

MINUTES

BOARD OF ADJUSTMENTS

REGULAR MEETING

Tuesday, December 18, 1990

10:00 a.m.

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

Members absent: James Canaday, Jerry Dietz.

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

Visitors: Gail Harrison.

The meeting was called to order at 10:09 a.m by Chairman Don Hawkins.

The **only item on the agenda** was an appeal by Gail Harrison to the Fire Marshal's decision regarding any [possible] error in any order, requirement, decision, or determination by him on property located on the Moss Lake Road, F.M. 1201, which appeal is in reference to the storage of fireworks on her property.

Mr. Hawkins asked a representative of the City to explain what brought the appeal to the Board. Don Blanton explained that on July 3rd of 1990, he answered a complaint regarding the storage of fireworks on Ms. Harrison's property. He said he explained to Ms. Harrison that she could not store any more fireworks at that location. The Fourth of July season, according to Ms. Harrison is the only time she stores the fireworks. Mr. Blanton continued by saying he gave her written notice that she had fifteen days to appeal his decision.

Mr. Hawkins presented a letter from Mack Barnhart, City Attorney, which stated that the notice to Ms. Harrison [letter dated September 17, 1990: received: September 18, 1990] was sufficient in notification to Ms. Harrison of her violation of the Ordinance and her time for appeal began upon receipt of the letter. However, her fifteen day time frame elapsed without her appealing the decision; therefore, the Board, according to Mr. Barnhart, did not have authority to hear her appeal according to provisions of the Ordinance. Mr. Hawkins asked Ms. Harrison if there was a reason for the delay; she replied she had been out of town.

Ms. Harrison said she conferred both with Mr. Dresher and Mr. Blanton to try to find out what she do after Mr. Blanton's inspection of her premises. She stated that both told her they would have to research the matter. She also said her business is not an on-going "thing" and was told that as long as she had the matter cleaned up by the first of the year she would be fine.

The business was in effect before the area was annexed into the City (1984). Ms. Harrison said she feels she is not in violation because of that.

Mr. Blanton reiterated that sale, storage and manufacturing of fireworks within the City limits are in violation of the Code.

Mr. Hawkins said the determination that the Board had to make is not whether there can be any type of variance for Ms. Harrison's particular situation, but whether or not the Board is empowered to hear the case due to the timeliness of filing of the appeal.

Mr. Boone stated that it appeared that the Board has difficulty in hearing the case due to the fifteen-day time limit for appeal.

Mr. Barnhart explained that at the present time Ms. Harrison is not in violation of the Code and was not when the letter was sent to her. Therefore, it will be difficult to cite someone over a case such as this one due to time limits of public hearing notices unless the Code is amended. Mr. Barnhart said he recommended that the problem be referenced June 1st of 1991, or maybe she should ask the Council to address the problem between the present time and June of 1991.

A motion was made by Robert Boone and seconded by Ben Turbeville not to make any ruling on the request for appeal due to the Board's lack of jurisdiction on time limit expiration. Motion carried by the following vote: Ayes: Boone, Hawkins, Schmitz, Turbeville and Wright. Nays: None. Absent: Canaday and Dietz.

After no further business, meeting was adjourned at 10:42 a.m.