

MINUTES

BOARD OF ADJUSTMENTS AND APPEALS

SPECIAL MEETING

Tuesday, June 16, 1992

10:00 a.m.

Members present: David Wright, Joyce Rigler, Lewis Ozuna, Belvin Harris, Don Hawkins, and J. D. McCain.

Members absent: Ben Turbeville.

Staff present: Lyle Drescher, Pat Payne and Mack Barnhart, City Attorney.

Visitors: List.

The first item of business was calling the meeting to order at 10:05 a.m by Chairman Don Hawkins.

The second item on the agenda: The second item on the agenda was the swearing in of newly appointed Board member, J. D. McCain.

The third item on the agenda was consideration of and action on the minutes of the regular meeting of May 19, 1992. A motion was made by David Wright and seconded by Lewis Ozuna to approve the minutes as presented. Motion carried by the following vote: Ayes: David Wright, Joyce Rigler, Lewis Ozuna, Belvin Harris, Don Hawkins, and J. D. McCain. Nays: None. Absent: Turbeville. Abstentions: None.

The fourth item on the agenda was consideration of and action on the minutes of the special meeting of May 26, 1992. A motion was made by Belvin Harris and seconded by Joyce Rigler to approve the minutes as presented. Motion carried by the following vote: Ayes: David Wright, Joyce Rigler, Lewis Ozuna, Belvin Harris, Don Hawkins, and J. D. McCain. Nays: None. Absent: Turbeville. Abstentions: None.

The fifth item on the agenda was consideration and action on a request by Henry Kuhn, Jr. for a nine foot variance to the side yard setback requirements of the Zoning Ordinance for his residence at 1537 Burns City Road. Mr. Hawkins asked if anyone present would like to speak in favor of the request. Mr. Kuhn spoke, stating that his house is too close to the side yard line, bordering Kenneth Mitchell, and he would like a variance to that effect. The house, Mr. Kuhn continued, was added on to some five and one half years ago [NOTE: Building permit was obtained 12/02/86] and he would like to get a nine foot variance to make the side yard setback legal. The lot is 136 feet wide.

Mr. Hawkins asked if anyone else wanted to speak either for or against the request. Kenneth Mitchell said that the problem he sees is that if he decides to build another structure on the lot he owns between his and Mr. Kuhn's property, the structure will be closer together than they should be.

Mr. Hawkins asked Mr. Dresher if he had any staff comments. Mr. Dresher responded by saying that the staff report explains the situation. FACTS: The permit application in 1986 indicated that the setback for the side yard would be 13'6"; the site plan presented with said application also indicated the correct setback. However, the structure, being an attached garage, was not constructed according to the building permit or the site plan as the applicant applied for at that time. Therefore, a nine foot side yard setback is needed because the structure was built 4' 6" from the side yard setback line.

Mr. Harris confirmed with staff that the garage portion of the structure was too close to the boundary line; Mr. Dresher replied that was correct.

Mr. Hawkins asked Mr. Barnhart if he had any comments on the issue. Mr. Barnhart replied, "No, not really. It is within the Board's jurisdiction to do it. Just grant the variance-from a legal standpoint....you (the Board) have the authority to do it, under the guidelines of the findings necessary for the Board of Adjustment...within its power. You know as much as I do, your authority."

Mr. Dresher handed copies of a petition to the Board presented by Mr. Kuhn and signed by neighboring property owners (7) in support of the variance request for the structure as it is now (copy attached).

Mr. Hawkins asked Mr. Kuhn why he built the structure 4' 6" from the side yard line rather than the 13' 6" setback that he presented to the City Inspection Department for the permit. Mr. Kuhn replied that he was told prior to his obtaining the permit that five feet was the side yard setback. At that time he started on the house (foundation) before he picked up the permit (and plot plan approved). When he returned to get the permit, he was told that it would be different.

Mr. Harris asked if the structure were approved after completion of the building. He was told it was not (a final inspection was not called for in this case).

At that time discussed ensued as to the correct and appropriate determination for side yard setbacks for Single Family lots. Mr. Barnhart surmised that the minimum setback is ten feet (in fact, he was noting the minimum required side yard for Single Family and Two Family Dwellings, Attached, Section 9-105, which is ten feet; Mr. Kuhn's house is a Single Family Dwelling, Detached ref: Definitions to the Zoning Ordinance No. 25-2-71, 101A-8-76, 154-12-79, Section 8-600 - Single Family Dwelling (Detached) defined as follows - "A dwelling designed and constructed for occupancy by one family and located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract and occupied by one family." (Because of this deduction, a 5' 6" variance was granted rather than a variance of 9'.)

Joyce Rigler asked if follow ups are required after permits are obtained. She was told that the applicant is responsible for calling for inspections on each phase of construction, and, if he doesn't, he is responsible for any fault that may occur with the structure. She also asked if Mr. Kuhn asked for a follow up inspection; she was told that there was no documentation in the file to indicate that an

inspection had been called for or done. M. Hawkins said what bothered him most about the situation was that a plot plan was submitted for a certain side yard setback, but was not built to that specification.

After no further discussion, a motion was made by Joyce Rigler and seconded by J. D. McCain to **grant a 5' 6" side yard setback variance** at 1537 Burns City Road. Motion carried by the following vote: Ayes: Joyce Rigler, Lewis Ozuna, Belvin Harris, and J. D. McCain. Nays: Don Hawkins. Absent: Turbeville. Abstentions: David Wright.

After no other business to come before the board, the meeting was adjourned at 10:45 a.m.