

**RICHLAND HILLS ZONING BOARD OF ADJUSTMENT
OCTOBER 16, 2017
MINUTES**

Roll Call:

Members present:

Jorge Cisneros, Chairman
Ashly Schilling, Place 3
Chris Utchell, Place 4
Corrie Hayward, Place 5

Members Absent:

Sanjay Mathews, Place 2
Brent Peck, Alternate

Staff

Kay Duffy, Development Coordinator
Jason Moore, Assistant City Manager
Andrea Russell, City Attorney

CALL TO ORDER

Chairman Cisneros called the meeting to order at 6 p.m.

1. Approval of the August 29, 2017 meeting minutes.

A motion to approve the minutes from the August 29, 2017 meeting was made by Chris Utchell seconded by Corrie Hayward, and approved by all.

2. EXECUTIVE SESSION. The Board reserves the right to adjourn into executive session, pursuant to Section 551.071(2) of the Texas Government Code, to obtain advice from the city attorney regarding any posted agenda item.

A motion to adjourn to Executive Session was made by Corrie Hayward, seconded by Chris Utchell and approved by all.

The board reconvened into regular session at 6:26 p.m.

3. Public Hearing and consideration of a request for a special exception from Section 2.04.02 D Area Regulations to allow for an encroachment of the building into the required rear yard setback on the west side of the property located at 3901 Popplewell Drive. (Case# ZBA 2017-0726).

Jason Moore, Assistant City Manager, briefed the Commission on the case to be decided. The property at 3901 Popplewell was zoned Retail in the zoning ordinance adopted in 2014. Recently a one story, 2-suite building with six parking spaces was constructed at the site. It sits between the new Advanced Auto Parts store and a

residence at 7067 Hardisty. The owner had submitted all of the appropriate plans to the City prior to construction and had agreed to suggestions made by the Development Review Committee (DRC). Unfortunately, the DRC mistakenly missed a setback requirement for retail properties that are adjacent to a residential lot. The project was nearing completion at the time the oversight was brought to the attention of staff by another property owner and the applicant has been working with the City to rectify the discrepancy with the zoning ordinance. Staff's recommendation was to approve the special exception option based on the special exception rule of the zoning ordinance (Section 6.13.01.(D)(2))

Chairman Cisneros opened the public hearing at 6:41.

The first speaker was the applicant, Tommy Cunningham. The Cunningham family has lived in Richland Hills over 70 years since his grandfather bought a house here and Mr. Cunningham currently owns multiple properties in the city. He is constructing the building to use as an office for his custom homebuilding business and his brother's architecture office. He purchased the property at least 6 years ago with the intention to build an office. Mr. Cunningham stated that during the building process he paid to help one of the adjacent neighbors move a storage building that was encroaching on the site.

The second speaker was Kevin Jones who lives at 7116 Hardisty. He is for the new property but is concerned about a vehicle that is parking nightly in the new parking lot. He suggested a locked gate at night might keep cars out of the parking lot and help deter crime in the neighborhood. Mr. Jones is also concerned about the wall between Advanced Auto and the new property causing a safety hazard for the people pulling out of Mr. Cunningham's new parking lot.

Chairman Cisneros closed the public hearing at 6:59 p.m. and asked Mr. Cunningham if he had any additional comments. The commission asked questions of the applicant and learned that there would be enough activity at the new office to make it look like it were in use, that there wouldn't be any goods or garbage stored in the backyard, and that the neighbor whose yard abuts the improper setback considers it a minor issue (the neighbor was in attendance at the meeting).

The commission members then began to discuss and deliberate points A through F under Section 6.13.01 of the Zoning Ordinance.

Chris Utchell made a motion to approve the exception of the rear setback as the building is currently constructed. Ashly Shilling made a second and a vote was taken with three commissioners voting in the affirmative and Commissioner Hayward voting no. The commission had been advised by the City Attorney that a special exception requires a larger majority of votes to pass and therefore all four members in attendance would have to approve the exception to pass this ZBA case.

After the vote, the Commission further discussed the issue. Corrie Hayward felt the architect had not done his due diligence to miss this setback. In addition, commission

member Hayward mentioned her concerns that she felt the property looked out of place as it was built and she was concerned about the maneuverability of the parking lot. Ashly Shilling stated that she may have voted differently if the case had come before construction but that in her experience working construction getting a permit from the City means that the plans have been approved. Commissioner Utchell said he felt the owners operated in good faith and mentioned his concern about what would happen to this new building if ZBA did not approve the exception.

Chris Utchell made a second motion to approve the exception of the rear setback as the building is currently constructed. Corrie Hayward made a second and the motion carried 4-0.

Corrie Hayward motioned to adjourn. With a second from Chris Utchell and unanimous approval Chairman Cisneros adjourned the meeting at 7:58pm.

ATTEST

APPROVED

Kay Duffy, Development Coordinator

Jorge Cisneros, Chairman