

MINUTES OF THE CITY OF MESQUITE BOARD OF ADJUSTMENT, HELD JUNE 25, 2009, AT 6:30 P.M., AT CITY HALL, 711 NORTH GALLOWAY AVENUE, MESQUITE, TEXAS

Present: Chairman Jennifer Vidler, Vice Chairman Cindy Burkett, Regular Members Dianne Mendoza, Lonnie Craine, and Alternate Member Duddly Hargrove

Absent:

Staff: Manager of Planning and Zoning Jeff Armstrong, Planner Bee Martin, Assistant City Attorney Steve Crane

I. APPROVAL OF THE MINUTES OF MAY 28, 2009, MEETING

A motion was made to approve the minutes of May 28, 2009. The motion was seconded and passed unanimously.

II. SPECIAL EXCEPTION

A. **Case No. 3627**

Conduct a public hearing to consider an application submitted by Mark Miller - Mesquite Championship Rodeo for a special exception to allow Special Event - Extended Permit at 1818 Rodeo Drive.

Jeff Armstrong, Manager of Planning and Zoning, presented the staff report. The applicant is requesting a special exception to allow the use of a temporary structure for checking in cowboys participating in rodeo events. According to the applicant, the participant's families are often with them when they check in. This has historically been done in an area where there are animals and other hazards. Having a separate and specific location for this activity would improve safety for the participants and, more particularly, their families. The 300 square-foot (30 feet by 10 feet) structure is currently in place on the site and is being used as a construction trailer for renovations taking place on the property. Utilizing the building for dual purposes gives the applicant the opportunity to see if such an office would be beneficial on a permanent basis. If so, they intend to construct a permanent office following the current rodeo season (scheduled to end at the end of August).

The City of Mesquite agreed to allow the dual purpose of the building since it was already there as a construction trailer and would only be used for the office purposes on Friday and Saturday nights. However, construction on-site is expected to be complete prior to the end of the current rodeo season. A construction trailer is not permitted on a site when there is no active construction taking place. The proposed special exception is primarily intended to allow the temporary structure to be used for the check-in office only, following construction on the site. The applicant anticipates the duration of time between the completion of construction and the end of the rodeo season to be about one month. After construction, the structure would only be used on Friday and Saturday nights through the end of August 2009.

The use has occurred on the property for many years. The structure itself is already on the property as a construction trailer and will be throughout the duration of construction regardless of the Board's decision on this request. Existing facilities to serve the proposed use and structure are already in place. Therefore, no additional parking demand or other related accessory impacts will create a site capacity burden on the property or other infrastructure. Staff recommends approval of the request for a duration of 67 days. 70 days would be acceptable if the Board would prefer a round number.

The applicant failed to come forward to present the request for the special exception. The Board discussed the case among themselves and with City Staff. The Board noted the absent of the applicant was disappointing and frustrating.

Ms. Vidler opened the public hearing asking if anyone wished to speak in favor of or in opposition to the request. As no one came forward to speak, Ms. Vidler closed the public hearing.

A motion was made to approve the Special Event – Extended Permit until September 15, 2009. The motion was seconded and passed unanimously.

III. VARIANCE

A. Case No. 3626

Conduct a public hearing to consider an application submitted by Brian Maddox, Maddox Surveying and Mapping, Inc. on behalf of Wildwood Baptist Church for a variance to allow a residential principal structure to encroach five (5) feet into a required five (5)-foot side yard setback up to it's proposed lot's eastern property line at 531 and 631 S. Walker Street.

Bee Martin, Planner, presented the staff report. The applicant is requesting a variance from the City of Mesquite Zoning Ordinance to allow an existing church parsonage to encroach five (5) feet into a required five (5)-foot side yard setback to ultimately allow the home to directly abut a proposed eastern property boundary. The applicant is proposing to plat a separate lot for the home to stand alone and independent of the lot containing the church. Therefore, the home will be on its own zoning lot and is required to comply with the prescribed setbacks set forth in the City's Zoning Ordinance.

Mr. Martin stated that there are special conditions and circumstances that are unique to the subject property. The subject property served as a church parsonage for many years unlike any other homes in the property's immediate vicinity as well as for far most homes in the R-3 district. The parsonage also served as such a use pre-dating much of the City's existing land development and zoning ordinances. Because the subject property currently and formerly was contained on the property used for the church, ancillary improvements to the church property were made over time to accommodate required demands, namely parking. Therefore, the improvements made to the subject property and neighboring property over time in accordance with land use regulations have created a unique condition that poses a challenge to locate a lot line five (5) feet from the east side of the home without creating or increasing additional nonconformities. The proposed lot containing the home also does not currently exist. The parsonage has traditionally been on the same lot as the church. Therefore, the existing site was not platted and developed uniformly and to the same standards in which developed properties manifest themselves today as with the existing single-family homes in the immediate vicinity, making it unique when compared with similarly used properties.

A literal interpretation of the provisions of the ordinance results in an unnecessary hardship to some extent, but mainly only if it is necessary to plat a residential lot for the house separate from the one containing the church. If the house will be sold separately, used as a single-family dwelling as it is designed, and set back five (5) feet from a proposed eastern property line, then a hardship does exist when applying the Zoning Ordinance's provisions because of the potential creation of other nonconforming situations related to the required improvements and needs associated with the church such as parking and landscaping. If the house remains on the church property, there is no hardship other than the inability to sell the house separately and independent of the church, which may be construed as an applicable hardship if the house will not be used by the church and remains vacant and a potential detriment as such to the rest of the surrounding neighborhood. To circumvent this potential hardship, the house may be demolished. However, demolishing the house could possibly engender an adverse impact to the surrounding neighborhood because it would ultimately remove a transitional buffer between some of the existing single-family properties and the remaining church property, therefore lessening the residential character of this part of the existing neighborhood. As a result, it is Staff's position that a hardship does exist to meet the burden of proving so for the purposes of granting a variance in keeping with the spirit of the City's Zoning Ordinance and the possible prevention of a situation more contrary to the public interest if the variance is not granted.

Whether the special conditions and circumstances that do exist possibly warranting the granting of a variance can be considered self-imposed may be argued in both directions. One of the major reasons the church property's parking situation may be nonconforming in terms of the required number of parking spaces is because at least ten (10) of the church's previously existing spaces are no longer

fully located on the subject property as a result of an expansion of the Walker Street right-of-way, which comes at no fault to the applicant. This considerably contributed to the church's potential nonconforming situation of not having enough parking spaces to serve its needs as required by the City's Zoning Ordinance.

It could be argued that the special conditions were imposed by the owner of the property because the parking area was provided up to the edge of the house as the church and its congregation grew over time at the hands of the owner. Such improvements that created this situation could be considered self-imposed. However, there was not previously much space on the church property to provide for the amount of parking required by the City's ordinances, and therefore, the owner may not have had much of a choice in where to locate the parking. It could also be argued that creating the lot itself is self-imposing the hardship. However, if the separate lot is not created to contain the house, the result could be contrary to the intent and spirit of the City's Zoning Ordinance because it may sit vacant, be used for storage, or be demolished, which would ultimately present more probable adverse impacts for the neighborhood than with the granting of the variance. It is Staff's position that the special conditions associated with this property's unique circumstances are not fully self-imposed.

The applicant's request for a variance to allow a residential principal structure to encroach five (5) feet into a required (5)-foot side yard setback from a proposed lot's eastern property line is for the most part in agreement with the criteria established for variances as provided by state law and in the City of Mesquite Zoning Ordinance. Staff recommends approval of the request for this variance.

Representatives from Wildwood Baptist Church, 631 South Walker Street, presented the request for the variance. The Board discussed the case among themselves and with the applicant.

Ms. Vidler opened the public hearing asking if anyone wished to speak in favor of or in opposition to the request. As no one came forward to speak, Ms. Vidler closed the public hearing.

A motion was made to approve the request with the condition that the variance was only applicable to the existing house. The motion was seconded and passed unanimously.

There being no further business for the Board, Chairman Vidler adjourned the meeting at 7:40 p.m.

Chairman, Jennifer Vidler