

MINUTES

BUILDING AND STANDARDS COMMISSION

Wednesday, November 28, 1990

4:00 p.m.

Members present: Russell Duncan, Donna Doty, Whit Williams (4:19 p.m.), Lee Birkhead and Jan Russell.

Members absent: None.

Staff present: Gene Cravens, Pat Payne, David Hall, Don Blanton, and City Attorney Mack Barnhart.

Visitors: Bo Maniss, Clyde Woods, and Lloyd Fairless.

The first item of business on the agenda was the calling of the meeting to order at 4:04 p.m.

The second item on the agenda was consideration of minutes from the meeting of October 10, 1990. A motion was made by Donna Doty and seconded by Lee Birkhead to approve the minutes as presented. Motion carried by the following votes: Ayes: Duncan, Doty, Russell, and Birkhead. Nays: None. Absent: Williams.

NOTE: Testimony given during the public hearing has been recorded by a certified Court Reporter; all persons giving testimony were sworn in under oath.

The third item of business and fourth item on the agenda was consideration of and action on determination of the Building Inspector's decision of the substandard condition of a structure located at 306 Harvey Street, owned by Lloyd Fairless, and formerly known as the Barrett Food Locker.

Mr. Barnhart announced that the City was prepared to proceed. Mr. Duncan asked if the owner of 306 Harvey Street was present; Mr. Lloyd Fairless stated he is the owner. Mr. Duncan then explained all rights to Mr. Fairless which he could utilize for his defense. Mr. Fairless said he understood what was told to him. Mr. Duncan then instructed Mr. Barnhart to proceed, at which time Mr. Barnhart called David Hall, Building Official, to testify. Mr. Hall was sworn in under oath.

Mr. Barnhart began by asking Mr. Hall to explain the duties of his position. Mr. Hall then explained that he had had the opportunity to inspect the structure at 306 Harvey Street at least three times and completed a **Report of the Building Official**. The first inspection occurred on September 26, 1990, at which time Mr. Hall stated that the condition of the structure was inspected, which inspection confirmed that the back (west) wall of the building had caved in. Mr. Barnhart presented a series (6) of photographs which was taken on September 26,

1990 by Mr. Hall. This group of pictures was categorized as Exhibit "A". Prior to inspection of the property, Mr. Hall said he had previously determined the owner of the property who was Mr. Lloyd Fairless (according to the Cooke County Tax Rolls). At that time Mr. Barnhart tendered the deed from Lewis and Shirley Barthold conveying the property at 306 Harvey Street for Mr. Fairless to examine. This was marked as Exhibit "B".

Mr. Barnhart asked Mr. Hall if he contacted Mr. Fairless in response (the inspection) to September 26; Mr. Hall replied he did and did give him notice of the intent to inspect prior to inspecting the structure. Mr. Fairless did not accompany Mr. Hall on the inspection. The building was inspected a second time on October 25, 1990. Additional photographs were taken (29) by Mr. Hall. These were marked as Exhibit "C" and included aerial photographs of the roof. All pictures of the structure were shown to Mr. Fairless, and all photos depicted the deteriorated condition of the structure. Mr. Hall explained that he would not go into the building because of the deterioration of its members and also because the roof is beginning to fall in. He also stated that he had all electrical service disconnected due to the wires rubbing against the exterior with the insulation being worn away as a result and creating a fire hazard. He commented that a grave concern of his and the surrounding neighbors pertaining to the structure was young children playing in and around the building.

Mr. Hall continued by saying he completed a report called The Building Inspector's Report after the inspection of October 25, which report was marked as Exhibit "D". A copy of the report was provided to Mr. Fairless prior to the meeting.

Mr. Barnhart asked Mr. Hall if, prior to the public hearing, he gave notice of the meeting to all involved parties. Mr. Hall replied he did. This notice(s) was marked as Exhibit "E". This pertained to all interested parties, i.e., lien holders, Gainesville Independent School District, Gainesville Memorial Hospital, Cooke County Tax Appraisal District, Shirley and Lewis Barthold and Mr. Lloyd Fairless. According to the requirements of the Substandard Structure Ordinance, the notice was published in the Gainesville Daily Register, which Publisher's Affidavit was marked as Exhibit "F".

Mr. Barnhart then asked Mr. Hall, based upon his observations and inspections, if he were able to form an opinion on the building as it presently exists as to whether or not it endangers life, limb, health, property, safety and welfare of the public as a substandard structure. Mr. Hall replied he had determined this and his opinion is reflected in his Building Inspector's Report (Exhibit "B"). Further, Mr. Barnhart asked Mr. Hall if the building could be repaired to return it to compliance with the building codes of the City of Gainesville in an economic fashion. Mr. Hall said, in his opinion, that it could not.

Mr. Hall gave testimony regarding the complaint of a neighboring property owner. The neighbor said that brush, weeds, trash and debris pile up and accumulate on his property and the west wall that has fallen in has caused brick to fall on his fence and damage it.

At that time, Mr. Duncan told Mr. Fairless that he could ask Mr. Hall questions. Mr. Fairless asked questions concerning the electricity. He said that he felt that by not going into the building a "judgement call" was made as to the soundness of the structure even though the roof, which can be seen from the windows, is sagging and falling in. Mr. Fairless asked if the building were brought up to Code, would it be any less of a problem. Mr. Hall answered by saying it depended on what type of fire wall he built (this is in reference to discussion of trash and debris which was piled outside the building.) Mr. Fairless argued the possibility of the building being a fire hazard because he felt that it had been "permitted" at some point in time to be built. Mr. Hall explained that in order for the building to be brought up to Code, the value would have to be increased 50% or more of its present day value in order to bring it up to Code standards.

Mr. Hall said the building is open due to broken windows and is unsecured. That constitutes a fire hazard because children or transients can enter and start fires in the structure.

At that time Mr. Barnhart called Don Blanton, Fire Marshal for the City of Gainesville, to testify. Mr. Duncan swore Mr. Blanton in under oath.

Mr. Barnhart asked Mr. Blanton if, on or about October 26, 1990, he had had the opportunity to inspect the property at 306 Harvey Street; Mr. Blanton replied he did. He stated that he determined that a fire hazard did exist at that location due to the structure being capable of being entered by children and transients. He also said that the building appeared to have a heavy fire load of combustible materials within the building; he indicated did not enter the building due to the deteriorated condition of its roof. He also said that he would never want to see firemen enter the building to fight a fire because of the possibility of it collapsing on them. Mr. Blanton testified that he inspected the roof by way of a platform truck and looked at it from above. The roof was beginning to sag and buckle in around the rear wall which has already collapsed. Mr. Barnhart asked him if, in his opinion and based upon his experience as a firefighter, does the structure, as it presently exists, constitute a fire hazard and could render immediate harm to surrounding structures, persons, lives and property. Mr. Blanton replied it could.

With that, Mr. Barnhart ceased his questioning of Mr. Blanton.

Mr. Fairless replied to Mr. Blanton's testimony by asking if any structure would have "...a certain amount of combustible load in it". Mr. Blanton replied they would. Mr. Fairless then asked if the clutter was cleaned up and the aisles were cleared, i.e. for firefighters, and the building closed, would there be any reason for the building to be a fire hazard. Mr. Blanton replied it would have to be brought "...back to Fire Codes and ... repaired...".

Mr. Barnhart said temporary boarding of an access to a building such as Mr. Fairless' does not imply denial of access. He asked Mr.

Blanton if it would be easier to go through; Mr. Blanton replied it would. So, therefore that would not constitute a closing of the structure.

With that, Mr. Barnhart completed his questions. Mr. Fairless also ceased any questioning.

Mr. Duncan then informed Mr. Fairless that the City had finished their presentation and he could then present any testimony rather than ask questions. Mr. Duncan then administered the oath to Mr. Fairless.

Mr. Fairless began by saying for that past two to three years he had been trying to give the building back to the previous owners [Bartholds]. He bought it with the intended use of storage and was aware at the time of purchase that the building needed work on it. However, he bought it without inspecting it closely and soon discovered it was badly in need of many repairs. He says that he is a real estate investor and intended to sell it at a later time. Mr. Fairless finally said he only needs a "little more time" in order to get the building in decent repair in order to sell it. He asked "...to have ninety days to get the building completely closed up and stop the roof from sagging and to ... and get the bricks down that are a danger". He further said he does not have the money to tear the building down nor secure a permit for any type of rebuilding or repair.

Mr. Birkhead asked Mr. Fairless how long it had been since he had made any repairs to the building. Mr. Fairless replied it had been about three years.

At that time, Mr. Duncan declared testimony cease. He asked if any lien holder or mortgagee on the property were present; there was no response. He also asked if any other parties were present who would have an interest in the property, be it neighbors or property owners within the immediate vicinity; there was no response.

Mr. Barnhart finally argued and recommended that the Board/City should give the compliant sixty (60) days to bring his building into compliance with the Substandard Building Code and recommend demolition of the structure after said sixty day period and order a fine of \$500.00 per day for each day beginning on the sixty first (61st) day thereafter and impress a lien against the property at that time.

After discussion among the Board members, Mr. Duncan asked Mr. Fairless if he had further comments. He replied by saying the building had been there a long time and he felt that it wasn't a lot to ask to ask for a little time to try to get it closed up.

After no further testimony and discussion, Mr. Duncan called the Board's attention to the purpose of the Ordinance (442-4-90), Section 1.3, which section outlines the purpose and intent of the Ordinance and article. He then asked what was the pleasure of the Board and reiterated the recommendation of Mr. Barnhart.

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Donna Doty said that the Board should remember the purpose of the Board which is to protect the City from substandard, dilapidated buildings in addition to preserving the safety of people entering, and also protecting the citizens from the blight areas which contain substandard housing.

Jan Russell referenced Section 1.8 of the Substandard Structure Ordinance, entitled "Responsibilities Defined", which indicates that every owner is liable for violations of duties imposed upon him by this article....., being interpreted to mean being responsible for their own property and the upkeep and maintenance of same.

Mr. Williams stated that he felt the property would be more valuable to the owner if the building were removed, the land cleaned and replacing the old structure with a metal type building if it is intended to be used for storage.

Mr. Birkhead said he is all for Mr. Fairless being given sixty days to fix up the building and make repairs to it, sell it, or have it torn down, but he feels that the aesthetic values of the neighborhood and the City should be considered and action should be initiated immediately. He continued by saying that since Mr. Fairless had made no attempt [within the past three years, as stated previously] to beautify the area [of the building], then the Board should take action to have the building redeemed or demolished.

Jan Russell made a motion that the property be brought into compliance of Code within sixty (60) days; if no action has been taken after 60 days, a fine to be levied at \$500.00 per day on the 61st day, not to exceed \$500.00 or 60 days, with building to be demolished and lien placed on property by City. A second was made by Lee Birkhead to Ms. Russell's motion. Motion carried by the following votes: Ayes: Doty, Duncan, Birkhead, Russell and Williams. Nays: None. Absent: None. Abstentions: None.

The next item of business, being the third item on the agenda, was consideration of and action on the determination of the Building Official of the substandard condition of a structure located on North Interstate 35 and being the Woods Furniture Building.

Mr. Barnhart spoke, stating that he had conversed with Clyde Woods, owner of the property, and Mr. Woods realizes that the City [The Board] can order repair, have the building demolished and a lien placed on the property. Mr. Duncan asked Mr. Woods if he realized that he could be represented by an attorney or represent himself; he could cross-examine witnesses, offer rebuttal; hearsay evidence could be offered, with every opportunity to be for him to present his side of the issue. Mr. Woods said he is aware of these rights.

At that time, Mr. Barnhart presented Exhibit "A", being the notices to lien holders, etc. Exhibit "B" being the Publisher's Affidavit of publishing of the notice of public hearing. Exhibit "C" is 44 photographs of the property. Exhibit "D" is the Building Inspector's

report of inspection on the property. Mr. Duncan declared the exhibits would be offered as evidence.

At that time, Mr. Duncan swore Mr. Woods in to testify in his behalf.

Mr. Woods discussed the notices which were sent to the lien holders.

Mr. Barnhart questioned Mr. Woods at that time and asked Mr. Woods if he were aware of the dilapidated condition of the building. Mr. Woods replied he was aware of that, but he said he was not in a financial position to repair the building.

Mr. Barnhart said he had no further questions since, obviously, the building is substandard and Mr. Woods agreed with the findings.

Mr. Woods spoke in his behalf at that time. He stated that he has been working with Mr. Hall [Building Inspector] trying to work out the problem. He continued by saying he thought he had the property sold, but a problem surfaced with the 17 acres on which the building sits. Behind the property, dumping had occurred in the 1970's, leaving contaminated wastes on the land. He continued by agreeing that the building in question should come down, but he cannot do it himself.

After no further presentation by Mr. Woods, Mr. Barnhart made his recommendation to the Board to have the building demolished and not encourage repair.

A motion was made by Lee Birkhead to allow sixty (60) days for the owner to demolish (only) the building with no fine to be levied after the sixty day period. The City will then impress a lien against the property and demolish the building if no repairs are made to bring the building to Code. The motion was seconded by Whit Williams.

Jan Russell then questioned the opportunity for Mr. Woods to repair the building within the sixty day period. Mr. Birkhead amended his motion to include "repair and demolition" of the structure. Jan Russell amended her second of the motion to include the phrase as heretofore stated.

Motion carried by the following votes: Ayes: Doty, Duncan, Birkhead, Russell and Williams. Nays: None. Absent: None. Abstentions: None.

The meeting adjourned at 6:10 p.m.