of the Highland Meadows #2 addition.**

Marc Kurbansade, Planner II, came forward to present the case. He began by providing a brief background including the property location and site photographs. Mr. Kurbansade then provided an exhibit depicting the distance between the existing driveway and the proposed driveway as being approximately 120-feet. Mr. Kurbansade then provided a background of the request, stating that the process was initiated by a private citizen concern that an existing carport did not have proper driveway access. City of Rowlett Code Enforcement staff contacted the applicant/property owner and the property owner contacted planning staff. Mr. Kurbansade stated that since the property owner already has one driveway connection and he was not proposing a circular driveway, a variance was necessitated to allow a second driveway connection. Mr. Kurbansade provided a summary of the applicable Code Section (Section 77-505.F.1(a)(1) of the Rowlett Development

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Code) pertaining to driveway connections as well as the applicable Code Section (Section 77-812.A) pertaining to the powers of the Board of Adjustment. Mr. Kurbansade explained that the location of the home on the south end of the site along with the size of the property make this property basically unique. Mr. Kurbansade then explained that the intent of Section 77-505.F.1(a)(1) of the Rowlett Development Code is mainly from a safety perspective. Mr. Kurbansade then stated that the applicant could technically build a circular driveway by-right but could not build an additional driveway without the circular drive connection. Mr. Kurbansade then concluded by providing a summary of the public hearing notices that were returned—one in favor and one against.

Alternate Edra Brashear asked Mr. Kurbansade to clarify the requirements for a circular drive. Mr. Kurbansade reiterated the code requirements for a circular drive and stated that a circular drive would be permitted at this location. Board Member Moyer asked if the applicant could just construct a walkway. Mr. Kurbasade replied that he could not.

Chairman Jerry Galloway opened the public hearing and swore in anyone wishing to speak.

Justin Ferguson, property owner, 5506 Fairmont Drive, Rowlett, Texas came forward to speak. Mr. Ferguson provided a background of his property as well as his intent to utilize the new driveway to store recreational watercraft and his third vehicle. Mr. Ferguson stated that the traffic, particularly school traffic is heavy in this location and he believes the ability to store his third vehicle of the road will help out the situation. Member Charles Lee asked Mr. Ferguson if the parking is for safety issues as well as to get the third vehicle off of the street. Mr. Ferguson responded in the affirmative.

With no other speakers Chairman Jerry Galloway closed the public hearing.

The Board commenced deliberation. Member Charles Lee made a motion to approve variance request as presented. Member Raymond Moyer seconded the motion. Motion carried with a 5-0 vote.

**6. Discuss and elect Chair and Vice-Chair positions.**

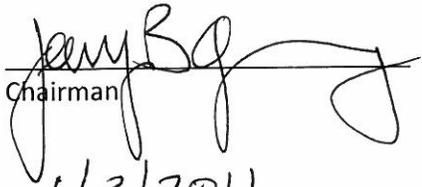
Chairman Galloway offered for discussion whether the rest of the Board would desire to postpone the elections until a later date when all members could be present. Chairman Galloway stated that if the elections were postponed they would need to be to a date and time certain, potentially the next regularly scheduled meeting on January 3, 2011 at 7:00pm.

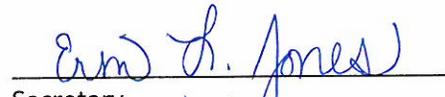
Member Juan Vasquez made a motion to postpone the elections until the next regularly scheduled meeting on January 3, 2011 at 7:00pm. Member Raymond Moyer seconded the motion. Motion carried with a vote of 5-0.

**7. Adjournment.**

Member Charles Lee made a motion to adjourn the meeting at 7:45 p.m. Member Raymond Moyer seconded the motion. Motion carried with a 5-0 vote.

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Chairman  
1/3/2011  
Date

  
Secretary  
1/3/11