

## BOARD OF ADJUSTMENT REGULAR MEETING

APRIL 25, 2018

The Board of Adjustment met in regular session in the 2<sup>nd</sup> Floor Conference Room, 222 N. Tennessee Street, McKinney, Texas, on Wednesday, April 25, 2018 at 5:30 p.m.

Board members Present: Chairman Scott Jacoby, Vice Chairman Randall Wilder, Brad Taylor, Betty Petkovsek, and Anthony Salas. Absent: Board member Brian White

Staff Present: Chief Plans Examiner Jeff Harris and Administrative Assistant Dee Boardman.

Chairman Jacoby called the meeting to order at 5:31 p.m. after determining a quorum was present.

**18-357** Minutes of the Board of Adjustment Meeting of January 31, 2018. Board members unanimously approved the motion by Vice Chairman Wilder, seconded by Board member Taylor, to approve the Minutes of the Board of Adjustment Meeting of January 31, 2018.

**18-358** Chairman Jacoby called for a Public Hearing to Consider/Discuss/Act on the Request by Kobey Seale for Consideration of a Special Exception to Waive the Parking and Loading Requirements for 711 N. Tennessee Street, Lot 0480, William Davis Survey A - 248, McKinney, Texas. Chief Plans Examiner Jeff Harris stated that the applicant is requesting a waiver at 711 N. Tennessee of the off street parking requirement for on street parking along the adjacent Tennessee and Heard Streets. The Board has the power under Section 146-165 Board of Adjustment, c. *Special exceptions*. To hear and decide special exceptions to the terms of this chapter upon which the board is required to pass as follows or elsewhere in this chapter: "Waive or reduce the parking and loading requirements in any of the districts, whenever the character of use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely

granting an advantage or a convenience.” The request has been field validated and I agree that the Board has the implied authority to consider this Special Exception based on the character of use of the building or other conditions presented by the applicant and is not contrary to the public interest and general welfare of the adjacent property. Mr. Harris stated that the property is on the corner and is zoned neighborhood business. The parking requirement is one parking space for each four hundred square foot of building and this building would require six spaces. Mr. Harris stated there is adequate street parking in the adjacent areas. He stated that this is an existing building which is non-compliant regarding the parking. Mr. Harris stated that no life safety danger from prospective street parking much like the other businesses in the general vicinity. Applicant, Mr. Koby Seale, 302 Parker, McKinney stated that they will be turning the building into an architecture office. He stated that the Building cannot be used for anything, if parking is not waived. Mr. Seale stated that there is room in front; however, there is no room for actual parking space. He stated that there is room to provide partial parking on the side street; however, utilizing the side street will not allow enough spaces for parallel parking. Mr. Seale stated that there will be very minimal foot traffic to the building. Mr. Seale stated to the south of this building is a law office, north across the street is commercial lease space, behind the building is lease space, west is a residence, and to the east across Tennessee Street is a vacant lot. Mr. Seale stated their plan is to be parking on the east and west side of Heard Street located on the side of the building. Chairman Jacoby called for public comment and there was none. Chairman Jacoby read the one submitted letter in support. Board members unanimously approved the motion by Board member Petkovsek, seconded by Board member Taylor, to approve the request by Kobey Seale for a Special Exception to waive the parking and loading requirements for 711 N. Tennessee Street, Lot 0480, William

Davis Survey A - 248, McKinney, Texas.

- 18-359** Chairman Jacoby called for a Public Hearing to Consider/Discuss/Act on the Request by Mr. Jason Rose, Representing the Owner Terri Lustig, for the Consideration of Five (5) Variances to the Zoning Ordinance for Property Located at 208 S. Bengé Street, Lot 218B, Block 55, McKinney, Texas. Chief Plans Examiner Jeff Harris stated that the applicant is requesting minor reductions in the building setbacks. Board member Petkovsek asked to clarify what the current zoning is on the lot. Mr. Harris stated the lot is zoned RD30, residential duplex zoning district and located in the Historic District. Mr. Harris stated that the owner will be building a single family residential home. Mr. Harris stated that the board shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done, including the following: Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare; and authorize upon appeal, whenever a property owner can show that a strict application of the terms of this chapter relating to the construction or alterations of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of this chapter as are in harmony with its general purpose and intent, but only when the board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the zoning ordinance

as established by this chapter, and at the same time, the surrounding property will be properly protected. Applicant, Mr. Jason Rose, 2120 Cosmos Way, Argyle, representing the owner, stated that the property is a small, 45' wide and 98' deep lot, with two existing big trees. He stated that if the variance requests were not approved, then he will be forced to build a two story home. Mr. Rose stated that the proposed house will be a single story smaller scale house. The setbacks currently spelled out in the ordinance are more appropriately applied to lots as defined by such ordinance. This lot predates current zoning and is similar to many other small lots in the downtown core. The requested variances will create an appropriate streetscape to the existing adjacent houses. Particularly, the house to the North is a state registered historic house with an 18' front yard setback. Mr. Rose stated that the setback to the face of the building will be 15 feet and they are also asking for a 5 foot porch, which will be about 10 feet from the property line. Board member Petkovsek stated her concern is that it is going to sit out that much farther than the house next to it and that the house next door has an 18 foot front yard setback. Mr. Harris stated because it will be part of the structure of the house, it would require a variance. Chairman Jacoby called for public comment.

The following individuals spoke in opposition to the request:

Ms. Teresa Gray, 305 W Davis Street, McKinney

Mr. Jorge Ortiz, 401 Howell Street, McKinney

Ms. Megan Levinson, 405 W Davis Street, McKinney

Ms. Tera Busch, 206 S Benge Street, McKinney

Chairman Jacoby stated the application they are applying for is for a 5 foot variance from the front. He stated that the house has to be 15 feet or farther back and can't come to 13 feet. Mr. Harris stated that any new construction within the Historic District would have to submit for Certificate of Appropriateness and be approved through the Historic

Preservation Officer. Board member Petkovsek stated that it seems like the process is backwards and this request should have been approved by the Historic Preservation Officer first.

Mr. Harris stated that any new house built in McKinney is required to have two covered parking spaces (two covered garage or a two covered carport). Mr. Harris stated that it would be an additional variance request to go from a two covered parking spaces down to the one covered parking space. Applicant, Mr. Lustig, 733 Creek Valley Court, Allen stated that if the request is disapproved, then he probably would build a market house and sell it. He stated that he could build a three story to get enough footage. He stated that this variance request provides a nice solution. Mr. Lustig stated that the lot is not big enough to build a duplex. Chairman Jacoby asked for clarification if changes can be made to the proposed variance request or if they would have to reapply or table the item. Mr. Harris stated that the variance can be changed by motion of the Board and will have to include clarification of what you are approving and each variance would have to be approved separately. Mr. Rose stated that this is a detached garage because it gives him the ability to call it an accessory structure. If it were attached to the house, there would be a 20' rear setback requirement which would leave almost no backyard. Mr. Harris stated if you attach the garage, you just add to the setback requirement then to the rear property line. Mr. Rose stated it is going to be about a 2,500 square foot home. Chairman Jacoby read a letter of opposition by Mr. Samuel Garza, 301 McKinney Avenue, McKinney. Mr. Lustig stated that it is a small lot and if you start playing with the geometry too much, it would not be a very desirable house. Mr. Rose stated that if the request is not granted, then the lot will be designed and built to sell.

Board unanimously approved the motion by Board member Taylor, seconded by Board member Petkovsek, to close the public hearing.

Board member Taylor suggested to alter the variance for the front yard from a 20 feet to 18 feet to make it consistence with the house next door. Chairman Jacoby stated the Board can approve, disapprove, or table the item. Vice Chair Wilder suggested that the item be tabled due to confusing or not enough information. Chairman Jacoby stated that the majority of the people who spoke this evening, other than the builder and property owner, do not want this house built. Chairman Jacoby stated that if more time is needed to get clarification from the City on the definition of how Henry Street is identified, then it will be up to the Board to decide to either approve, disapprove, or table the item. Board members unanimously approved the motion by Board member Petkovsek, seconded by Board member Wilder, to approve reopening the public hearing.

Chairman Jacoby called for public comment.

Mr. Jorge Ortiz, 401 Howell Street, McKinney spoke against the variance due to a lack of information.

Chairman Jacoby asked the applicant to place flags on the property showing the proposed building and take pictures of the property. Mr. Harris wanted to clarify the safety of the corner of Henry and Benge Street. He stated that anytime an application is submitted at a corner lot, Engineering staff will look at the site visibility triangle for that intersection to ensure that there is nothing that would block site visibility for oncoming traffic for that visibility corner. Board unanimously Board member Taylor and second by Vice Chair Wilder to close the public hearing. Board members unanimously approved the motion by Board member Wilder, seconded by Board member Taylor, to table the agenda item until the May meeting.

**18-360** Chairman Jacoby called for a Public Hearing to Consider/Discuss/Act on the Request by Mr. Philip Tucker for the Consideration of Two (2) Variances to the Zoning Ordinance for Property Located at 404 S. Benge

Street, Lot 2, Block A, of the Jered Square Addition, McKinney, Texas. Chief Plans Examiner Jeff Harris stated that the applicant is requesting two variances for the side and rear setbacks. The board shall have the power to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done, including the following: Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare; and authorize upon appeal, whenever a property owner can show that a strict application of the terms of this chapter relating to the construction or alterations of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of this chapter as are in harmony with its general purpose and intent, but only when the board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the zoning ordinance as established by this chapter, and at the same time, the surrounding property will be properly protected. Applicant, Mr. Philip Tucker, 404 S Bengel Street, McKinney stated after much discussion with the City and Jered Homes that taking into account the small lot size, the large tree, and existing accessory structure on the back of the property, the only option was to request a variance. He stated that he would like to build a new covered open walkway/porch area, covered garage, and convert the existing garage into a mother-in-law space. Mr. Tucker stated that there will be no

changes aside from what is on property over the current driveway. He stated that the accessory structure would not move and would stay in the same location. Mr. Tucker stated that he wants to comply with the look, design, and feel of the historic district area. Chairman Jacoby called for public comment.

The following individuals spoke in favor of the variance request.

Mr. Jorge Ortiz, 401 Howell Street, McKinney

Mr. Ed Boughtin, 302 S. Benge Street, McKinney

Ms. Janet McAuliffe, 408 S. Benge Street, McKinney

Chairman Jacoby read the two submitted letters supporting the request.

Mr. Harris stated that once you attach the accessory structure, it becomes part of the house itself, and must meet the setback requirements. He stated that without the request, it doesn't meet the required setbacks. Board members unanimously approved the motion by Board member Salas, seconded by Board member Petkovsek, to close the public hearing and approve request by Philip Tucker for the consideration of two (2) variances to the Zoning Ordinance for property located at 404 S. Benge Street, Lot 2, Block A, of the Jered Square Addition, McKinney, Texas.

Board members unanimously approved the motion by Board member Wilder, seconded by Board member Petkovsek, to adjourn the meeting. Chairman Jacoby adjourned the meeting at 7:00 p.m.

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SCOTT JACOBY  
Chairman