

**MINUTES**  
**BOARD OF ADJUSTMENTS**  
**REGULAR MEETING**

**Tuesday, November 19, 1991**

**10:00 a.m.**

**Members present:** Bill Harris, Don Hawkins, Ben Turbeville, Joyce Rigler, and Robert Boone.

**Members absent:** Lewis Ozuna David Wright.

**Staff present:** David Hall and Pat Payne.

**Visitors:** List.

The meeting was called to order at 10:06 a.m by Chairman Don Hawkins.

The **second item on the agenda** was consideration and approval of the minutes from the regular meeting of September 17, 1991. A motion was made by Robert Boone and seconded by Bill Harris to approve the minutes as presented. Motion carried by the following votes: Ayes: Turbeville, Harris, Hawkins, Boone, and Rigler. Nays: None. Absent: Wright and Ozuna.

The **third item on the agenda** was consideration of and action on an appeal by Joyce Fletcher to the decision of the Building Official for denial of a Certificate of Occupancy for a mobile home as a fixed dwelling at 405 N. Chestnut Street.

Prior to opening of the public hearing on the appeal, Mr. Hawkins presented a memo from the City Attorney, which was delivered to all board members, stating, according to Mr. Hawkins that it appeared that the board possibly did not have jurisdiction to hear the appeal from Ms. Fletcher. Mr. Barnhart, City Attorney, clarified Mr. Hawkins' concerns, stating that the board did have jurisdiction to hear the appeal, but solely based on whether or not the Building Inspector erred in denial of issuance of the Certificate of Occupancy.

At that time Mr. Hawkins opened the public hearing on the issue. He asked if anyone present wanted to speak in favor of the request by Joyce Fletcher. Joyce Fletcher addressed the Board and stated that she wished to keep their premises as they are under the Specific Use Permit [as granted by the City Council on October 1, 1991]. She pointed out that buildings surrounding her are also in violation [of **Code-being the Fire District #1**]. She said she felt her mobile home is built of better fire retardant than their office building [the GWF Manufacturing business]. She continued by saying that they want to keep their mobile home as placed because, she said, she feels that it is a "fire ranger's station in the forest".

Mr. Hawkins asked if anyone else wanted to speak in favor of the appeal; there was none. He asked if anyone wanted to speak against

the appeal. Billy G. Reed stated that he felt that if the City has regulations and rules, "we ought to follow them-if not, we ought to get rid of the ordinance(s)".

Mr. Barnhart said that "in support of the Building Official's denial, then we [the Board] should hear from him the basis of the denial".

David Hall, Building Inspector, stated that according to the Zoning Ordinance and Building Code, every building that is either moved in or continued to be occupied or constructed within the City, requires that it have a Certificate of Occupancy before that building is occupied. Based upon the Building Code, there are several steps that have to be observed, i.e. what type of structure is being placed where, and one stipulation is if it is in a fire district, which is comprised of a more congested area. Only Type I through IV structures are allowed in a fire district [the mobile home is a Type VI structure]. However, Type VI structures are located within the Fire District, but, Mr. Barnhart said that the majority of them were grandfathered in when the Fire District was established in 1957. Mr. Hall said the main idea of his decision is that he "**does not have any right to vary from the Code**". He further stated that the intent of the Certificate of Occupancy is that all minimum standards (requirements) of the Building Code [and Zoning Ordinance, Section 19-100] have to be met before anyone can occupy that structure.

Mr. Hawkins asked Mr. Hall how many buildings within the fire zone (district) would meet the criteria of the Building Code regulating that zone. Mr. Hall answered that probably not more than ten, but he said he had not done a count. Mr. Hall continued by explaining requirements of the Fire District. Further, he said he did not want to put his name on a Certificate of Occupancy for the Fletcher's mobile home because of what he considers a discrepancy in conformity to the building and fire codes.

Mr. Hawkins asked if anyone else had questions concerning the appeal. Joyce Rigler confirmed the purpose of the public hearing, that of the Board deciding whether or not the Building Inspector erred in his decision. Mr. Hawkins said that is what he understands and confirmed same with Mr. Barnhart. Mr. Barnhart stated that either side can appeal a decision, either the City or the Fletchers, depending on how the Board decides, and the appeal will be made to District Court.

Mr. Harris confirmed that with the Specific Use Permit, as allowed by the City Council, the mobile home can remain on the premises, unoccupied, unless the appeal as presented is overturned. He was told that is correct-the zoning is appropriate. Mr. Barnhart quoted Section 19-103 of the Zoning Ordinance to Mr. Harris which states the basis for requirement of a Certificate of Occupancy. Mr. Harris asked if a Certificate of Occupancy was issued two years ago when the first Specific Use Permit for the mobile home was first granted; Mr. Barnhart replied that it was not, at least not that he was aware of. The mobile home was originally moved onto its present location without knowledge of the City and then a Specific Use Permit was applied for. Mr. Harris asked if the Council knew about the Fire District, Building Code and Fire Code restrictions for placement of the mobile home. Mr. Barnhart replied that assumption would be appropriate [that the Council knew]. Mr. Harris said that it would have to be assumed that they knew [regarding the codes].

Mr. Barnhart explained the right to appeal to the Board of the Board, the Fletchers, and the Building Official.

A variance, as opposed to a Specific Use Permit, was explained to the Board. The mobile home was authorized to be allowed on the site where it is presently located by a Specific Use Permit as originally allowed by the City Council in 1989. Mr. Hawkins said he thought that no concerns or disagreement with the Specific Use Permit was voiced when the public hearings were held and the City had no objections. Mr. Harris said he assumes that the City had confidence in the permit. [Note: Neither Mr. Hall nor Mr. Barnhart were in office or employed by the City in 1989 for the granting of the first Specific Use Permit for the mobile home. However, concerns for safety were expressed during the Planning and Zoning Commission meeting of August 9, 1989. The matter was tabled until an opinion could be written by the City Attorney. Minutes of September 13, 1989 stated in part: "...after talking with Ms. Williams (City Attorney), the opinion is that as long as the City is documented in averring its stand from the standpoint of liability in the situation, and the fact that the permittees have been warned that there are certain liability factors, such as the danger of fire, then the City will be covered if a disaster should occur with the structure and/or the structures abutting the mobile home." There was also a concern expressed by the Assistant City Manager and the Fire Marshal at that time of the lack of space between the mobile home and the buildings on either side of it; one foot on one side and approximately six feet on the other side. The Specific Use Permit was granted in September of 1989 "...with the stipulation that the liability factor be on record and also be strictly emphasized both to the residents of the mobile home and the property owners" (Barnes & Selder)]

Mr. Hawkins continued by asking, if the Board finds error in the decision of the Building Official, what effect will it have on the insurance rates or ability to obtain insurance. Mr. Barnhart answered by saying that he had asked Don Blanton, Fire Marshal, to address that issue.

Mr. Blanton said that the Key Rate (insurance) was set up to give people a break in building structures according to code(s). He continued to explain factors which determine the Key Rate within the City, including establishing a Fire Zone. That encourages people to build fire safe buildings within that zone. However, if the State does not make an inspection of the area and "catch" irregularities, such as buildings not built according to Code, then the Key Rate is not affected. He also said that some of the buildings within the Fire Zone were probably built without City inspection and were not in compliance with the Codes and "not caught".

Ms. Fletcher told Mr. Blanton they she begged to differ with him-the mobile home was moved in with permission. Mr. Blanton corrected her in saying that the mobile home was permitted after it was moved in.

Mr. Drescher spoke at that time and stated that concerns were expressed in 1989. Liability and concern for fire safety was discussed. The Fire Marshal was present and the main concern at that time was the setbacks requirements and the distances between the mobile home and

the adjoining structures. Liability for surrounding property owners was also a concern in the event there was a fire.

Mr. Barnhart pointed out that another factor involved for basis of denial, other than the Type VI structure, is that of a separation problem from the existing buildings of the mobile home, mostly being that of the one foot separation from one of the buildings. He said he still has concerns about the safety of the people in the mobile home.

Mr. Hawkins asked about the "grandfather" standard. Mr. Barnhart explained that it only covered structures from date of passage of the Fire Zone District. There is no "grandfather" clause from date of passage forward.

Mr. Hawkins asked if there were comments from anyone else; no one else spoke. He made further comment that the main concern was fire safety for occupants of the mobile home. He said that addition of more smoke alarms, removal of the permanent "screen" at the east end of the mobile home (front at street), and other factors might add to safety. He said the hazard of the existing buildings (relating to the Fire Zone) was there before the mobile home was placed there and will be there when it is gone. He also suggested that fire alarms be placed in the adjoining buildings and even outside the buildings.

Mr. Hawkins reiterated that the issue at hand before the panel was that of determining whether or not the Building Official erred in denying a Certificate of Occupancy for the mobile home.

At that time, Mr. Harris made a motion, based upon the City Council having granted a Specific Use Permit in September, 1991, and that they had (or should have had) knowledge of all pertinent facts relating to the mobile home and its location, **to overrule the decision of the Building Inspector (determination that he erred in denial of the Certificate of Occupancy).** Motion carried by the following votes: Ayes: Harris, Boone, Turbeville and Hawkins. Nays: Rigler. Absent: Ozuna and Wright. Abstentions: None.

The **fourth item of business** was consideration and action on a request by Billy G. Reed for a 10 foot variance to the setback requirements of the Zoning Ordinance for gasoline pump island canopies (overhang) for a new service station at the corner of California and Culberson Streets.

Mr. Reed explained the site plan requirements for the canopy placement after earlier review of the site plan by the Planning and Zoning Commission.

Mr. Hawkins asked Mr. Hall if, after review, he had any problems with the variance request; Mr. Hall replied he did not.

After no further discussion by the Board, a motion was made by Bill Harris and seconded by Robert Boone to **grant a 10' variance to the setback requirements of the Zoning Ordinance** to Billy Reed for service station canopies. Motion carried by the following votes: Ayes: Rigler, Harris, Boone, Turbeville, and Hawkins. Nays: None. Absent: Ozuna and Wright. Abstentions: None.

After no further business, the meeting was adjourned at 10:55 a.m.