

STATE OF TEXAS

**MINUTES OF BOARD OF  
ADJUSTMENTS AND APPEALS**

COUNTY OF NUECES

**WEDNESDAY AUGUST 21<sup>ST</sup>, 2013**

CITY OF PORT ARANSAS

**COUNCIL CHAMBERS – 3:00 P.M.**

The Board of Adjustments and Appeals of the City of Port Aransas met in Called Session on Wednesday August 21<sup>st</sup>, 2013, at their regular meeting place, 710 W. Avenue A, Port Aransas, Nueces County, Texas, with the following members present:

**BOA MEMBERS PRESENT**

Chair Billy Gaskins  
Member Glen Martin  
Member Flip Burleson  
Member Linda Daves  
Member Jim Freeman  
ALTERNATE Member Noyes Livingston (in audience)

**STAFF MEMBERS PRESENT**

City Manager David Parsons  
Director of Development Services Rick Adams  
Building Official Abel Carrillo  
Planning Assistant Jeane Ivey  
Building Clerk Nicole Hammock

1) **CALL TO ORDER:** With a quorum of the Board of Adjustments and Appeals Members present, the Called Meeting of the Board of Adjustments and Appeals was called to order by Chair Billy Gaskins at 3:00 pm on Wednesday August 21<sup>st</sup>, 2013 in the Council Chambers of the Port Aransas City Hall, 710 W Avenue A, Port Aransas, Texas.

2) **APPROVAL OF MINUTES:** Wednesday, February 20<sup>th</sup>, 2012, Called Meeting  
The minutes of Wednesday February 20<sup>th</sup>, 2012, were approved as written with a yes vote by all members present. Member Glen Martin made the motion and Member Linda Daves seconded motion.

3) **PUBLIC HEARINGS:**

**A. Public hearing to receive comments on Variance Application #VAR-130152, Aransas Holding Co S/D, Blk 77, Lot 7, Port Aransas, Nueces County, Texas. Request by Ronald Pierson. Property location: 301 E Ave E.**

Ron Pierson: Hello board, I want to thank y'all for your time being here, I know a lot of you work, and may have a loss of income being here as I did, I could have booked today two or three times over, but I had to prepare to be here. Middle of summer, I had to take today off from income, just to prepare my case to get my variance. And I want to thank the members of the city for being here also. Is now the appropriate time ...I have prepared some paperwork and pictures and so on and details for the members of the board, and the city....is now the appropriate time to hand those out?

Billy Gaskins: Yes.....we've got a bunch in here.

(Others in group agree, jokingly, that there is a lot in the packet. Ron passes them out, there is some discussion about making copies, and sharing, general talking amongst themselves. )

Billy Gaskins: What's this permit here Ronald?

Ron Pierson: The permit is for a variance asking for 4 point something feet...I'm looking at my paperwork here....off the side yard for a building...a variance

Flip Burlison: a year ago?

Ron Pierson: Actually, the variance was applied the 14<sup>th</sup> of February this year, the original building permit that I have, the date of issuance was December 21<sup>st</sup> last year. I came in and I applied for a building permit to build a portable building on skids. And had a hand-drawn diagram of the distance that building would be from the side street and the placement on the property...my property...and it was approved, you know, with the other building requirements, you know, as far as the structure of the building, the space of studs and ties and whatnot. I adhered to all of them. I was given approval and issued here, here's.....I only have one copy of this....here's the original building that approved me to start building the building in it's original location, it's not now in it's original location, and I'll get to that in a few minutes, but this is the original building permit issued in December , I believe 21, 2012. I was near completion of my portable building, lacking hanging one swinging door and painting the ¾" treated plywood, you know, in case got wet, or rained or something leaked on it...and I got red tagged and was told I was still in the right of way and at that point, I moved the building back an additional 5 feet, so it is 4 or 5 feet further back now than when it was originally approved and I continued finishing my building. I was told by the city that I had to apply for a variance to continue construction, or whatever, that I was pretty much finished with. I applied on the 14<sup>th</sup> of February of 2013 after the construction was already completed for my original building permit when it was approved and I haven't done anymore construction to it since. The building has been moved further back from the street, I have pictures, I have the original drawing...the approved general permit, approved the accessory building permit that was issued on the 21<sup>st</sup> of December, and behind that was the drawing that I originally submitted to the city that was approved and was issued my building permit. Now the question, I don't know, but...all of the sudden it was red tagged, I moved the building back even further, and it is clearly behind...from the pictures in the back...behind the roof line of the anchor court, the cottages, immediately to the north of me, my building is clearly behind that roof line, and the entire row of palm trees that line the entire two blocks from Avenue E all the way to Avenue C on Tenth street. So, I guess I am here to satisfy the board and the city that I deserve the distance on the variance I needed to reduce the setback for the portable building from 20 to 11.4ft or 26' from the edge of the street but that is not what we went by originally when my permit was originally approved. That's about all I have got to say.....other than, the very last two pages of pictures of other new construction within the past...two of them this year, one...two of them in the past two or three years. One property is behind the circle k on Avenue G and 11<sup>th</sup> year, I believe that is

property, I'm trying to remember, property #4, and they have some type of storage shed building which is 15 to 18 feet off the pavement inside their fence. Property #1, I believe is adjacent to my front address at 316 Avenue E, they just built a deck, this year, that is about 4 feet from the curb and less than 7 or 8 feet from the edge of the pavement that to me appears to be a relatively permanent structure. There's two other properties that there's a picture of that I think I labeled properties 2 and 3, they're at Avenue G and Oceanview Estates. The one that is actually at the corner, of course, has the concrete retaining wall that has been there, as long as I've lived here, since the late 80's, but they put some new construction there that is within 18' of the pavement, some type of thick wall barrier, I didn't trespass on their property to see what was on the other side of it, it appears to be attached to the building. And the property number two directly north of that in Oceanview estates, they have what appears to be some type of substantial barrier that is attached to concrete that is within 6 or 7 feet of the edge of the pavement. My building is not visible from two blocks away on either side. It is behind the roof line of all of the cottages that are next door of me and is also behind all of the palm trees that line the two blocks that I am on the side tenth street between avenue C and Avenue E. Are there any questions? Am I leaving something out? Do y'all see something on there that I haven't mentioned?

Glenn Martin: Mr. Chair, I have a question for Rick, or Jeane? This address is on E street? And we are treating Tenth Street as the front yard?

Jeane Ivey: No.

Glenn Martin: Then why does he have to have a...

Jeane Ivey: He has to have a 15 foot side yard off of tenth. And I think your paperwork reflects that.

Glenn Martin: off of Tenth....yes. yeah....he's....

Billy Gaskins: He's saying how you look at the property....

Rick Adams: It's the side setback, not the front

Glenn Martin: It's a corner lot, so it's 15 feet off both sides?

Jeane Ivey: No, it's 20 off of E.

Glenn Martin: 20 off of E?

Jeane Ivey: Yes, and 15 off of tenth

Glenn Martin: Which would be a side yard?

Jeane Ivey: Yes

Glenn Martin: And side yard because it's on a corner is 15 feet, not five feet.

Jeane Ivey: Correct.

Glenn Martin: Ok.

Jeane Ivey: Correct, if you are on a corner lot you have to be 15 feet off of that one side. The property is running this way...if it was running that way, the side yard would be E.

Glenn Martin: Ok he is showing 26' off of the pavement, but he needs to be 15 feet off of...

Multiple people: Off the property line

Rick Adams: Off of the property line....some of that measurement includes the right of way.

Glenn Martin: Right. Exactly. He is supposed to be 15 feet because he is the corner lot, he is supposed to be 15 feet, and he is something less than that? Is that what the red tag was about? That he wasn't far enough off the property line?

(Some discussion, people speaking over one another)

Rick Adams: Essentially our violation is that he has a structure, we keep referring to it as a portable building, but it's a structure. It possibly can be moved because it was constructed on skids, but it's a structure. And it's in the setback, that's the issue.

Glenn Martin: Right

Ron Pierson: And I'm asking for a variance to satisfy the city so we can all go on with our lives.

Glenn Martin: Why was he issued a building permit?

Rick Adams: The building permit, it looked like was to construct the structure.

Glenn Martin: In other words, it had nothing to do with the location of the structure?

Rick Adams: Obviously, right, we issue permits all day long but the expectation is that they conform to the other ordinances and regulations

Glenn Martin: (to David Parsons) go ahead....

David Parsons: Just real quick, the confusion stemmed from the applicant's original site plan. The site plan, when we received the site plan, it showed a box, representing his lot and it showed a measurement of 20-something feet, but....

Ron Pierson: 23 feet

David Parsons: So we issued a permit based on that. (at the same time) Ron Pierson: From tenth street.

David Parsons: We were like: 'great, he meets the side yard setback. But what the applicant really had submitted was that he was measuring from the edge of the pavement, not his lot line. That is why the application was approved because his site plan indicated 20something feet from the lot line, when in essence, he had given us a measurement from the edge of the asphalt. It wasn't until he started building that we drove by and went: 'Whoa, what's up here? We've got something too close, what's going on? We went back and looked at the plans, and the plans said 20something, so we're like, okay, something's not right. That's when we contacted him, and discovered that the error was, and he acknowledged it, he said, yeah, that's from the edge of the street. We said, wait a second, we're reading it as from the edge of your property line. So that is where the whole confusion comes in, that is why he was issued the permit. Because his original drawing was measured from the asphalt, which was incorrect.

Ron Pierson: that was my drawing. That was my drawing. Clearly, tenth street, 23 feet to the building. I was red tagged. I went through the expense and time, and effort to move the building further back and now it's 26 feet from the property...from the edge of the street, and behind the roof lines

Glenn Martin: well, you understand what he said though, the property line is not the edge of the street. The property line...I thought you had a survey here...

Jeane Ivey: it's in your packet

Ron Pierson: I got an actual survey from Griffith and Brundrett, they are not cheap. I placed the building on the property and it is now 26 feet back....

Glenn Martin: no, no, no, no, but we're talking property line.

Billy Gaskins: how far is it from the property line?

Ron Pierson: well, what I am asking for in the variance that I applied for....

Billy Gaskins: is it ten foot off?

Ron Pierson: ...is asking for 11.4 feet to leave the building where it sits. Or whatever the exact measurement might be. I believe that we determined that it's 11.4 feet. Abel and I went and looked at that.

Glenn Martin: it's 11 foot from your property line.

Ron Pierson: from the setback. I'm asking for 11.4 feet in the set back.

Glenn Martin: right. Instead of 15.

Billy Gaskins: roughly 4 feet

Ron Pierson: correct. That is what the variance is now for. After the construction was pretty much completed and approved. My drawing clearly showed the edge of the pavement on tenth street. And the western edge of the building from the pavement on tenth street.

Glenn Martin: if it's appropriate to ask another question?

Billy Gaskins: yes, yes, I think it is. That is what we are here to do.

Glenn Martin: the only question I had when I looked at this and saw what the problem is....why didn't you move the Second Lady (name of the boat in the yard) and put your building there?

Ron Pierson: if I had the Second Lady backed up to that metal shed, the tongue from the trailer would be about 4 or 5 feet from the edge of the pavement. Or six feet. It's got a really long tongue on it. The building takes up much less space than the Second Lady does with the tongue. The tongue of

the trailer, where it actually connects to the vehicle, it would be five or six feet from the edge of the pavement. Or seven or eight feet. But the way things are now, my building is 26 feet from the edge of the pavement. Huge difference. And I have no desire to move my building into the driveway and parking space.

Billy Gaskins: Anyone else have any questions for Ron?

Jim Freeman: I got one. Ron, is this shed still there?

Ron Pierson: Yes.

Billy Gaskins: It's on the corner.

Ron Pierson: The shed has been there for 20 or 25 years

Flip Burleson: It's illegal too, but it's grandfathered.

Billy Gaskins: I thought we were here to talk about the shed when I first saw it.

Flip Burleson: What's the rule about your trailer tongue sticking out in the setback. Anyone know?

(Some multiple partial comments)

David Parsons: The only ordinance regarding trailer in regards to city right of way is that a trailer, without a car, or truck hooked up to it, cannot be on the asphalt. It can be in, directly located off the asphalt, in the city right of way.

Ron Pierson: For so many days.

David Parsons: No, there is no timeline.

Ron Pierson: They made me move that black trailer that was in my yard. And I did.

David Parsons: Well...if the police have an issue with visibility on the corner, and they might do that, because you are on the corner.

Ron Pierson: It wasn't the police... the city passed an ordinance to force me to move that trailer.

David Parsons: I think that one was on the asphalt.

(Some disagreeing, but speaking over each other, so not decipherable)

David Parsons: So, yes, he can have the tongue sticking out in the right of way and that would be perfectly legal.

Ron Pierson: Then I suppose I can park my black trailer back where it was before in the yard....but that has nothing to do with why we are here....

Flip Burleson: Yeah, let's get back to it, I guess

Billy Gaskins: Any more questions for Mr. Pierson? Anyone else on this one?

**B. Public hearing to receive comments on Variance Application #Var-13707, Ed Mercer Survey No. 11, Lot 4, Block 2, Port Aransas Nueces County, Texas. Request by Ralph G. Keene. Property location: 501 Mercer.**

Bubba Jensen: Thank y'all for being here. My name is Bubba Jensen. I live at 218 Sixth Street and I'm here to give you a summary of what took place and why we are asking for a variance for this situation. The trailer park down on 11<sup>th</sup> street closed down, and a lot of, well, all of the trailers had to move out of there and find new places. Well there is no place in Port Aransas available for trailers. Mr. Ralph Keene has a trailer spot that has been a trailer spot for years. It has everything there. All the hook-ups and everything there, it's on a multi-family lot on Mercer Street. Mr. Williams, with his trailer, he and his son are looking for a place to go with that trailer, so he contacted Mr. Keene and Mr. Keene said yes, if everything will work out, I'll agree to make a deal with you so you and your son can reside on that property. Mr. Williams then hired an electrician which came down to city hall to get the building inspector and go look to make sure that everything was in order. The old meter that was there needed to be replaced so the specifications for that meter update were all laid out and described, so, the permit was pulled, and construction of the new meter pole started taking place. Once all this was all in place, there were

several items that needed to be attended to. There were a bunch of trees, big salt cedar trees that had to be trimmed, just quite a bit of stuff had to happen in order to bring all this up to code. So, through the process, everything was done that was required of us. Everything was in place. The meter pole was inspected and passed. The meter was...the city then called in and had it okayed with the electric company to have the meter in, the meter was installed, the trailer was put into place, the trailer was plugged in, and the next day, when Mr. Williams came to the trailer, the trailer had a yellow tag, or pink tag on the door that said: cannot reside in this property. Since then, and this has been quite some time, Mr. Williams and his young son, have been without a place to live, and this has been a great hardship on Mr. Williams and his young son...throughout the whole summer. The following day, the meter mysteriously disappeared, and we don't know what happened to the meter. We have no idea what happened to the meter. We assume that the city had the meter pulled. So, there is a little bit of confusion about that. Mr. Parsons, I talked to David about that the day before, before the meter got pulled. We talked about the situation. He said that it wasn't illegal for that meter to be there, or for the city to permit that meter to be there, so we were within our rights having the meter, and the city was within their rights to permit that, but the intention was to put that trailer back there, and that was always the intention. And, it was clear to everyone, the city, and everybody, that that was what was going to take place. We looked at the sewer, the sewer hook-up, we looked at the power, we looked at the water, all the utilities, all in place, and the meter had to be updated, so it was updated. So, that's the situation that we have right now. Everything's been done, everything's been put into place, and quite a bit of money has been spent in order to do this. And then, after the fact, Mr. Williams and his young son have been on the street without a place to live ever since then. So, we asked to have this meeting and to have consideration to get us a variance in order to straighten out this mess and let Mr. Williams to move into the trailer which he went through all the proper procedures with the city to get this okayed and at the last minute it all fell apart. So we are here today to get a variance on that. We have the electrician here. We have the owner of the property here. We have the man who came and cleaned the trees up and moved the trailer here. And we have Mr. Williams here. His son is in camp so his son could not be here today. And that's where we're at.

Glenn Martin: why was the reason on the yellow tag? When he was living there and they put a yellow tag?

Bubba Jensen: The reason for the yellow tag was that the zoning had changed along the road. The zoning in area had changed and so the multi-family status apparently was not there anymore. But the city never brought forward that information. They let us move forward, you know, and proceed forward, and we did everything that they asked us to do. You know? So, the trailer is there, we have everybody here if there are any questions about what is going on, and that's our situation.

Billy Gaskins: I got a question, and I'm not sure, I think I'm asking the city. What are all these other pictures of trailers in here? Ten years ago?

Jeane Ivey: Previous...of what was there before, and the problems that were there.

Jim Freeman: When did they change the ordinance on the R1 to multi-family, or the multi-family to R1?

Jeane Ivey: 1997.

Billy Gaskins: What's required to, like if...isn't there a grandfather in there somewhere?

Jeane Ivey: It dies after one year, if those trailers are vacated in an R-1, then they are not allowed back after 12 months. If they are gone for 12 months and they not allowed back.

Billy Gaskins: Even if the hook-ups are still there?

Jeane Ivey: Correct.

Rick Adams: The hook-ups aren't...and again....and what Mr. Jensen said is mostly correct. Trust me, we are sympathetic to the emotional side of it, and I know almost everybody, so it is particularly difficult for me. The issue though is when it changes, just like the cottages that Mr. Pierson pointed out, once those go away or are destroyed, they won't be able to be built back, they were

grandfathered. But once that use has changed for a year, or greater, then it reverts to whatever the new ordinances and codes are. And this was an issue that came back, and it's in your file, that in 2001, same thing. The occupancy was a little different; it was 14 days out of 6 months, that has now been reduced to 14 days out of 60 days. He can have an RV, he can have a meter, and have it hooked up, the issue is, and everything he said is correct, other than the fact that he cannot permanently occupy it as a dwelling unit. And that wasn't made clear. So, the permit was perfectly acceptable, the RV itself is perfectly acceptable, it's the permanent occupancy of it, since that use was vacated long ago, it couldn't be reestablished in an R1.

Bubba Jensen: In a situation such as that, when a citizen comes into the building department, which, the citizens of this city depend on the building department to inform them on what they can do and what they cannot do, and that is the function of the building department. So when that permit was being, when the electrician came in to pull that permit, at that point in time, a conversation should have taken place, a question should have been asked before the permit was issued or something should have been clarified in some way or another.

Rick Adams: But it is perfectly acceptable, and it's routine that we issue these permits. And the RV itself is allowed. It's the permanent occupancy now, in an R-1 that can't be reestablished since it was vacated.

Bubba Jensen: Okay. So all this took place, all this took place, the city called and okayed for the electric company to put the meter in, the electric company came and put the meter in, and then immediately after the meter was installed, the city came out, without asking any questions of anyone, because we found the note on the door. And, without asking anyone, all of the sudden the city placed this no occupancy tag on the door. And if the city sold that permit in order for someone to live there for 14 days out of 60 days or whatever that time period is, then, without being any questions asked, why was that yellow tag on that door just out of the blue? There was no questions asked, there was no reason for it, nothing had changed from the time the permit was pulled, to the time the tag showed up on the door and the next day, the meter disappeared. Now, I know that CP&L didn't just take it upon themselves to put in a meter and within 48 hours come and pull the meter, so evidently, the city must have requested that that meter be pulled. And, Mr. Parsons to me that there was no reason why we could not have that meter. That that meter was perfectly legal to have there. We haven't been told, we still haven't gotten an answer on that.

Rick Adams: I don't disagree, the meter...and I don't think that is the matter at hand...the meter, if you chose to have the meter there...but once it was made clear to us that the intention for that meter was a permanent occupancy, then that changed the dynamic...you could still have the meter, you could have it today if you choose to do that. But I don't know if that is addressing the issue we've got as far as the permanent occupancy in a changed R-1 zoning. And, again, I have to point out; the permanent occupancy was addressed in 2001. I mean, almost the exact same circumstances. Mr. Keene received a letter, again at the time it was 14 days in a 6month period. Now that has been reduced to 14 days in a 60day. So, nothing has changed other than the time frame as far as a permanent dwelling unit in an R-1.

Billy Gaskins: Well, I mean, I can kinda see myself how you might get in a bind if you're applying for a permit and...I mean there is already, it's noticeable that there is a trailer there, and a trailer up front...that you might be, you know...shouldn't somewhere along the line there, I mean....in hind sight, I mean, it looks like they didn't get the heads up, I mean, even if its....

Rick Adams: Well, but again, I fall back on the fact that it is perfectly allowable. It's out of public view, it's behind a fence. That RV is perfectly legal, as would be the electrical pole. If they choose to put the electrical pole back in and have separate service, that would be acceptable. It was when we were informed that it was for a permanent dwelling unit that changed the use of that pole. If they were to tell us 'okay, we are just going to occupy it for 14days,' the pole can go back up. If

they want to pay for the electrical, that's AEP....we will issue the permit, we've issued the permit.

Bubba Jensen: When the issue came up, and the tag was placed on the door, the decision was made by the property owner and the owner of the trailer and his son, to not occupy that premises at all. We were given permission, and told it was allowed to be there for 14 days out of a certain period of time, which we were allowed to be there for that 14 days, but the following day, and nobody talked to us, nobody said anything, this was just pulled. I talked to David Parsons, David told me that the meter is perfectly legal, perfectly legal to have that meter for 14 days, and I said 'David, well, the intention, our intention is not for 14 days, our intention is for a residence for this man and his son and that is what our intention is. We've been perfectly upfront, and wide-open throughout this whole situation. There has not been anything behind tables, or done on the weekend, or night-time. I mean, this has all been laid-out as clear as it can be and that's why this confusion is so hurtful, but I'm going to tell you that we had the right to put in the meter, according to the city manager. And we had the right to stay there for 14 days out of a certain amount of period, and the city came in and pulled that meter without asking us 'now that we've had this conversation what are your intentions?' Because our intentions immediately upon that tag being on the door, that we had not done anything wrong, and we are not going to rock this boat, and we are not going to occupy these premises at all until this matter has been dealt with, and that is exactly how we've handled it. But the city, on the other hand, has kinda jumped the gun and is going to 'fix this problem' without even talking to us.

Billy Gaskins: What did happen to the meter?

Rick Adams: Well, the city hasn't pulled the meter, that belongs to AEP

Billy Gaskins: Well, who keys them into pulling the meter?

Rick Adams: We would have told them, if it was for a permanent occupancy, and the permit was....

Billy Gaskins: What if they changed their mind?

Rick Adams: Then they can, we can tell them to put that meter back.

Bubba Jensen: The question he asked you was: "did the city call and have that meter removed, yes or no?"

Rick Adams: Is the city responsible? The city is always responsible when something like that happens.

Bubba Jensen: The city did call and have that meter removed. And it's my understanding....

Rick Adams: You just got finished saying that you were upfront, but the timing of that being up front, I think, is maybe a little bit questionable. Had you told us upfront that you want that meter to permanently occupy an RV, we would not have issued the permit for that. That wasn't the case, you had asked for a permit, we went out and inspected, you needed to upgrade the service, we found the service as it was, in disrepair, so it needed to be upgraded, and that was....as it was routine to issue a permit to do the meter...when it became apparent through conversations of the intention, then, after that conversation and that permit was allowed, was to permanently occupy that unit, that then changed it, so after that, everyone was up front, but that was after the permit was....

Bubba Jensen: No, no, no. After everybody was upfront, that statement is not true. Everybody has been perfectly up front from the very beginning. When we came in, when we came in to the inspector's office and we said we wanted to pull a permit for the property over here for a trailer, and the address was given. And then the people in the department there said 'there's always been two trailers on that property, there is nothing we can do about that,' and then it all moved forward. There hasn't been anything.....

Billy Gaskins: Let me ask this question: when somebody comes in for an application, how does the city know if it is for temporary or not if they don't ask right away?

Rick Adams: If it...

Billy Gaskins: If you come in for a permit to do exactly what they did, how did you know? It should, I mean, I'm thinking it needs to be on a form, like 'is this going to be used for this, or this' before I take the next step. You do this first before, I mean, it's seems like that there was a...I don't know how, I mean.....I'm asking for an application and you don't ask exactly what the use is, right away, I mean, is it permanent use or is it temporary use? 'Oh, it's temporary use, we can't allow you...' But you.....there seems to be a flaw in the process....

Flip Burleson: How would a person even know about that 14 day thing?

Billy Gaskins: Yeah.

Rick Adams: First off, all of our ordinances are online or here.

Flip Burleson: Yeah, but it's this thick....

Rick Adams: I understand, but here's the thing: we are issuing dozen of building permits. Somebody comes in and asks for a new construction permit for a single-family home. We will issue that permit. If they start building a duplex..."whoa, whoa, whoa, we issued you a permit to build a house, you can't put a duplex in an R-1." So, again, it's not that.....

Billy Gaskins: You get to see that ahead of time.

Rick Adams: We don't ask. If they meet the criteria to get an electrical permit and a meter loop....again, whether it's permanent occupancy or not, it's an R-1. I mean, we don't find the obligation, necessarily. Not that we are not trying to be helpful, but if we are not asked "can I permanently...?" .....let me rephrase that. We were not asked if they could permanently occupy a second dwelling unit in an R-1, and that was what they were going to use the electrical meter for. If they had, we would have obviously said no.

Billy Gaskins: Well, it's going to a second location on that property anyway.

Claude Brown: well, that brings up a good point. Because if someone comes in, and they say 'I want an electric meter,' do you say 'okay, fine is this going to be a duplex?' You asked that question didn't you. 'Is it going to be a duplex?'

(some indecipherable speaking over each other)

Rick Adams: I'm talking about a construction permit....when we issue an construction permit, we still hold them to building based on what the zoning and ordinances are.

Claude Brown: that's right....but you ask them that question, right?

Rick Adams: No, actually we don't.

Claude Brown: You don't ask them what it's for?

Rick Adams: We review a set of plans.

Billy Gaskins: They don't have to because it's on the plans.

Claude Brown: Okay, but the point.....

Rick Adams: Let's say they decide to add a second unit to the plans.....

Claude Brown: Okay, but the point I'm getting to, that if someone comes in, and says 'what are we gonna do here?' and you say 'well, we're going to put a trailer in here,' wouldn't it be to the city's advantage to ask 'are you going to live in it or use it for 14 days....'

Billy Gaskins: Because it is the second spot on the property.

Rick Adams: In hindsight, that would have been a great question in this situation to have asked, but it's not improper to put an RV, and many people have that, and have it hooked up. It's the permanent occupancy.....

Claude Brown: Well, if it's not going in a park, they are obviously going to put it somewhere to live in.

Rick Adams: That is absolutely not correct, we have a lot of RV's that are here that are stored, which is in the ordinances and is allowed, behind fences, which, they meet that criteria.

Claude Brown: but that would fall into the proper perspective that if you are going to put an RV somewhere, where are you going to put it?

Rick Adams: well, you have got to put it on your property. I don't know if I understand that question.

Claude Brown: Well, okay, wouldn't you ask if you're going to be living in it, or are you going to be living in it for the 14 day period? And that question would fall under the building department or the....the what is going to happen with that RV, that's not for the guy that come in and say, I'd like to get an electric meter, but I'm only going to live in it for 14 days. That falls on the responsibility of the city, not for the RV owner.....I'm sorry (fades as he walks away from microphone) you're back paddling there.....I'm sorry....

(Jim Freeman?): We got it.

Bubba Jensen: When the permit was pulled, the permit was pulled for the address A & B, which on that multi-family lot, was listed with the address A&B, and that was what that permit was pulled for.

Rick Adams: We keep saying multi-family lot. Let's be clear, it's an R-1, it's not a multi-family lot. It allowed at one point for multiple.....

Bubba Jensen: (indecipherable)

Rick Adams: Your elected leaders changed that, and we are bound to enforce what the elected leaders say.

Billy Gaskins: We have a question.

Jim Freeman: Did I hear you right, that in 2001, Mr. Keene was notified that he could not have a permanent....

Rick Adams: Yes sir, that is in your package.

Jim Freeman: Okay, well, I was just making....just bringing that up.

Rick Adams: It's actually two pages before the pictures in the very back. So, this wasn't the first time that the situation had become apparent. So this was another attempt, and I don't know if it was intentional, but we weren't aware that that was the use.

Linda Daves: I have a question.

Billy Gaskins: Go ahead.

Linda Daves: I would like the city's definition on what a recreational vehicle is.

Rick Adams: It is defined, I think.

Billy Gaskins: Dave's looking it up.

Rick Adams: It's on page 968 of our ordinances, but I'll read it: "*Recreational vehicle*: It is recognized that there are many varieties, sizes and types of recreational vehicles. For the purpose of this definition, pop-up trailers, pickup coaches and other vehicles which do not have restrooms, kitchens, and bathrooms shall be allowed in recreational vehicle parks. RV's include:(1) Dependent trailer, (also called pop-up trailer), which is a trailer that is dependent upon a service building for toilet and lavatory facilities. (2) Travel trailer, which is a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, or permanently identified travel trailer by the manufacturer of the trailer, and when factory-equipped for the road, it shall have a body width not exceeding eight and one-half (8.5) feet and a body length not exceeding state maximum" That's RV....motorhomes, self-contained trailers....and we use that synonymously with that, and that is the way the ordinance reads, RV, motorhomes. It goes to say "Park model trailer is a temporary dwelling four hundred (400) square feet or less in size, containing a water flush toilet, lavatory, shower and kitchen all of which are designed to be connected to an independent water and sewer system. Self-contained trailer, which is a trailer which can operate independent of connections to sewer, water and electric systems. It contains a water flushed toilet, lavatory, shower and kitchen sink all of which are connected to water storage and sewage holding tanks located within the trailer. Pickup coach, which is a structure designed to be mounted on a truck chassis for use as a temporary dwelling, for travel, recreation and vacations. Motor home which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle." Those all fall under the RV, recreational vehicle definition, all of those that I just read.

Linda Daves: So if this vehicle is not portable, how would this fall underneath that ordinance?

Billy Gaskins: A manufactured home, or.....”

Rick Adams: That probably be the self-contained trailer, which is a trailer that can operate independent of connections, it appears to have a holding tank, and those types.....or it can be connected to an independent water and sewer system, which this one was.

Linda Daves: So this ordinance would mean that if an individual wanted to bring in one of the latest innovations of down-sizing living, which is the tiny house concept, which are pulled in, are basically self-contained, or they can be hooked up, and they are pulled in on a chassis, and that chassis is removed, then that type of structure would not be.....would be classified as an RV as well, underneath these ordinances?

Billy Gaskins: It’s still an R-1.

Rick Adams: The problem would be the second dwelling unit regardless.....it’s still the second dwelling unit.

Billy Gaskins: It’s still an R-1

Rick Adams: Although, our elected leaders did pass an ordinance that allows for an accessory dwelling unit. There would be an opportunity for an accessory dwelling unit to be built on the property and be perfectly legal. And there is a whole set of criteria for that.

Billy Gaskins: It’s almost the same thing.

(Someone from the audience): that’s what it gets to. You allow for an accessory dwelling unit and that is virtually what this would be.

Rick Adams: But it’s not. The definitions are completely different.

Billy Gaskins: They’ve got the rules, and they are written the way they are, I mean, that is why we are all here.

Rick Adams: I don’t write them, I’m just charged with enforcing them.

Billy Gaskins: That’s why we’re all here.

Rick Adams: but again, that was in attempt, to offer up an opportunity for more of the affordable housing and to allow somethings to be done within a specific criteria.

Billy Gaskins: Anyone else on your side wanna speak?

Glenn Martin: Only one other quick question: when they went out to look at the meter originally, and you had to upgrade and all that, was there a meter there?

Bubba Jensen: There should have been a meter there,

(Some indecipherable speaking over one another)

Glenn Martin: There was a meter loop there, but was there a meter?

(Electrician, from audience): There was a meter (something) there, but no meter loop.

Glenn Martin: Okay, alright.

Bubba Jensen: There is a couple things here that I want to bring up, you know, I’ve been part of city government, I’ve been out of it for quite a while, but I’ve been a part of it for a long time, and I know how things work, and I know how to communicate with people within the city. And the biggest part of that is, is doing with the word of honor. And that is probably more important than anything else that we have to talk about here today. Is the part about the honor. With honor, I spoke with the city manager about this, and told him, no sir, that is not our intention to be there for 14 days, our intention, because I’m trying to straighten this out, it’s been honorable from the beginning and I’m not going to back step, and then I start running into problems. And I tell the man, this is what our intention is, okay? So, I expect to be treated with honor. (TAPE RECORDER SWITCHES SIDES, WE MAY HAVE MISSED A SENTENCE OR TWO) I wasn’t given the opportunity, and we already split the money, I say I, I represent Mr. Keene and Mr. Williams, in my voice today. I was not given the opportunity to say ‘okay, we can only be there 14 days and that’s what we’ll do’ or ‘that’s not what we’re going to do.’ When we were in

the middle of this, evidently, the city had found out that they had made a mistake and was backtracking as fast as possible. Now, I don't believe that Mr. Parsons is aware that meter was being pulled. I think the building department, and this is speculation, I think the building department was trying to correct something that should have been investigated a little more beforehand and were trying to fix it. Because I know Mr. Parsons, I've known him for a long time, and Mr. Parsons would have said to me, with honor, exactly what was taking place. And, I don't think he knew that meter was gone, until it was gone, or he would have said something to me about it. He would have spoken with me about it, and we would have discussed it and we would have come to a conclusion. And there wouldn't have had to be anything happening that everybody was not perfectly aware of. You don't come to someone's residence when they get their meter hooked up, and take their meter without notifying that person. You said you notified Mr. Keene back in 2001. How did you notify Mr. Keene because he doesn't have a recollection of being notified.

Rick Adams: Well, we've got this letter that was sent.

Flip Burlison: It's in this letter.

Bubba Jensen: We asked, we have asked for everything that you guys have up there, your packet, we have asked for that. We have been asking for that all along. We came in yesterday and asked for it again. We were told that 'it slipped our mind, we've been awful busy, but we'll get to that.' Mr. Williams asked me today, 'how do I go about getting that.' I said 'Mr. Williams, at this point, it's kind of a moot point for us to receive this information.' The information that y'all have today, we have been denied that information.

Glenn Martin: Bubba, to interrupt you, I do have that letter, and I was reading the packet, as it was current, and I just today figured out that it was 2001. The letter that Mr. Keene received, that the city sent him, had all kinds of electrical violations, I mean a whole page of them. Extension cord laid open, and all kinds of stuff. The very bottom sentence, one sentence also alludes to the 14 day part. I'm sure if Mr. Keene got it, it he was worried about the electrical part, not the bottom line.

Mr. Keene (from audience): That was not an agreed deal, someone just post on there. It used to be open...(some indecipherable...and I did not have knowledge of that being there.

Glenn Martin: alright.

Mr. Keene (from audience): The only one who had permission to be there was me, and I had it there for years. And I never had any problems, and the city never had any problems with me. It was the poachers that came in there. I don't go over there. You can't see it from the street. You have to drive down the alley, or get out on Mercer and walk back, it's behind a big fence and all that. That's all...if it happened, it's small stuff.

Rick Adams: Well, here's the thing. Whether it was yours or anyone, it gave you notice that RV's and motorhomes cannot be occupied permanently. And you asked about receipt, Mr. Jensen, and, with all due respect, there is a return receipt signed by Mr. Keene saying that he received the letter. And, also, just in all fairness, you never once asked me for this documentation, because there would have been no hesitation on our part to supply any of this to you. There is no conspiracy here to not give you this information. And you asked why....that's exactly why we're here, is to....this is the whole process to give you an opportunity to say 'wow, what they did was wrong, and here is why it's wrong.' And so, there is no attempt not to give that opportunity, and that is why we are here today.

Bubba Jensen: No problem, I appreciate that. Mr. Inspector?

Abel Carrillo: Yes sir.

Bubba Jensen: Did Elvin Williams come to you several weeks ago and ask you to provide him with a timeline of events and why all this....

Abel Carrillo: Yes he did sir.

Bubba Jensen: And did you provide that information to him?

Abel Carrillo: I have not been....

Bubba Jensen: Yes or No, sir? Yes or No?

Abel Carrillo: No.

Bubba Jensen: And did Mr. Williams come to you within the past 24 hours and ask you again to provide him with that information and did you provide him with that information sir, yes or no?

Abel Carrillo: No.

Bubba Jensen: Okay, I rest my case on that. That explains what I am saying to you. Like I said before, Rick, you know, this is all about honor, and I am standing up here being an honorable and trying to deal with honorable people, and the realistic situations. Real situations, not the loopholes that we find in our books, and not those issues. We did the best we can when we create these ordinances, to put them together, but we always make mistakes, okay. And down the road, we have to come back and we have to fix them, and a lot of times, we don't ever get back to fixing those loopholes and those mistakes, because they don't come up. Well, we're in a situation right now where we have real people being affected by this. Their lives are being affected, they've been out, a man and a little boy have been without a place to live, when he spent his money in good faith and did everything the way the city was asking him to do, and then, all of the sudden there was a loophole that was never explained to him, and the city said it wasn't explained to them. Well, we have a situation here, that all the way around, something happened somewhere and when everything.... If this would have happened at nighttime or sliding in on the weekend when the inspector was off for the weekend, we see that stuff happening all the time, that's a different situation, this isn't that way. This is a straight board trying to do the right thing....

Rick Adams: And we're not claiming....

Bubba Jensen: ...trying to get this thing straightened out and we go in here and we do this, and everyone is on the same page until we get the pink slip, nobody has made a phone call, 'hey we got a problem, come down here and let me talk to you cause we gotta figure this thing out. We get a pink tag, the next day the meter is missing, I was told within 24 hours of that there is no problem having that meter. I said David, that isn't our intention, this is our intention. Straight, above board. I'm not saying 'okay then we'll only stay there for 14 days, and then tell them just tell them you weren't there.' You know, what are they going to do, come by here and watch...that is not what is going on here....this is a real situation, done with honor. At this point, everyone needs to stick to their guns, and do what they said they were going to do. And that's why we're here. That's why this board is the board... for the people that are on it, to make these decisions, because these are regular people, just like we have out here.

Rick Adams: absolutely. There are fact-finding conditions. Again, once you made it clear to Mr. Parsons what the intent was, then it changed what our understanding was.

Bubba Jensen: David, I want to speak with you about this.

David Parsons: What's that?

Bubba Jensen: A conversation took place...

Billy Gaskins: Hey. Hey ,Bubba. Let's go ahead and wrap this up. Yeah, we're going on. Everyone has gone past their limit here. If anyone has any questions. If not, I think it's time for us to go on. Anybody?

Linda Daves: I have a question.

Billy Gaskins: Yes?

Linda Daves: This might seem kind of unusual. I would like to know if there is talk of future expansion of that alley way that touches on that property.

Rick Adams: is there any talk...?

Billy Gaskins: What? Is there any what? What is that?

Rick Adams: At this particular point there has not been any, there is nothing in the work as far as any discussion regarding that alley.

Linda Daves: I would hope that was not part of this discussion

Billy Gaskins: Well, if there is no further questions, I guess we'll go ahead and move into the discussion on our end. So, the first one we'll go back...do I need to hit a gavel or anything?...(laughter)

Glenn Martin: Close the public hearing.

4) **ITEMS FOR DISCUSSION AND ACTION:**

**A. Discussion and take appropriate action on Variance Application #VAR-130152, Aransas Holding Co S/D, Blk 77, Lot 7, Port Aransas, Nueces County, Texas. Request by Ronald Pierson. Property location: 301 E Ave E.**

Billy Gaskins: I close the public hearing. We're moving into our discussion and action. First one is with the, Mr. Pierson's property. Well, you guys go ahead and...do your ideas.

Glenn Martin: Well, you know, I'll go first. I can see Capt. Pierson's argument, but I totally understand David's argument that the measurement is from the property line. It's pretty evident from the drawing from Brundrett, the real engineer's drawing that it's inside the setback by 4 feet still. It used to be more than that. It used to be closer than that to the property line. And my only argument for that is, again, if you put the portable building, temporary building, whatever you want to call it, where the boat is, it'll fit just fine.

Billy Gaskins: Is that a moveable, I mean, it's portable, right?

Ron: Not easily, I have no intentions, I never had intentions when I originally built this building to have it back there at the back fence. At all.

Glenn Martin: You mentioned to me that Claude moved it back with four or five people...

Ron Pierson: No, I pushed the building back. Claude originally set 20 something years ago, that back building for me that...

Glenn Martin: Oh, he didn't do anything with this subject building.

Ron Pierson: No, I physically pushed, with my pickup truck and a giant piece of timber, pushed that building back to satisfy the city to get it further away from the street. I was approved, clearly from my original drawing, I was told I had to provide, after the fact, this other, engineered from Brundrett, which I did, and paid for. On my original drawing, clearly from my drawing, it was approved by the city manager and the building inspector.

Glenn Martin: it was approved because your pencil drawing was assumed to be the property line, and it wasn't.

Ron Pierson: no, it said tenth street, right on there. It says, clearly, tenth street, that is the line. Tenth street. The building was that many feet away from the pavement (continues indecipherable due to cross conversation between board members)

Glenn Martin: I see it says Tenth Street, that'd be the address, but if I was looking at this I (lots of others speaking simultaneously) would think that that's your property line.

Ron Pierson: (speaking over others conversing with each other) That's just to show the placement of the building off of tenth street. Off of tenth street. Here is the line of tenth street. Originally it was going to be 23 feet. I got red-tagged, so I pushed it back even further. Far as I could, to that other shed.

Billy Gaskins: What's in your shed?

Ron Pierson: huh?

Billy Gaskins: What's in your shed?

Ron Pierson: In my shed? Which one?

Billy Gaskins: The middle one back behind....

Ron Pierson: Oh, Tools and supplies and boat parts for the Second Lady. (the rest is indecipherable due to everyone else speaking, which goes on for quite a bit)

Billy Gaskins: Yes, David?

David Parsons: A point of order here. We, you guys seem to be getting wrapped around the axle. Just because someone is alluding to the fact that the city has made a possible error is absolutely irrelevant in what you guys are making the decision on. You guys are here to make a decision on one thing, and that's 'do you want to reduce the front setback, or the side setback in this case for this gentlemen. You have a list of criteria you have to use to meet that answer. And that list is in front of you, and you have to meet it. Just because there are possible errors, it's irrelevant. If Abel makes a mistake, and we catch it, and we say 'Whoa, stop. We're going to go to the Board of Adjustments and sort this out,' that's how it happens. Mistakes are caught down the road. But it doesn't matter. Just because a mistake is made, doesn't grant the applicant

Billy Gaskins: You mean like that house....

David Parsons: Doesn't give him the victory.

Billy Gaskins: Like that green house that the city approved and it was built 5 foot too close to the road? Over by the Country Cajun...or, the Crazy Cajun?

Linda Daves: Yeah.

Flip Burleson: Yeah, on Roberts and Station?

Billy Gaskins: They actually built the house in error.

David Parsons: They built it. That's right.

Ron Pierson: They had to get a variance.

David Parsons: They had to get a variance.

Billy Gaskins: We gave them a variance, didn't we?

David Parsons: Right, we gave them a variance. But, it's a little easier to get a variance when a \$200,000 house is built. We have the opportunity now to...nothing has been built, is that correct? Right? So....

Billy Gaskins: Ron Pierson's building has been built.

David Parsons: On skids?

Billy Gaskins: Yeah.

David Parsons: But my point is, that the granting of a variance, simply because....okay, he is not going to meet any of the criteria, but you're going to hang your hat on that there was one little mistake possibly made, which there wasn't, by the way. That you're gonna grant....that's your out to grant a variance? That's not how it works guys.

Billy Gaskins: I didn't think that was an issue on his property. Which one are you talking about?

David Parsons: I'm talking in general. Everything.

Flip Burleson: Where is that list?

Noyes Livingston: Yeah, you normally get us a list, but in this case, I don't think....

David Parsons: That's how this works. Go down that list. They meet it, or they don't.

Flip Burleson: I'd like to see that list.

Noyes Livingston: It's coming I think.

David Parsons: I mean, errors....errors are all aside guys.

(lots of side conversations drown the speaker out as the list is passed out)

Noyes Livingston: Mr. Chair, may I add something?

Billy Gaskins: Yes Sir.

Noyes Livingston: Yeah, the building department, based on my limited experience, approves stuff that then they go along and find that there are problems with. So, they do make on the spot corrections and that's the way it's done. So, they can change their mind based on previous decisions and say

that the work, or the situation is wrong. That, in and of itself, is not unusual. So, they don't always make the right decision the first time, but they have the recourse to saying that the work is done wrong the second time. Does that make sense?

Linda Daves: Ron, where are the doors on that metal building that's behind this portable?

Ron Pierson: The doors? Facing south, towards the main residence on this property. It's in the very corner of the property, completely out of the way.

Flip Burleson: You know, if you get to reading this little list here...the two situations aren't really the same.

Billy Gaskins: No, not at all.

Glenn Martin: But it's the same list, right?

Billy Gaskins: Yeah, we're supposed to look at it through that list.

Flip Burleson: The same list goes for everybody, huh?

Rick Adams: It's a framework that gives you guys something to go by. It's a standardized...

Flip Burleson: This is good, this is good. We need this. Yeah.

Billy Gaskins: Well, let's get back to the discussion of Mr. Pierson's property.

Flip Burleson: Well, that's what I...I'm afraid that some of these, that Mr. Pierson's property doesn't really. This is gonna kinda kill that deal. 'Is the condition self-imposed, or self-created?' It kind of is. And it's not really...the variance is not owing to a special condition inherent in the property itself. And, I can...I'm not sure what the...granting the variance, no I'm sorry, the hardship would prevent any reasonable use of the property whatsoever. That's...I don't think Ron's request satisfies these things. I kind of hate it that we're tied to that...but we are.

Billy Gaskins: But allow the public interest...were there any complaints?

Glenn: There were no complaints.

Billy Gaskins: There were no complaints on it.

Flip Burleson: That's true. I noticed they all say: provided he doesn't move it anywhere else, it has to be right there. I don't know what the point of that was., but...

Glenn Martin: If you looked at...I mean, that's a narrow street, and a wide right of way. And there is no sidewalk, there is no drainage, nothing, there is just the pavement.

Billy Gaskins: He's got his building behind that line of palm trees, and it fits. You know, I went by and looked at it. And, it didn't stick out like a sore thumb in my...that's kind of how I saw the...the photos even show...

Noyes Livingston: You can make a motion.

Flip Burleson: Me too. I don't see any reason not to give it to him. Nobody cares...Nobody, none of his neighbors care. So...

Jim Freeman: The variance only applies to this....

Billy Gaskins: This one building.

Jim Freeman: Yeah, but you're not granting everyone can go....

Billy Gaskins: In the world? No.

Jim Freeman: Well if someone comes in and says 'Well, you did it for so-and-so'

Billy Gaskins: Each one has to be looked at individually.

Flip Burleson: right, right.

Billy Gaskins: And if it looks funny...however you see it.

Glenn Martin: I have one question of the building inspector or anybody. Is that building 5 foot off the property line? The back property line. Ron, do you...?

Ron Pierson, do you think it...?

Flip Burleson: It appears to be.

Linda Daves: off the back property line?

Glenn Martin: if you are looking at the building head on, to the left is the back property line, which is supposed to be five feet.

Jeane Ivey: Ten.

Glenn Martin: Ten on the back?

Jeane Ivey: Ten off the rear.

Rick Adams: It's grandfathered.

Billy Gaskins: The metal building?

Glenn Martin: The metal building is on the property line. If the metal building is on the property line, then this one is only two foot. Look at the metal building behind this one. I mean this is over the property line, if the setback is ten foot on the back yard, this thing is sitting about three feet.

Rick Adams: You're looking at the drawing?

Billy Gaskins: Brundrett's drawing.

Glenn Martin: I'm looking at Brundrett's drawing, but I'm also looking at the pictures.

Linda Daves: I the property line on the right or the left side of that?

(Conversation back and forth pointing out the property lines on the drawing)

Billy Gaskins: What does the city say? I mean, did y'all measure that way?

Rick Adams: Well, a violation is a violation, so....

Jim Freeman: The metal building was there forever, right? It's grandfathered.

Ron Pierson: And I didn't hide anything in my original drawing. I put the lines, put the building...

Billy Gaskins: It's not that Ron, it's just that it's a sketch, instead of an architect, you know...

Jim Freeman: You've been by and looked at it, you've got the building.....

(more conversations over each other)

Ron Pierson: I also intend to build an addition to the house, and if I have to move this portable building closer to my house and up against the back fence, then that addition, I would never build it to improve that property because it would take away from what I intend to do. In the future, to my existing property. That's why I wanted the building in the driveway to use as a storage case and a work area convenient to the street access, behind the palm trees, out of the way of anything that may move or come up and down that street.

Flip Burleson: I know you don't want to move it, but why can't you put the boat where the building is, and the building where the boat is and everything would be legal? It'd all be legal.

Ron Pierson: If I back the boat up to the metal building, the tongue would be about 4 feet from the street. Instead of 6 feet from the street, it would be even closer.

Flip Burleson: But legal. It's still legal. You wouldn't have to have a variance.

Ron Pierson: I didn't go through three months of construction and thousands of dollars of construction to have to have the building elsewhere.

Flip Burleson: I see your point, but it is what it is.

Ron Pierson: It should have come up before I started construction

Glenn Martin: I don't see a thing wrong with it. It's real pretty, it's painted. It looks natural. But it violates two of the setbacks.

Billy Gaskins: When you look at it, you don't see that though.

Rick Adams: Regarding the permit that Mr. Pierson provided for you though, again, I'm obligated to refer you down to the language though. It says 'the granting of a permit does not presume to give authority to violate or cancel the provisions of any other statute or local law regarding any construction or performance of construction.' So still, we have that in the permits to protect us from the invariable mistake we might make in not catching the drawing or not assuming that he was referring to the asphalt rather than the property line. Again, obviously, most reasonable people would look at that as the property line, so it's perfectly within our authority to grant the permit, but that language in all of our permits, including the one that he gave you, says that that still doesn't mean that if he built it the way that he did that it's acceptable to us. You know, we don't that and then try to catch people. We try to catch everything we can up front, and I think

we get better and better at it. But, again, that clause is in there for a very specific reason, for situations like this.

Billy Gaskins: Well, you guys know how this works, once we discuss it, then we make a motion.

Noyes Livingston: And it should be to pass the variance, so we aren't....

Billy Gaskins: So our no's and our yes's....

Noyes Livingston: So yes means yes, and no means no.

Flip Burleson: I move we pass the variance

David Parsons: Point of order. The first step for legal issues, you guys have to legally go down that checklist. And say yes or no on all those things. You legally got to do that because that's state law.

Billy Gaskins: So, you want my check next to it, and my signature, or what do you need? Show me where you want me to sign on this thing.

David Parsons: Because I want to point out that the last time you guys went into a side yard setback, we ended up going to court because of this exact same thing. Granting a variance because you don't think it hurts anything, doesn't meet the muster of the state law. And we ended up in a lawsuit last time, in which the city won, because of that same action of this board. It's not 'does it hurt anything/who cares?' That's not how this works. You go down the checklist.

Glenn Martin: Then what are we here for?

David Parsons: Go down the checklist. If you guys come up with the yes's or no's, then so be it, that's fine.

Billy Gaskins: I think we have every time. Even the time of the lawsuit, we did that, and everyone did what they thought was right at the time. It wasn't, you know....

David Parsons: I'm just pointing it out. You guys got to go through the checklist. You have to read the question, and you guys need to discuss it and come up as a body with a straightforward yes or no.

Billy Gaskins: I think we all have it.

Glenn Martin: He's saying you have to verbally read it.

David Parsons: Before you pass a variance on an ordinance

Billy Gaskins: You want me on the record, in other words. Okay

David Parsons: You bet.

Billy Gaskins: "#1 The request for a variance is owing to a special condition inherent to the property itself." You guys all say yes, it's yes, if y'all say no....

Glenn Martin: I don't think it's specific to this property.

Flip Burleson: No.

Billy Gaskins: "is the condition unique to the property requesting the variance?" I don't even know what that means.

Glenn Martin: Rick, do you want to explain that?

Rick Adams: The uniqueness?

Billy Gaskins: the shape of the property? Is that what number 2 means? The condition is unique to the property requesting the variance.

Rick Adams: Is a building in a setback unique to this property. Would it only be on this property typically? Would something over the setback be a unique situation? If you have a road, if you have series of lots along on a road, and there was an access issue to the last one, the only way you could get to the road was through a special variance to allow crossing over something. That, to me, would be unique to that property. Is a building in the setback or other structure in the setback a unique occurrence, that would be my interpretation.

Linda Daves: is the setback larger than other properties?

Jim Freeman: Setbacks are different throughout the city.

Rick Adams: Is it a weird pie-shaped piece of property? That the setback, the size of it....

Glenn Martin: Sounds like a no to me.

Billy Gaskins: 'is the condition self-imposed or self-created?'

Flip Burleson: I think so, yeah, that's the one that gets me.

Billy Gaskins: Well...I mean, I could even.... I can find the gray area there too, myself. I mean, the city accepted his drawing, you know.

Flip Burleson: right, on top of a piece of paper that said 'this doesn't mean...'

Billy Gaskins: On a bar room napkin, and then design comes in, and then they.....

Flip Burleson: On the same piece of paper that says 'this doesn't mean that you can build inside the property lines.'

Rick Adams: And here's where we go with that. If we didn't allow something small like that to be done that way, and we initially require that they go get an engineer, then it initially would have been a \$500 or \$600....but we try not to burden our folks doing simple projects . But we also hold them accountable for what they give us when we base a decision on that. So, we don't want to have them get an engineer drawing on something like that, but again, that's why the language, and this is on all our permits, even the one he gave you, shows that that language still doesn't mean...that if we're going to rely on that, then you still have to take some responsibility and look at setbacks, just like they do when they build houses and everything else.

Billy Gaskins: 'Is the condition self-imposed or self....' 'a literal enforcement of the zoning ordinance would result of an unnecessary hardship?'

Jim Freeman: I don't think so. I mean, he wouldn't want to do it, but there is another way Ron can fix the situation.

Flip Burleson: I don't know.

Billy Gaskins: Well, David, with this list, why do y'all need us? Why don't you just do this without us up here? Cause....

David Parsons: It's state law. I mean state law. Vernon's Code, Section 211, states how the Board of Adjustment works. It's straight out of Vernon's. Straight out of state law. That's how we have to do it.

Linda Daves: But this is all open to our interpretation.

Billy Gaskins: so, if it's all yes's....? what happens if you have mixes of yes's and no's on your list?

Noyes Livingston: It's not an absolute. Not this column is all good, and this column is all bad. Kind of like when you go buy a gun. You can have a no one place but not in another place.

Flip Burleson: And still get the gun?

Noyes Livingston: Yeah.

Glenn Martin: I got all No's did you get all no's?

Bubba Jensen (from the audience): Mr. Gaskins, can I ask you a question?

Billy Gaskins: Yes sir.

Bubba Jensen: How long have you been on this board?

Billy Gaskins: Oh, a long time.

Bubba Jensen: a long time, huh? A long, long time. Well, have you ever been presented with that piece of paper before?

Billy Gaskins: Yeah.

Flip Burleson: Yeah, we have.

Billy Gaskins: We've had a couple....I don't know if it was exactly in these words here, but....

Nicole: Yes sir, it's the same thing.

Billy Gaskins: Same exact words? Okay, we've seen these same exact words. Some meetings they've been at, and some meetings they haven't. It hasn't been at every meeting.

Glenn Martin: I think that point that we're making is that even if they are all no's or all yes's

Billy Gaskins: Except one time someone signed this and had to go to court, didn't they?

Glenn Martin: I can't see that that dictates the answer about the variance.

Billy Gaskins: But if they don't like that, then they'll take you to court.

Glenn Martin: Well, I'm with you, if they are all no's and we're supposed to deny it, then why don't they do it?

Billy Gaskins: That's right. It's a machine, it's not a bunch of people's minds, you know?.....Okay, I'll read them all. ' #6 Granting of the variance would not be contrary to the public interest.' And I'll also say this on the record that we are discussing this, and we have read this list and we are discussing this list. Okay, have I done my part, David?

David Parsons: Well, yeah. Have you checked them all off?

Billy Gaskins: Oh, you want to see my checks?

Glenn Martin: They are all no's right?

David Parsons: I need the form checked off and signed by you guys.

Jim Freeman: I don't have but this one form.

Nicole: We only need the chairman to mark and sign the form.

Billy Gaskins: We're going to have to all agree on these six...

Glenn Martin: They are all no to me.

Flip Burluson: What are the chances of that happening?

Billy Gaskins: That's why they have a bunch of us here, so we can agree together like people do.

Glenn Martin: To me, that's all no's.

Billy Gaskins: There's always a way to make it black and white.

Noyes Livingston: No, there is one yes.

Glenn Martin: Which one?

Noyes Livingston: Again, each column in and of itself, each answer, is weighted. It just depends on what the question is. #3: is the condition self-imposed or self-created? The answer to that would be....

Billy Gaskins: Well, we wouldn't be here if it wasn't....

Glenn Martin: We wouldn't be here

Noyes Livingston: No, well, the answer literally, more accurately is probably yes to that particular question.

Linda Daves: I want to address a minor issue on five. Just to bring up to the committee. If Mr. Pierson moves this building to parallel the back, is that the back of the property?

Noyes Livingston: (pointing to drawing) Front, back, side, side.

Linda Daves: The side of the property, it will move that boat and that trailer....

Billy Gaskins: He says that if he puts that over there...

Linda Daves: That it will stick out. I have also been by and I am familiar with that property, and it will also mean movement of the trailer will begin encroaching toward the street as well. Which may protrude even farther than the boat. In doing that, could possibly pose a hardship in that there is not anywhere else on that property where those two possessions could be stored.

Noyes Livingston: I think that there is another yes here. If you agree that what he has is better than what he could do. And, we've been down that road before. If you agree that what he has is better than what the alternatives are. You could answer, although there is a not in the middle of the sentence. You could answer #6 yes also. Because the public interest might be served by just leaving it like it is, at the end of the day, after all is said and done. Does that make sense?

Linda Daves: I'd rather drive by that building as far back as it is, rather than that boat trailer some dark night.

(some indecipherable talking.)

Billy Gaskins: well, I'll tell you what we'll do. We'll mark all these things here. Then we will get someone to take a....

Flip Burluson: What are we going to do, vote on each one?

Billy Gaskins: No.

Glenn Martin: Vote on the whole thing.

Noyes Livingston: Someone started a motion...

Billy Gaskins: Someone started a motion, then we got this paper. We've read all these things, we're on the record. Would you like to make your motion.

Flip Burleson: What happened to checking them off? We have to check them off.

Billy Gaskins: Well, we've been through them....I don't see how.....David wants us all to agree on yes or no on each one of these. And I see all of us up here, and one of us is going to say yes on one and no on another and then we get down to the variance, then someone is going to make a motion, and it's not going to fit this thing.

Noyes Livingston: Well, that's why you're the chair, and ultimately you've got the say....

Billy Gaskins: Well, just like Glenn said, I'm more confused now then....  
(conversation amongst themselves)

Glenn Martin: All of them has to be yes, or all of them has to be no?

David Parsons: Well, they're not all just yes or no. Some need to be yes, some need to be no.

Jim Freeman: Any one of them could deny the request. So, it's not like you're adding them up. It just takes one.

Billy Gaskins: well, are we going to go through it again and mark each one?

Flip Burleson: I don't know, I don't know what he wants us to do. There is no way we are all going to agree on the same thing.

Noyes Livingston: Can I say this, and David is going to correct me if I'm wrong, because David has been through this a lot. In all the meetings I've been at, the principal question has been: what is the hardship to the homeowner. That was the core of the issue.

Billy Gaskins: Before we ever saw this list, that was the issue.

Noyes Livingston: this list was in the packet that I got years ago, but the core issue was the hardship to the homeowner. So, I would discuss these yes's and no's blah blah blah but at the end of the day, we're going to have to ask: does the homeowner have a hardship that if this variance isn't granted and if you guys think he has a hardship if the variance isn't granted, that's probably close enough. But the key issue is: does he have a hardship. Now, David, have I said anything that's not really correct. Is that good enough? You've discussed these. Does he have a hardship? Someone needs to make a motion.

Flip Burleson: I move that we approve the variance.

Billy Gaskins: Do I have a second?

Billy Gaskins: (after a long pause) Do you need more discussion? Do we need to go through it again?

Flip Burleson: Do you want me to move that we disapprove the variance?

Glenn Martin: Variance doesn't pass for lack of a second? If you can't get a second?

Billy Gaskins: Is that how that works, if no one makes a second? Well, once again, everybody....everybody knows that, right...if there is no second, that's as well as a....

Glenn Martin: Mr. Chairman, I'll offer a substitute motion that we deny the variance.

Billy Gaskins: Do I have a second on that?

Jim Freeman: I'll second.

Billy Gaskins: Read the roll.

Linda Daves: question....we are voting to deny the variance?

Flip Burleson: well, I tried to do it the other way?

Nicole: Yes, we should do it the other way.

Flip Burleson: Do you want to vote on this?

Glenn Martin: Do we need to vote on this?

Rick Adams: I think effectively you have denied it by not being able to approve it.

Billy Gaskins: But then there was a substitute motion made.

Noyes Livingston: This will make it more definitive. I mean, if you want to kill it, this is how you kill it I suppose.

Rick Adams: The risk you take then is that you have two motions that have both been approved that could be in contrast of one another.

Billy Gaskins: Y'all don't need to have citizens up here....you should have hired a bunch of lawyers to do this.

Rick Adams: You're the judge, jury and executioner.

Glenn Martin: Mr. Chairman, I will withdraw my motion.

Billy Gaskins: okay, so we are back to....do we have a motion....?

Flip Burleson: I'd like to point out, I was not moving to approve in order to approve it. I was moving to approve so it would be simple when we voted. So we could either vote for it, or against it.

Nicole: He is making a motion so you can vote for or against it.

Linda Daves: I second.

Billy Gaskins: So, we have a motion to approve. Read the roll, please.

**MOTION: Member Flip Burleson made the motion to approve Variance Application #VAR-130152, Aransas Holding Co S/D, Blk 77, Lot 7, Port Aransas, Nueces County, Texas. Request by Ronald Pierson. Property location: 301 E Ave E. . Seconded by Member Linda Daves and carried with the following vote:**

| Name                 | Yes | No | Abstain | Absent |
|----------------------|-----|----|---------|--------|
| Chair Billy Gaskins  | X   |    |         |        |
| Member Glenn Martin  | X   |    |         |        |
| Member Flip Burleson | X   |    |         |        |
| Member Linda Daves   | X   |    |         |        |
| Member Jim Freeman   |     | X  |         |        |
|                      |     |    |         |        |
|                      |     |    |         |        |

**B. Discussion and take appropriate action on Variance Application #Var-13707, Ed Mercer Survey No. 11, Lot 4, Block 2, Port Aransas Nueces County, Texas. Request by Ralph G. Keene. Property location: 501 Mercer.**

Billy Gaskins: Okay, we'll move on to the next one. Now we are going to discuss Mr. Keene's property. Let's go through this list again. Okay, is this one, this request for a variance owing to a special condition inherent to the property itself?

Flip Burleson: Yes.

Glenn Martin: Yes.

Billy Gaskins: Yeah, I agree with that myself. Is the condition unique to the property requesting the variance?

Flip Burleson, Linda Daves, Glenn Martin: Yes.

Billy Gaskins: Is the condition self-imposed or self-created?

Flip Burleson: I don't see how. It's not his fault. He didn't create it, right? I'm discussing.

Billy Gaskins: How do you see that?

Glenn Martin: Well, yeah, you know....

Billy Gaskins: Let's move to the next one and then go back...Okay. A literal enforcement of the ordinance will result in an unnecessary hardship.

Flip Burleson, Linda Daves, Glenn Martin: Yes.

Billy Gaskins: The hardship will prevent any reasonable use whatsoever of the property.

Glenn Martin, Flip Burleson: Yes.

Billy Gaskins: Granting the variance would not be contrary to the public interest.

Flip Burleson: No....or yes it would not.

Linda Daves: The not in there throws us off every time. Granting of the variance would not be contrary to public interest. Yes, it would not.

Billy Gaskins: Back to number 3. Is the condition self-imposed, or self-created? I think there were a combination of things that went on in my mind, I don't know how to say 'maybe'. They don't put a maybe on there.

Glenn Martin: I don't know. I think when Mr. Keene bought the property, the hook-up was there. He didn't build it, you know. He bought the property. So, it wasn't self-imposed.

Rick Adams: I think the note there is that it was removed. The conditions changed when he vacated that use.

Glenn Martin: so, that would be self-imposed, you think?

Rick Adams: Well, I mean, that....I'm just here to present the facts. They removed those other units, that would have been grandfathered as the lot of things were out here. Because our intention is to do no harm. But when that changed....

Flip Burleson: Didn't the city make him remove it?

Rick Adams: No, sir.

Linda Daves: Self-imposed and self-created means by choice of the individual.

Flip Burleson: For all the electrical problems, they made him move it?

Rick Adams: No, that was not the case. They vacated the use. And again, we've gone back to make sure that was the case. We can demonstrate through pictures that it was gone. I don't think they deny the fact that it was gone, and they brought it back.

Bubba Jensen: The ordinance was changed not by Mr. Keene. Mr. Keene did not change the ordinance. So, it was not self-imposed.

Flip Burleson: Yeah.

Bubba Jensen: This imposition is because the ordinance changed. Mr. Keene had nothing to do with it.

Billy Gaskins: That's irrelevant. Okay, now we've gone through this criteria. Now, is there any discussion you guys want to do, or make a motion at this point.

**MOTION: Member Flip Burleson made the motion to approve Variance Application #Var-13707, Ed Mercer Survey No. 11, Lot 4, Block 2, Port Aransas Nueces County, Texas. Request by Ralph G. Keene. Property location: 501 Mercer. Seconded by Member Jim Freeman and carried with the following vote:**

| <b>Name</b>          | <b>Yes</b> | <b>No</b> | <b>Abstain</b> | <b>Absent</b> |
|----------------------|------------|-----------|----------------|---------------|
| Chair Billy Gaskins  | X          |           |                |               |
| Member Glenn Martin  | X          |           |                |               |
| Member Flip Burleson | X          |           |                |               |
| Member Linda Daves   | X          |           |                |               |
| Member Jim Freeman   | X          |           |                |               |
|                      |            |           |                |               |
|                      |            |           |                |               |

5) **ADJOURNMENT:** There being no further business Chair Billy Gaskins adjourned the Called Board of Adjustments and Appeals Meeting at 4:35 pm.

**PASSED AND APPROVED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Billy Gaskins, Chair

\_\_\_\_\_  
Planning & Zoning, Secretary