

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 6:30 P.M., AUGUST 1, 2011

PRESENT: Vice-Chairman Juan Vasquez; Member Charles Lee; Alternates Edra Brashear, Andrew Hall

ABSENT: Chairman Jerry Galloway; Members Raymond Moyer, Michael Lucas; Alternates Jarvis Morgan, Kennedy Bruce

STAFF PRESENT: Erin Jones, Planning Manager; Marc Kurbansade, Senior Planner; Michele Berry, Planning Intern; Ashley McCoy, Development Services Technician

1. Call to Order.

Vice-Chairman Juan Vasquez called the meeting to order at 6:34 pm.

2. Consider approval of the minutes of the Regular Meeting of the Board of Adjustment from May 2, 2011.

Member Charles Lee made a motion to approve the minutes of the regular meeting of the Board of Adjustment from May 2, 2011. Alternate Edra Brashear seconded the motion. Motion carried with a 4-0 vote.

3. Conduct a public hearing and take appropriate action on an interpretation of nonconforming status. The applicant seeks to present evidence that there was a clear intent not to abandon the nonconforming use located at 3609 Dennis Street. Pursuant to Section 77-902.F of the Rowlett Development Code, the Board of Adjustment may consider evidence by the owner that there was a clear intent not to abandon the use, structure or property even though the use, structure or property was discontinued for 180 days or more. The subject property is located at 3609 Dennis Street, being Lot 7 and 32 feet of lot 8 of the Oliver Addition.

Erin Jones, Planning Manager came forward to present the case. She presented a location map and stated that the property has a 797 square foot single family home on it and is within the Mixed Use – Downtown zoning district. She noted that based upon utility records the prior use ceased on or about December 8, 2009 and utility records provide a consistent method for staff to determine when a use discontinues. Mrs. Jones stated that the applicants contend that they did not intend to abandon the property and have maintained the property for the last two years by arranging for lawn care and addressing any code violations in a timely manner. She also stated that personal belongings remain in the home and storage building on the site and the nonconforming issue became apparent when the applicants listed the property for sale and the realtor contacted staff about the property. Mrs. Jones noted that per the Rowlett Development Code the Mixed Use – Downtown zoning district is intended to accommodate both residential and non-residential uses of moderate intensity however the use chart explicitly prohibits single family uses and the only type of dwelling allowed in this zoning are mixed use dwellings. These two sections of the code conflict with one another and in such a case the stricter of the provisions applies and therefore the single family residence is a nonconforming use within the district. Mrs. Jones noted that the intent of nonconformities is to curtail investment in nonconformities and bring about their eventual elimination in order to preserve the integrity of the code and goals of the City of Rowlett. She stated that staff evaluated the property to be predominately surrounded by occupied single family residences and there is no

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indication that the area will completely redevelop in the foreseeable future therefore while nonconformity may curtail investment in the individual property it is unlikely to cause the entire neighborhood to redevelop in a timely manner. She also stated that the use does not go against the intent of the zoning district as defined by the Mixed Use – Downtown definition to allow the single family use to continue and staff would recommend approval to reinstate the residential use. Board member Lee inquired how many days beyond the allowed 180 the nonconforming use had continued before the issue was observed and Mrs. Jones responded that the utilities were disconnected in December of 2009, over a year and one-half prior. Vice-Chairman Vasquez asked if the applicant were able to sell the home if the new owners would be able to expand the square footage of the house and Mrs. Jones answered that at that time the house would not be permitted to be expanded to increase the nonconformity of the site and would have to brought up to the Mixed Use – Downtown zoning requirements including a minimum four story height and setbacks as defined by downtown regulations. Vice-Chairman Vasquez clarified that the site would have to remain as is and asked if the applicant was aware of that fact to which Mrs. Jones replied that they were. Alternate Andrew Hall asked if the house could be remodeled or refurbished and Mrs. Jones answered that minor repairs and maintenance could be done but square footage could not be expanded. Vice-Chairman Vasquez opened the public hearing and recognized one of the applicants Paula Applegate to speak. She stated that she co-owned the property with her brother and sisters and that the sister who had been living in the property had surgery and went to a medical establishment in Tyler. Mrs. Applegate also stated that the sister's belongings and a few of those belonging to the family were still in the house and on the property. The utilities were disconnected due to the fact that there was no one at the house to look after them and prevent damage. The family was made aware that the sister would not be able to return to the home and the decision was made to sell the property to someone that could properly maintain the home and property. Vice-Chairman Vasquez pointed out that they family had arranged for lawn care and Mrs. Applegate affirmed they had. Vice-Chairman Vasquez closed the public hearing and Board member Charles Lee made a motion to approve the request that there was a clear intent not to abandon the use. Motion seconded by Alternate Andrew Hall. Motion passes with a 4-0 vote.

- 4. Conduct a public hearing and take appropriate action on an appeal of an administrative decision. The applicant is requesting an appeal of an administrative decision by the Planning Department regarding what constitutes the definition of a bay window and its allowable encroachment into a side setback. The subject property is at 3721 University Drive, being Lot 23, Block 4 of the Ridgecrest I Addition.**

Michele Berry, Planning Intern came forward to present the case. She presented a location map showing the property to be just north of Miller Road and just west of Rowlett Road. She showed a photo of the existing bay window that currently projects fourteen inches from the wall and just over eight inches into the side setback which is permitted under the Rowlett Development Code providing that bay windows may project no more than two feet into any required yard setback. She stated that the house falls in the zoning of Planned Development 2-7-84A. Ms. Berry presented the proposed exterior renovation to the home and explained that staff did not feel that the proposed construction met the definition of what constitutes a bay window. The code does not expressly define window or bay window however it does allow for the use of common phrases not specifically defined within the code and staff consulted the codes of other cities for reference. She gave the

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definition of window and presented several examples of bay windows as approved by those cities referenced. Ms. Berry stated that on June 14, 2011 a letter was sent from the Planning Manager, Erin Jones stating staff's interpretation that the proposed development does not constitute the definition of a bay window and therefore the renovation would not be permitted due to an eight inch encroachment on the side yard setback. The applicant is appealing the administrative decision because she feels that the addition does meet the definition of a bay window. Three responses to the public hearing notices that were mailed out were received and the applicant was able to obtain signatures from neighbors in the area supporting the request. Board member Lee inquired what was proposed in the spaced created by the extension of the bay window and Ms. Berry responded that it was proposed to be a walk-in shower in the existing bathroom. Vice-Chairman Vasquez clarified that the code had been interpreted to read that bay windows could project no more than two feet into any required yard setback not withstanding any provisions of the code bay windows may not be included in determining lot coverage and that lot coverage defines building footprint and asked what the code defined lot coverage to be. Erin Jones, Planning Manager read that lot coverage is defined as the amount percentage of impervious coverage which includes primarily surface parking and permanent structure building footprints including accessory structures. Vice-Chairman Vasquez asked if the bay window extended to the ground if that was considered to increase the footprint of the building and Mrs. Jones stated that she had interpreted the code that it would given that only a small portion of the addition would be window and the remaining portion would be siding. Vice-Chairman Vasquez asked if the addition of more window space would change the interpretation and Mrs. Jones replied that it would still increase the building footprint and the only way to meet the interpreted definition of a bay window would be if it were cantilevered out past the foundation. Vice-Chairman Vasquez opened the public hearing and recognized the applicant Sylvia Havre-Carter to state that the current bay window is located in the bathroom in the bathtub area. She stated that when standing in the bathtub there is a shelf like space protruding from the house that has a window and with the moisture from the bathroom the protrusion has begun to separate from the house and damage the inside of the house. She also stated that for the replacement and repair of the damage she would like to increase the space to allow for a walk-in shower in the event that she or her husband becomes handicapped. Vice-Chairman Vasquez stated that as the Board of Adjustment they must make a decision based on the information provided and the code and not based on what each member thinks is right or wrong. Mrs. Havre-Carter presented several definitions of bay windows and examples that her research had found. Vice-Chairman Vasquez stated that his concern was that the code stated that bay windows should not be counted towards the lot coverage and that lot coverage included the building foundation. Mrs. Havre-Carter inquired if it would be a possibility to install a plate under the bay window to elevate the inside of the structure off the ground so no foundation would need to be poured adding to the footprint of the house. Vice-Chairman Vasquez stated that the objective was to interpret the code as it pertains to the definition of a bay window. Board member Charles Lee stated that extending the bathroom past the side of the home would be an addition to the footprint and not a bay window. Mrs. Havre-Carter stated that she was replacing a bay window and based on the definitions from her research anything that protrudes from the side of the house and contains one or more windows would be a bay window. Board member Charles Lee asked if the addition would be in the shower and Mrs. Havre-Carter replied that it would be as it is currently in the bath tub. Alternate Andrew Hall clarified that she would be taking the existing bath tub out and installing a shower with seat in the same place and Vice-Chairman Vasquez stated that there would be no windows. Mrs. Havre-Carter showed

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photos of the bath tub and window from inside the bathroom and Vice-Chairman Vasquez commented that the existing window was his interpretation of a bay window and to extend the protrusion to the ground level would create useable floor space increasing the square footage of the home. He noted that the signatures from the neighbors showed no objection and Mrs. Havre-Carter stated that her neighbors with similar windows were no longer using the bathrooms due to the same issue. Vice-Chairman Vasquez closed the public hearing and Alternate Edra Brashear asked what options the Board had. Vice-Chairman Vasquez answered that the Board could uphold staff's interpretation that the addition would not be a bay window and move forward with the variance request or could determine that the addition did meet the definition of a bay window. He stated that his interpretation was that it was not a bay window because it would increase lot coverage and lot coverage specifically mentions the foundation of the home. Alternate Andrew Hall reviewed the options for the Board's decision and Board member Charles Lee made a motion to deny the appeal and uphold staff interpretation. Motion seconded by Alternate Edra Brashear. Motion passes with a 4-0 vote.

- 5. Conduct a public hearing and take appropriate action on a variance request. The applicant is requesting a variance from interior side setback requirements found in the approved Planned Development Ordinance (Ord. No. 02-07-84A) for the subdivision, specifically a reduction in the interior side setback from 7.5-feet to 6.8-feet. The subject property is at 3721 University Drive, being Lot 23, Block 4 of the Ridgecrest I Addition.**

Michele Berry, Planning Intern came forward to present the case. She stated that this was a continuation from the previous item on the agenda and that the home was located in Planned Development 2-7-84A with a required side setback of 7.5 feet or ninety inches for a single story residence. She noted that the proposed renovation would continue to project fourteen inches from the wall of the house and just over eight inches into the setback and with the Board's interpretation that it would not be a bay window a variance is required for the encroachment of the setback. Ms. Berry reviewed the requirements set forth in the Code for granting a variance and stated that staff was unable to find any properties of the location that would make it unique and eligible for a variance. Staff would recommend that the variance for a reduction in the side setback be denied as there exists no true hardship arising from the land but requests if the variance were approved to limit the encroachment to nine inches. She noted that staff had received no negative responses from the notices sent out and at the inquiry of Board member Charles Lee, stated that the applicant had received approval from the adjacent neighbor on the side of the property where the addition would be constructed. Vice-Chairman Vasquez inquired if a building permit could be approved for the construction if the variance were granted and Erin Jones, Planning Manager stated that plan review had ceased when the encroachment of the setback became an issue and that if the variance were granted the Building Inspections Department would review plans at that time and issue a permit accordingly. Vice-Chairman Vasquez recognized Sylvia Havre-Carter to answer a question if the space was needed for a handicap accessible shower and she stated that it was to allow them to place a shower that she and her husband would be able to step in and out of as they age and potentially lose mobility versus the high sides of a bath tub. Alternate Andrew Hall asked if there were currently any permanent occupants residing in the house that were physically handicapped and Mrs. Havre-Carter responded that her sister was physically handicapped and did visit on occasion but at this time there were no permanent occupants fitting that description. Alternate Hall

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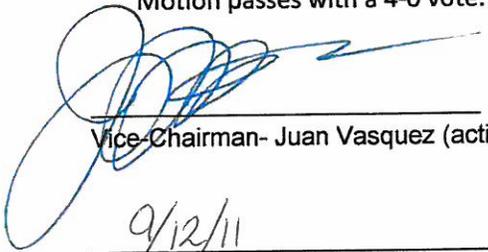
inquired what other alternatives Mrs. Havre-Carter could implement and she responded she could only have the window repaired. Alternate Hall asked if the proximity of the air conditioner to the addition would cause any problems with restriction of air flow and Mrs. Havre-Carter responded that the air conditioning contractor had assured her it would not or that the condensing unit could be moved. Mrs. Havre-Carter pointed out that on the survey of her property her house currently sits exactly on the setback at the front corner but encroaches into the setback at the rear corner and the addition on the side of the house would not encroach into the setback any more than the rear of the house currently does. Vice-Chairman Vasquez closed the public hearing and Alternate Hall asked to see the photo of the outside of the home from the street view once more and Mrs. Havre-Carter showed the photo and commented that a person would not be able to see the addition from the road due to the landscaping and air conditioning unit blocking the view. Vice-Chairman inquired if there was any precedent the Board should follow in making their decision and City Attorney David Berman replied that the Board had to make each decision based on the merits of the individual case and that this decision would not follow precedent nor set one for the future. Board member Lee stated that the basis for a variance was hardship and he did not feel that a hardship existed and Mrs. Havre-Carter requested to speak so Vice-Chairman Vasquez reopened the public hearing. Mrs. Havre-Carter stated that approximately one year ago the Board had granted a variance for a house requesting a five foot variance from the setback requirements due to the owner's physical handicap and noted that though she or her husband may not be physically handicapped at the moment, with both of their parents losing mobility with age it was possible that she or her husband may also lose mobility and the proposed construction would permit them to live in their home longer. Alternate Brashear inquired if the applicant was experiencing issues with the window and Mrs. Havre-Carter showed a photo of the cracks where the window was separating from the house. Alternate Brashear noted that the proposed improvement would reduce the issues currently being experienced by the owner. City Attorney David Berman commented that according to Code, the physical condition or potential future need of the property owner is not considered an unnecessary hardship which would instead be an issue specific to the real estate and separate and independent of the property owner. The fact that the Board may or may not have granted a variance in the past has no bearing on the current case however if there exists a physical condition associated with the structure that creates an unnecessary hardship that would not be any different than an odd shaped lot. Mrs. Havre-Carter reminded the Board that the rear corner of the house did already encroach past the required setback and Vice-Chairman Vasquez requested a copy of the survey that the Board could review. Vice-Chairman Vasquez clarified that the setback was 7.5 feet and Marc Kurbansade, Senior Planner stated that the setback is measured from a point equidistant from the front lot line to the rear lot line and across the sides of the lot so the rear corner of the house could be over the setback due to the angle in the shape of the lot and if the rear corner did encroach past the setback it would be immaterial to the variance request. Mrs. Havre-Carter inquired if a variance would have been requested for that encroachment and Mr. Kurbansade stated that it would have been part of the approved site plan and no variance was needed. Vice-Chairman Vasquez closed the public hearing and stated that he felt it was for a future potential hardship but not a currently existing hardship. Alternate Brashear inquired if the problems the owner faced due to the current damage to the structure could be considered a hardship and Vice-Chairman Vasquez responded that the Board members would need to make individual interpretations. Board member Lee stated that there was no hardship based on lot size or shape but the applicant wanted to extend useable space and Vice-Chairman Vasquez noted that the Board had to make their decision by the letter of the law and code

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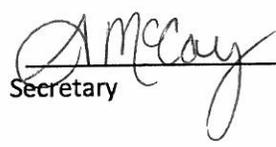
interpretation and though the neighbors may not object, future owners of surrounding lots may have objections. He asked what would need to be done if the vote was not unanimous and Mrs. Jones responded the Board could either reword the motion and vote again or simply not pass the motion. City Attorney David Berman reviewed the criteria for a variance and the definition of unnecessary hardship. Alternate Hall reviewed the survey and asked if he understood that the protrusion of the proposed construction would not go out past the rear corner of the house which was already encroaching into the setback and Mr. Kurbansade stated the proposed construction would protrude from the straight wall on the side of the house but the angle in the lot shape caused the rear of the house to encroach into the setback. City Attorney David Berman responded that there did not have to be an explanation of what the Board thought the hardship to be if they found there was any hardship in answer to Alternate Hall's question of how they should word the cause. Board member Lee made a motion to deny the request for a variance and no second followed so the motion was removed from the table. Alternate Andrew Hall made a motion to approve the request to allow for an interior side setback reduction from 7.5 feet to 6.8 feet. Motion seconded by Alternate Edra Brashear. Motion was not approved with a 2-2 vote. More discussion followed with Vice-Chairman Vasquez stating that he could not support the request because his interpretation of hardship included something that is not induced by want or financial factors but instead is based on a need and he did not feel that evidence has been presented to that effect. He also stated that he could not support a request for future potential needs when the owner may not retain the property for that length of time. Board member Lee stated that he could not support the request because his interpretation of the Code stated this request did not meet the criteria for a variance that the Board would have authority to grant. Alternate Brashear noted that the applicant had a potential future hardship and her sister would require the additional space if she were to visit. Vice-Chairman Vasquez requested the definition of hardship to be presented once more and read aloud that a variance is not intended to remove inconveniences or financial burdens that the requirements of the code may impose on property owners but instead is intended to provide relief where the requirements of the code render the land difficult or impossible to use due to some unique physical attribute of the land itself. Alternate Hall stated that he felt a broad interpretation of the design and set of the lot could meet the criteria for a variance and Vice-Chairman Vasquez noted that each lot in the subdivision was similar to one another in size and shape. Alternate Brashear stated that with the clarification of the definition she had new understanding of the criteria and made a motion to deny the variance request. No second followed and a vote did not take place.

6. Adjournment.

Alternate Edra Brashear made a motion to adjourn. Motion was seconded by Member Charles Lee. Motion passes with a 4-0 vote. Vice-Chairman Vasquez adjourned the meeting at 7:39 pm.



Vice-Chairman- Juan Vasquez (acting Chairman)



Secretary

9/12/11

Date