

BOARD OF ADJUSTMENT

January 28, 2008

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, January 28, 2008 at 5:45 p.m. at the City and County Building, 451 South State Street, in Room 326. Members present were Catherine Dunn, Michael F. Jones (Chairperson), Gary Jones, Rex Olsen and Edward Radford. Douglas L. Wheelwright (Deputy Planning Director), Kevin LoPiccolo (Zoning Administrator), Nole Walkingshaw (Senior Planner), Nick Norris (Principal Planner), Casey Stewart (Principal Planner) and Janice Lew (Principal Planner) 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 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 meetings held December 4 and December 17, 2007.

Mr. Olsen moved for the Board to approve the minutes for December 4 as presented. Ms. Dunn seconded the motion; Mr. Olsen, Ms. Dunn and Mr. Gary Jones voted *aye*; Mr. Radford and Chairperson Jones did not vote; the motion passed with a 3-0 vote.

Mr. Radford moved for the Board to approve the minutes for December 17 as presented. Mr. Olsen seconded the motion; Mr. Radford, Mr. Olsen and Ms. Dunn voted *aye*; Gary Jones and Chairperson Jones did not vote; the motion passed with a 3-0 vote.

Report by the Planning Director.

On behalf of Planning Director George Shaw, Mr. Wheelwright had nothing to report at this time.

PUBLIC SESSION

Case 420-07-241 by David Richardson at 570 East Tenth Avenue (500 North) for a special exception to exceed the height limit for a principal structure located in the SR-1A zoning district. (Sections 21A.24.080(D)(6) and 21A.52.060) (Staff – Nick Norris at 535-6173 or Nick.Norris@slcgov.com)

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

Sharon Austin (Owner), David Richardson (Architect) and Steve Simmons (Design Architect) were present.

Mr. Norris explained that the request is for excess wall and roof height for an addition to an existing structure. The existing structure is 23 feet 8 inches high at the highest point and the

wall height is 16 feet 6 inches. The proposed addition would include both a pitched roof and a flat roof. The pitched roof would be approximately 26 feet high at the highest point and the flat roof would be approximately 22 feet at the highest point. Wall heights in the SR-1A zoning district may be increased 6 inches for every 1 foot of cross slope. The proposal would be to allow a maximum wall height of 20 feet with the existing cross slope of 8 feet from the front elevation of the home to the rear. The proposed addition would have a wall height of 22 feet on the west elevation and 21 feet 6 inches on the east elevation. Mr. Norris then explained that five properties exist on the applicable block face of which the average height of all existing primary structures is 22.12 feet. Two properties on the block face exceed the maximum building height of 23 feet and have wall heights of 26 feet to the peak and 22 feet. Two other properties on the block face have wall heights of 18 feet and 17 at the rear elevations. Mr. Norris continued to explain that the proposal would have little impact on the streetscape in that the roof peak of the addition would be below the peak height of the existing home due to the slope of the lot, and grade changes occurred on the other properties making the rear elevation of the subject dwelling sit lower than the others. Mr. Norris noted that the staff report provides analyses of the standards for granting the special exception.

Mr. Richardson acknowledged the staff report and agreed with the analyses adding that the project would not cause an impact because the grade on the property to the east is much higher and an alleyway exists at the rear (west) of the subject property. Mr. Richardson said they believe the form, mass and scale of the addition would fit the development pattern of the neighborhood.

Mr. Simmons added that the proposed addition was designed to use passive solar energy and the materials chosen for the exterior were intended for low maintenance as well as minimizing the visual impact. The flat roof was intended to accommodate solar panels and the pitched roof served to provide ventilation in summer months.

Ms. Austin explained that they strived to stay within the guidelines and designed the addition to minimize the impact on neighbors as well as saving costs to the environment. Ms. Austin added that they have already lost thousands of dollars on the project because of the process that they have had to go through, and they were led to believe that the process would not be difficult because the impact would be minimal.

The Applicants and Board Members discussed the proposal. The addition would consist of a dining room and a master bedroom at the same level as the main floor of the existing dwelling and then step down to a second bedroom, office space and a great room. A deck would be constructed on the southwest corner. The concept was to follow the existing grade by stepping the addition. Mr. Richardson acknowledged that they could design an addition with a pitched roof that would comply with the height regulation or step the addition from the main level.

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

Shane Carlson, Representative for the Greater Avenues Housing Committee, explained that the Housing Committee has two concerns. The first concern is that they understood the SR-1A zoning provided for additional wall height on pitched roof structures, but no provisions were given for additional wall height for flat roof structures. Mr. Carlson noted a graphic that he presented to the Board and explained that wall height provisions were only intended for pitched roof structures on sloping lots. Applying wall height allowances on flat roof structures would create more mass than what would otherwise be allowed on a pitch roof building. Furthermore,

the average wall height on the block face is 17.1 feet and no development pattern has been established to allow wall heights of 22 feet. Also, the average building height would be 22 feet in that no three structures on the block face exist to demonstrate allowing a building height of 26 feet. Mr. Carlson then noted emails to Planning Director George Shaw and City Council Member Eric Jorgenson explaining the concerns that the Housing Committee has with the process and the impact it has had on the Applicants. The SR-1A provided an infill review process and it was not followed in this case. The Housing Committee and the neighborhood are frustrated that these types of projects are not allowed to follow the path that the City Council intended them to when the Infill Ordinance was adopted. Mr. Carlson explained that Mr. Richardson had been working diligently to provide a mutually agreeable design that would have had minimal impact on adjacent property owners and now the Applicants are going through the more stringent process and have a plan that would greatly impact adjacent owners. Mr. Carlson said that he believes allowing the flat roof section farther down the lot places the primary mass of the addition farther from the original structure and would impact view corridors and present a boxed-in feeling to property owners on the east and west. The proposal doubles the square footage of the home and he believes that a better design could provide the same amount of livable space as well as moving the mass toward the original home. Mr. Carlson noted that every house in the Avenues was inventoried and the 16-foot wall height limitation for flat roof structures was to allow a comfortable one-story home but not a two-story home. Houses in the Avenues are predominately 1 ½ stories or lower.

L. Mary Sohn, 574 East Tenth Avenue, indicated on the public meeting registration form that she did not wish to speak. Chairperson Jones read into the record her comment stating that "the additional structure is huge and blocks sunlight".

N. Kay Senzee, 574 East Tenth Avenue, added that the proposed addition would totally shade their back yard and block their view. She explained that they originally gave their signature of approval, but they now wish to retract it given the information they have received. They do not support the special exception request and would like the addition to be built within code.

Robert McClane, 484 North "H" Street, presented a drawing of how he perceived the addition would appear from his property. He said that he believes the addition would be enormous and it appears to be a second building with an entirely different style connected by a glass covered stairway. Mr. McClane said that the proposal may not impact the block face, but it would impact the neighbors. He added that granting the special exception would weaken the Ordinance.

Gregory Pratt, 478 North "H" Street, voiced concerns about construction activity in the alley because it is not designed to handle heavy equipment. He also voiced concerns about the material effect the proposal would have on the neighborhood. His home is 100 years old and the bulk of homes in the neighborhood were constructed in the 1930s. They are modest homes and the proposal would completely change the character of the neighborhood from turn-of-the-century architecture to ultra-modern high-tech architecture.

Elise Erler, 480 North "H" Street, explained that she did not give her signature of approval and presented pictures taken from her back yard depicting how the addition would impact her view shed. Ms. Erler explained that she is a gardener and sunlight is very important to her as well as the view shed. She said that she is opposed to the design in that it would substantially impair her property value having a very large structure so close to her property line. She also believes that the proposal does not meet Standard D in that it would not be compatible with surrounding development. Staff analyses only addressed the block face and not the entire neighborhood.

She noted that Staff determined the ten-foot alley would be an adequate buffer, but she believes otherwise.

Mr. Richardson reaffirmed that he agreed with the staff report particularly that the property to the east is higher and the alley and existing trees provide mitigation to the property on the west. Mr. Richardson presented a sketch depicting what the Ordinance would allow and he believed it would have more impacting affects.

Mr. Simmons explained that they could stay within the wall height allowance and design the addition with a pitch roof, but that would maximize the envelope and appear more massive. The proposed design and exterior materials were intended to minimize the scale. They also wished to change from the architecture of the existing structure because the geometrics of a passive solar home need to be respected and they wanted to compliment the existing structure. They believe that they made a very conscious decision in respecting the block face in placing the high point of the new structure below the existing ridge line. He added that the Ordinance speaks to the block face and the proposal would not impact Tenth Avenue at all.

Ms. Austin added that her husband and she were very honest with neighbors and let everyone review their plans.

The meeting was closed to public comment and Mr. Olsen asked the City to respond to Mr. Carlson's contention that no provisions are given for increased wall height for flat roof structures. Mr. LoPiccolo explained that the Ordinance does not state that cross slope measurements may not be used for flat roof structures and Staff has been consistent in allowing higher wall heights for flat roofs when the development pattern has been established.

Board Members discussed the proposal and determined that the mass of the additional height would have a negative impact when considering that the neighborhood consists of smaller lots. Also, the Board determined that Standard D would not be met in that design options are available that would comply with the Ordinance.

THEREFORE, based on the evidence and testimony presented and pursuant to the plans submitted, Mr. Gary Jones moved for the Board to deny the special exception because the proposal is not in harmony with the character of the neighborhood and the proposal does not meet Standard D in that it does not conform to other properties on the existing block face.

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

Case 420-07-245 by Clark Mower at 1648 East Garfield Avenue (1850 South) for a special exception to construct a new, detached garage that exceeds the building coverage limits in an R-1 zoning district. (Section 21A.40.050(B)(2) (Staff – Casey Stewart at 535-6260 or casey.stewart@slcgov.com)

(This case was heard at 7:09 p.m.)

Mr. Mower was present.

Mr. Stewart explained that the R-1 zoning district limits accessory structures to 50 percent of the existing principal dwelling. The existing dwelling on the subject property is 1,148 square feet which would allow a maximum footprint size of 574 square feet for an accessory structure. Mr.

Stewart noted that the staff report reflected analyses based on a garage that would measure 24 feet wide by 30 feet deep which would be 720 square feet. The Applicant has since changed his request for a garage that would measure 24 feet wide by 26 feet deep which would be 624 square feet. The new request is for 50 square feet more than allowed by the R-1 zoning. Mr. Stewart noted that the Applicant submitted information regarding three other buildings on the applicable block face. Mr. Stewart found that the largest existing garage on the block face is 24 feet by 26 feet, the next being 24 feet by 20 feet and the third largest being 20 feet by 20 feet. The development pattern that has been established would allow 400 square feet based on the three largest accessory structures on the block face.

Mr. Mower explained that his initial request was for a larger garage, but he found that a garage 26 feet deep would serve his needs. The garage is intended to store two cars, two scooters, bikes and a lawn mower. The proposal would replace an existing garage measuring 12 feet by 20 feet. The proposed garage would be designed with a hip roof to minimize the impact on the block face. Mr. Mower said that he believes the proposal is consistent with the Sugar House area and he obtained 100 percent approval from the neighbors within an 85-foot radius of his property.

Chairperson Jones noted for the record that no one from the public registered to speak to the issue.

The meeting was closed to public comment. The consensus of the Board was that the proposal would present compatibility issues in that few properties in the Sugar House area have large garages and it would set a precedent.

THEREFORE, based upon the evidence and testimony presented, Mr. Olsen moved for the Board to deny the request for an oversized garage at 1648 East Garfield Avenue because the proposal does not meet the general standards of approval for granting a special exception in that the proposal would not be compatible with surrounding development.

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

Chairperson Jones read the Transportation Engineer comment into the record stating that Transportation had no problem with the construction of a larger garage as long as the 3-to-1 side step maneuver taper and grades are met to access both stalls inside the new garage. If the 3-to-1 taper or grades can not be met, a visit and discussion with drawings in their office may outcome with a solution.

The hearing was recessed from 7:26 p.m. to 7:35 p.m.

Case 420-07-263 by Matthew Christensen at 669 East Second Avenue (100 North) for a special exception to allow grade changes in the yard area in excess of two feet to legalize the construction of a rear patio in an SR-1A zoning district. (Section 21A.36.020(B) (Staff – Janice Lew at 535-7625 or janice.lew@slcgov.com)

(This case was heard at 7:35 p.m.)

Mr. Christensen (Owner) and David Richardson (Architect) were present.

Ms. Lew explained that the Applicant is requesting grade changes in the yard area in excess of two feet to legalize the construction of a rear yard patio. The grade changes occur on the west and north sides of the principle building. The patio area provides a transition between the principle building and a two-car garage located in the rear yard. Ms. Lew noted that the Board of Adjustment delegated to the Zoning Administrator approval of grade changes and retaining walls exceeding two feet in required yards; however, the Applicant was unable to obtain required signatures of approval from adjacent property owners. Staff received a letter from the abutting property owner to the west stating that their property is impacted by the grade change. The property owner expressed concern regarding potential damages to the foundation of their dwelling in which the subject planter box was placed very close to their foundation wall. The neighbors also expressed concern regarding lose of access to their structure. Building Services identified issues regarding the planter box as to whether or not it was intended to serve as a retaining in that a retaining wall would be required. Building Services also acknowledged the concern regarding damages to the neighboring foundation that may have occurred during the construction of the patio which were repaired and not reviewed by the City. Building Services requested that the Applicant provide engineering specifications to verify the minimum space separation between the neighboring house and to ensure that the planter box meets structural requirements. Ms. Lew added that the case before the Board is essentially the first step in the City's process to issue the appropriate permits for construction. The Applicant will be required to submit plans for the appropriate building permit if the grade changes are approved and will be required to address the issues outlined in the staff report as well as obtaining a Certificate of Appropriateness for doing work within a historic district.

Mr. Christensen explained that the neighboring foundation was covered by a large slab of concrete that ran the majority length of the foundation and it encroached into his property. The landscaping survey indicated that the neighboring house sits on the shared property line and the concrete was removed for the construction of the garage. Deterioration of the foundation occurring over the years was exposed upon removal of the slap. At that point, Mr. Christensen had the foundation restored to which the neighbors agreed and he felt their concerns were addressed. Mr. Christensen then explained that the subject lot is long and narrow and the patio exceeded the two-foot allowable grade change in order to provide a natural transition from the house to the garage. The actual grade change on the west side is 2 feet 4 inches.

Mr. Richardson acknowledged that he reviewed the staff report and agreed that they would need to address the issues presented by Building Services; however, he believed that those issues were not relevant to the grade change request. Mr. Richardson then explained that the project began as a landscaping job which was not engineered. They have since resurveyed the property after construction of the garage and submitted a drawing for the proposal. Only the garage and the driveway were presented to the Historic Landmark Commission for review. The space between the driveway and the neighboring house was not yet determined at that time and indicated a gradual grade from the garage to the house with a couple of new trees. Landscaping in that area was left to the discretion of the Applicant.

Matt Dimick, 663 East Second Avenue, explained that he submitted a letter prior to the meeting stating his concerns and photographs of damage to the foundation that has occurred since the date of the letter. Mr. Dimick then explained that they had a structural engineer inspect the planter box in October 2007 and the engineer voiced concern about future damage. Since that time, four cracks have surfaced on the foundation. Mr. Dimick recalled that the planter box was constructed right next to the foundation and it has moved. It is now two inches away from the foundation on the north end, 1 ¼ inches on the south end and touching the foundation in the middle. Mr. Dimick said that he believes the planter box is too close to his home and the

damage to the foundation is occurring from hydrostatic water. The planter box is posing a risk to the structural integrity of his home and it does not allow him the access to monitor or maintain the foundation. The sprinkler system also causes him concern because it too presents drainage issues. Mr. Dimick said that he approved the original plans for the garage and driveway; however, no plans for the patio and retaining wall were included. Mr. Dimick noted that four trees were also planted one foot from his four east facing windows and he is concerned that emergency egress from those windows will become hampered once the trees have matured.

Mr. Olsen advised Mr. Dimick that only the grade change request was before the Board and issues relating to the foundation would be addressed by Building Services through a proper building permit. Mr. Dimick explained that his engineer determined that the grade was raised 32 inches and Mr. Dimick objected to the fact that the change covered his foundation and created a water drainage issue that severely impacts his home. Mr. Dimick further believes that the special exception for the grade change is not necessary because the original plan showed more stairs going down from the driveway to a grassy area that appeared to serve as the transition area from the garage to the house. The grade was changed to accommodate the patio.

Joseph Dimick, 114 North "J" Street, explained that his son's concerns were tailored in response to the standards of review for the special exception including adverse effect on property value. Joseph Dimick contended that Matthew Dimick's concerns are concerns that the Board may consider, and the grade change has severely and negatively impacted the adjacent property.

Mr. Christensen again acknowledged that building code issues would need to be addressed, but in terms of the grade change request there are no issues.

The meeting was closed to public comment. The Board discussed the proposal and determined that the grade change was not relevant in terms of complying with conditions of the building permit for the patio. They found no issue in approving the grade change in excess of two feet provided the standards and conditions were incorporated into the building permit process.

Chairperson Jones read the Transportation Engineer comment stating that they have no problem with the grade change as long as the access to and from the garage meet City design standards.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Olsen moved for the Board to grant the special exception to allow a grade change in the yard area in excess of two feet to legalize the construction of the rear patio at 669 East Second Avenue in the SR-1A zoning district. The special exception is granted because:

1. The proposal is in compliance with the specific and general standards of review for a special exception.
2. The special exception for the grade change does not provide approval or disapproval of the existing patio as it is currently constructed.
3. The special exception for the grade change is consistent with the requirements of the building permitting process.

Conditions of Approval:

1. The grade change shall not exceed the current height.

2. The Applicant shall satisfy any comments or concerns from Building Services prior to the issuance of any building permits.
3. The Applicant must obtain a Certificate of Appropriateness from the Historic Landmark Commission prior to the issuance of any building permits.

The Board further recommended:

1. Building Services to carefully and completely address the issue regarding management of storm and irrigation water from the Christensen patio in a manner that does not pose any risk of damage to the Dimick property.
2. The access to the Dimick foundation should be considered in the course of the permitting process.

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

It is noted that Chairperson Jones suggested that Mr. Olsen include in his motion addressing the concern that Mr. Dimick had regarding management of water drainage. Mr. Radford suggested placing a numerical limitation on the grade change as to not allow a greater grade change in the event that the patio would need to be removed or reconstructed.

There being no further business, the meeting adjourned at 8:23 p.m.

Deborah Martin, Secretary

Michael F. Jones, Chairperson