

**MINUTES
ZONING BOARD OF ADJUSTMENT
CITY OF RICHARDSON, TEXAS
JUNE 15, 2016**

The Zoning Board of Adjustment met in session at 6:30 p.m. on Wednesday, June 15, 2016, in the Council Chambers, at the City Hall, 411 West Arapaho Road, Richardson, Texas.

MEMBERS PRESENT: Mike Walker, Chair
Larry Menke, Vice Chair
Chip Pratt, Member
John Veatch, Member
Jason Lemons, Alternate
Shamsul Arefin, Alternate

MEMBERS ABSENT: Brian Shuey, Member

CITY STAFF PRESENT: Michael Spicer, Director of Development Services
Mohamed Bireima, Planner
Brent Tignor, Building Official
Victoria Thomas, City Attorney
Dana Slechta, Administrative Secretary

Opening comments: Chairman Walker introduced City staff and explained the staff serves in an advisory capacity and does not influence any decisions the Board might make. Mr. Walker summarized the function, rules, and appeal procedure of the Zoning Board of Adjustment.

1. MINUTES: APRIL 20, 2016

Motion: Mr. Veatch made a motion to approve the minutes from April 20, 2016 as presented; second by Mr. Pratt. Motion approved 5-0.

2. PUBLIC HEARING ON ZBA FILE V 16-04, a request by Kent Robinson for approval of the following variances to the City of Richardson Comprehensive Zoning Ordinance:

- 1). Article IV-A, Sec. 2(b)(2), to allow the use of 100% wood siding in lieu of 35% masonry for a proposed detached garage.
- 2). Article IV-A, Sec 4(h)(1), to allow the extension of an existing gravel driveway. The property was located at 325 Huffhines Street.

Mr. Bireima stated Variance 16-04 is a request by Kent Robinson for two (2) variances. The first request is to allow the use of 100% wood siding in lieu of masonry construction for a proposed detached garage. The second request is to allow the extension of existing gravel driveway in lieu of the required approved surface for a residential driveway.

The subject property is located at 325 Huffhines Street. The property is zoned Planned Development for R-2000-M Residential district. The property owners within 200 feet of the subject property were mailed a notice of the public hearing as required by State Law. To date, one phone call was received regarding the request along with a petition which was provided by the applicant signed by four (4) adjacent property owners, all in favor of this request. No correspondence was received in opposition.

Mr. Bireima presented the survey map showing the home that was built in 1922 and the existing attached garage which was converted into living space located on the north side of the home. The applicant has proposed to build a new detached garage which will be located on the rear (north) side of the home using 100 % wood siding in lieu of the required minimum 35% masonry construction.

The second request is to allow the extension of an existing gravel driveway to the new garage to match the character of the established driveways along the neighborhood street in lieu of installing a new concrete driveway.

The applicant has expressed his desire to construct the new garage using materials to match the architectural and historical nature of the homes in the neighborhood.

The applicant states his hardship for requesting the variances is to match the architecture of the home and the character of the street.

Mr. Bireima concluded his presentation by stating a physical hardship does not exist.

Mr. Menke confirmed there were no curbs or gutters on the street and most of the homes have gravel driveways.

Mr. Bireima stated the street is asphalt without curbs and gutters and did verify the majority of the existing driveways were gravel as opposed to concrete.

With no further questions of staff, Mr. Walker opened the public hearing.

Mr. Kent Robinson, 325 Huffhines, Richardson, Texas stated his intent is to build a replacement garage that would match the house and the character of the neighborhood. The elevation plans show the architect is able to match the existing garage; angel, trim and shiplap siding to make it appear that the garage has always been there.

Mr. Robinson stated he met with the neighbors and they were in favor of the gravel driveway.

Mr. Robinson had some concerns about changing the material of the driveway. The lot was very flat and heavy rains have caused some ponding in the back which does not affect the house however, putting in a large expansive concrete drive might change this issue. The applicant is hoping to match the existing driveway and not change the drainage, tone and historical nature of the neighborhood.

Mr. Pratt applauded Mr. Robinson for being able to match the current architectural look and feel by using the same materials. He asked if Mr. Robinson had considered applying for historical district or neighborhood zoning which would protect the architectural feel and allow the use of the wood siding.

Mr. Robinson responded this had not been discussed or brought up but would like to point out that in the very same ordinance that request or requires the 35% masonry; states that detached garages that are built to replace garages which are enclosed or converted to living space shall be constructed of brick, stone etc. and the detached garage shall be architecturally compatible with the principal building as determined by the Building Official.

Mr. Robinson said he is trying to match what was replaced and was asking for an appropriate interpretation of the zoning rather than a variance.

Mr. Walker asked if the garage going to be the same color as the home and if the storage building would be removed.

Mr. Robinson said he would be matching the siding and the color and had no intentions of removing the shed.

Mr. Walker asked staff why these requests are not two separate items, one for garage and the other for the driveway.

Mr. Biriema stated because there are two (2) requirements which he was varying from the same ordinance.

Mr. Walker confirmed there would be just one vote.

Mr. Biriema stated the board may vote to approve or deny one or both of the requests.

Mr. Arefin wanted how long Mr. Robinson had lived in the house, and when it was last remodeled, and did he know of the changes coming to the area.

Mr. Robinson replied they purchased in December 2015 and moved in a few months later, did not know when the home was remodeled, but knew the converted garage had fairly new electric and plumbing.

Mr. Robinson acknowledged he knew of the changes in the area and was happy there would be some diversity in the neighborhood.

Mr. Walker wanted to know if he would be able to match the current brick.

Mr. Robinson replied the brick was locally available.

Mr. Walker asked if anyone in attendance was in favor of the request or opposed and there were none.

Public hearing was closed.

Mr. Menke commented that the extension of the current gravel driveway and the design of the building is non-conforming with current regulation but because of the area it will look nice and he had no problem with either request.

Mr. Bireima pointed out to the board that Mr. Robinson would be required to remove the non-conforming driveway and construct an approved driveway under current regulations; therefore his request was to extend the gravel driveway to the new garage.

Mr. Arefin asked City staff if only concrete driveways were allowed or were there other options.

Mr. Bireima said the City allows pavestone and bricks along with concrete.

Motion: Mr. Pratt made a motion to grant the requests in V 16-04 as presented, limited to those specifics that applicant presented in the case; seconded by Mr. Lemons. The motion was approved 5-0.

3. PUBLIC HEARING ON ZBA FILE V 16-05, a request by Holly H. Jennings Independent Executor of the Estate of Eleanore D. Heaver to appeal the Building Official's determination that the non-conforming use of the property located at 514 Lockwood Drive, Richardson, Texas for a motor vehicle repair shop has been abandoned.

4. PUBLIC HEARING ON ZBA FILE V 16-06, a request by Zubair Khan, KZK World Inc. to appeal the Building Official's revocation of the certificate of occupancy issued to KZK World Inc. for the property located at 514 Lockwood Drive, Richardson, Texas.

Mr. Spicer, Director of Development Services for the City of Richardson, stated Items 3 and 4 on the agenda relate to the public hearing for Zoning Board of Adjustment File V 16-05 and V 16-06. Both cases concern property located at 514 Lockwood Drive, Richardson, TX. The property is located on the north side of Lockwood Drive approximately 300 feet west of Custer. File V 16-05 is an appeal of a determination that the nonconforming use of the property had been abandoned. File V 16-06 is an appeal of the revocation of the Certificate of Occupancy (C.O.) related to the property.

Mr. Spicer asked the Chairman if there was no objection the City would like to have the board consider these two cases together as both appeals are the product of the determination that the nonconforming use has been abandoned.

Mr. Walker responded by stating both cases would be heard together

Mr. Spicer stated the subject property located at 514 Lockwood Drive, Richardson, Texas is presently zoned PD Planned Development. The district was established with the adoption of Ordinance 4097 in January of 2015. The ordinance is also known as the Main Street/Central Expressway Form Based Code. The code does not allow motor vehicle repair shop major as a legal use of the property by right. Prior to the current PD zoning the subject property was zoned C-M Commercial. Since July of 2008, motor vehicle repair major had not been a use allowed by right in the C-M Commercial Zoning District.

However, the subject property was formerly occupied by a motor vehicle repair use prior to July 2008 and subsequently through 2015 until November 10, 2015. Because the use was legally established and operating prior to July 2008 it was allowed to continue operating as a legal nonconforming use even though the use was no longer allowed by right, in accordance with Article XXII of the City of Richardson Comprehensive Zoning Ordinance. Article XXII of the Comprehensive Zoning Ordinance governs nonconforming uses. The article provides that when there was a use that legally existed on the property prior to a zoning change, but which would be illegal after the zoning change, the use may continue as a legal nonconforming use. Article XXII also states, that if a legal nonconforming use is discontinued for a period exceeding 6 months, the nonconforming use shall be deemed to have been abandoned and any future use of the property must conform to the current zoning.

The City's Building Official had determined that the nonconforming use of motor vehicle repair at the subject property 514 Lockwood Dr, Richardson, Texas, had been abandoned due to the discontinuance of the nonconforming use for a period exceeding 6 months.

On May 11, 2016 the Building Official notified the property owner, Eleanore D. Heaver Estate, of his decision. Because a Certificate of Occupancy (C.O.) noting a business name change and business owner change had been applied for and issued to Zubair Khan and KZK World Inc. on March 17, 2016, Mr. Khan and his business, KZK World Inc., were also notified of the building official's revocation of the C.O. for the property because the property could no longer be used for motor vehicle repair.

Because of these decisions the property owner Eleanore D Heaver Estate and KZK World Inc. are appealing. With the board's permission, Mr. Brent Tignor Building Official for the City of Richardson would present the board the factual matter considered by the City which led to the determination that the legal nonconforming use had been abandoned which supports the revocation of the Certificate of Occupancy.

Mr. Brent Tignor, Building Official of the City of Richardson, 411 W. Arapaho Rd, Richardson, Texas, distributed supporting documents and graphics of the City's case including the application and Certificate of Occupancy, utility disconnect notice, demand to remove abandoned property letter, email correspondences with Tonia Stevens of Henry S. Miller and letters from the City to Eleanore D. Heaver Estate, and Zubair Khan, KZK World Inc. to the board members regarding the property located at 514 Lockwood Drive, Richardson, Texas.

Mr. Tignor stated, based on the evidence provided, the City believes the prior legal nonconforming use has been abandoned under the provision of Article XXII of the

Comprehensive Zoning Ordinance due to the property not being used for such use for a period exceeding 6 months.

In conclusion, Mr. Tignor asked the board to uphold the determination of abandonment of the nonconforming use and the revocation of the Certificate of Occupancy.

Mr. Walker asked if there was furniture and equipment on the premises then would it have been compliant with the C.O.

Mr. Tignor replied, yes.

Mr. Pratt wanted to know if the applicant or owner was aware of the 6 month potential expiration for the use on the property.

Mr. Tignor stated there was communication between himself and Tonia Stevens of Henry S. Miller who represented the property owner regarding the abandonment letter.

Mr. Menke wanted clarification of storage group S1 which appears on the C.O. that was granted to KZK World Inc.

Mr. Tignor explained the nomenclature of the S1 was a building code reference which indicates motor vehicle repair shop. The application also indicates the use to be automotive repair.

Mr. Walker asked why the City would grant a C.O. if the property showed no active business.

Mr. Tignor replied based on the application it was assumed the business was ready to open. Inspections were done on the property based on minimum code standards to verify the property meets all code requirements prior to occupancy.

Mr. Walker asked if the March 3rd date was relevant to the C.O. date.

Mr. Tignor explained the C.O. was only for the name and the ownership change. The activity was based on the abandonment date of November 10, 2015 and that there were no business operations occurring from November 10, 2015 forward. The C.O. was applied for in March and granted because it was still within the 6 month time frame to operate the business as a motor vehicle shop repair major. Once the C.O. was issued business operations were never conducted on the property.

Mr. Walker asked if the business had opened its doors prior to May 11, 2016 and started operations, then they would not have had any issues.

Mr. Tignor said correct.

Mr. Leonard Hoffman, Attorney, 901 Main St., Ste. 4800, Dallas, TX stated he was representing the current property owner, Dr. Holly Jennings Executrix of the Estate of Eleanore D. Heaver;

her brother Dr. Mark Heaver, a local physician and interested party in the business of the estate; and Mr. Zubair Khan, owner of KZK World Inc. the purchaser of the property.

Mr. Hoffman stated he met with the interested parties and did not know there was a nonconforming use issue or confidentiality agreements that existed between the different parties until the C.O. was revoked.

Mr. Walker asked when was the contract initiated and why had the sale not gone through.

Mr. Hoffman replied the contract was signed on January 17, 2016 between Dr. Jennings and Mr. Khan and would not go through unless Mr. Khan can open the business on the property. Mr. Hoffman asked Dr. Jennings to come forward.

Dr. Holly Heaver Jennings, Executrix of the Eleanore D. Heaver estate, 2508 Greenridge Dr., Fort Smith, Arkansas stated there was a specific request from Mr. Khan to be able to occupy the property immediately so he could clean it up because the previous tenant left it in a state of disrepair. This was allowed before the transaction closed because Mr. Khan had come forward in good faith and had a track record with Henry S. Miller.

Mr. Arefin wanted to know if there were any other potential buyers.

Mr. Hoffman responded the property was in horrible condition and needed to be cleaned up and repairs done to the building to make it ready for business. There were no other buyers.

Mr. Walker wanted to know when Mr. Hoffman became aware of the July 2008 zoning change to the property.

Mr. Hoffman explained he had no prior knowledge before May 2016 until he was retained due to the revocation of the C.O. and special use permit.

Mr. Walker asked Dr. Jennings if Henry S. Miller ever made her aware of the July 2008 zoning change.

Dr. Jennings said she was only aware of the 6-month grandfathering of the C.O.

Mr. Veatch asked if she had any knowledge that an AAMCO franchise would operate on the property.

Dr. Jennings replied she did not know anything about the AAMCO business, only that there would be a representative at the meeting. Her attorney in Fort Smith told her there was a relationship between Mr. Khan and AAMCO.

Mr. Arefin wanted to know if AAMCO was a part of the contract with Mr. Khan and did he need to go through the city to get permits for cleanup of the property.

Dr. Jennings said she could not answer because this was something Mr. Khan did himself.

Mr. Pratt asked if there was communication during the negotiation of the contract regarding the nonconformance and the 6-month timeline.

Dr. Jennings stated she had no knowledge of specific communications with Mr. Khan and the board would need to ask Ms. Stevens of Henry S. Miller. Because of the relationship Mr. Khan had with Henry S. Miller, she made the unusual concession to go ahead and allow him to begin occupancy in order to be able to clean the property. This would not have been something she would have done if the clock was not ticking.

Mr. Walker asked if the deal does not go through with AAMCO would she be reimbursing Mr. Khan for the cleanup.

Dr. Jennings replied this was not in the contract. Mr. Khan did the cleanup on his own with the expectation that things would work out. Mr. Khan had a C.O. dated March 16, 2016.

Mr. Hoffman noted the ordinance focuses on occupancy and the importance that the premise be occupied. Mr. Khan was issued a C.O. and was granted absolute right by Ms. Jennings to occupy the property to prepare it for the new tenant AAMCO. They did not feel that the 6 month rule had been violated until the revocation letter was received and removed the right for Mr. Khan to do anything on the property.

Mr. Veatch commented about the matter of use on the property not about the occupancy. He stated the revocation letter was specific to the ordinance; "if a nonconforming use is discontinued for a period exceeding 6 months such nonconforming use shall be deemed to have been abandoned and any further use therefore shall conform to the term of the ordinance". The letter does not talk about occupancy. The use in this instance was for a major automotive repair facility.

Mr. Hoffman expressed that a business has a right to remodel or rebuild. The building was occupied during the cleanup and remodeling efforts to enable a safe environment for the public.

Mr. Arefin pointed out the building was not being used as an auto repair business during the time the C.O. was issued.

Mr. Hoffman decided to introduce Christine Mulligan, AAMCO Real Estate Manager from San Diego to explain the studies that were done before a franchise was sold.

Ms. Christine Mulligan, 1271 Alta Vista Dr., Vista California, 92084 stated she was a real estate manager for AAMCO who works with companies that do analytics to study different areas that would be good for opening a business, not only to benefit the new franchisees but to support existing franchisees. While going through the process there are some confidentialities that are not disclosed until contracts are completed. Buxton was the analytics company that was used to locate the property which was already designated and built as an automotive property.

Ms. Mulligan stated she approached Dr. Jennings in February to express interest in the property so they could advertise it to their franchisee, Mr. Darren Brown, who was local to the area and was interested in the location.

Ms. Mulligan who had been in contact with Ms. Stevens regarding the location learned that Mr. Khan had been cleaning the property so he could move forward with the business.

Mr. Walker asked Ms. Mulligan when she became involved.

Ms. Mulligan state she became involved around May 25, 2016 when she heard about the revocation of the C.O.

Mr. Walker wanted to know if she had helped the franchisee any time before May 25, 2016.

Ms. Mulligan replied that she was helping Mr. Brown put together a letter of intent to the owner.

Mr. Walker asked why AAMCO had not done their due diligence regarding the ordinance change and the problem pending with the location being an automotive repair shop. Who gave her the information that led her to believe the property was still in compliance?

Ms. Mulligan stated her communication was with Ms. Stevens who gave the impression that the business was ready to move forward since the C.O. was issued they had 6 months to get the property ready.

Mr. Lemons wanted to know if Buxton analytics included investigation of current zoning and issues.

Ms. Mulligan said that Buxton does not investigate zoning. They just identify competitors, roof tops and key potential customers.

Mr. Hoffman shared that some issues were not disclosed to him until as recently as June 14, 2016. Mr. Hoffman asked Ms. Stevens to give an overview of the time line and some of the circumstances related to the issuance of the C.O., the certificate of special use permit along with the withdrawal of the C.O. even though the business was getting ready to open.

Ms. Tonia Stevens, 3990 Vitruvian Way Apt 514, Addison, Texas is a commercial real estate agent and has worked in the industry for 16 years specifically with automotive properties. She was aware of the time sensitivity of the C.O., and after several conversations with Mr. Tignor, he informed her the C.O. had been issued and the clock was reset.

Mr. Walker asked if she received an email in regards to his response.

Ms. Stevens stated she did not have an email but Mr. Patrick Hill her project manager heard Mr. Tignor over the speaker phone in her car. Mr. Hill has signed an affidavit of his conversation with the inspectors from the City regarding the timeline.

Ms. Stevens pointed out that architectural drawings and modification would need to be done before moving forward, but when the revocation letter was received the project stopped.

Mr. Spicer addressed the Chairman, Mr. Walker, regarding the reference to a special use permit and clarified there had never been a special use permit granted at this location. The issues are the revocation of the C.O. and abandonment of the legal nonconforming use.

Mr. Walker asked Ms. Stevens if she was under the impression there was a special permit.

Ms. Stevens stated she may have used the incorrect terminology but felt it allowed for minor and major auto repair.

Mr. Spicer offered clarification relative to her point. The ordinance as it exists today and as it existed in the Comprehensive Zoning Ordinance that predated it, under the standard C-M Commercial Zoning district requires the approval of a special permit for this type of use for it to be a legal and conforming use. No special permit had ever been granted for this use at this location. Consequently, it was a legal nonconforming use per Article XXII of the Comprehensive Zoning Ordinance. City Council's consideration of a special permit is a legislative and discretionary consideration.

Ms. Stevens said every municipality functions differently and the advice that was received from the City led her to believe she was within the guidelines. She spoke extensively to Mr. Tignor after the inspections and the C.O. was an issue because the original application for the C.O. had been denied.

Mr. Walker asked Mr. Tignor why the original application had been denied.

Mr. Tignor said, based on the communications with Ms. Stevens regarding the abandonment letter dated November 10, 2015 and the disconnection of utilities, there was still 3 months left, therefore, the C.O. was approved based on this condition. The fact that the property was not occupied other than the cleanup did not constitute a permit. The business had 3 months to open before the legal nonconforming use associated with the C.O. expired.

Mr. Menke asked Ms. Stevens if she was aware November 10, 2015 was the abandonment date that was being used.

Ms. Stevens felt she was not told that this date would be used as the abandonment date.

Mr. Tignor pointed out that Ms. Stevens came forth with the canceled check as well as the abandonment letter which helped determine the abandonment date of November 10, 2015. She established the date the previous tenants vacated the building. Dr. Jennings was aware of the date and had been in conversation with Henry S. Miller.

Mr. Veatch asked if anyone ever said anything about abandonment.

Ms. Stevens said the word abandonment was never used. It was explained to her once the C.O. was issued the time frame was reset; otherwise there would have been a month to month tenant on the property and the doors would have been opened. The definition of occupancy was not explained to her. She did not know that furniture had to be in place and the business operating as an automotive repair shop.

Mr. Veatch felt that it should have been made clear that automotive repair work needed to take place on the property once the C.O. was issued.

Mr. Walker asked if she knew there was going to be an AAMCO on the property.

Ms. Stevens said she knew the value of the property and its use and did not want to lose the use. They were in the process of signing the lease for the property.

Mr. Menke wanted to know if Ms. Stevens was aware that the date on the Demand to Remove Abandoned Property letter, dated November 10, 2015, would be the hard date the City and property owner would use to establish the abandonment.

Ms. Stevens said she was never told by the City that the November 10, 2015 date would be used to determine when the previous tenant vacated the property. She said Mr. Tignor was going to move forward and issue the C.O. and wanted to know the time constraints since there were discussion with AAMCO and the finish out requirements were large. It would take at least 3-4 months to complete and was told by Mr. Tignor all was good and the clock had been reset.

Mr. Arefin asked how often do you take someone's word.

Ms. Stevens commented that she respects the City Official's position and authority.

Mr. Walker asked Ms. Stevens why the date of November 10, 2015 was an issue when there was documentation regarding the history of the property and Ms. Heaver requested the services be automatically turned back on this date. This should be a sign the previous tenant had abandoned the property.

Ms. Steven responded by saying it was never explained that this date would be used as the abandonment date.

Mr. Tignor replied that Ms. Stevens never asked if there was specific date as to when the city considered the property abandoned. He asked if Ms. Stevens could provide some type of formal documentation that would indicate when the previous tenant terminated the building. This was in the email correspondence in the packet on pages 2 and 3 along with the letter on pages 3 and 4.

Mr. Pratt asked for a short recess of 5 minutes. The hearing was recessed at 8:26 p.m.

Note: At this point the digital recording ended. The remainder of the minutes comprises a general description of the proceedings based on the secretary's notes. It was not until after the meeting had adjourned that the lapse in recording was discovered.

Mr. Walker, Chairman, reconvened the hearing at 8:34 p.m.

Mr. Hoffman pointed out the affidavit from Mr. Patrick Hill regarding the necessary work that needed to be done to pass all required inspections by the City. The final inspection was completed on March 17, 2016 and no deficiencies remained, therefore, the C.O. for auto repair major/minor was issued to KZK World Inc. It wasn't until the C.O. was revoked that he was retained.

Mr. Walker asked City staff the definition of S1 group which was checked on the C.O.

Mr. Tignor responded saying the S1 on the C.O. was nomenclature for a type of occupancy in the 2012 IBC; S1 means a storage group with moderated-hazard storage, which also includes motor vehicle repair garages as part of this group. Based on the C.O. at the time it was a legal nonconforming use.

Mr. Tignor stated had permits been pulled and based on the dates this would have extended the C.O.

Mr. Walker wanted to know once the C.O. was issued was a letter sent stating the time frame in which the business would need to open.

Mr. Tignor said letters are not required. The C.O. was issued during the 6 month period.

Mr. Menke pointed out the affidavit by Mr. Patrick Hill which states that Mr. David Perry, inspector with the City, said the permit would not expire.

Mr. Tignor explained the application for C.O. would not expire and no special permits were issued.

Mr. Hoffman requested Mr. Zubair Khan to come forward to explain what had been done to the property.

Mr. Zubair Khan, 2101 Forest Crest Dr., Plano, Texas 75075, stated after the contract had been signed he had been given verbal approval by the owner, Dr. Jennings, to begin cleanup on the property.

Mr. Walker asked if he was aware once the C.O. was issued that he only had from March to May to open the business.

Mr. Khan said due to the amount of cleanup and repairs that needed to be done on the property, permits were not going to be pulled until the architectural drawings were done.

Mr. Walker wanted to know if he had an agreement with Mr. Darren Brown.

Mr. Khan stated no, due to the confidentiality agreement.

Mr. Hoffman asked for Mr. Darren Brown to come forward.

Mr. Darren Brown, 313 West Vista Circle, Garland, Texas, identified himself.

Mr. Walker asked Mr. Brown if he had an agreement with Mr. Khan and did he have any other advisor during this business transaction.

Mr. Brown said he looked at the property in early March just before the C.O. was issued and signed the letter of intent in mid-April. He was advised by Ms. Stevens that there was a C.O. for the property.

Mr. Pratt wanted to know when he became aware that the C.O. had been revoked.

Mr. Brown told the board he found out on May 26, 2016. The same day he graduated from AAMCO training.

Mr. Hoffman thanked the board for being attentive and asked the board to try and do the right thing. There are so many people involved in the decision that would be made.

Mr. Walker asked if there was anyone who would like to speak in favor or opposed and there were none therefore the public hearing was closed.

The board members discussed the difficulties of the case and felt there was poor communication amongst all parties involved. Members of the board asked City staff if the cases were denied could they be brought back to City Council for consideration.

Mr. Spicer said yes, but only as a request for a Special Permit, which could take 60-90 days and council could still deny the request.

Ms. Victoria Thomas, City Attorney, 1800 Lincoln Plaza, 500 Akard, Suite 1800, Dallas, Texas pointed out that the C.O. was issued within the guidelines and standard language of the ordinance. The use was grandfathered in due to it previously being in existence. As long as it stayed the same and was not abandoned, nonconforming status would not be lost. The C.O. may be issued for a legal, nonconforming use however, if the business does not occupy the property within in the required time, the property would be considered abandoned after 6 months had lapsed.

Ms. Thomas went on to say that discussion should not continue with the board unless the board wanted to go into executive session, due to client attorney privileges.

Motion: Mr. Veatch moved that the Board of Adjustment in case V 16-05, reverse the decision of the Building Official that the non-conforming use of the property located at 514

Lockwood Drive, Richardson, Texas for motor vehicle repair major has been abandoned because of investigation and facts and evidence produced at the public hearing show that there is an error in the determination made by the Building Official in the enforcement of the Zoning Ordinances as applied to this case.

Motion failed due to the lack of a second.

Mr. Walker stated a different motion by the board would need to be made to move forward.

Motion: Mr. Meneke moved that the Board of Adjustment in case V 16-05, affirm the decision of the Building Official that the non-conforming use of the property located at 514 Lockwood Drive, Richardson, TX for motor vehicle repair major has been abandoned because our investigation and the facts and evidence produced at the public hearing show that there is not an error in the determination made by the Building Official in the enforcement of the Zoning Ordinances as applied to this case; seconded by Mr. Arefin the motion approved by 3-1 with Mr. Veatch opposed and Mr. Pratt abstaining.

Mr. Walker asked if Mr. Pratt would like to make another motion.

Mr. Pratt asked for time to construct his motion.

Mr. Walker asked counsel if a decision could not be made what happens.

Ms. Thomas said that there would be no reversal and the decision to revoke would stand.

Motion: Mr. Pratt moved that the Board of Adjustment in this case V 16-06 affirm the decision of Building Official that the non-conforming use of the property located at 514 Lockwood Drive, Richardson, Texas has been abandoned and the facts and evidence produced at the public hearing show that the Building Official followed the letter of the law in the enforcement of the Zoning Ordinances as applied to this case; seconded by Mr. Afefin the motion was approved 4-1 with Mr. Veatch opposed.

Motion: Mr. Pratt moved that the Board of Adjustment in this case V 16-06 affirm the decision of the Building Official revoking the certificate of occupancy issued to KZK World, Inc. for the property located at 514 Lockwood Drive, Richardson, Texas because our investigation and the facts and evidence produced at the public hearing show that the Building Official followed the letter of the law revoking the certificate of occupancy and enforcing the Zoning Ordinances as applied to this case; seconded by Mr. Menke the motion approved by 4-1 with Mr. Veatch opposed.

There being no further business, the meeting was adjourned at 9:18 p.m.

Mike Walker, Chairman
Zoning Board of Adjustment