

MINUTES OF THE CITY OF MESQUITE BOARD OF ADJUSTMENT, HELD DECEMBER 2, 2010, AT 6:30 P.M., AT CITY HALL, 711 NORTH GALLOWAY AVENUE, MESQUITE, TEXAS

Present: Chairman Jennifer Vidler, Vice Chairman Dianne Mendoza, Regular Members Lonnie Craine, Duddly Hargrove, David Fitzgerald, and Alternate Bruce Archer (not seated)

Staff: Senior Planner Garrett Langford, Planner Elizabeth Butler, Plans Examiner Larry Ewing, Assistant City Attorney Paula Anderson, Manager of Planning and Zoning Jeff Armstrong, Building Official Keith Smith and Director of Community Development Richard Gertson

I. APPROVAL OF THE MINUTES OF THE SEPTEMBER 23, 2010. MEETING

Mr. Hargrove moved to approve the minutes of the September 23, 2010, Board meeting. Mr. Fitzgerald seconded and the motion passed unanimously.

II. VARIANCE

A. **Case No. 3669**

Conduct a public hearing to consider an application submitted by Elvia Elias for a variance to allow a front-yard fence to exceed the maximum allowed height of 42 inches by 5 ¾ inches for a total height of 47 ¾ inches at 1417 Powell Drive. (The Chair moved this item to the beginning of the meeting to consider Staff's request to table the item.)

Elizabeth Butler, Planner, stated that the Staff is requesting that the Board table item. Staff is currently working on proposed amendments to the fence regulations, which if approved by City Council will make this request moot.

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

Ms. Mendoza moved to table the request until the next Board meeting in January. Mr. Craine seconded and the motion passed unanimously.

III. SPECIAL EXCEPTION

A. **Case No. 3670**

Conduct a public hearing to consider an application submitted by Metro Patio & Carports on behalf of Joan Crutcher for a special exception to allow a front carport and a special exception to allow the carport with a metal exterior and a flat roof at 1720 Longview Street.

Elizabeth Butler, Planner, presented the staff report. Staff recommended approval of the request as it meets most of the criteria for a special exception for a front carport. The subject property has a one-car garage and does not have access to a paved alley. A front carport would provide the only opportunity to provide covered parking. Two property owner notices were returned in favor. The property was platted before 1964, making it eligible for a carport with a flat roof and metal exterior. Staff found a number of carports in the area that have a metal exterior and flat roof.

Jack Gaines, Metro Patio & Carport, 4441 I-30, presented the request on behalf of Joan Crutcher for the carport.

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

Ms. Vidler stated that the request meets most of the criteria for a carport. Mr. Fitzgerald moved to approve the request for a front carport with a metal exterior and a flat roof for Case no. 3670. Mr. Hargrove seconded and the motion passed unanimously.

B. **Case No. 3671**

Conduct a public hearing to consider an application submitted by Stephen Wittmer on behalf of Greg Dyer for a special exception to allow an accessory structure to exceed the maximum size of 1,000 square feet by 800 square feet for a total size of 1,800 square feet at 2450 Edwards Church Road.

Elizabeth Butler, Planner, presented the staff report. Staff found that the request meets the criteria for a special exception. The large size of the subject property and the existing tree coverage will obscure the view of the

accessory structure. The structure will occupy less than 1% of the property. Staff recommended approval of the request.

Stephen Wittmer, Morton Buildings, presented the request. The applicant stated that the property owner will use the proposed addition to the accessory structure to store outdoor equipment and recreational vehicles.

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

Mr. Craine stated he agreed with the Staff's recommendation and that the request would be an asset to the property, therefore moved to approve the request. Mr. Fitzgerald seconded and the motion passed unanimously.

IV. VARIANCES

A. **Case No. 3672**

Conduct a public hearing to consider an application submitted by Bill Thomas, Engineering Concepts and Design for a variance to reduce the required landscaping from 10% of the entire site to 1.7% (2,401 sq ft to 405 sq ft) at 900 Dalworth Drive.

Elizabeth Butler, Planner, presented the staff report. The property owner, Dallas Plastics, is proposing to build a 11,700 square foot warehouse on the subject property. To accommodate the building, required parking, and driveway for truck access, the applicant is requesting a reduction in the amount of required landscaping. If the Board grants the variance, it would also reduce the calculation for the number of required trees, which is based on the amount of landscaping required. Staff did not find any special circumstances or unique conditions that are peculiar to the subject property. Additionally, the applicant has not shown any unnecessary hardship will occur if the variance is not granted. It is Staff's opinion that granting a waiver from landscaping requirements would be contrary to the public interest. One property owner notice was returned in opposition of the request. Staff recommended denial of the request.

Bill Thomas, Engineering Concepts and Design, 210 Industrial Ct, Wylie TX, presented the request on behalf of Dallas Plastics. Mr. Thomas stated the landscaping would present a maintenance issue given the amount of trucks that will be visiting the building. Additionally, the applicant stated there is a limited amount of landscaping in the surrounding area and landscaping has not been provided in the area. Mr. Thomas further stated that the lot width of 100 feet wide, the lot shape, and providing a driveway large enough for truck ingress and egress makes it difficult to provide the required amount of landscaping. The Board and the applicant further discussed the case, site design and building configuration. Representatives from Dallas Plastics discussed how proposed building would impact the use of their existing facility regarding truck traffic.

Ms. Butler reiterated that compatibility with the neighborhood is not one of the criteria for granting a variance. Additionally, the site plan for the proposed building has a number of comments that the applicant needs to address regarding service entrance screening, fire safety, driveway width, etc.

Chip McClelland, 10670 County Road 2450, Terrell, TX, spoke in favor of the request. Mr. McClelland, adjacent property owner, stated that the proposed development would be an improvement to the area.

Ms. Vidler opened the public hearing asking if anyone else wished to speak in favor of or in opposition to the request. No one came forward to speak; Ms. Vidler closed the public hearing.

Ms. Vidler and Mr. Fitzgerald stated that there are a number of site plan issues to be resolved before the Board can ultimately address the requested variance. Mr. Fitzgerald moved to table Case 3672 for 90 days. Mr. Craine seconded and the motion passed unanimously.

B. **Case No. 3674**

Conduct a public hearing to consider an application submitted by Betty Erwin for a variance to allow a front-yard fence to exceed the maximum height of 3 ½ feet for a height of 8 feet at 1432 Oriole Street.

Garrett Langford, Senior-Planner, presented the staff report. The request is to allow a fence to exceed the 3½-foot requirement with an eight-foot fence in the front yard at 1432 Oriole Street. The subject property was

rezoned in 1980 to its current zoning, Commercial. In 1984, a tornado destroyed the existing home. The applicant obtained a building permit to rebuild home in 1985. To date the home has not been completed. Citing previous burglaries and vandalism, the applicant constructed an 8-ft tall fence to protect the property without a building permit. The property owner was advised prior to installing the 8-ft fence that a temporary 6-ft chain-link fence may be installed while the property owner completes construction/repairs to the home.

Staff did not find any special conditions or circumstances unique to the land. There is nothing physically or otherwise peculiar related to the layout and character of the subject property that is not applicable to other properties within the district. The lots in the area were developed in similar manner and size. The applicant cited crime as a reason for the higher fence. While crime is an issue, it is not unique to the subject property and cannot be used as a reason to grant the variance for this property. Crime affects the entire community. Allowing a higher fence in the front yard to deter crime is something for the City Council to consider community wide. Staff recommended denial of the request.

Mr. Langford stated that all three responses from the property owner notices were in opposition to the request. For clarification, Mr. Langford stated that the request for the variance is for the fence that runs from the existing 8-ft wood fence permitted in 2009 to the 6-ft chain-link fence located on the property to the south. It was also noted that there are no other building permits on record for the house beyond the original permit issued July of 1985.

Betty Erwin, 2009 Potter Lane, presented the request along with crime report and responses to the property owner notices that she collected. Ms. Erwin stated that she had a number of difficulties with personal issues that have prevented her from completing the home. Additionally, the home has been burglarized or vandalized a number of times in past few years. Since installing the fence, the home has not been broken into. Ms. Erwin is trying to repair the home in order to lease the property.

The Board and the applicant discussed the case further. Ms. Erwin indicated that she did not get a permit because she was replacing an existing fence. In response to Mr. Fitzgerald, Ms. Erwin indicated she plans to replace the garage door, the siding on the back of the house and paint the home. However, Ms. Erwin did not indicate how long it would take to make the home ready for occupancy. The applicant submitted twelve responses to property owner notices in favor of the request that she collected; however, they are responses from outside of the 200-foot notice area.

Ms. Vidler opened the public hearing asking if anyone wished to speak in favor of or in opposition to the request. Eddie Rucker, 1933 Potter Lane, and Steve Wingard, 2012 Potter Lane, spoke in favor of the request and both stated that they have been to the property a number of times in the last couple of years when it was burglarized. Ann Yates, 1300 Douglas, spoke in favor of the request and spoke about the increase in the crime in the area and condition of the neighborhood and the increase in number of Mexicans and Blacks in the area. No one else came forward to speak; Ms. Vidler closed the public hearing.

Ms. Vidler stated that she understands the issue with crime but it is not unique to that area and we have to work within the confines of the Code.

In response to Mr. Fitzgerald, Mr. Langford clarified that the fence height requirements for commercial zoned property are the same as they are for residential zoned property.

The Board members discussed if it was possible to grant time before enforcement took place to allow the applicant to make the home ready for occupancy. Jeff Armstrong, Manager of Planning and Zoning, stated that the Board can only set conditions or time limits on an approval of a request, it cannot set conditions or time limits when it denies a request.

Mr. Fitzgerald moved to deny the request for Case 3674. Mr. Craine seconded and the motion passed unanimously.

V. SIGN VARIANCE

A. **Case No. 233**

Conduct a public hearing to consider an application submitted by Michael DeMeulenaere, Site Enhancement Services on behalf of Lumber Liquidators for a sign variance to allow a monument sign to exceed the maximum height of 10 feet by 9 feet for a total height of 19 feet; and a variance to allow the monument sign with a sign face to exceed the maximum sign area of 50 square feet by 25 square feet for a total area of 75 square feet at 3301 IH 30.

Garrett Langford, Senior Planner, presented the staff report. Mr. Langford explained the intention of limiting freestanding signs to monument signs with specific size and height restrictions are to reduce the “visual clutter created from oversize signs and to ensure future appropriately scaled signs create a distinctive community image while promoting commercial enterprise.” It is opinion of Staff that allowing a monument sign to exceed the maximum allowable height and sign face size is contrary to the public interest. Mr. Langford explained that the request for a variance is not the first recourse to allow a larger freestanding sign along the freeway. The Sign Ordinance has a provision, which allows the Planning Staff to approve a low-clearance monument signs on properties adjacent to the freeway under certain situations to provide relief from the size restrictions without getting a variance. Staff did not find any special conditions on the subject property to grant a low-clearance monument sign.

Regarding the variance, Staff did not find any special conditions that would create a non-financial hardship from limiting the height and/or area of the proposed monument sign. There are no changes in the topography of the subject property or along IH-30 that would obstruct or create a special condition obscuring a sign permitted under the sign ordinance. Additionally, all properties in the IH-30 corridor are similarly situated and have the same advantages and disadvantages concerning signage. The subject property has the option to install a second wall sign. Staff recommended denial of the request.

Michael DeMeulenaere, 6001 Nimtz Parkway, South Bend, IN, presented the request along with additional visual graphics of the proposed monument sign. The applicant stated that while the property is visible from the I-30, it would be difficult for drivers to recognize and respond to a sign that complies with the ordinance. Additionally, their trademark logo will not be recognizable within sign restrictions given the speed of the freeway.

The Board members and the applicant discussed the case. Mr. Fitzgerald stated that given the location of the site along the interstate, patrons would have to go out of their way to get to the site even if a variance is granted for a larger sign. Ms. Vidler also stated that the applicant is a business that people would seek out to find.

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

Mr. Fitzgerald stated that the request does not meet the criteria for a sign variance. Mr. Fitzgerald moved on Case 233 to deny the request for the variances. Ms. Mendoza seconded and the motion passed unanimously.

There being no further business for the Board, Chairman Vidler adjourned the meeting at 8:32 p.m.

Chairman, Jennifer Vidler

The Board considered all testimony including the staff report, applicant's presentation, public hearing, and discussions in the decision for each case.