

sides. The ladder folds and locks on the pool so someone would not be able to get into the pool.

No other citizens appeared before the Planning and Zoning Commission to discuss the variance.

Letters were received from the following in favor of the request:

Jason Kimsey, % Linda Kimsey, 1705 S. Travis, Sherman, Texas

Gladys Perkins, 1701 S. Travis, Sherman, Texas

Harvey & Linda Kimsey, 1705 S. Travis, Sherman, Texas

ACTION TAKEN.

Motion by Commission Member Morgan to approve the variance. Second by Commission Member Jones.

VOTING AYE: DAVIS, SOFEY, JONES, MORGAN AND ATHERTON.

VOTING NAY: NONE

MOTION CARRIED

THE COMMISSION FOUND THE REQUEST CONFORMS TO THE INTENT OF THE ORDINANCE.

EXCEPTION & VARIANCE

THE REQUEST OF MOZELE, INC (OWNER) AND DOUG MCKENZIE, BACKYARD LIVING POOLS AND SPAS (TENANT) CONCERNING THE PROPERTY LOCATED AT 1415 SOUTH SAM RAYBURN FREEWAY, SUITE 700, BEING LOT 2, BLOCK 1, NATA CROSSING REPLAT, AS FOLLOWS;

BOARD OF ADJUSTMENTS

EXCEPTION UNDER ORDINANCE NO. 2280, SECTION 7, SUBSECTION (14) TO ALLOW A SWIMMING POOL AS A DISPLAY FOR ADVERTISEMENT IN LIEU OF ONE FREESTANDING SIGN PER DEVELOPMENT LOT AND A VARIANCE UNDER SECTION 6.8.2, SUBSECTION (5)(A) TO ALLOW A 0 FOOT FRONT YARD SETBACK IN LIEU OF THE REQUIRED 40' IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1.2 (SAM RAYBURN) OVERLAY DISTRICT.

EXCEPTION –
OUTDOOR DISPLAY
VARIANCE – FRONT
SETBACK
1415 S. SAM
RAYBURN, STE 700
(BACKYARD LIVING
POOLS & SPAS)

(DENIED)

Doug McKenzie, Backyard Living Pools and Spas, 1415 S. Sam Rayburn, Ste. 700, Sherman, Texas

Mr. McKenzie appeared to represent the request and answer any questions. The property is located at 1415 South Sam Rayburn Freeway, Suite 700; the northeast corner of South Sam Rayburn and Olive Street, Backyard Living Pools and Spas is the tenant. The tenant would like to use an above ground pool, erected on its side as advertisement for their business. The pool would be placed in three of the parking spaces on the property line along Sam Rayburn Freeway. Mr. McKenzie explained “the display is meant to be inventory, not a sign; that is the only place on the property you can put it safely and allow trucks to still get around the building, my landlord told me where I

had to put the product. When I rented/leased the space, I thought there was never an issue, he said if you get letters, you have to get a permit with the City. The pool is anchored down and well in excess of 100 mph wind load; I have a letter from a machinist to exceed the minimums that are being asked for.” He had seen the Staff Review Letter and would abide by the Staff Review Recommendations.

Commission Member Davis asked if the pool would be kept there permanently.

Mr. McKenzie responded “absolutely, it is the cornerstone of my business, we are here doing in-ground pools, that is our primary business, it is my display, my inventory, there is no way for it to fit inside the building.”

Commission Member Jones asked if a variance was required for the square footage of the display as a sign as well.

Mr. McKenzie explained it is not really a sign, it is inventory sitting in front as the variance.

Scott Shadden, Director of Developmental Services explained it would be considered that, since he does not have the wording on it, then he is calling it inventory.

Mr. McKenzie explained “it is inventory that sits there and every time I sell one of those, the City gets several permits for the City, it is a very good revenue base for the City.”

Commission Member Davis asked if the exception was for inventory to be too close to the property line.

Mr. Shadden explained they are calling it a sign because it is being used as a sign, it is too close to the front property line, if it is granted it would be for this sign in that location.

Commission Member Atherton explained the request calls it a display for advertisement in lieu of a freestanding sign.

Mr. McKenzie explained “when I turned in the permit he was wanting it to be about the inventory, not a sign, parking was the City’s main concern since the pool took away three of the parking spaces, there are 19 parking spaces needed and 37 spaces have been provided. Then it became a sign issue, there are no letters on it, have never put letters on the pool, my landlord told me I could not put letters on it, he told me it had to be anchored. The minute I finished anchoring the pool and spending \$1,600 to get it engineered, the inspector came and told me to remove the pool.” He never thought it would be an issue, he has pool stores all over the country, Louisiana, Houston, New York, Manhattan, Long Island, the same exact way and as long as they do not put lettering on them, it has never been an issue in any major city.

Commission Member Atherton asked if he could set the pool on the property instead of standing it up.

Mr. McKenzie explained there is no way to set the pool down on the property.

Commission Member Davis asked if inventory is allowed in the parking lot.

Mr. Shadden explained it is a violation in the Overlay District.

Commission Member Atherton asked if the issue was the Overlay District.

Mr. Shadden explained “the issue is, he has a swimming pool bolted down out in front of the building, it is a structure.”

Commission Member Davis was concerned as a sign issue, “if a hamburger stand wanted to put a giant hamburger out there or Home Depot wants to place a giant hammer and everybody wants some kind of inventory out there.”

Mr. McKenzie asked about a car or boat dealerships, those are outdoor products, the only way you can display it is outdoors.

Chairman Sofey explained those are different because the zoning is in place or a Specific Use Permit is granted.

Commission Member Davis explained if you have a building and inventory there and it wasn't violating any ordinance, if it was properly off the road or behind a fence and met all the requirements. “I am all for encouraging business, but I do have some concerns about the precedent of that.”

Chairman Sofey explained he was concerned with the precedent, if they could have it worded in such a way, it would ease his concerns.

Commission Member Atherton explained after hearing the explanation of being more of a display of products in lieu of a sign. She was not sure of the requirements for the display of products.

Chairman Sofey explained there was a roofing company down the road that we had issues with because they had pallets and pallets of roofing material stacked up and they finally moved it back.

Commission Member Atherton explained Lowe's displays their storage buildings or their gazebo's and they are displaying their product on their parking lot and they are

not taking up parking spaces that they have to have, so this is more in that category than it is in the sign category.

Mr. Shadden explained Lowe's, Home Depot and Tractor Supply came to the Planning and Zoning Board for site plan approval and met the setbacks for their displays.

Commission Member Atherton asked if it then becomes a setback issue.

Mr. Shadden explained that was correct.

Commission Member Davis explained he thought it was distinction that he would have less problem with it, you set that pool back with the proper setback and display your products somewhere rather than getting into the precedent of this is a sign we want to put our inventory up there, turn it up, make it big, it is noticeable when you drive through, it is eye catching.

Mr. McKenzie explained his first intent was to put it on the side of the building, right on the edge, because it would be easy to walk in and out, but the owner said he could not put it there because of trucks and he asked to put it on the side on the far wall but it would not work because of the trucks, the only place it physically fits is on the parking lot in the spaces we have taken, it is the safest place to put it and the only place on that property, if that is not it, I have to relocate my business to another town.

Chairman Sofey asked "to another town, this is the only spot in Sherman you could put a pool store."

Mr. McKenzie explained he would not put it in Sherman, "I can't because I have to have the product, the product is my livelihood."

Chairman Sofey asked "for a zero setback, there is not another location in town that would accommodate you."

Mr. McKenzie explained that is correct, "it is the only place in the city that would fit my needs, I need the traffic counts, it needs to be on Highway 75 and if 75 has an Overlay issue, I would rather buy a piece of land just outside the town and put it there and have twenty pools there. I went with this, I am going to open eight stores; my plan is to put another one here in Sherman and another one in Denison inside of eighteen months. I have already worked on breaking ground on a new strip mall development in Denison and that is not an issue with them, but it is farther off the road."

Commission Member Davis asked if he was familiar with the setback requirements.

Mr. McKenzie explained he is now, "this never crossed my

mind, I have never had a problem in any other city.”

Commission Member Morgan explained if this met the setback requirements it would not appear like a sign.

Commission Member Davis explained if it met the setback requirements you could stack a bunch of them up or anything you wanted to do with them.

Mr. Shadden explained it would be more of a site plan approval instead of an exception.

Mr. McKenzie explained “this is the cornerstone of my business, if I don’t have it, I am out of business, it’s as simple as that.”

Commission Member Davis asked the setback requirements.

Mr. Shadden explained it is 40’ from the front property line for any sign or structure. Inventory would not be permitted in the front of a business, an automobile dealer inventory would be allowed because they get a Specific Use Permit for an automobile dealership; it is a different type situation. Lowe’s got a Specific Use Permit for a lumberyard and they chose where their display would be located on their site plan.

Mr. McKenzie asked if a Specific Use Permit would be allowed in this case.

Mr. Shadden explained “you would still not be meeting the setback, you would still need to meet the 40’ setback; the building is built on the 40’ setback. The lot is full; they built all the building they could build on that lot. There are means to do a roof mount, if you could get the engineering and the structure correct.”

Mr. McKenzie explained he could do that, but the owner said no way to that but he would have to get City approval for that. “We didn’t look at roof mount but that would definitely be a sign, I would put letters on that. That would be dangerous, if that thing tips over, it slides across the parking lot, if it falls off the roof it would kill someone.”

Mr. Shadden explained the reason for granting an exception, “if you have an unique lot or terrain or something like this, this is a shallow lot, the corner is cut off at a 45, you can consider those type things.”

Commission Member Davis asked how he had the pool anchored.

Mr. McKenzie explained he had it engineered, it has special machined clips that go over it and they are designed to go in excess 150 mph around the pallet itself, then the pool is

reinforced with fiberglass timbers which will also withstand a high wind load, lead lines run off of it that are drilled into the concrete and reinforced with break away straps which are also anchored and welded together. “I paid through the nose to survive a hurricane.”

Commission Member Davis asked if he had a copy of the engineering report.

Mr. McKenzie explained he had a letter with his warranty from the machine shop that did it for him. He did not have an engineering report. “His insurance company had no problem with the letter from the machine shop, it will withstand over 95 mph winds, they sent out their own adjusters and they did not have a problem with it, the owner had no issues as well.”

No other citizens appeared before the Planning and Zoning Commission to discuss the exception and variance.

Commission Member Davis felt to call it a sign was troubling to him rather than some kind of exception for inventory, maybe that doesn't matter.

ACTION TAKEN.

Motion by Commission Member Atherton to approve the exception and variance subject to the Staff Review Letter based on the unique size and depth of the lot. THE MOTION DIED FOR THE LACK OF A SECOND.

ACTION TAKEN.

Motion by Commission Member Morgan to deny the exception and variance.

Commission Member Jones explained if it is a sign, there is another exception too and that is the size of it, what they are approving is to allow inventory as a sign and that would exceed the size of a sign. The request is worded as a sign.

Mr. Shadden explained the request is worded to allow a swimming pool as a display for advertisement in lieu of one freestanding sign per development lot.

Mr. McKenzie explained he would like for it to be inventory to sit out there because it is a display. He went back to a car or boat dealer, you cannot sell cars or boats looking at a picture.

Chairman Sofey asked to get some clarification so he announced they would go into Executive Session to consult with the City Attorney.

EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)

EXECUTIVE SESSION

CHAIRMAN SOFEY ANNOUNCED THAT THE BOARD OF ADJUSTMENTS WILL HOLD A CLOSED EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNON'S TEXAS CODES ANNOTATED, IN ACCORDIANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

SECTION 551.071 -- CONSULTATION CONCERNING LEGAL MATTERS ON AGENDA ITEM 3, REGARDING THE REQUEST OF MOZELE, INC (OWNER) AND DOUG MCKENZIE, BACKYARD LIVING POOLS AND SPAS (TENANT) CONCERNING THE PROPERTY LOCATED AT 1415 SOUTH SAM RAYBURN FREEWAY, SUITE 700, BEING LOT 2, BLOCK 1, NATA CROSSING REPLAT, AS FOLLOWS;

BOARD OF ADJUSTMENTS

EXCEPTION UNDER ORDINANCE NO. 2280, SECTION 7, SUBSECTION (14) TO ALLOW A SWIMMING POOL AS A DISPLAY FOR ADVERTISEMENT IN LIEU OF ONE FREESTANDING SIGN PER DEVELOPMENT LOT AND A VARIANCE UNDER SECTION 6.8.2, SUBSECTION (5)(A) TO ALLOW A 0 FOOT FRONT YARD SETBACK IN LIEU OF THE REQUIRED 40' IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1.2 (SAM RAYBURN) OVERLAY DISTRICT.

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:27 p.m.

On Motion duly made and carried, the Executive Session recessed at 5:45 p.m. and reconvened in Open Meeting.

OPEN MEETING

Reconvene into Open Meeting and take action, if any, on items discussed in Executive Session.

OPEN MEETING

Commission Member Davis asked Mr. McKenzie if he understood he had an engineering report.

Mr. McKenzie explained he had a report from the company that engineered that and machined it for him, with a letter from them about the wind load, "if I need to have a professional engineering firm put an engineering stamp on it, I will be happy to pay for that."

Chairman Sofey explained "so there is not a stamped engineering report."

Mr. McKenzie explained "no, but that thing is not going anywhere."

Chairman Sofey explained “the Staff Review Letter requires it and you have repeated several times you have an engineered letter, you don’t have an engineered letter you have a letter from the people who warranted it.”

Mr. McKenzie explained he received the Staff Review Letter on Friday stating if the request is approved engineering would be one of the requirements. “I paid overtime for a guy to come over this weekend relook at it, he beefed up a couple of things so that it would far exceed any wind load you might throw at me and he put a warranty deed in writing. I have a copy of that if you would like to see it.”

Chairman Sofey explained they did not need it.

Commission Member Davis asked where his main headquarters was located.

Mr. McKenzie explained he is part of a buying group that is part of 127 stores from upstate New York all the way through Florida, the biggest pool stores in the country. “I own several of those, portions of several of those; this one is mine by myself, I lease the building. This location has been in business since May 29, 2009, the pool was put up on May 29th.”

Commission Member Davis asked if he talked to the City before he put up the pool.

Mr. McKenzie explained the pool was put up without a building permit, it never occurred to him that a permit was required. “It is a piece of inventory of what I sell. When I sell those pools, I get a permit, I have only broken ground on one pool in Sherman; it has been by the numbers, permitted.”

Chairman Sofey asked if the pool is an example of what he has for sell.

Mr. McKenzie explained “the pool is actual inventory, that pool is for sale; that is what I sell. I will sell that pool right now for \$28,100 installed turnkey.”

Commission Member Morgan explained that contradicts what was said earlier, that is a fixed display.

Mr. McKenzie explained he will always have a display there, if that one goes, he will order another one and put right back in the same location.

Commission Member Davis stated practically speaking you are not going to sell that one, you will sell one in a warehouse or something to put it in, there is no reason to take that one down to replace it with another one.

Mr. McKenzie explained he likes to sell those every four

months just so he keeps a fresh one out there, “I need to have one there to show his product, they are custom ordered pieces but in a real world I will sell that pool four times a year, every three months I will put a new one, it will always be the same size, the same exact space, it might be dark blue or light brown, always nice high quality looking, top of the line. Every time I sell one of those we are getting quite a bit of revenue from contractors in the area for permits, it is a nice hit for everyone involved.”

Commission Member Davis explained “I don’t think anyone there was not for you doing business, doing lots of business and putting in pools, having contractors and inventory and all that, I don’t think that is an issue with anyone here, I think it is an issue to have this permanently or semi-permanently placed on the property line in the Overlay District.”

Mr. McKenzie explained without it he is not in business, “I would have to relocate to another location, I can’t afford to go through this again to run the risk of spending \$100,000 into a store and being told I’m shut down because of something that is not an issue.”

Chairman Sofey explained “we are not shutting you down. You keep saying that we are the one’s that are responsible, you keep putting that on us, it is your responsibility, you and the business, you and the building owner have the ability to work that out, we are trying to grant you an exception, we are trying to work with you and the threat of moving your business, the idle threats are becoming a little old, we are trying to work with you. You have contradicted yourself on four or five things and I want you to understand where you can operate and can’t operate is one of those things, we are trying to help you.”

Mr. McKenzie explained that is why he is here, “I’m just trying to get through this hoop, if I had known ahead of time I would have clearly asked.”

Chairman Sofey explained “there is still an option within the perimeters, there is a place you can put that swimming pool and not ask for this exception, if the building owner does not want to allow you to do that it is between you and he and that is something that should have and could be worked out at this point, but we are trying to accommodate you. He felt the biggest issue was, it is not set out whether this is a sign or not, we are trying to find out if we want to allow not only in this Overlay District but Overlay Districts that we have to allow them to put inventory out on a zero foot setback within the Overlay Districts that we have taken a lot of time to implement throughout the City, not only on Sam Rayburn but 75/82 and Heritage Parkway.”

Commission Member Atherton explained if they are setting a precedent then the precedent would be if it is a 40’

building line then businesses would not be able to basically display anything outside of their building line.

Commission Member Davis explained what the public policy is and what the point of the Overlay Districts were; what's the balance to encourage business, commerce but also to implement the Overlay District over Highway 75.

Mr. McKenzie explained if he thought there was any issue, "200 yards to the south on the Overlay District is a car dealership and he has his product on the property line and I saw my product exactly the same way that car dealership did, to the north on the Overlay District is his landlords building and he has product on the property line, motorcycles and Sea-doo's."

Chairman Sofey explained all of those locations are in a completely different zoning, C-2 (General Commercial) District or it has a Specific Use Permit. They are properly zoned and they meet the setbacks for that zoning.

No other citizens appeared before the Planning and Zoning Commission to discuss the site plan.

Commission Member Morgan asked where we stood as far as action taken on the request.

Chairman Sofey explained when we came back in, we had two motions, the motion to deny the request is still out there; it was not terminated because we went into executive session.

ACTION TAKEN.

Chairman Sofey restated Commission Member Morgan's motion to deny the request. Second by Commission Member Davis.

VOTING AYE: JONES, DAVIS, SOFEY AND MORGAN.

VOTING NAY: ATHERTON

MOTION CARRIED

THE COMMISSION FOUND THE REQUEST DID NOT CONFORM TO THE INTENT OF THE ORDINANCE.

VARIANCE

THE REQUEST OF MITCH & BONNIE WEST, ANGELS OF CARE HOME HEALTH (OWNERS) AND RICKY BATES, NEON SIGNS AND DESIGNS (REPRESENTATIVE), CONCERNING THE PROPERTY LOCATED AT 8001 U.S. HIGHWAY 75 SOUTH, BEING LOT 1 OF DAVIDSON ADDITION, AS FOLLOWS;

BOARD OF ADJUSTMENTS

VARIANCE UNDER ORDINANCE NO. 2280, SECTION 6.8, SUBSECTION (5) TO ALLOW A 25' FRONT YARD SETBACK FOR A 245 SQUARE FOOT FREESTANDING SIGN IN LIEU OF THE REQUIRED FORTY (40) FOOT OR TWENTY-FIVE (25) FOOT PLUS THE HEIGHT OF THE

VARIANCE – FRONT SETBACK FOR SIGN 8001 HWY 75 SOUTH (ANGELS OF CARE HOME HEALTH)

STRUCTURE, WHICHEVER IS GREATER IN A C-1 (RETAIL BUSINESS) DISTRICT AND O-1 (75 & 82) OVERLAY DISTRICT.

Ricky Bates, Neon Signs & Designs, 103 E. Crawford, Denison, Texas

Mr. Bates appeared to represent the request and answer any questions. The property is located at 8001 U.S. Highway 75 South; Angels of Care Home Health is the tenant. The owners would like to erect a 245 square foot freestanding sign 25 foot from the front property line. Mr. Bates presented the Board a revised site plan moving the sign out of the 15' utility easement on the north property line. They had seen the Staff Review Letter and would abide by the Staff Review Recommendations.

Commission Member Jones asked Mr. Bates why he could not comply with the necessary setbacks.

Mr. Bates explained the sign would need to be setback 75' from the front property line because the sign is 50' tall, which would put it on the side of the building. Heading south on Highway 75, there are a lot of trees along the property line and it would be hard to see the sign if it was moved back any further.

Ron Barton, 715 S. Sam Rayburn, Sherman, Texas

Mr. Barton expressed his support for this request, he felt it was a good investment for Sherman.

No other citizens appeared before the Planning and Zoning Commission to discuss the variance.

Board of Adjustments

ACTION TAKEN.

Motion by Commission Member Davis to approve the variance subject to the Staff Review Letter. Second by Commission Member Morgan.

VOTING AYE: DAVIS, SOFEY, JONES, MORGAN AND ATHERTON.

VOTING NAY: NONE

MOTION CARRIED

THE COMMISSION FOUND THE REQUEST CONFORMS TO THE INTENT OF THE ORDINANCE.

SITE PLAN & PERMIT FOR MOBILE FOOD VENDOR

THE REQUEST OF DAVID HENRY, HENRY LANDSCAPE COMPANY, INC. (OWNER) AND MARK ROYAL (APPLICANT) CONCERNING THE PROPERTY LOCATED AT 3412 WEST HOUSTON STREET, BEING 1.47 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, AS FOLLOWS;

BOARD OF ADJUSTMENTS

SITE PLAN APPROVAL AND PERMIT FOR A MOBILE FOOD VENDOR UNDER ORDINANCE NO. 2280, SECTION

**MOBILE FOOD VENDOR
3412 W. HOUSTON
(DAVID HENRY,
HENRY LANDSCAPE
COMPANY, INC. &
MARK ROYAL)**

(REMOVED FROM AGENDA)

8, SUBSECTION (4.1) IN A C-2 (GENERAL COMMERCIAL) DISTRICT.

This item was removed from the agenda.

SPECIFIC USE PERMIT, REPLAT, VARIANCES

THE REQUEST OF LAZY L ENTERPRISES (OWNERS), GREG EDWARDS ENGINEERING SERVICES, INC. (ENGINEER) AND COX LAND SURVEYING COMPANY (SURVEYORS) CONCERNING THE PROPERTY IN THE 600 BLOCK OF EAST COLLEGE STREET, THE 600 BLOCK OF EAST CARTER STREET AND THE 800 BLOCK OF NORTH BROUGHTON STREET, BEING LOTS 13-21, BLOCK 4, W.P. CARTER'S ADDITION AND 0.90 ACRES IN THE J.B. MCANAI SURVEY, ABSTRACT NO. 763 FOR A TOTAL OF 1.20 ACRES, AS FOLLOWS:

PLANNING AND ZONING COMMISSION

SPECIFIC USE PERMIT AND SITE PLAN APPROVAL UNDER ORDINANCE NO. 2280, SECTION 8 (5)(A) TO ALLOW PATIO HOMES IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AND THE COLLEGE PARK OVERLAY DISTRICT.

PLANNING AND ZONING COMMISSION

AUSTIN PARK ADDITION, BEING PART OF A REPLAT OF LOTS 13-21, BLOCK 4, W.P. CARTER'S ADDITION AND 0.90 ACRES IN THE J.B. MCANAI SURVEY, ABSTRACT NO. 763.

BOARD OF ADJUSTMENTS

VARIANCE TO ORDINANCE NO. 2280, SECTION 8, SUBSECTION 9(B) TO ALLOW ZERO SETBACKS TO BE ADJACENT WITH NO MORE THAN TWO PATIO HOMES ATTACHED IN ONE GROUPING ON PROPOSED LOTS 4 & 5 AND 7 & 8 OF THE AUSTIN PARK ADDITION IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AND THE COLLEGE PARK OVERLAY DISTRICT.

BOARD OF ADJUSTMENTS

VARIANCE TO ORDINANCE NO. 2280, SECTION 8, SUBSECTION 9(B) TO ALLOW A ZERO FOOT SIDE YARD SETBACK IN LIEU OF THE REQUIRED 10' ON PROPOSED LOTS 1 & 8 OF THE AUSTIN PARK ADDITION IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AND THE COLLEGE PARK OVERLAY DISTRICT.

Greg Edwards, 1621 Amanda Ct., Ponder, Texas

Mr. Edwards appeared to represent the request and answer any questions. The property is located in the 600 Block of East Carter, the 600 Block of East College Street and the 800 Block North Broughton Street. The owner would like to replat the property into 8 lots for development of patio homes. Mr. Edwards explained the new homes will provide residences for people in the Austin College community, they are anticipating attracting students or faculty who would like to reside in the College Park area. The variances are requested so that they can attach two structures together on Lots 4 & 5 and 7 & 8 and a variance to allow a zero foot setback next to the Railroad right-of-way, which would allow them to maximize square footage and provide

SUP – PATIO HOMES

FINAL PLAT – AUSTIN PARK ADDN, A REPLAT OF LOTS 13-21, BLOCK 4, W.P. CARTER'S ADDN. & 0.90 ACRES IN J.B. MCANAI SURVEY, ABSTRACT NO. 763.

VARIANCE – PATIO HOME GROUPING

VARIANCE – SIDE SETBACK

600 BLK. E. CARTER,
600 BLK. E. COLLEGE
& 800 BLK. N.
BROUGHTON
(LAZY L
ENTERPRISES)

the best utilization of the property. They had seen the Staff Review Letter and would abide by the Staff Review Recommendations.

Commission Member Davis asked the purpose of putting two of the houses together.

Mr. Edwards explained it would give them more flexibility in the width of the product that they can put on the lot. The homes will have three and four bedrooms on each of the lots.

Chairman Sofey explained they will have to meet the requirements of the College Park Overlay District.

Commission Member Morgan asked how close the house would be on Lot 8 to the railroad tracks.

Mr. Edwards explained with the zero setback, it would be approximately 15 feet.

Commission Member Hicks asked how many of the big trees they would have to take down.

Mr. Edwards explained most of the trees on the site are in the open space that is proposed, he did not think they would have to take down many at all.

Chairman Sofey explained you have to have two trees to on the lot to receive a Certificate of Occupancy Permit.

Ron Barton, 715 S. Sam Rayburn, Sherman, Texas

Mr. Barton expressed his support for this request, he felt it was a good investment for Sherman, this is a perfect area for something like this.

No other citizens appeared before the Planning and Zoning Commission to discuss the Replat or the Specific Use Permit and site plan.

Planning and Zoning Commission

Specific Use Permit and site plan approval to allow patio homes in an R-1 (One Family Residential) District and the College Park Overlay District.

Planning and Zoning Commission

Final Plat Approval of Austin Park Addition, being part of a Replat of Lots 13-21, Block 4, W.P. Carter's Addition and 0.90 acres in the J.B. McAnair Survey, Abstract No. 763.

ACTION TAKEN.

Motion by Commission Member Jones to approve the Specific Use Permit and site plan to allow patio homes and the Final Plat of Austin Park Addition subject to the Staff Review Letters. Second by Commission Member Tankersley.

VOTING AYE: JONES, HICKS, TANKERSLEY, DAVIS, SOFEY, MORGAN AND ATHERTON.

VOTING NAY: NONE

MOTION CARRIED

Commission Member Hicks was concerned with the zero foot setbacks along the railroad right-of-way, what if a train derailed.

Mr. Shadden explained it would be his understanding the liability would be when the train crossed the property line, it wouldn't matter where the structure was.

Commission Member Atherton explained someone is going to have to make the decision to buy the property and live there. She asked about the grouping of the patio homes that had the attachments, two that are attached instead of one.

Chairman Sofey explained Lots 4 & 5 and 7 & 8 will share a common wall but it will be separate structures.

Board of Adjustments

Variance to allow zero setbacks to be adjacent with no more than two patio homes attached in one grouping on proposed Lots 4 & 5 and 7 & 8 of the Austin Park Addition in an R-1 (One Family Residential) District and the College Park Overlay District.

Board of Adjustments

Variance to allow a zero foot side yard setback in lieu of the required 10' on proposed Lots 1 & 8 of the Austin Park Addition in an R-1 (One Family Residential) District and the College Park Overlay District.

ACTION TAKEN.

Motion by Commission Member Morgan to approve the variance to allow zero setbacks to be adjacent with no more than two patio homes attached in one grouping on proposed Lots 4 & 5 and 7 & 8 of the Austin Park Addition and a variance to allow a zero foot side yard setback in lieu of the required 10' on proposed Lots 1 & 8 of the Austin Park Addition. Second by Commission Member Atherton.

VOTING AYE: JONES, DAVIS, SOFEY, MORGAN AND ATHERTON.

VOTING NAY: NONE

MOTION CARRIED

THE COMMISSION FOUND THE REQUEST CONFORMS TO THE INTENT OF THE ORDINANCE.

REPLAT

THE REQUEST OF SPAVINAW DEVELOPMENT, LLC (OWNERS) AND SARTIN AND ASSOCIATES, INC.

REPLAT LOTS 1, 2, & 3, BLOCK "B", NORTH HAVEN ADDITION

(SURVEYORS) CONCERNING THE PROPERTY LOCATED AT 3104, 3108, AND 3112 RIVERCREST DRIVE, BEING LOTS 1-3, BLOCK B, NORTH HAVEN ADDITION, CONTAINING 0.64 ACRES IN THE J.B. MCANAI SURVEY, ABSTRACT NO. 763, AS FOLLOWS:
PLANNING AND ZONING COMMISSION
REPLAT OF LOTS 1, 2, AND 3, BLOCK "B", NORTH HAVEN ADDITION

3104, 3108 & 3112
RIVERCREST DR
(SPAVINAW
DEVELOPMENT LLC)

Chairman Sofey abstained from this item because of a conflict of interest. Commission Member Jones replaced him as Chair for this item only.

Marshall Sartin, Sartin & Associates Surveying, 109 S. Travis, Sherman, Texas

Mr. Sartin appeared to represent the request and answer any questions. The property is located at 3104, 3108 and 3112 Rivercrest Drive in the North Haven subdivision. The owner would like to replat three lots into 2 lots for residential development. They had seen the Staff Review Letter and would abide by the Staff Review Recommendations.

No other citizens appeared before the Planning and Zoning Commission to discuss the Replat.

ACTION TAKEN.

Motion by Commission Member Davis to approve the Replat subject to the Staff Review Letter. Second by Commission Member Atherton.

VOTING AYE: JONES, HICKS, TANKERSLEY, DAVIS, MORGAN AND ATHERTON.

VOTING NAY: NONE

ABSTAIN: SOFEY

MOTION CARRIED

THE COMMISSION FOUND THE REQUEST CONFORMS TO THE INTENT OF THE ORDINANCE.

SPECIFIC USE PERMIT & SITE PLAN

THE REQUEST OF CIRCLE SHERMAN, LLC (OWNERS), DAYS INN HOTEL & SUITES (TENANT) AND ZONA SANDERS (REPRESENTATIVE) CONCERNING THE PROPERTY LOCATED AT 3605 U.S. HIGHWAY 75 SOUTH, BEING 4.59 ACRES IN THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667, AS FOLLOWS:

PLANNING AND ZONING COMMISSION

SPECIFIC USE PERMIT AND SITE PLAN APPROVAL UNDER ORDINANCE NO. 2280, SECTION 8 (5)(A) TO ALLOW A COMMERCIAL AMUSEMENT CENTER (BINGO GAMES) IN A C-2 (GENERAL COMMERCIAL) DISTRICT, THE O-1.2 (SAM RAYBURN) OVERLAY DISTRICT AND THE O-1.1 (FM 1417) OVERLAY DISTRICT.

SUP & SITE PLAN –
COMMERCIAL
AMUSEMENT CENTER
(BINGO GAMES)
3605 HWY 75 S.
(DAYS INN HOTEL &
SUITES)

Zona Sanders, 3605 U.S. Highway 75 South, Sherman, Texas

Ms. Sanders appeared to represent the request and answer any questions. The property is located at 3605 U.S. Highway 75 South; Days Inn and Suites is the tenant. The owner of the building would like to establish a bingo game room within the hotel. The hotel has 138 room and suites and 252 parking spaces. Ms. Sanders explained they will have to work with the State to be approved for bingo games, but this would be the first step. They do not know how many days they would operate the bingo games. They would have sponsorships from charitable organizations, they don't really profit from the bingo games itself but they rent the hall to the people, any kind of charitable organization, they are the one's that collect the profit. It will let people know where they are and hopefully provide a lot of business for the hotel and restaurant. There are a few people that are interested in it and they would fill out the paperwork to be approved through the State. They had seen the Staff Review Letter and would abide by the Staff Review Recommendations.

Mr. Shadden explained they would not be allowed to have any eight-liners or illegal gambling machines permitted on the property.

Commission Member Davis asked if the plan was to rent out a large room to a qualifying charitable organization to run a bingo game.

Ms. Sanders explained that was correct. The organization would have to go through the State with the approval letters. They will give them the application and they will go through the State on their own, once they get approved they can operate the bingo games. The hotel would provide the facility for the game, it would be held in the banquet room.

Commission Member Davis asked if there would be any restrictions on the hours of operation of the bingo games.

Ms. Sanders explained they have not talked to the State about that but they did not want to be in there 24 hours, they would abide by whatever the State requires.

Bob Stoolfire, Flamingo Bingo, Sherman, Texas

Mr. Stoolfire wanted to make sure the applicant knew they would have to get a license, an application for a commercial license to lease bingo premises there and each charity has to apply to get a license.

Ms. Sanders explained she has spoken to the State several times and she understood that, this is the first step to get approved.

Gwen Coleman, 3618 S. Dakota, Sherman, Texas

Ms. Coleman explained her property is immediately to the southeast of the hotel. She has been there 32 years and

they have had numerous problems in the area, drinking and the commotion that is associated with that. There are several homes that abut the parking lot of the hotel, the noise is a problem especially if this is a late night function and people are trying to sleep and cars are coming and going. She was interested in knowing what the hours of operation would be and the number of patrons that would be expected. "We need to make sure we do not add to the problems that have been associated with this property to the residents that live behind the hotel." The fence in the back of the hotel is falling down and needs repairs between the residential houses.

Ms. Sanders explained this hall is up towards the front of the hotel, so they would not be parking in the back. It is a new owner right now and they are trying to have a good reputation, the owner has put close to \$1,000,000 in the hotel trying to bring it up to what it used to be.

Chairman Sofey explained the fence is a requirement when it borders residential property. One of the things we could do is put a condition that the hotel comply with the screening ordinance.

Barbara Plumlee, 3614 S. Dakota, Sherman, Texas

Ms. Plumlee explained they have tried to repair the fence and it is leaning way over and it is horrible. When they first put in the hotel, they put the concrete over the drainage ditch and her house has flooded.

Mr. Shadden explained the fence will need to be brought up to standard whether this is granted or not, the Board can put a condition that this will not become effective until the fence is installed correctly.

Commission Member Davis asked if it was possible to put a condition on the hour at night that the function would be over.

Mr. Shadden explained that could be done.

Commission Member Jones explained "the Staff Review Letter does not address compliance with all State Regulations, should that be added."

Mr. Shadden explained "the State will see to it that happens, but you can add that as a condition."

No other citizens appeared before the Planning and Zoning Commission to discuss the Specific Use Permit and site plan.

ACTION TAKEN.

Motion by Commission Member Jones to approve the Specific Use Permit and site plan subject to the Staff Review Letter and compliance with the completion of the

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repairs of the screening, subject to the hours not going after midnight and compliance with all State requirements for the operation of a commercial amusement center, bingo. Second by Commission Member Morgan.

VOTING AYE: DAVIS, SOFEY, JONES, TANKERSLEY, HICKS, MORGAN, AND ATHERTON.

VOTING NAY: NONE

MOTION CARRIED

THE COMMISSION FOUND THE REQUEST CONFORMS TO THE INTENT OF THE ORDINANCE.

OTHER BUSINESS

No other business came before the board.

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:29 p.m.

CHAIRMAN _____

SECRETARY

OTHER BUSINESS

ADJOURNMENT