

**MINUTES OF THE REGULAR MEETING OF THE BOARD OF ADJUSTMENT
OF THE CITY OF ROWLETT, TEXAS HELD IN THE ROWLETT
MUNICIPAL CENTER, 4000 MAIN STREET, ROWLETT, TEXAS
AT 7:00 P.M., APRIL 14, 2008**

PRESENT: Chairman Larry Beckham, Vice-Chairman Jerry Galloway, Members Joe Charles, Karl Crawley, Dennis Hernandez, Charles Lee, Keith Powers, and William Vehon, Jr.

ABSENT: Member Juan Torres

STAFF PRESENT: Chief Building Official Danny Denman, Administrative Assistant Dianne Kolb and Planner II Erin Jones

Item 1. Call to Order.

Mr. Beckham called the meeting to order at 7:00 p.m.

Mr. Beckham called roll with Mr. Torres being absent.

Mr. Beckham explained that with four (4) appointed members being present, only one alternate member would be able to vote on the items. Mr. Crawley was selected to be the alternate voting member; the other alternate members would not vote on the items but participate in their discussions.

Item 2. Consider approving the minutes from the February 25, 2008 Regular Board of Adjustment Meeting.

Mr. Galloway moved to approve the minutes as submitted. The motion was seconded by Mr. Lee. The motion passed with a 5-0 vote.

Mr. Beckham swore in those persons wishing to speak either in favor or in opposition during the public hearings.

Item 3. The Applicant, Linda Buck, is disputing staff's decision that the non-conforming use on her property located at 7905 Liberty Grove Road out of the James M. Hamilton Survey, Abstract No. 544, Page 570, Tract 12 on approximately .98 acres was discontinued for a period exceeding six months. Section 77:902 of the Rowlett Development Code states the following:

Abandonment of use. If a nonconforming use is discontinued for a period exceeding six months, such use shall be discontinued. Any future use of the property shall conform to the terms of this Code. At a hearing on the matter, the board of adjustment may consider evidence by the owner that there was a clear intent not to abandon the use, structure or property even though the use, structure or property was discontinued for 180 days or more. If no such evidence is presented, the board may presume the intent to abandon the nonconforming use, structure or property. The owner shall have ten days following the decision by the board of adjustment to terminate the nonconforming use, structure or property. If a nonconforming use is discontinued for a period of 180 days or more, and the space previously occupied by the nonconforming use is vacant of merchandise or other items

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needed to conduct the business, or where all activities have ceased during this period, the board of adjustment may consider such as a discontinuance of a nonconforming use.

Disputes. Any dispute regarding nonconforming uses shall be referred to the board of adjustment for further review and action. (Case No. - BOA 08-03)

Erin Jones, Planner II for the City of Rowlett explained that the applicant, Linda Buck, is disputing staff's decision that the non-conforming Adult Day Care land use on her property located 7905 Liberty Grove Road was discontinued for a period exceeding six (6) months.

Ms. Jones explained that the property was rezoned in 2006 to the MU-NS (Mixed Use - North Shore District) which does not allow the adult day care land use, thus the existing business became a legal non-conforming land use. Ms. Jones explained that based on information received by staff the property had been vacant for more than six (6) months, which means that the property loses its legal non-conformity for the prior use which was the adult day care facility and any subsequent use of the property would have to meet current code requirements.

Ms. Jones explained that the applicant met with staff to discuss their options for occupying the existing building with the possibility of a private school, convenience store, an adult day care facility, along with other uses being discussed. The applicant was informed during this meeting that any new use for this property would have to comply with the existing MU-NS zoning classification and all current code requirements. The applicant was again informed that an adult day care facility was not an allowed use within the MU-NS zoning district. Ms. Jones explained that based on the information staff had compiled regarding this property, it was the interpretation of the Director of Community Development that the subject property had been vacant for over six (6) months and as a result had lost non-conforming status and any subsequent use of the property would have to meet current code requirements.

Ms. Jones explained that the applicant requested that this issue be brought before the Board for their review and action on the interpretation of staff that the non-conforming use was abandoned. Per Section 77:902-F out of the Code of Ordinance, the owner has to show and prove "clear intent not to abandon the use, structure or property even though the use, structure or property was discontinued for 180 days or more."

Mr. Beckham stated that six (6) notices were mailed out to property owners within two hundred (200) feet of the request with one (1) notice returned in favor of the request and zero (0) notices returned in opposition to the request.

Mr. Beckham asked for those persons wishing to speak in favor of this request. The following spoke:

Linda Buck, 6118 Cedar Lane, Rowlett, applicant for this request, came forward and explained that she opened the adult day care facility in 1999 and explained its five (5) year history. She explained that the building and use was leased for two (2) years which did not work out and the facility was closed. Ms. Buck stated that when she had someone interested in leasing the building, the City requirements prohibited the tenant from occupying the building. She explained that the adult day care use is a needed facility in the City, which she said others have expressed to her throughout the years. Ms. Buck stated that if she could have sold or leased the building she would have, due to the fact that she cannot afford two (2) mortgages. Ms. Buck also stated that she has all the paperwork showing the length of time the property has been on the market.

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Mr. Beckham asked for those persons wishing to speak in opposition to this request. No one spoke. Mr. Beckham closed the public hearing.

Mr. Beckham asked when the last tenant left the building. Ms. Buck stated in August 2007. She explained that the tenant was not in compliance with the State requirements, thus the reason it was closed.

Ms. Buck stated that she had discussed several different land use options with various possible tenants which included a private school, convenient store and an adult day care facility since it was placed on the market. She explained that she had started discussing the possibility of leasing the building to re-opening the adult day care facility with a possible tenant in September 2007.

Mr. Galloway asked if the furniture was still in the building. Ms. Buck stated it was.

Mr. Crawley asked if the building was originally a single family house. Ms. Buck stated that it was. He asked if anything special had to be done to the interior or exterior of the house for it to be turned into an adult day care facility. Ms. Buck stated that the property was purchased with the intent of turning the house into an adult day care facility and was brought up to the State's standards in order to receive their required permits and pass their inspections.

The Board went into a lengthy discussion concerning the length of time the building had been vacant, the type of tenants the applicant had been negotiating leasing the building too and the 180 day discontinuation of the non-conforming use requirement.

Mr. Crawley stated that he felt due to the applicant marketing the property and negotiating leasing the building for a variety of land uses other than the non-conforming adult day care facility, which has not been in operation for more than the 180 day period, staff's decision that this use was discontinued for a period exceeding six (6) months should be upheld. Mr. Beckham agreed with Mr. Crawley.

Mr. Galloway made the motion to deny the request to appeal City Staff's decision concerning the abandonment of the legal non-conforming Adult Day Care land use. The motion was seconded by Mr. Lee. The motion passed with a 5-0 vote.

Item 4. Public hearing to consider and take appropriate action on the application of Nick and Vera Bert, are requesting a variance from Ordinance 9-4-01C, Table No. 2-3, Side yard setback – Interior lots for the SF-S3 Zoning Classification, which requires that the side yard setback for interior lots be ten percent (10%) of the lot width, measured at the front building line or 7-1/2 feet, whichever is greater. The applicants are requesting the variance to allow the encroachment of the main structure into the side yard setback area on the north side of the lot located at 1902 Touch Gold Court, Lot 1, Block C out of the Winner's Circle subdivision. (Case No. – BOA 08-04)

Danny Denman, Chief Building Official for the City of Rowlett, explained that this request is the same with nothing being changed from what the Board heard on January 14, 2008. He explained that the applicants, Nick and Vera Bert, are requesting a variance to the side yard setback requirement to allow the encroachment of a new residential home. Mr. Denman stated that the zoning for the subdivision requires that the side yard setback be ten percent (10%) of the lot width, measured at the front building line or 7-1/2 feet, whichever is greater. He explained that the required side yard setback along the northern property line is approximately 12.70 feet and the applicant is requesting that it be reduced to 7-1/2 feet.

Mr. Crawley explained that the key hardships for placing a structure on this lot need to be fully discussed.

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Mr. Denman stated that the subdivision is a gated community with this being the last undeveloped lot in the subdivision. He showed the Board a copy of the final plat for that area, pointing out the irregular shape of the lot, existing drainage easement and lift station located at the southeast corner of the lot.

Mr. Denman explained that with the proposed 7-1/2 foot setback there would still be approximately 19-1/2 feet between the existing house to the north and the proposed house. He stated that the setbacks between the houses in the subdivision vary from eight (8) feet to sixteen (16) feet and that this request is consistent with setback areas between existing houses within the subdivision.

Mr. Beckham stated that nineteen (19) notices were mailed out to property owners within two hundred (200) feet of the request with one (1) notice returned in favor of the request and four (4) notices returned in opposition to the request.

Mr. Beckham asked for those persons wishing to speak in favor of this request. The following spoke:

Mr. J.D. Sims, 3013 Mulberry Lane, Rowlett, representing the owners Nick and Vera Bert, explained that the applicants were requesting a variance to encroach into the north side yard setback area of their lot. Mr. Sims passed out elevation pictures of the proposed house to the Board. He explained that the lot has various hardships that the property owners had to contend with to get a house that would be comfortable for Mr. Bert since he was in a motorized wheelchair. Mr. Sims stated that the lot slopes fourteen (14) feet from one side to the other; the garage was put under the house with an elevator for Mr. Bert; and there is a lift station located at the southeastern corner of the lot which created a challenge for placement of the driveway. Mr. Sims pointed out that eight (8) other lots within the subdivision have 7-1/2 feet to eight (8) feet side yard setbacks; therefore, this request would not be setting any type of precedent in the subdivision. He stated that the existing vegetation along the northern lot is an eyesore which would be cleaned up with the construction of a house on the lot and there would only be one window on that side of the house with a nice privacy fence being installed. Mr. Sims stated that all other requirements of the Code would be complied with and the construction of a house would increase the value of the property.

Mr. Galloway asked if the applicants had looked at turning the house so that it fits on the lot without the need for a variance. Mr. Sims stated that they had looked at this option, but the contour of the lot prohibited them from turning the house. Mr. Galloway asked about moving the house toward Skipaway Drive. Mr. Sims explained due to the lift station and contour in that area, the driveway would be too short and not meet Code.

Mr. Crawley pointed out that there are several issues that this lot is going to have to deal with prior to construction of a house such as the contour of the slope, the lift station at the southeast corner of the lot, and the lot being a corner lot with two (2) twenty-five (25) foot front building lines.

Mr. Powers asked if there were other lots within the subdivision where a variance had been granted. Mr. Denman explained that no variance has been granted for this subdivision.

Mr. Beckham asked if the applicants had talked with the neighbors prior to the meeting. Mr. Sims stated that they would do that prior to going before the Homeowner's Association Architectural Board for approval of their house plans.

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Mr. Crawley again pointed out that this is one of the worse lots left in Rowlett for building on due to having two (2) front yards, fourteen (14) feet of fall and a lift station on the corner. He felt that this lot did not have one (1) hardship but three (3) hardships.

Mr. Charles explained that his concern was that the applicant had made no effort to change the house by reducing it in size or by attempting to move it to fit on the lot without requiring a variance.

Mr. Beckham swore in Mrs. Bert so that she could speak during the public hearing.

Vera Bert, 2939 Leeshire Drive, Dallas, applicant for this request, came forward and explained that they bought the lot not realizing how difficult it would be to build on. She explained that her husband is in a motorized wheelchair and in order for him to get around the house comfortably it has to be constructed to very specific specifications. Mrs. Bert stated that they have tried to down size the house, but with Mr. Bert being in a wheelchair everything inside the house must be wider and it was just not possible to reduce the size of the house. Mr. Charles stated that if certain areas of the house were reduced by only one (1) foot, it would make a difference with no variance needed. Mrs. Bert explained that it was the lot that was causing the hardship, which was not their doing. Mr. Charles pointed out that they purchased the lot with the existing limitations.

Mr. Beckham asked for those persons wishing to speak in opposition to this request. No one spoke. Mr. Beckham closed the public hearing.

The Board went into a lengthy discussion concerning the existing lot conditions, the possibility of reducing the size of the proposed house to fit on the lot, the vegetation and screening between this lot and the neighbor to the north and the concerns returned on the for and against forms.

Mr. Lee moved to deny the request as submitted. The motion was seconded by Mr. Galloway. The motion failed with a 3-2 vote; with Mr. Charles and Mr. Crawley voting in opposition.

Mr. Beckham explained that a 4-1 vote by the Board is required in order for an item to pass.

Mr. Crawley moved to accept the variance as submitted. The motion was seconded by Mr. Charles. The motion failed with a 2-3 vote; with Mr. Lee, Mr. Beckham and Mr. Galloway voting in opposition.

Mr. Beckham stated that due to the votes taken by the Board, the 4-1 vote needed to approve the request was not accomplished; therefore, the item has been denied and no variance granted.

Item 5. Adjournment.

Mr. Beckham adjourned the meeting at 8:15 pm.



Chairman



Secretary