

## MINUTES

### BOARD OF ADJUSTMENTS

Tuesday, January 16, 1990

10:00 a.m.

**Members present:** David Wright, Ben Turbeville, James Canaday, Jerry Dietz, Joyce Rigler and Don Hawkins.

**Members absent:** Robert Boone.

**Staff present:** Pat Payne.

**Visitors:** List.

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

The **second item on the agenda** was consideration and approval of the minutes from the regular meeting of August 15, 1989. A motion was made by David Wright and seconded by James Canaday to approve the minutes as presented. Motion carried by the following votes: Ayes: Wright, Rigler, Hawkins, Canaday, Dietz and Turbeville. Nays: None. Absent: Boone. Abstentions: None.

The **third item on the agenda** was consideration and action on a request from Ralph Sidener, property owner, and from Capitol City Restaurants II, Ltd., (Grandy's), jointly, for three variances on property located at 701 W. California Street (corner of California and Culberson). Variances being: (1) 10.67' variance to side yard setback requirement; (2) 35' variance to sign height requirement; and, (3) 32' variance in maximum sign square footage. Property is located within the I-35 Corridor and zoned Commercial.

Mr. Hawkins asked if anyone would care to speak for the request. Mr. James Dewey, engineer and surveyor, spoke first, referring to a site plan presented before the Board members, which included the items for the variance requests. He explained that normally a Grandy's restaurant required a 125' wide tract of land to place the structure on. However, with the tract only being 100' feet wide and the present Marler Ford building encroaching on the west, the situation forced the request for a variance. Mr. Hawkins asked Mr. Dewey if the encroachment was not there, would the variance be necessary. Mr. Dewey replied that it might only make a couple of feet difference and the variance request is for 10.67 feet. He further stated they wish to construct a sign the same approximate height and size as the adjoining businesses, including Wendy's and McDonald's. Mr. Dewey further explained setbacks, driveways, egress, ingress, and other pertinent features which might effectively inhibit progression of the site for building if the setback variance were not granted. Mr. Dewey was asked if the entire property was to be built up three feet; Mr. Dewey replied that only the building pad would be built three feet higher than adjoining property.

Mr. Hawkins asked if anyone else wanted to speak for the request; there was none. He then asked if anyone wanted to speak in opposition. Mr. Ken Davey, attorney, spoke stating that he represents the interest of the Marler family who owns Marler Ford west of the property in question. He indicated that NCNB Bank of Dallas, formerly the Republic National Bank, did not receive notice of the hearing and he questioned that. He also stated that two representatives from the Ford Motor Company were present, and they were concerned about the effect the location of the new site and building would have on the dealership. According to the new survey, the Marler building encroaches upon the Sidener property, and he questioned the viability and accuracy of the survey, in comparison to older surveys. The centerline of Culberson was questioned, since it had been replatted when it was widened. Mr. Davey said he and the Ford Motor Company representatives needed more time to research the situation and therefore, he asked that the meeting be recessed and the matter be tabled for about two weeks to give them more time.

Mr. Hawkins then asked Mr. Davey if the property line were reestablished through correction of an error, would it not change the effect of the whole situation. Mr. Davey said it might.

Mr. Davey expressed his concern further about driveways, parking, and other matters of the site. He continued by saying he would like for the Board to adjourn and continue the meeting at a later date.

Mr. Hawkins asked if anyone had questions for Mr. Davey, representative of Ford Motor Company or for the Marler family. No one spoke.

Mr. Howard Revier of the Ford Motor Company in Dallas spoke stating that their interest is the viability of the dealership. They are also concerned with the relocation of the used car dealership since the lot it was on has been leased for construction of the Grandy's restaurant.

Mr. Hawkins asked Mr. Revier how long he had known of the proposed restaurant; he said he was notified five days prior to the meeting. Mr. Hawkins asked Everett Marler how long he had known. He said he had known since August of 1989.

Mr. Dewey said he talked both with the Sideners and the Marlers in August, 1989 and informed them of their intentions. The lease was signed with the Sideners in December, 1989, according to Mr. Dewey.

Mr. Hawkins asked Everett Marler what type of lease he had had with the Sideners. Mr. Marler explained that it was an oral agreement and every two weeks he would give them a check for rent; there was nothing in writing and had been transacted that way since 1975.

Mr. Hawkins established the fact that regardless of the intentions of the Sideners in not renewing the agreement with the Marlers, the effect would remain the same; Marler's would lose their used car lot facilities, whether or not Grandy's built there or Mr. Sidener used it for his business.

Mr. Dewey explained further that he had made numerous attempts to contact Mr. Marler and go over the plans with him and Mr. Marler would not meet with him.

Mr. Hawkins asked Mr. Davey at that time about NCNB Bank and what role it plays in the Marler's business. Mr. Davey explained that when Mr. Marler died, his will provided for a trust through the NCNB Trust Department. Mr. Davey indicated that NCNB "owns" part of the property now occupied by the Marler Ford business. Mr. Hawkins asked if NCNB were the titled owner. Mr. Davey further stated he did not know because he didn't know if the will or the trust was recorded.

After discussion and presentation by Mrs. Marler, Mr. Hawkins said his only question is if proper notice had been given to all surrounding property owners for the public hearing. If so, the request could be acted on; if not, the notification process and publication would have to be done all over again. Pat Payne explained that all property owners within a two hundred foot diameter of the property in question were notified by mail and their names taken from the most current tax roll. She further explained that the only alternative was to have a continuation of the meeting until further review could be made to determine if proper notice had been given to all property owners.

Mr. Hawkins proposed that a meeting be tentatively set up for 10:00 a.m., the following morning, January 17, 1989, to continue the meeting, unless NCNB is found to be a legally titled property owner; in that case, the meeting will be officially adjourned and rescheduled after proper notification and publication.

After no further business, Mr. Hawkins called for a continuation of the meeting and the meeting was adjourned at 10:50 a.m.