

**State of Texas
County of Denton
City of Lake Dallas**

The Board of Adjustments of the City of Lake Dallas met on January 27, 2014 at 7:30 p.m. in the Lake Dallas City Hall located at 212 Main Street, Lake Dallas, Texas with notice of the meeting posted as required by Title 5, Chapter 551.041 of the Texas Government Code.

1. Roll Call

Members Present: Steven Bertrand, Cindy Nelson, Terry Tuck, Danny Everett, Carol Ann Connors

Staff Present: Community Development Director Char DuPree and Planning and Zoning Secretary Khara Sherrill

2. Consideration and Action on approval of Minutes for the January 7, 2013 meeting.

Carol Ann Connors advised the minutes have her last name misspelled in several places.

There were no problems regarding the content of the minutes.

Motion to approve the minutes for January 7, 2013 was made by Carol Ann Connors; second by Terry Tuck.

Ayes: Carol Ann Connors, Terry Tuck, Steven Bertrand, Cindy Nelson, Danny Everett

Noes: None

Motion Passed

3. Public Hearing to hear an appeal regarding the revocation of a Certificate of Occupancy for Mav's Auto, requested by the property owner, Avi Collins, for the property located at 326 Main Street, Lake Dallas, Texas.

Char Dupree, the Community Development Director, came forward, stated her name and position, and was sworn in by Chairperson Steven Bertrand. She gave an overview presentation of Mav's Auto and the business owner Mr. Avi Collins regarding the property history. The City Manager approved the certificate of occupancy in January 2011 even though it was an illegal non-conforming use. Mrs. DuPree told Mr. Collins that he needed to bring the property up to code once the certificate of occupancy was issued.

Over the next 16 months there were continual code enforcement violations including not maintaining the parking lot, building was not maintained, and constant trash and debris. Vehicles were being moved on and off the business during the night.

On May 23, 2013 a violation notice was sent to Mr. Collins regarding the condition of the parking lot stating that if there is a problem again he would be required to install a hard service. In June, after a second incident, a citation was issued and another notice was sent requiring a hard surface needed to be installed. On July 29, 2013 Mr. Collins asked that the City waive the hard surface requirement which was denied but he was given an extension to the end of September. On September 17, 2013 the building permit was issued. The hard surface was never installed.

On October 30, 2013 a notice was issued regarding the revocation of Mav's Auto's certificate of occupancy; because it was an illegal non conforming use and there were constant code violations making it a public nuisance against city ordinance. In December 2013, Mr. Collins allowed a tenant to move into the property and a refrigerator was placed outside the front door. This has had a negative impact on the downtown revitalization effort.

Mr. Wohr, attorney for Mr. Collins, spoke on his client's behalf. He stated the only issue here is whether the issuance of the certificate of the occupancy was valid. He believes that city codes should be handled in the municipal court only and not in this setting. If it is found that the certificate of occupancy was issued in error, then it leaves the City liable. He doesn't feel that the Board has the authority to decide whether a certificate of occupancy was illegally issued by a previous City Manager since that City Manager had apparent authority to approve it. The City Manager based the certificate on a letter that he felt was true and it should have been his responsibility at that time to see if the letter was valid. But the fact of the matter is the City Manager accepted the letter and felt it was appropriate to issue the certificate of occupancy. It was only with the issuance of the certificate of occupancy that Mr. Collins bought the property. The City does have authority to enforce ordinances but not to keep him from doing his business. Each City Manager has his own opinion and it should be upheld. Mr. Wohr then spoke of Mrs. DuPree and his belief that she has kept Mr. Collins from keeping the property in compliance. The main issue here is whether the certificate of occupancy was granted legally.

Jason Masten, neighboring business owner at 380 Main St., then spoke. Mr. Masten stated that the last two years having Mav's Auto as neighbors has really hurt his business. The process of the certificate of occupancy is to run the business in accordance with the rules of the City. He tries to abide by them as much as he can. It takes money to keep these old properties up to code. Cars have not been moved out of there in 6 months. It just looks tacky; it needs to be cleaned up.

Mr. Avi Collins then spoke. He asserted again that he would never have purchased this property if the former City Manager had not approved the certificate of occupancy. He stated he has done a lot of work to that property. Every time he got a code ticket he always complied. He doesn't want to fight the City but he is not going to invest any more money into the property until his certificate of occupancy is reinstated. He then thanked the Board for their time.

Chairperson Bertrand then asked Mr. Collins what it is that he does on the property to make money. Mr. Collins answered he has two licenses, one for selling cars and one to finance cars. Mr. Bertrand next asked what the background was regarding the fence being removed. Mr. Collins replied that he took it down since it was part of the cleanup process for the property. Mr. Collins would like to put the fence back up so he can hide the dismantled cars behind the fence. He wants to fix up the property but he is looking for the Board's help and assistance to do the right thing. Mrs. DuPree spoke regarding the fence. She stated the older fence was around the car wash equipment and junked vehicles that were part of Jack Ezell's business, plus there were issues of high grass.

In summary, the certificate of occupancy should not have been issued, however, once it was the property should have been maintained in compliance with city code.

No one else came forward and the Public Hearing closed.

4. Consideration and Action to hear an appeal regarding the revocation of a Certificate of Occupancy for Mav's Auto, requested by the property owner, Avi Collins, for the property located at 326 Main Street, Lake Dallas, Texas.

Carol Ann Connors stated she was on City Council when the certificate of occupancy was approved and knew nothing about it. She stated that even though she believes the former City Manager should have never done this, it was done and it appeared at that time that he did have the apparent authority to issue it. The City Attorney, Whitt Wyatt, stated there is case law that the Board of Adjustment is not bound by City Staff's decisions. Mr. Bertrand clarified with Char DuPree that the City Manager was not the individual who normally issues the certificate. The City Manager was told by Char DuPree that he needed to get a variance reviewed by the Planning and Zoning Commission and then approved by the City Council before she could issue the certificate of occupancy. Board member Carol Ann Connors asked why Char DuPree still signed the certificate of occupancy and she answered because it was her boss who advised her to do so.

Mr. Masten came forward giving his testimony that he had been in Lake Dallas for 5 years and he can attest that there was only the beauty shop at Mav's location when he opened his business over 2 years ago. He also stated that when Masten's property was not maintained he also got a citation.

Chairperson Bertrand asked in what instance a certificate of occupancy can be revoked. Char DuPree answered if the property becomes a public nuisance. The Building and City Code (section 122-711 & 712) gives the City authorization to revoke the certificate of occupancy. Then he asked the City Attorney if they can consider the city ordinance violations as a reason to revoke the certificate of occupancy. He answered that they can address anything and everything said at the meeting, they just cannot address whether they can demolish the building on the property. It was clarified that anyone that has a certificate of occupancy is responsible for keeping the property up to code.

Carol Ann Connors asked Mr. Collins how long it would take to get the property up to code. Mr. Collins stated it would take 60 days. Mrs. Connors stated she felt the property is an eyesore and it has been going on for too long. It was also clarified that Mr. Collins could have brought the property up to code even without the certificate of occupancy. Board member Terry Tuck asked Char DuPree to explain again why there was a problem with the initial certificate of occupancy issuance. She further explained the revocation was done due to it being an illegal non conforming use and that it had become a public nuisance.

Chairperson Bertrand asked if the Board upholds the revocation, what opportunity Mr. Collins would have to get another certificate of occupancy. Mr. Wohr answered he could not get another certificate since the ordinance does not allow car sales unless he wanted to go through the legal process to get a variance. Mr. Bertrand asked if there is a place where the process of getting a certificate of occupancy is explained. Char DuPree stated there are instructions attached to the application which explains the process and that she, as the permit tech, approves the certificate of occupancy. After reviewing any initial application, it would be up to her to advise the applicant if they needed a variance. Mr. Bertrand asked Mrs. DuPree if it is her opinion that Mr. Collins was doing an end-run on the rules by going through the City Manager and she answered yes.

Mr. Bertrand asked Mr. Collins how willing he is to get his property up to his code. He said he just needs 60 days, he will do whatever it takes.

City Manager and Chief of Police Nick Ristagno came up to speak. It was never the City's intent to try and remove the certificate of occupancy. The City has tried to act in a good faith effort not to revoke it and attempted to work with Avi Collins repeatedly. Mr. Collins indicated that he intended to do what he was asked but in the end he never did anything. Mr. Collins was told repeatedly to talk to the city code inspector and see what they require him to do to be in compliance and all he would do was yell and scream and continue to have code violations. If the Board does uphold the appeal Mr. Collins needs to clean it up. To get to this point has been a long process. The City encourages the businesses in our city, we want them to succeed, but the manner in which Avi has been doing business is not working.

Carol Ann Connors feels that if they allow the appeal to go through she expects Mr. Collins to do what he has said he will do in 60 days. Board member Danny Everett stated if nothing has been done in 3 years is there really a chance he will do something in 60 days. Mr. Bertrand stated that the fact remains that the certificate of occupancy can be revoked for certain reasons and there is proof that those reasons exist here since he has not maintained the property.

Motion to uphold the revocation of the Certificate of Occupancy was made by Steven Bertrand; Second by Cindy Nelson.

Ayes: Cindy Nelson, Terry Tuck, Steven Bertrand, Danny Everett

Noes: Carol Ann Connors

Motion passed.

5. Public Hearing to hear an appeal regarding the condemnation of the residential structure located at 703 Glen Rhea. The City of Lake Dallas is requesting an order to vacate, secure, repair, remove or demolish the structure in accordance with the City's current Minimum Housing and Building Standards Code and the 2003 International Residential Code.

Char Dupree, the Community Development Director, was sworn in by Chairperson Steven Bertrand. Char DuPree gave a presentation giving a history of the property code violations dating back to 1992. The current owner is Jerry Varnell who obtained possession of the property during probate in 1999; however his daughter currently lives in the residence. Property taxes have not been paid on the property since 2008. There is extensive accumulation of trash and debris, no solid waste service or potable water and major structural damage on the property. The interior of the structure is not maintained, confirmed through police reports and animal control personnel.

In 2014 a letter of condemnation was posted on the property. There has been no response from Ms. Varnell to the Community Development Department and no property improvements were made until a couple days before this meeting. On the day of the meeting Ms. Varnell had removed a large amount of trash and debris from the outside of the home.

In summary, Ms. Varnell has shown a total disregard toward the City's request to abate the property violations for many years. She has been unresponsive to legal enforcement efforts and has several citations pending in the Lake Dallas Municipal Court. The City of Lake

Dallas cannot allow this situation to continue effecting the health, safety and property value of our other residents.

Mrs. DuPree presented a proposed written order to the Board with the City Staff's recommendations.

The current resident, Courtney Varnell came up to speak. The last seven days she has removed several loads of trash. This whole situation has been overwhelming. Board member Terry Tuck did advise the property looks much better. Carol Ann Connors asked about the condition of the interior of the property. Ms. Varnell said she lives on the property with only her two cats and it is much cleaner than it has been in the past. She stated she doesn't have a job and it was her dad's money that was paying for things. Cindy Nelson asked her if she has water. She said no, but she get buckets of water from her neighbor three doors down.

Courtney Varnell said she has gone several periods of time without trash service. She added she does have windows but needs help to install them. When asked if she has been getting the notices from the City, she said she has been getting the citations. Regarding the situation with outstanding property taxes, she said she doesn't know anything about the taxes and what her father had set up. Her father is currently in a nursing home in Denton named Senior Care on Brinker Rd. She got control of the house just because she was living there when he got sick but the house does still legally belong to him. Varnell is the only living relative. Board member Nelson asked her if she has tried to get any help in regard to the taxes of the home and she said she just doesn't have any idea what to do.

No other people came forward so the public hearing closed.

6. Consideration and Action to hear an appeal regarding the condemnation of the residential structure located at 703 Glen Rhea. The City of Lake Dallas is requesting an order to vacate, secure, repair, remove or demolish the structure in accordance with the City's current Minimum Housing and Building Standards Code and the 2003 International Residential Code.

Board member Cindy Nelson stated they don't know who owns the property right now and asked if there were any liens on it. Char DuPree stated that Denton Central Appraisal District still lists Jerry Varnell as the owner. It has not been foreclosed on for back taxes because it has the over 65 homestead on it.

Chairperson Bertrand read the four items that needed to be dealt with, which include all the outside trash and debris, trash and debris plus animal feces in the interior, remove all health hazards that are on the property, and bring the structure into full compliance with the City's code of ordinances. Ms. Varnell admitted she is a hoarder but there is minimal trash in the house. She advised she does not have any issue with rodents and insects on the property. Mrs. Varnell said it would be hard to pay for the water because she has an existing balance to pay before service can be reinstated. She was asked if she has reached out to any of the social services in the area. Ms. Varnell replied that she has only gotten food from the Methodist Church. She also told the Board she recently lost her ID and does not have a vehicle.

The City Attorney explained to the Board that they have the right to give a certain amount of time to let Ms. Varnell complete what is required to get the house in a habitable condition. If she does not comply then the City has the right to take over the property and do what they

need to do. Danny Everett advised 60 days seems like a fair amount of time to give her. Mr. Bertrand said one concern is her ability to keep up the maintenance on the property. The City Attorney recommended they give her 60 days and then request a rehearing to see what needs to be done from there. Mr. Bertrand stated not having neighbors speaking against her at the hearing is a good sign. Terry Tuck requested to get a status report from the City in 30 days. It was determined that an inspection would be done by Mrs. DuPree on or before March 1, 2014 just to see what progress has been made. Ms. Varnell verbally gave Char DuPree permission to enter her house. Carol Ann Connors gave Ms. Varnell several options of social service organizations that could help her.

Motion to approve the Board of Adjustment order as amended to allow Ms. Varnell to make improvements to the house and to be re-evaluated at a later time was made by Danny Everett; second by Terry Tuck.

Ayes: Cindy Nelson, Terry Tuck, Steven Bertrand, Danny Everett, Carol Ann Connors

Noes: None

Motion passed.

7. Adjournment

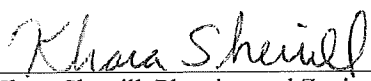
Motion to adjourn was made by Carol Ann Connors; second by Cindy Nelson.

Ayes: Cindy Nelson, Terry Tuck, Steven Bertrand, Danny Everett, Carol Ann Connors

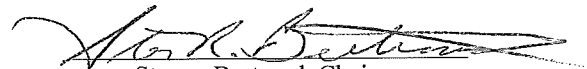
Noes: None

Motion Passed

The meeting was adjourned at 10:17 PM.



Khara Sherrill, Planning and Zoning Secretary



Steven Bertrand, Chair