

BOARD OF ADJUSTMENT

September 17, 2007

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, September 17, 2007 at 5:45 p.m. at the City and County Building, 451 South State Street, in Room 315. Members present were Catherine Dunn, Michael F. Jones (Chairperson), Gary Jones and Rex Olsen. Douglas L. Wheelwright (Deputy Planning Director) and Kevin LoPiccolo (Zoning Administrator) were also present. Board Member Tom Berggren was unable to attend.

Chairperson Jones called the meeting to order and explained the procedures of the meeting. He informed those present that the Members of the Board have visited the properties and the testimony given during the meeting is recorded. Mr. Jones further explained that three concurring votes (or a simple majority vote in some cases) are necessary to pass or defeat a motion. All decisions of the Board of Adjustment are made effective immediately and may be appealed to the Third Judicial District Court within 30 days after Findings and Orders of the cases have been mailed.

ADMINISTRATIVE SESSION

Approval of the minutes for the meeting held August 20, 2007.

Mr. Olsen moved for the Board of Adjustment to approve the minutes as presented. Ms. Dunn seconded the motion; Mr. Olsen, Ms. Dunn and Mr. Gary Jones voted aye; Chairperson Jones did not vote; the motion passed with a 3-0 vote.

Report by the Planning Director.

Mr. Wheelwright had nothing to report on behalf of the Planning Director.

PUBLIC SESSION

Case 420-07-163 by Robert C. Hogle at 1911 South Lake Street (rear) (740 East) for a variance to construct a new single-family dwelling on existing lots without frontage on a dedicated street in the R-1/7000 Zoning District. (Section 21A.36.010.C) (Staff – Janice Lew at 535-7625 or janice.lew@slcgov.com)

(The case was heard at 5:54 p.m.)

Mr. Hogle and Maurine Bachman (representative) were present.

Ms. Lew explained that the Applicant is requesting a variance to reconstruct a single-family dwelling without frontage on a dedicated street. The subject property consists of two lots and is located on the east side of Lake Street behind two existing duplexes. The proposal includes demolishing the existing dwelling and constructing a new one in the middle of the property. The subject property would be accessed by a 15-foot wide right-of-way leading from Lake Street and between the two duplexes. A garage also exists on the property which would remain. Ms. Lew then explained that Staff determined the reconstruction of a single-family dwelling would not result in any new nonconformity. Staff also determined that the proposal meets the hardship criteria in that the original two lots are extremely deep because of an existing irrigation ditch running along the east boundary of the property. The proposal further meets the standards for granting a variance in that the two lots are legal complying lots without frontage on a dedicated street. The narrow right-of-way is also considered a unique circumstance.

Chairperson Jones read the Transportation Engineer comment stating that the 90 degree turn on the new driveway to access the garage needs to meet City driveway standards. No other transportation issues were found.

Ms. Bachman said that they read the staff report and concur with the findings. They believe that they have a unique situation and the proposal would be the best use of the property.

Mary Copenhauer, 1924 South Lake Street, explained that she supports the construction of a new home, but she would not support the proposal if it were intended for office or any other commercial use. Ms. Copenhauer also explained that she was present speaking on behalf of several other interested neighbors.

Ms. Bachman assured Ms. Copenhauer that there would be no commercial activities associated with the proposal. The plan is to construct a new home that would utilize both lots instead of developing two odd lots. The style of the proposed dwelling is a bungalow and it would be compatible with the scale of the neighborhood. Ms. Bachman said that they would also change the design of the driveway to meet Transportation requirements.

The meeting was closed to public comment and Board Members and Staff discussed the proposal. Mr. Olsen noted that the only variance requested related to the frontage issue; the dwelling would meet all other zoning requirements. Ms. Lew explained that combining the two lots would result in a lot size of 12,871 square feet, and the R-1/7000 zoning district limits lot sizes to 10,500 square feet. Mr. Olsen reasoned that limiting lot sizes and requiring specific setbacks would prevent construction of "monster houses" and questioned what mechanism would be available in this case to prevent such a result with the larger lot.

Mr. LoPiccolo explained that any modifications would require an amendment should the Board grant the variance. Mr. Wheelwright added that limiting lot sizes is a result of the compatible infill ordinance and compatibility standards exist in order to prevent homes that would be out of character.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to grant the variance for the property located at 1911 South Lake Street (rear) to allow the replacement of a single-family dwelling in an R-1/7000 zoning district. The variance is granted because:

1. Holding the Petitioner to the literal enforcement of the Ordinance would cause an unreasonable hardship in prohibiting the development because of the lack of frontage on a dedicated street. Literal enforcement of the Zoning Ordinance in this case is not necessary in carrying out the general intent of the Ordinance.
2. A special circumstance is attached to the property that does not generally apply to other properties in an R-1/7000 zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zoning district.
4. The request will not affect the general plan and will not be contrary to the public interest.
5. The request meets the spirit and intent of the Zoning Ordinance.

Conditions of Approval:

1. The final site and building design must substantially comply with the proposed preliminary plans and shall comply with all other code requirements for this zoning district.
2. The Applicant must proceed with the subdivision process in accordance with Salt Lake City and Utah State codes to combine the two subject lots that would accommodate the new single-family dwelling.
3. Any necessary right-of-way to access the subject lot from the street through the existing driveway is to be included in the subdivision process.

Ms. Dunn seconded the motion; Mr. Olsen, Ms. Dunn and Mr. Gary Jones vote aye; Chairperson Jones did not vote; the motion passed with a 3-0 vote.

It is noted that before the vote on the motion, Chairperson Jones recommended language that would state the two lots would need to be combined, and Mr. Olsen amended the motion to reflect that language. Mr. Gary Jones voiced concerns about the driveway, and his concerns were addressed upon Mr. Hogle explaining that he possessed documentation allowing him the right-of-way. Mr. Olsen further explained that his intent for Condition of Approval 3 was to address issues regarding the right-of-way. The plans would also have to reflect that the driveway met Transportation standards before the Development Review Team would sign off on them and before the permit would be issued.

Case 2818-B (Re-opened and Modified) by Bruce Meisenheimer at 494 East Ninth Avenue (450 North) requesting a special exception to allow an increase of height (front gable) for a newly constructed single-family dwelling in the SR-1A Zoning District. (Sections 21A.24.08(0)(6) and 21A.52) (Staff - Kevin LoPiccolo at 535-6003)

(The case was heard at 6:17 p.m.)

Bruce Baird was present to represent Bruce Meisenheimer.

Mr. LoPiccolo explained that the request is to allow a portion of a single-family dwelling to remain at a height of approximately 23 feet 10 inches. The plans were originally caught up with the Infill Compatibility Ordinance that was adopted by the City Council in December 2005. At the time, Mr. Miesenheimer was informed about the new ordinance and he revised his plans to reflect the height limit of 23 feet for the new SR-1A zoning district. Mr. Miesenheimer also submitted a special exception application along with the plans requesting a building height of 23 feet on the Ninth Avenue elevation (north) to 32 feet on the "G" Street elevation. In April 2006, the Board of Adjustment granted the special exception. Mr. LoPiccolo further explained that the process in reviewing height standards under the Infill Ordinance has changed. In 2005, no established application was available to reflect the review standards of the Infill Ordinance. In this case, the standard "special exception" application was used and it did not require height surveys. Due to community concerns after the subject structure was built, a survey was conducted and identified that an area of the structure exceeded a height that the Board did not approve. The Board granted the special exception with focus on the down slope of G Street and not on the north elevation because it met the 23-foot maximum height limit. The survey identified that the north gable itself is below the 23-foot maximum, but the roof ridge line running east and west from that gable increased from 0 to 10 inches. The roof ridge itself runs parallel from gable to gable, but the grade of the lot causes the 0- to 10-inch increase in height. Mr. LoPiccolo then explained that Staff met with the Greater Avenues Community Council (GACC) and the staff report includes responses to their concerns. At one point, it was believed that the structure exceeded the height limit by 5 feet according to review of the plans, but the survey reflected that it actually encroached 10 inches over the limit. Mr. LoPiccolo noted that the east elevation was scaled on the plans, but the north elevation was not scaled. GACC also voiced concerns about streetscape presentation of which the Board approved the special exception in part based on Staff's recommendation that the structure was consistent with the block face along Ninth Avenue. Mr. LoPiccolo said that the question before the Board at this meeting is whether or not the additional 10 inches is in keeping with the development pattern along Ninth Avenue.

Chairperson Jones read the Transportation Engineer comment stating that Salt Lake City driveway grade standards need to be met.

Chairperson Jones then disclosed that Mr. Baird and he were law partners with the firm Hutchings, Baird and Jones. Chairperson Jones left the law firm in July 2006, and Mr. Baird and he have no further affiliations.

Mr. Baird explained that there is no question the height of the structure is 23 feet on the Ninth Avenue elevation and that the roof top fits within the building envelope when looking west on G Street. The problem occurs at the front with a 23-foot roof top stretching flat as the ground slightly slopes causing the height to become slightly higher over a run of 15 feet. Mr. Baird then explained that it is his understanding the case should not have been brought back to the Board, but Staff forwarded it because of political pressure from GACC. Mr. Baird noted the letter submitted by GACC and he believes they are

essentially asking the Board to overturn their April 2006 decision. They further asked the Board to investigate the processes that led to the April 2006 decision and deny the special exception. Mr. Baird argued that the special exception was approved pursuant to the plans submitted and the building was constructed precisely to the plans. The Board of Adjustment has no authority and no legal process to overturn their decision, and the Board does not have the purview to investigate staff processes in how the Board made their decision. Any dissatisfaction with a Board decision is challenged in Third District Court, and neither GACC nor anyone else did so at the appropriate time. Mr. Baird said that he further finds no basis to challenge the Board's decision because evidence shows that the front gable is lower than the requirement when reviewed on Ninth Avenue. Mr. Baird further believes that the Board approved the natural consequences of the elevations when they approved the special exception, and no one would suggest angling the roof line as it runs from north to south for 15 feet to match the slope of the ground.

Chairperson Jones noted that GACC suggested a lower dormer should have been presented to the Board so that the ridge would not have encroached past the height limit. Mr. Baird said that that issue can not be revisited because the north elevation was reviewed and it complied with the Ordinance. Mr. Baird said that he does not find taking 10 inches from 23 feet would alter the character of the neighborhood. Likewise, there is no evidence in the record, then or now, that shows 10 inches would make a difference to the character of the neighborhood. Also, there is no legal basis to change a decision made 16 months ago and after construction has been approved. Mr. Baird said that he also believes the statute and process are riddled with ambiguity. "Patterson versus Utah County Board of Adjustment" states that zoning laws in derogation of the private property rights to develop are unfettered by regulation plus any ambiguity must be construed in favor of the property owner. The Applicant showed plans to the City and the City informed him that approval must be obtained from the Board of Adjustment. The plans were presented to the Board and the public, and the Board approved the plans and the project was built accordingly. The Applicant in no way could have known that someone would later say 23 feet is approved, but we meant that the roof ridge must slope downward. And again, Mr. Baird found no evidence in the record that the 10-inch deviation over a run of 15 feet would be incompatible with the neighborhood.

Chairperson Jones noted that the request is for a special exception for the additional height to remain. The standards that would apply in this case are the special exception standards, and Mr. Baird is suggesting that the Patterson case sets the standards. Mr. Baird explained that he came into the case after it was noticed, and he believes the better argument would have been an appeal to an administrative decision. Mr. Baird added that the sole issue before the Board is the 10 inches for 15 feet; not the front height or the center or south ridges because they are in compliance.

Chairperson Jones asked Mr. Pace to address Mr. Baird's contentions.

Mr. Pace explained that the Patterson case applies in general principal of the law in that if the rules are not clear then any ambiguity is not applied against the property owner. Secondly, the agenda language may suggest the Applicant needs a special exception approval that he does not already have. In his opinion, one question that should be deliberated is whether or not the north gable was approved at 23 feet and whether or not everyone assumed the ridge line would be level with the sloping ground or the approval was based on the front gable at 23 feet and the rear gable at 32 feet with the roof pitch viewed as the height. Mr. Pace said that his concern is that the portion of the ridge line that is too high is 6 inches lower than the gable that the Board approved. Should the Board determine that the ridge line is too high then they must present findings as to why it is too high especially when it is lower than the portions that were approved. The Board must determine whether or not the request meets the Ordinance coupled with their previous approval, or they may find that a special exception is not required in that the Applicant has already obtained the approval that is needed.

Chairperson Jones then asked Mr. Pace whether the burden would be upon the City or the homeowner as to seeking a special exception for a dormer that exceeded the height limitation. Mr. Pace explained that an applicant who submits a request for a permit is entitled to rely upon the permit that was issued based on those plans. In addition, the City informed the Applicant that special approval was required for the plans showing a height of 32 feet, and if the City issued the permit upon the special approval, then the Applicant is justified in building pursuant to the permit.

Chairperson Jones then asked whether or not it would be correct that if other height exceptions are contained in plans and the City does not catch them, then the City has erred and the applicant is entitled to build pursuant to approved plans. Mr. Pace answered that that would be generally correct, but inquiries would need to be made as to determine at what point the City would be legally estopped from correcting the mistake.

Michael Hughes, Chairperson for GACC, asked if any of the Board Members visited the subject property to which Chairperson Jones answered that they have visited the property. Mr. Hughes then asked the Board to consider the reasons why any height overage could have occurred in the first place. He explained that their contention is that a failure to address several key parts of the Ordinance especially relating to establishing a development pattern led to the plans to be approved at a height greater than the existing development pattern. He explained that the requirement to measure and survey adjoining structures on both block faces was not done and should have been done since the subject lot is a corner lot. Mr. Hughes also explained that Staff allowed height measurements with measuring poles to verify heights and the structures chosen for the measurements were not on the appropriate block faces. The City's argument that a different procedure is now being used is not a good argument because the rules were in place once the law past. GACC contended that the resulting height of the subject structure is not in keeping with the development pattern of the two block faces in question which are required by Ordinance to be considered.

Responding to questions by Board Members whether or not Mr. Hughes believed the 10-inch encroachment would make the structure incompatible with the neighborhood, Mr. Hughes answered that it contributed to the incompatibility of the development pattern. Mr. Hughes said that GACC would have no contention with the limited issue before them, but they have problems with the overall size of the structure.

Chairperson Jones acknowledged that Erin Coffey at 482 East Ninth Avenue did not wish to speak and he read the comments she wrote on the public meeting registration form. In part, she stated that the subject house damaged her quality of life, decreased her property value and offended the neighborhood. She had privacy, light, space and a pleasant home before the house was built. Her backyard is now completely observable because of the height, and the size blocks the light and damaged her garden. The massive structure next to her quaint home is undesirable to her and whoever might live there next. It is problematic that it has been allowed to happen and she asked the Board to consider abatement to right this wrong.

Matt Knotts, 420 North G Street, voiced his concerns about due process and the inadequacy of the notice causing him confusion and frustration in order to get involved as a community member. The drawings that were provided were not legible and the neighborhood asked for specific requirements of the drawings which were provided only at meetings and in an untimely manner. He is still confused as to whether the issue is 10 inches or 16 inches. Mr. Knotts then acknowledged that the issue may be only inches, but it is an exception to an exception. He believes that it is unfortunate the City did not catch the encroachment and it is appalling to him to discuss the issue now because someone did not do their job.

Chairperson Jones read comments from Jill Van Langeveld at 807 Northcliffe Drive stating that she felt the original permit was given to the permit department with false information in that the numbers were not given and the drawing was not to scale.

Cody Curtis, 482 East Ninth Avenue, said that the issue may be only 10 inches, but it does not fit just the same. Mr. Curtis said that he believes the structure stands out like a "sore thumb" when viewing it from both Ninth Avenue and G Street which in his mind does not reflect compatibility. He further does not see how it could be compatible 10 inches more. Mr. Curtis also said that he believes the Board let down the community when they initially approved the project. The Board now has the opportunity to correct the situation and deny the request.

Margaret Miller, 653 East Ninth Avenue, said that the fact the north elevation drawing was not to scale in the application for the building permit made it impossible for planners to realize that the gable would be over 23 feet. Mrs. Miller said that she believes if the special exception is granted, the Board is sending a message to the public that they should submit whatever plans are necessary to get a permit and then build whatever they want and nothing will happen.

Earl Miller, 653 East Ninth Avenue, explained that he thought the project would fit well in the neighborhood when it was originally presented to the community. He has since changed his opinion because of misleading drawings and photographs that were presented. Additional 10 inches is too much because it goes beyond what is permitted by the law. The line was drawn at 23 feet and the law should be abided.

Jeffrey Stevens, 485 North K Street, explained that he disagreed with Mr. Baird's rationale that one special exception absolves the project of all its transgressions. Mr. Stevens said that he believes a lower gable should have been presented to the Board then the entire roof would have remained within the building envelope. He further believes the burden of proof may not be reversed and placed on the Board or the community; it is and always has been upon the Applicants and their professional consultants. Mr. Stevens explained that he reviewed the minutes from the last approval and found no evidence to support the granting of a special exception for the front gable; and moreover, the issue was not on the table. If the roof ridge is 23 feet 10 inches, it is not in compliance and not compatible.

Alex Steckel, 269 North N Street, urged the Board to reject the application.

Philip Carroll, 89 North G Street, Board Member of GACC, said that he believes reducing the height of the gable 10 inches would substantially make the house more compatible from Ninth Avenue.

Mr. Baird said that he believes the Board met the burden itself by visiting the property, and the Applicants are not required to present a compatibility study at this point because the project has been approved. Mr. Baird contended that they should not even be before the Board because the plans were approved based on compatibility review at that time. The Board made the decision 16 months ago and any one dissatisfied with the decision should have gone through the appropriate appeal process. Mr. Baird further believes that no one could be convinced that 10 inches would now make the structure incompatible.

The meeting was closed to public comment and Board Members discussed the project. Mr. Olsen found that a special exception request would be needed and that it could be granted for 10 inches in that the offending portion connects one approved gable to another. Mr. Olsen reasoned that the additional 10 inches would not create an adverse impact to the neighborhood in that upon his on-site review, he observed the building from all sides and the offending portion was within all other roof lines. He further could not see any indication that something was wrong. Mr. Olsen explained that he was not offended when the plans were first approved and still is not offended recognizing that a corner lot always shows more house on one or the other block face. Mr. Olsen also recognized that all the houses on corner lots in this area look different from the others.

Gary Jones noted that he was not a Board Member when the initial decision was made, but he reviewed the minutes and found that the Board acted properly in granting the original special exception. He further found that 10 inches is not critical enough to overrule the original decision in that granting a special exception does not have to be mandated by inches or feet, but more significantly by the compatibility of a dwelling within a neighborhood.

Ms. Dunn noted that she did not attend the meeting when the case was originally presented to the Board, but she would have voted against granting the special exception. The Ordinance sets the height limit at 23 feet and she is inclined to play by the rules.

Chairperson Jones asked Staff whether or not the structure was constructed per plans presented to the Board and pursuant to which the building permit was issued. Mr. LoPiccolo answered that he believed the dwelling was constructed per plans presented to the Board.

Chairperson Jones noted that the scale and size of the dwelling is not the issue, but rather limited to the gable. The question would be whether or not 10 inches would make a compatible house incompatible, and he believed it would not at all. Chairperson Jones said that he too believes in abiding by the rules, but in this case he finds no basis to deny the special exception because the additional 10 inches would not violate Standards B, C or D.

THEREFORE, based on the testimony and evidence presented, Mr. Gary Jones moved for the Board to approve the special exception to allow the construction of a single-family dwelling that exceeds the 23 feet maximum height limit. The special exception is granted because:

1. The Petitioner has demonstrated that the height exception is in keeping with the compatibility of the immediate neighborhood.
2. The general design of the building is typical for many homes in the area although some are larger.
3. The plan includes strategies to mitigate potential impacts on neighboring properties.
4. The proposal is consistent with City planning objectives and it is in the best interest of the City to approve the special exception.
5. The excess of 10 inches as proposed would not diminish property values or have a material effect on the character of the area and it would be compatible with surrounding development.

Mr. Olsen seconded the motion; Mr. Gary Jones, Mr. Olsen, Chairperson Jones voted *aye*; Ms. Dunn voted *no*; the motion passed with a 3-1 vote.

Mr. Olsen asked Mr. Gary Jones to clarify the motion by including that the request would not diminish property values, it would not have a material effect on the character of the area and it would be compatible with surrounding development. Gary Jones accepted the clarifications to be included in the motion.

Case 420-07-130 by Tom and Heather Hulbert at 1547 East Yale Avenue (1080 South) for a variance to allow the reduction of a side yard setback to accommodate the construction of an addition to an existing single-family dwelling in the R-1/7000 Zoning District (Section 21A.24.060). The proposal requires conformity with the Yale Crest Compatible Infill Overlay District (Section 21A.34.120) (Staff – Nole Walkingshaw at 535-7128 or nole.walkingshaw@slcgov.com)

(This case was heard at 7:56 p.m.)

Tom and Heather Hulbert were present.

Substituting for Mr. Walkingshaw, Mr. LoPiccolo explained that the request is for a two-story addition to an existing single-family dwelling. The variance request is for a side yard reduction from the required 6 feet to approximately 1 foot 6 inches. The proposed addition would have approximately 2,300 square feet of habitable space with an attached garage 462 square feet. Mr. LoPiccolo then explained that the standards and Staff analyses are outlined in the staff report. Staff was unable to determine a hardship that is required for the Board to grant the request and so Staff recommended denial.

Chairperson Jones noted that the Transportation Engineer had no transportation related issues for the case.

Mr. Hulbert explained that they met with all their neighbors over the course of the last six months trying to devise a plan that would benefit the residents of the area and meet their concerns. Mr. Hulbert said that he believes the plans that have been developed meet the standards for granting a variance. The existing home was constructed in 1923 and was placed on the lot with a detached garage 1.5 feet away from the property line. The property has existed with a nonconforming detached garage for 80 years. The issue arose when they were going to rebuild the garage and they would not be before the Board if they had an attached garage that could be remodeled. Mr. Hulbert then explained that the nonconforming

circumstances are permitted and addressed in the Zoning Ordinance. Their situation is they have a nonconforming garage and they would like to attach it to their home. As a result, no venue was available and they believe that they are being denied a significant property right. They have great concerns for safety with a detached garage, and the size of the existing garage is not adequate for two vehicles. A two-car garage is considered standard to current times and it would provide off-street parking that is not currently available. Mr. Hulbert then noted that they are seeking a variance to Section 21A.24.06 of the Zoning Ordinance and Section 21A.34.120(C) of the Yalecrest Infill Overlay District relating to exterior wall heights. Mr. Hulbert said that he believes the special circumstance attached to the property is that the existing home was constructed in the 1920s and they are trying to maintain its integrity. The footprint of the home is in the middle of the lot and sets physical boundaries for an addition. In maintaining the integrity of the property as a whole, they elected to maintain the courtyard located in front of the existing garage which is further enjoyed by the neighbors to the east. As to the literal enforcement of the Zoning Ordinance, Mr. Hulbert said that the Ordinance allows the rebuilding of a nonconforming garage and remodeling of a home that is nonconforming, but it does not address attaching an existing garage and using the same footprint. So the literal enforcement would not be in keeping with the home because the 6-foot side yard currently does not exist. The literal enforcement would eliminate open space in their back yard, block views and provide a hardship on their neighbors because of the changes that would occur. Furthermore, the neighbors feel that placing a second story above the garage would be in their interest when it comes to view, distance and maintaining the appearance and compatibility of the neighborhood. Mr. Hulbert continued to explain that the lot tapers toward the rear. A 6-foot setback 29 feet forward would increase to an 8-foot setback because of the rectangular shape of the garage with the diagonal line of the property line. As for the Yalecrest Infill requirements, the Ordinance states that an existing non-complying detached garage located in the rear yard may be rebuilt or expanded at its existing location, so Mr. Hulbert believes that the existing garage may be rebuilt. Mr. Hulbert said that they are seeking from the Board equitable relief under the broadest definition of a variance in order to maintain good relations with their neighbors and the compatibility of the neighborhood. Mr. Hulbert added that they obtained five letters with signatures for neighbors.

Board Members and Mr. Hulbert discussed the plans. Mr. Hulbert explained that he wants to use what exists by constructing a story on top of the garage as part of the addition to the home. The foundation wall on the east side of the existing home to the property line already has separation and constructing a detached two-car garage would preclude the required four-foot separation between buildings. An additional 4 feet on the width of the garage would be gained by attaching the existing garage to the home and leaving one wall of the garage at 1 foot 6 inches.

Matt Parkin, 1553 East Yale Avenue, said that he would hope the Board appreciated Mr. Hulbert involving the neighbors and addressing their concerns. He is in favor of granting the variance because the proposal is the most equitable and serves the neighborhood the best. If the variance is not granted, he would be unable to support other options that would come into play. Currently, the existing garage area blocks the view from one of his windows. Other plans that he has reviewed, blocks six of the seven windows that are along the west elevation of his home. Mr. Parkin added that he appreciates the required six-foot setback, but it would be more detrimental than helpful in this situation. Literal enforcement would obstruct sunlight and create a narrow corridor along the side yard which is not characteristic to the neighborhood. In allowing the variance, the courtyard which is an attractive feature to the home and neighborhood would be able to remain in place and would not obstruct any existing views. Mr. Parkin added that the proposal would keep the home compatible with the neighborhood.

Chairperson Jones informed Mr. Parkin that compatibility was not a standard for granting a variance to which Mr. Parkin disagreed stating that it is part of the Board's responsibility to citizens to act in their best interest. Should the Board fail to do so then the citizens have a board that is remiss in their responsibilities. Mr. Parkin added that the Hulbert's could have done whatever they liked and he for one appreciated them being considerate of their feelings as neighbors.

Mr. Hulbert noted the standards outlined in the staff report and explained that he believes Standard 4 is met in that the variance would not substantially affect public interest. If the neighbors had a problem with the granting of the variance, many of them would have attended the hearing. Mr. Hulbert further believes

that Standard 5 is met in that they are asking the Board to grant a variance that would uphold the spirit and intent of the Ordinance and give the justice they are authorized to provide. Mr. Hulbert said that he believes the Board may provide the latitude so they can comply with the spirit and intent of the Ordinance and provide a home that is attractive and meets 99.9 percent of the code in that the request is for a small exception on the east side of the property.

The meeting was closed to public comment. Mr. Olsen reasoned that Standard 2 is not met because he could find no evidence of any special circumstance attached to the property. The lot has no unique characteristics that would preclude reasonable development or the enjoyment of a substantial property right. The lot is not steep and it is not narrow or oddly shaped; the lot is relatively large and similar to all other lots in the Yale area.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to deny the variance request for the property located at 1547 East Yale in the R-1/7000 zoning district because the proposal does not meet the standards for granting a variance; specifically, there is no special circumstance attached to the property that does not generally apply to other properties in the same district. Ms. Dunn seconded the motion; Mr. Olsen, Mr. Gary Jones and Ms. Dunn voted *aye*; Chairperson Jones did not vote; the motion passed with a 3-0 vote.

It is noted that Chairperson Jones asked Mr. Olsen to define the hardship placed upon the Applicant noting that hardship is a separate issue (Standard 1) from substantial property right (Standard 3). The Board is required to find only one standard not met to deny a variance request. Mr. Olsen explained that the Applicant alleged a hardship which was that a variance is needed to be able to build. Mr. Olsen found nothing unique about the property and therefore no unreasonable hardship would be imposed on the Applicant. Mr. Olsen reconsidered his motion and amended it to omit the language "and therefore imposes no unreasonable hardship upon the Applicant". He explained that the request does not meet Standard 2 and thus the variance can not be granted. It is also noted that Mr. Gary Jones seconded the motion, and then the motion was amended to which Ms. Dunn seconded it.

There being no further business, the meeting was adjourned at 8:27 p.m.

Deborah Martin, Secretary

Rex Olsen, Vice Chairperson