

BOARD OF ADJUSTMENT

December 17, 2007

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, December 17, 2007 at 5:45 p.m. at the City and County Building, 451 South State Street, in Room 326. Members present were Tom Berggren, Catherine Dunn, Michael F. Jones (Chairperson), Rex Olsen and Edward Radford. Staff Members Douglas L. Wheelwright (Deputy Planning Director), Kevin LoPiccolo (Zoning Administrator), Nick Britton (Principal Planner), Nick Norris (Principal Planner) and Casey Stewart (Principal Planner) were also present. Board Member Gary Jones was not present.

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 a simple majority vote (or three concurring votes in some cases) is 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 November 19, 2007.

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

Chairperson Jones welcomed Edward Radford as a new alternate member to the Board of Adjustment. Chairperson Jones noted that Mr. Radford previously served a five-year term on the Board and has returned after two years.

Report by the Planning Director.

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

PUBLIC SESSION

Case 420-07-187 by Justin Yarmark at 1149 South 1100 East for a special exception to construct an accessory structure that exceeds the height limit and is located more than five feet from the rear property line in an R-1/5000 zoning district. (Sections 21A.40.050(C)(2)(b) and 21A.40.050(A)(3)(d) (Staff – Casey Stewart at 535-6260 or casey.stewart@slcgov.com)

(The case was heard at 5:53 p.m.)

Justin Yarmark and Marie-Michel Tasse (Property Owners), and Tom Buese (Architect) were present.

Mr. Stewart explained that the R-1/5000 zoning district limits heights of accessory structures to 17 feet to the peak of the roof. The Applicants are proposing a new detached garage with a height of 21 feet to the peak of the roof. The additional height is intended to allow overhead space for a personal art studio and storage on a second level. The Applicant is also requesting to locate the proposed garage six feet from the rear (east) property line. The Ordinance requires that accessory structures be located no farther than five feet from rear property lines. Mr. Stewart noted that a driveway exists at the rear of the subject property which also serves to access the property abutting to the east. Staff determined that the additional foot would be beneficial for maneuverability of vehicles. Mr. Stewart added that upon review of the standards for granting the special exception, Staff recommended approving the location of the proposed garage, but denying the additional height based on the determination that no development pattern consistent with the proposal exists along the block face.

Chairperson Jones read the Transportation Engineer comment stating that there is not enough information on the drawing to determine if the proposed garage and access to the garage meet City standards. More information and dimensions are needed. Widening the existing driveway may be needed to access the proposed garage.

Mr. Yarmark explained that they are asking for a modification in the location in order to maintain the neighbor's (Blair Sorenson) access and parking in his back yard area as it is now exists. As for the additional height, Mr. Yarmark explained that the topography of the lot slopes and they wish to match the garage roof pitch with the existing dwelling. The garage would be 3 feet 3 inches higher than allowed by the Ordinance. Mr. Yarmark added that their home and all the surrounding homes are two stories high. The proposed garage height would be symmetrical with the neighborhood. Mr. Yarmark noted that they asked their neighbors for input in the design of the garage and 95 percent responded favorably.

Mr. Buese added that the shared driveway was an alleyway of which the Applicants own one-half. If the garage were located five feet from the rear property line, the neighbor would have only four feet to access his garage. The Applicants are essentially abandoning their half of the alleyway to allow the neighbor access to his garage. As for the height issue, Mr. Buese explained that the existing dwelling has a 10:12 roof pitch. The Applicants are proposing the same pitch on the accessory structure so that it would be compatible and in scale with the house and several other homes in the neighborhood.

Lawrence Buhler, 1021 South Lincoln Street, explained that he has reviewed the proposed plans and recommended that the Board favorably consider the request. He noted that Mr. Yarmark and Ms. Tasse made noticeable improvements to their home and they have worked with the City while doing so.

The meeting was closed to public comment and Board Members discussed the request. The consensus of the Board was that the proposed height would have an adverse impact on the surrounding neighborhood (Standard C) and set an unfavorable precedent in that no development pattern exists consistent with the proposal. The Board further determined that the proposed location of the garage would benefit both properties using the access without substantially affecting the general purpose of the Ordinance. The Board also determined that the case should come back for further review if more than six feet of setback is needed in order to meet Transportation requirements.

THEREFORE, based upon the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to deny the special exception to allow construction of

a garage with a height of 21 feet because the proposed height does not meet the general standards for granting a special exception. Specifically, granting the special exception would have an adverse impact (Standard C) in that it would create a precedent given the lack of a development pattern along the block face consistent with the proposed height of 21 feet, and the proposed height would be incompatible with surrounding development (Standard D).

AND THEREFORE, Mr. Olsen moved for the Board to grant the special exception to construct a garage six feet from the rear property line rather than five feet subject to final approval by the Transportation Engineer. The case must be brought back to the Board for further review in the event that the garage would require an increase in the setback.

Ms. Dunn seconded the motion; Mr. Olsen, Ms. Dunn, Mr. Berggren and Mr. Radford voted *aye*; Chairperson Jones did not vote; the motion passed with 4-0 vote.

Case 420-07-247 by Brickwell and Donna Thompson at 2639 East Skyline Drive (1625 South) for a special exception to construct an accessory structure that exceeds the height and size limits in an R-1/12000 zoning district. (Sections 21A.40.050(B) and 21A.40.050(C) (Staff – Katia Pace at 535-6354 or katia.pace@slcgov.com)

The case was postponed.

Case 420-07-253 by Kristy Bertelsen at 376 North “H” Street (550 East) for a special exception to construct an accessory structure that exceeds the height limit in an SR1-A zoning district. (Sections 21A.40.050(C)(2) and 21A.52.060) (Staff - Nick Norris at 535-6173 or nick.norris@slcgov.com)

(The case was heard at 6:19 p.m.)

Kristy Bertelsen and Kirk Chester (Property Owners) were present.

Mr. Norris explained that the Applicants are proposing to construct an accessory structure that would be 17 feet high. The SR1-A zoning district limits heights of accessory structures to 14 feet. The applicable block face consists of six properties including the subject property and none of the properties have an accessory structure that exceeds the 14-foot height limit. Mr. Norris noted that pictures of existing accessory structures on the block face are included in the staff report. The Applicant further submitted pictures of accessory structures greater than 14 feet existing in the general area.

Ms. Bertelsen explained that the subject dwelling was constructed in 1928 and the needs for garages have changed since then. The area is experiencing economic growth with residents improving their properties including construction of updated garages. Ms. Bertelsen acknowledged that no garage on their block face exceeds the height limit; however, at least nine structures over the height limit exist within 1000 feet of their property. Ms. Bertelsen said that she believes they should not be penalized because they are the first ones on the block face requesting additional height for a garage especially when numerous others within a reasonable distance exceed the height restriction.

Mr. Chester added that the garage would exceed the height restriction regardless with the typical wall height of 8 feet and the 12:12 roof pitch. The additional height is intended only to match the style of the home and surrounding homes. The interior pitch of the roof would be used for personal storage and not additional living space. The Applicants further chose to build

a tandem garage resulting in a width of 16 feet rather than a side-by-side garage at 28 feet which would have been allowed by a routine permit. The width was chose to preserve the yard and open space for the neighborhood.

Ms. Bertelsen noted that they have obtained signatures from surrounding neighbors who agreed that their views would not be impacted by the proposal. One neighbor even expressed that a different roof pitch on the proposed garage would look silly.

Shane Carlson, Member of the Greater Avenues Community Council Housing Compatibility Committee, explained that the understanding of the Greater Avenues Community was that garage height issues in the SR-1A zoning district would be reviewed as a routine and uncontested special exception. The routine and uncontested special exception process included an administrative hearing that would give applicants and neighbors a forum to discuss and mitigate garage heights. The Community Council's concern is that the process had been omitted. Mr. Carlson further explained that the Ordinance focuses on the character of the area when considering accessory structures rather than the development pattern. The intent was never to make the 14-foot height restriction a hard limit, but was intended to create a process that had a slightly less demanding process than height issues for primary structures. Mr. Carlson said that the appropriate process for this case would be the routine and uncontested special exception process rather than a hearing before the Board of Adjustment.

Mr. LoPiccolo explained that attempts were made at the administrative level to formulate an administrative hearing process for routine and uncontested infill development. As issues relating to infill were brought before the Board, Staff recognized that the Board consistently considered the development pattern of the block face, so Staff continued along the same reasoning and it was difficult for Staff to determine a threshold. Staff also began shying away from administrative hearings because decisions made at that level resulted in administrative decision appeals to the Board rather than special exception requests. Mr. LoPiccolo acknowledged that the Ordinance provides for an administrative hearing process for routine and uncontested infill, but it was never the intent to delegate zoning authority to neighbors.

Mr. Chester explained that they held candid conversations with their neighbors and obtained the appropriate signatures of approval, but were still denied the routine and uncontested special exception. The neighbors voiced support stating that the proposal would increase the value of the neighborhood. Mr. Chester reiterated that accessory structures existing across the street are well over 17 feet high, and a four-car garage over 20 feet high exists just 300 feet from their home. Mr. Chester acknowledged that no development pattern exists on their block face, but the pattern is evident throughout the neighborhood. He added that they simply want to build a garage that matches their home, and they could have built a larger garage, but would rather preserve green space in their yard and for the neighborhood.

Chairperson Jones read the Transportation Engineer comment stating that the access to the new garage meets City standards.

The meeting was closed to public comment and the Board discussed the proposal. The consensus of the Board was that the intent of the Zoning Ordinance was not to allow neighbors to negotiate heights, and the proposal would set an unfavorable precedent.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Berggren moved for the Board to deny the proposed accessory structure that would exceed the height regulation as outlined in the Salt Lake City Zoning Ordinance because:

1. The proposed accessory structure does not meet the general standards set forth in the Zoning Ordinance Section 21A.40.050(C).
2. The proposed accessory structure does not meet the standards of the Ordinance in terms of the established development pattern on the block face for accessory structures.

Mr. Radford seconded the motion; Mr. Berggren, Mr. Radford, Ms. Dunn and Mr. Olsen voted aye; Chairperson Jones did not vote; the motion passed with a 4-0 vote.

Case 420-07-262 by Redeemer Lutheran Church and School at 1955 East Stratford Avenue (2580 South) for a variance to reduce the landscape requirement for the interior side and rear yards in an Institutional zoning district. (Section 21A.32.080(G)(3) (Staff – Nick Britton at 535-7932 or nick.britton@slc.gov)

(The case was heard at 7:52 p.m. following Case 420-07-275)

Board Member Tom Berggren recused himself from the case.

Ken Jones, Lori Briesacher and Pastor David Fischer (Representatives for Redeemer Lutheran Church and School) and Mark Grabl (BGW Architects) were present.

Mr. Britton explained that the request involves three parcels. The site of the Redeemer Church and School is located on the northeast corner of Stratford Avenue and Preston Street and currently zoned Institutional (“I”). The other two parcels to the northeast are zoned Open Space (OS). In the early 1980s, Redeemer Church and School and the Sugar House Community Council petitioned the City to close the portion of Hillcrest Avenue which ran between the Church property and City owned property which is now known as the Hillcrest Park. The street parcel was supposedly split in half between the Church and the City, but for the last 20 years the Church has owned the entire parcel. About one year ago, Redeemer Church and School came to the City with plans to construct a recreation center and a new parking lot along with remodeling a portion of the existing church building. During the review and rezoning processes, the mistake was discovered and the two parties devised a new property line that would split the street parcel into the similar size that was agreed upon in 1980s, but with a different configuration. Mr. Britton then explained that the proposed recreational center would be located where the existing parking lot now exists. The proposed parking lot would be located along the outer edge of the new property line which violates the landscape yard requirement for the “I” zoning district. The “I” zoning district requires an eight-foot landscape buffer on interior side and rear yards, and the proposal is for a zero landscape buffer. Mr. Britton noted that the new property line was presented to the Planning Commission in late October 2007 and the Commission recommended approval.

The Board and Staff discussed the proposal and whether or not a variance would be needed if the mistake on the property line had not happened. Mr. Britton explained that a variance would be needed either for the landscape buffer or parking. Staff determined that granting a variance for the landscape buffer would have less of an impact than a reduction in parking. The outer stalls would have to be removed in order to meet the landscape requirement. Removing the outer parking stalls would result in 32 stalls and the parking requirement for the subject property is 47 stalls.

Mr. LoPiccolo added that Redeemer is proposing a total of 79 parking stalls to accommodate their parking needs, the LDS Church across the street and Hillcrest Park.

Mr. Britton noted that the agreement in the 1980s property split provided the City use of the Church parking and outdoor recreation facilities. If the variance were approved, there would be no physical evidence that the required landscape buffer was missing because the parking would abut the park and the property line would not be delineated on the site.

Mr. Wheelwright added that the rationale for supporting the variance is that the eight feet of landscaping would not be necessary because the subject property abuts a public park space that is already landscaped.

Ken Jones explained that no one from Redeemer Church and School or the City knew about the mistake until Redeemer went before the Planning Commission for a zoning change. Fully developed plans were in place when the mistake was discovered. Ken Jones then explained that the proposal with a circular driveway would work in conjunction with the activities of the Church and School and the adjacent park. The Applicants believe that the proposal would provide easy access to the park and not have an adverse impact on the neighbors. Ken Jones added that under the religious land use act, the City must have a compelling interest to impose substantial restrictions on the subject property because different standards apply to churches.

Ms. Briesacher added that the Hillcrest Park is considered a pocket park with mostly pedestrian traffic.

The Board and Applicants discussed options and the standards for the granting variance. Ken Jones said that he believes the unique shape of the subject lot would be a property-related hardship. Also, only one other Institutional property exists in the neighborhood and that is the LDS Church across the street and that Church does not have school functions. Mr. Grabl added that moving the proposed parking lot eight feet inward would hinder the play areas. Providing a legal sized basketball court and the required health facilities further would not allow reducing the footprint size for the proposed center.

Mr. Britton explained that the City does not have groups of properties zoned Institutional in that Institutional properties are usually surrounded by residential or commercial uses. The LDS Church is zoned R-1/7000 and it is not held to the same standards as the subject property. The Institutional zone also is applied to larger parcels that are usually at end or in the middle of blocks. The subject property is bordered by Interstate 80 and the park. The subject property is also required to have side yard setbacks of 20 feet. Mr. Britton added that he determined the proposal presented less of an impact on the neighborhood because a reduction in parking would cause Sunday parking to spill out onto the streets of the neighborhood which he found to be contrary to public interest.

Mr. LoPiccolo added that a substantial property right would be a recreational center for a school.

Mr. Wheelwright added that the Institutional zone has two minimum lot size requirements. A place of worship has a minimum of 2 acres and other uses require an additional 20,000 square feet. When considering both the place of worship and the school, the minimum required lot size would be 107,000 square feet. The subject parcel is 85,844 square feet. Mr. Wheelwright acknowledged that Redeemer is trying to establish a facility that would meet their programmatic needs to support their educational and religious goals, and that would be a substantial property right.

The meeting was closed to public comment. The Board reviewed the standards for granting the variance and their determined that the shape of the lot presented a property-related hardship and a recreational center for a school is a substantial property right.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to grant the variance to reduce the landscape yard in the interior side and rear yards from the required eight feet to approximately zero feet at 1955 East Stratford Avenue. The variance was granted because:

1. Holding the Petitioner to the regulations of the Zoning Ordinance would cause an unreasonable hardship that 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 the "I" zoning district because the existing building does not comply with current zoning standards.
3. Granting the variance is essential to the enjoyment of a substantial property right which is enjoyed by other property owners in the district because the proposed recreational use is consistent with the typical use and expectation of institutional uses currently undertaken on the property.
4. The variance will not affect the general plan or be contrary to the public interest.
5. The plan meets the spirit and intent of the Zoning Ordinance and substantial justice will be done.

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

Case 420-07-260 by Dallis Nordstrom representing Mark Kulmer at 1136 East Third Avenue (150 North) (Kura Door Day Spa) for an appeal of an administrative decision determining the expansion of a non-conforming use in an SR-1A zoning district. (Sections 21A.38.080(A) and 21A.36.010(A) (Staff – Nole Walkingshaw at 537-7128 or nole.walkingshaw@slcgov.com)

The case was withdrawn.

Case 420-07-275 by PRW Architecture representing Igor Maksymiw at 1564 East Federal Pointe Drive (350-375 North) for a special exception to construct a new single-family dwelling that exceeds the height limit in an FR-2 zone. (Section 21A.24.01001) (Kevin LoPiccolo at 535-6003 or kevin.lopiccolo@slcgov.com)

(The case was heard at 6:47 p.m.)

Paul Warnock and Eric Jones (PRW Architect) and Igor Maksymiw (Property Owner) were present.

Mr. LoPiccolo explained that the subject property is located in the Residential Foothill District, and the topography of the subject lot is unique in that the southern half of the buildable area of the lot has a four-foot depression. The Applicant is proposing to fill in the depression to make it consistent with the average grade which would bring two of the three areas of the proposed structure into compliance with the height regulation. The remaining encroachment would be a radius of 6 feet that would be approximately two feet over the height limit. Mr. LoPiccolo noted

that the height limit was reduced to 28 feet in 2005 upon an Ordinance change to the Residential Foothill District.

Mr. Warnock presented a site plan detailing topographical grades explaining that they have worked very hard to stay within the height limitations with the depression on the lot. The garage level is 11 feet below street level and they have redesigned the roof from an 8:12 roof pitch to a 4:12 pitch. They had considered a flat roof, but that too would still be out of compliance where the dwelling sits in the extreme portion of the depression. They further believe that flat roofs are not compatible with the neighborhood. Mr. Warnock then explained that the front of the house would be well below the height regulation, and the highest point of the home is approximately 8 feet higher than the offending section and still complies with the Ordinance. They have also stepped the structure following the downside of the hill. They would need to add four to six more stairs by the dining area which is the worst point in order to meet the height limit. Mr. Warnock explained that it is not the steepness of the lot that causes the problem, but it is the anomaly of the depression. The proposed footprint of the dwelling is 4,500 square feet including the garage. The Applicants believe that they have met Standard D in that the size of the dwelling would be compatible with surrounding development and reducing the square footage would violate that standard. Mr. Warnock noted that they presented the proposal to the Homeowners Association and they supported the design.

Mike Nelson (Watts Enterprises) explained that Watts Enterprises was the original developer of the Federal Point Community. He explained that a ravine runs through the subject lot and the lot to the east. If the Applicants were forced to follow the existing grade, the two homes on those lots would be so far depressed into the hillside that it would look like a hole in the Community. He explained that a more modern design may work on the lot, but it would not be compatible with existing designs in the neighborhood. Mr. Nelson said that he actually met with the Homeowners Association and they were in favor of the proposed design because they do not want to see grade changes reflected in the homes. Mr. Nelson explained that the subdivision was developed prior to the new 28-foot height limit and the lots were difficult enough to develop without the new restriction. He noted that the proposed structure would be only two feet over the height limit at two roof points.

Mr. Warnock reiterated that the greatest encroachment is at the lowest point of the roof and credence should be given because of the anomaly on the lot and not a design preference. Mr. Warnock added that they are not pushing any setback boundaries and the fill is necessary to divert the natural runoff from the corner of the dwelling.

The meeting was closed to public comment. Mr. Wheelwright explained to the Board that he was involved in the development of the subdivision and the concept at the time was that building floor plates would have to be stepped because of the steepness of the lots. No provisions were provided for grading the lots. Mr. Wheelwright added that upon his review of the contour map, he could not find an anomaly through the buildable area, but found a draw in the 40-foot rear yard setback.

Chairperson Jones noted that the Transportation Engineer had no applicable comment for the case.

The Applicants and Board Members further discussed the topography of the lot and design options. Mr. Warnock explained that the dwelling sits over the anomaly 16 to 20 feet and the main floor plate has been stepped. Stepping occurs from the north which is the high side of the lot down to the south side. The stepping further occurs in the interior and exterior of the

dwelling. Four steps are provided from the sidewalk to the front porch. The roof also steps with the topography resulting in 80 percent of the home being within the height envelope. Only the southeast corner of the dwelling encroaches beyond the height limit and that area is the lowest point. He noted that the lot slopes in two directions with an half of hole in the lot.

Mr. Radford and Mr. Berggren acknowledged the unique depression in the buildable area of the lot which they determined would be a special circumstance and it would be reasonable to allow the proposed development with the special exception. They reasoned that the proposed design would be compatible in that more than six feet of drop within the home would be excessive and reducing the footprint would make the dwelling incompatible with surrounding homes. They also acknowledged that the Homeowners Association supported the design.

Chairperson Jones, Ms. Dunn and Mr. Olsen reasoned that design options, such as a flat roof and an L- shaped footprint, were available. Ms. Dunn voiced concerns about the mass of the dwelling on the downside of the hill. Mr. Olsen further acknowledged that all lots in the subdivision have odd circumstances and he could not find a uniqueness that would make the subject lot any different. Chairperson Jones agreed that the depression is a topographic feature and he could not find any difference between an indentation and a pitch in terms of designing a home that required stepping. He voiced concerns about the intent of the Ordinance requiring homes to be stepped in the Foothill districts. Chairperson Jones found that granting the special exception could set an unfavorable precedent with respect to other lots that have topographic features of one kind or another that were addressed by stepping the dwelling.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to deny the special exception to allow a single-family dwelling located at 1564 East Federal Point Drive that would exceed the maximum height limit in the FR-2 zoning district because:

1. The request is not in compliance with the specific standards for additional height of the Foothill Districts.
2. The structure will have a material adverse effect on the character of the area.
3. The structure is not compatible with the surrounding development.

Ms. Dunn seconded the motion; Mr. Olsen, Ms. Dunn and Chairperson Jones voted *aye*; Mr. Radford and Mr. Berggren voted *no*; the motion passed with a 3-2 vote.

There being no further business the meeting was adjourned at 9:04 p.m.

Deborah Martin, Secretary

Michael F. Jones, Chairperson