

MINUTES

BOARD OF ADJUSTMENTS

Tuesday, July 17, 1990

10:00 a.m.

Members present: David Wright, Robert Boone, Joyce Rigler, Ben Turbeville and Don Hawkins.

Members absent: Jerry Dietz and James Canaday.

Staff present: Gene Cravens, Pat Payne, David Hall.

Visitors: List.

The meeting was called to order at 10:07 a.m by Chairman Don Hawkins.

The **second item on the agenda** was consideration and approval of the minutes from the regular meeting of June 19, 1990. A motion was made by David Wright and seconded by Robert Boone to approve the minutes as presented. Motion carried by the following votes: Ayes: Wright, Rigler, Hawkins, and Boone. Nays: None. Absent: Turbeville, Dietz and Canaday. Abstentions: None.

The **third item on the agenda** was consideration and action on a request by Mike Martin for a 1.5 foot variance to side yard setback requirements on his property located at 1507 Lynnwood Street. Chairman Hawkins asked if Mr. Martin was present; Keith Clegg, representing Mr. Martin, spoke, stating that the variance is requested to facilitate an addition to the residence. There is an existing slab which was poured some years ago with adequate footing in order to add to the structure at a later time. He continued by saying that when the house was built, the code [Zoning Ordinance] was interpreted to mean that a minimum side yard of five feet was required; the code actually stating 10% of lot width, with a five foot minimum. Therefore this residence was built with a five foot side yard on a sixty five foot wide lot some seventeen years earlier.

Mr. Hawkins asked Mr. Cravens to state any comments he had. Mr. Cravens said Mr. Clegg is exactly right; that the five foot minimum was adhered to more often than not, with the code being interpreted incorrectly. However, he said there appeared to be plenty of room for emergency vehicles to access the rear of the property if the addition were built.

Mr. Hawkins asked if anyone wanted to speak in favor of the request; there was none. He asked if anyone wanted to speak in opposition; there was none. Mr. Hawkins asked Mr. Clegg how the roof line would be pitched. Mr. Clegg answered by saying the new roof line will be an extension of the old, with the water runoff being shed to the north and south, as it is now; not to the sides of the lot.

After no further discussion, a motion was made David Wright and seconded by Ben Turbeville to **grant a 1.5 foot variance** to the side

yard set back requirements of the Zoning Ordinance at 1507 Lynnwood Street. Motion carried by the following votes: Ayes: Wright, Rigler, Hawkins, Boone, and Turbeville. Nays: None. Absent: Dietz and Canaday.

The fourth item on the agenda was a request by Gloria Smith for an appeal of the decision of the Building Inspector to the set back requirements for accessory buildings at 1415 Belcher Street. [Note: The carport in question was built without a building permit, too close to the side yard setback requirements and partly within a City-owned alley] Mr. Hawkins began by asking Mr. Cravens to comment on the issue.

Mr. Cravens said as far as the legitimacy of the issue or otherwise, the matter couldn't even be taken that far, according to the City Attorney [Note: The City Attorney submitted an opinion on the matter, a copy of which is attached to these minutes] Because the appeal of the Building Inspector's decision was not filed within a timely period by Mrs. Smith, the jurisdiction of the Board of Adjustment and Appeals had been forfeited. Mr. Cravens further explained that the City Attorney also said that the staff did not have the authority to say that the decision has to come from the Board; the Board has to make that decision. He also confirmed that the carport is built into the City-owned alley. The basic fact is, according to Mr. Barnhart's opinion, is that the Board does not have the jurisdiction to hear the appeal just because it was not filed within the fifteen day time limit.

Mr. Hawkins asked if the Board had any comments. There was none.

Mr. Kip Schiller, attorney for Mrs. Smith, responded next, saying that the City is trying to make the matter more simple than what it really is. What occurred, according to Mr. Schiller, is that an alley which does not run the length of the block, apparently has never been used by the City, specifically in the last 50 years. Neighbors up and down the block have accessory buildings within the alley way, but no complaints have been made. He continued by saying that Robert "Shorty" Nichols wanted to enter a bid for the carport and did not get the bid which caused, according to Mr. Schiller, a neighborhood disagreement, with Mr. Nichols bringing the complaint to the City concerning Mrs. Smith's carport. Also, he continued, Mrs. Smith placed a tarp on the side of the carport to hide the building materials Mr. Nichols stacked in his yard and metal cans along the fence, which, Mr. Schiller said, caused further disagreement. He said the carport had been in place for a year before any complaint was made. When the City sent the first letter to Mrs. Smith, Mr. Schiller discussed the matter both with the City and with Mr. Barnhart. His discussions with Mr. Barnhart included trying to obtain ownership of the alley way by the neighbors. His argument was that the appeal cannot be filed for a variance if Mrs. Smith does not own her part of the alley. He also said that Mr. Barnhart takes a "hard stance" in the matter because he (Mr. Barnhart) has represented the complaining party (Mr. Nichols) in the past on a personal client basis. Mr. Schiller said the complaining party (Mr. Nichols) also has an accessory building which is in violation. He said that if the Board insists on hearing the matter, they should grant the variance because it is equitable to do so.

Mr. Hawkins asked if anyone else wanted to speak. Margie Homer spoke in favor of Mrs. Smith's request. She said that the alley has never been open since she moved there in 1934.

Bill Kirchenbauer, treasurer of the church (Liberty Independent Church) spoke next and asked why they got a notice of public hearing. The 200-foot notification law was explained to him.

Mr. Hawkins asked David Hall to explain the situation of Mrs. Smith's carport further.

Mr. Hall began by saying that the carport is built partially within the alley way and by looking east toward the cemetery (Fairview Cemetery), one can see other accessory buildings which are too close to the rear yard setback requirements. But, in this situation, even if the alley is closed, the carport is still too close to the side property line. He said his interpretation of the Zoning Ordinance is that a carport, if detached from the main structure, has to be at the rear of the property, with this one being on the side property line.

Mr. Hawkins said it didn't appear that this situation is much different from others in that neighborhood or other older neighborhoods in the City where the narrowness of the lots causes violations of side yard requirements. The carport, he said, seemed to be attractive and an asset to the neighborhood. However, the main question is how can a variance be granted on a piece of property which does not belong to the person requesting the variance.

Mr. Cravens said he agrees with Kip Schiller in that he feels the alley should be closed and the adjoining property owners buy their part from the City and this particular situation should start from that point. Mr. Boone said he agrees; there has been a breakdown in communication. There is also a sewer line in the alley, but that can be dealt with later with easements. Mr. Hall said it appears that the carport is built over the sewer line.

Joyce Rigler asked if a building permit were ever obtained for the carport; she was told there was not. Mr. Schiller said Mrs. Smith interpreted the regulations indicating that their structure did not cost a thousand dollars or more and therefore did not require a permit.

Mr. Cravens said, at this point, that the Board should go along with Mr. Barnhart's recommendation and opinion. Mr. Hawkins asked for action on the matter. Mr. Wright said he felt that the variance should be denied, considering the circumstances. Mrs. Rigler said there are too many unanswered questions and she would like to table the issue. Mr. Boone made a motion that the request for a variance be denied for lack of jurisdiction by the Board of Adjustment and Appeals to act upon said application. The motion was seconded by Ben Turbeville. Motion carried by the following votes: Ayes: Wright, Boone, Hawkins, Rigler and Turbeville. Nays: None. Absences: Dietz and Canaday.

The fifth item on the agenda was a request by Connie R. Baker for a 3.5 foot variance to the rear yard set back requirements for accessory buildings at 507 S. Chestnut Street. Mrs. Baker asked that her husband, Dorsey Baker, speak in her behalf. He began by saying the property is in Mrs. Baker's name and they have lived there approximately twelve years. Mr. Baker showed pictures of the surrounding neighborhood. He pointed out that several structures in the neighborhood are not in compliance with set back requirements and he feels his building is an asset to the neighborhood. Mr. Baker was asked if he applied for a permit to build his building; he said he did not. He cited problems encountered with a water meter and sprinkler system as the reason he did not. He also said the garage to the side of him (on the south) was built too close to the property line several years ago even after he had complained. He said roofs around him were never inspected after permits were taken out on them [NOTE: After obtaining a permit, the contractor/home owner must call for an inspection]. Mr. Baker questioned the Zoning Ordinance requirement of a ten foot rear yard setback and a six foot (in his case) setback for side yards. Mr. Hawkins explained to Mr. Baker that the ordinances are adopted to create order within the City and although the ordinances do sometime cause a hardship on certain individuals and (older) neighborhoods, to ignore the ordinances is the wrong thing to do just because of a "bad experience".

Mr. Hawkins asked if anyone else wanted to speak. Mrs. Opal McCollum, 516 W. Weaver, spoke. She indicated her primary concern of the nearness of the Baker's accessory building to her property (at the rear) is the water runoff onto her property. Mr. Baker did confirm the water does run toward her property, but he built it so it drops two feet from her property and then runs on his property toward the street.

Mr. Cravens said the only other comment he had was that under the strict guidelines of granting variances, variances must be made on hardships that are caused by the character of the land and not caused by the individuals, i.e. a self-imposed hardship. Mr. Hawkins asked Mr. Cravens if such a hardship exists with Mr. Baker's property; Mr. Cravens said as far as the character of the land - no.

Mr. Hawkins then asked if anyone on the Board or the audience had any further comments. David Wright said he agreed the building is attractive, but somewhere, sometime, action must be taken to strictly enforce the City's ordinances. Mr. Boone said he agreed with Mr. Wright; blatant disregard of the City's rules must be stopped and he's ready for a change.

A motion was made by Robert Boone and seconded by Joyce Rigler to **grant the 3.5 foot variance** to the rear yard set back requirements of the Zoning Ordinance. Motion carried by the following votes: Ayes: Wright, Boone, Hawkins, Rigler and Turbeville. Nays: None. Absent: Dietz and Canaday.

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