

BOARD OF ADJUSTMENT

February 25, 2008

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, February 25, 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 and Rex Olsen. Kevin LoPiccolo (Zoning Administrator), Nole Walkingshaw (Senior Planner), Nick Britton (Principal Planner) and Katia Pace (Associate Planner) and Lynn Pace (Assistant City Attorney) were also present. Board Members Tom Berggren and Edward Radford were 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

Report by the Planning Director

Mr. LoPiccolo explained that Planning Director George Shaw and Deputy Planning Director Douglas Wheelwright were unable to attend; however, Mr. LoPiccolo would review the 2007 Board of Adjustment Annual Report and the Zoning Administrator List revisions under this item.

2007 Annual Report - Mr. LoPiccolo explained that the Board of Adjustment reviewed 29 cases in 2007. Nine were variance requests, 17 were special exception requests and 3 were appeals to an administrator decision.

The Planning Staff administratively approved 260 Routine and Uncontested requests and the Zoning Administrator heard 12 cases. The Zoning Administrator also prepared 190 rebuild/zoning letters.

Zoning Administrator List – This item was postponed until the March 17, 2008 meeting because the color coding on the Board Members' copies made the Zoning Administrator List unreadable.

Election of the Board of Adjustment Chairperson and Vice Chairperson

Michael F. Jones was unanimously voted in as the Chairperson and Rex Olsen was unanimously voted in as the Vice Chairperson.

Chairperson Jones and Vice Chairperson Olsen accepted their nominations.

Approval of the Minutes for the Meeting Held January 28, 2008

Mr. Olsen moved for the Board to approve the minutes as presented and 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.

PUBLIC SESSION

Case 420-07-283 by Chris and Margaret McGann at 1522 East Michigan Avenue (960-990 South) requesting a special exception for an in-line addition to a single-family dwelling in an R-1/7000 Single-Family Residential Zoning District. (Section 21A.14) (Staff: Katia Pace at 535-6354 or katia.pace@slcgov.com)

It is noted that this case was previously scheduled for an Administrative Hearing on February 4, 2008, but was not heard due to a Planning Division policy for posting staff reports on the City's Web Page in a timely manner. The case was then scheduled to be heard by the Board of Adjustment.

(This case was heard at 6:06 p.m.)

Chris and Margaret McGann were present.

Ms. Pace explained that the R-1/7000 zoning district requires side yard setbacks of 10 feet and 6 feet. The Applicants are proposing to construct an in-line addition to the rear of the existing dwelling that maintains side yard setbacks of 8.3 feet on the east side and 1.9 feet on the west side. The subject property is also located in the Yalecrest Compatibility Infill Overlay District. The Yalecrest Overlay District limits building heights to 27 feet and wall heights to 18.5 feet with a decrease of 1 foot in height for every 1 foot the structure encroaches into required side yard. Thus, the maximum wall height allowed in this case would be 14.4 feet. The wall height for the proposed addition would be 13 feet and the building height would be 19 feet to the midpoint of the pitched roof. The Yalecrest Overlay District further limits building coverage on lots to 40 percent. The building coverage on the subject lot with the existing dwelling and the proposed addition would be 31 percent. Ms. Pace added that Staff found the proposal would be compatible with existing development. The immediate area consists of 11 houses of which 6 existing homes are similar or larger in size and 5 are smaller. Staff recommended approval for the in-line addition based on the findings outlined in the staff report presented to the Board.

Chairperson Jones read the Transportation Engineer comment stating that with the addition to the back of the home, the distance between the addition and the free-standing garage has been lessened. The 3-to-1 maneuver taper to access both stalls in the garage must be met otherwise the garage can only be designated as a one-car garage.

Mr. and Mrs. McGann acknowledged that they were aware of the Transportation Engineer requirement. Mrs. McGann then explained that they agree with the analyses in the staff report and they have strived to make the addition compatible and not push any limitations. Mrs. McGann noted that they could not obtain administrative approval for the request because Ms. Ingham, the neighbor abutting to the west, would not give her signature of approval. Ms. Ingham simply stated that she did not believe in additions in the neighborhood. Mrs. McGann noted that they worked closely with Mr. McCune, the neighbor to the east and the neighbor most affected, in designing the addition.

Eric McCune, 1528 East Michigan Avenue, acknowledged that the addition would impact him more so than the neighbor to the west and he believed that the McGanns did what they could in designing an addition that would be compatible with the neighborhood. Mr. McCune explained that he has no concerns at this time and when he did, the McGanns worked with him.

The meeting was closed to public comment. Board Members acknowledged and agreed that the staff report was correct in its analyses that the addition would be compatible.

THEREFORE, from the evidence and testimony presented and the plans submitted, Mr. Olsen moved for the Board to grant the special exception request for an in-line addition at 1522 East Michigan Avenue based on the following findings:

1. The proposal will be in compliance with Ordinance and district purposes.
2. The proposal will not diminish neighboring property values.
3. The proposal will not have a material adverse effect upon the character of the area.
4. The proposal will be compatible with surrounding development.
5. There are no significant features that will be destroyed or any pollution to the environment.
6. The proposal is in compliance with the general and specific standards of review for a special exception.

Mr. Gary Jones 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.

Case 420-08-002 by Kimi Kasai at 1715 South 2300 East requesting a variance to legalize three existing accessory structures in the required side yard in an R-1/7000 Single-Family Residential Zoning District. (Section 21A.36.020B) (Staff: Nick Britton at 535-7932 or nick.britton@slcgov.com)

(This case was heard at 6:21 p.m.)

Kimi Kasai was present.

Mr. Britton explained that six accessory structures exist on the subject property of which three are located in the rear yard, two are located in the interior side yard and one is located in the front yard. The Applicant indicated that the structures were constructed in 1975 or 1976. Building permit records indicate that a structure consisting of 49 square feet was built in 1959 and another structure consisting of 130 square feet was built in 1970. Building permit records did not indicate whether or not these structures are still on the property or incorporated into existing structures. Mr. Britton then explained that he reviewed the requirements of the 1974 Zoning Ordinance to determine whether or not the accessory structures were legally constructed. The 1974 Ordinance allowed a maximum of 720 square feet for accessory structures so long as the total did not cover more than 50 percent of the rear yard area. The current Zoning Ordinance allows a maximum of 720 square feet provided the accessory structure is less than 50 percent of the footprint size of the primary structure and 50 percent of the rear yard coverage. The existing principal structure has a footprint size of 700 square feet which would allow a maximum of 350 square feet for accessory structures. The three structures in the rear yard consist of 328 square feet which would have been allowed under the 1974 Ordinance and the current Ordinance.

The 1974 Ordinance provided an exception for accessory structures in side yards. The accessory structure was required to be used as a garage or a carport, and required a minimum of 15 feet from a neighboring principal structure and 10 feet from the subject principal structure. In this case, the existing carport consisting of 144 square feet is located in the front yard. The 1974 Ordinance and the current Ordinance define front yards as the yard area beginning at the façade of a dwelling to the front property line. Neither the 1974 nor the current Ordinance allow any accessory structures in front yards. The two structures in the side yard are 80 square feet and 100 square feet. Accessory structures that were less than 120 square feet built prior to 2003 required zoning review, but did not require a building permit. Thus, the two structures in the side yard would not have required permits, but they would have required a determination as to whether or not they would have been allowed when they were built.

Chairperson Jones noted that the case was advertised for a variance request to legalize three existing accessory structures in the required side yard only. The notice made no reference to any accessory structures in the front yard.

Mr. Pace determined that the case was improperly noticed if the Applicant is seeking a variance to allow an accessory structure in the front yard as well.

The consensus of the Board was not to hear the case without proper notice if they were to consider the accessory structure in the front yard.

Mr. Pace noted that an appeal to the Board of Adjustment stays all enforcement, so any pending enforcement action would be stayed until the Board hears the case.

Ms. Kasai agreed to table the case.

THEREFORE, Mr. Olsen moved for the Board to table the case until the next meeting scheduled for March 17, 2008 for proper notification. No additional fees will be required. 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.

Case 420-08-009 by Justin R. Olsen representing Roma Riddle at 1870 East Herbert Avenue (1060-1100 South) requesting a special exception for additional fence height in an R-1/7000 Single-Family Residential Zoning District. (Section 21A.40.120) (Staff: Ray Milliner at 537-7645 or ray.milliner@slcgov.com)

(This case was heard at 6:32 p.m.)

Justin Olsen and Roma Riddle were present.

Substituting for Mr. Milliner, Mr. Walkingshaw explained that the request is for additional fence height in the rear yard and pillar heights along the east property line that have not been completed with fencing inserts. The Zoning Ordinance allows a maximum of 6 feet for fences in side and rear yards, and an additional 18 inches for ornamental features on fence pillars. The existing wall in the rear yard is 8 feet high and the pillars along the side are greater than 7.5 feet. Mr. Walkingshaw further explained that the case began in August 2004 as a zoning enforcement case because of the wall height in the rear yard and landscaping issues. A building permit was not required for construction of fences prior to the 2004, but the current Ordinance requires a no-fee zoning review permit prior to construction of any fence and then a building permit if additional height is granted. Mr. Walkingshaw further explained that the case

is currently pending in Third District Court. The case is a civil case in that the City brought suit against the Applicant for failure to remedy zoning violations. The Court referred the Applicant to the Board of Adjustment before final decision by the Court. Mr. Walkingshaw noted that the enforcement case was initiated as a result of complaints and the City received one comment from a neighbor in opposition to granting the special exception for additional fence height.

Chairperson Jones noted that the Transportation Engineer found no transportation issues relating to this case.

Mr. Justin Olsen explained that the fence and pillars were built in the Fall of 1998. At that time, Ms. Riddle believed that she hired a licensed contractor and assumed that he handled any building permit issues. Mr. Justin Olsen then explained that a stipulation exists with the City and the Court case in that the side yard fence and the front yard fence would be lowered to 6 feet, the yard would be landscaped and the Applicant would apply for a special exception for the rear yard fence. A fourth element of the stipulation related to the settlement of City assessed fines. The height of the side and front yard fencing was brought into compliance Summer 2007 and the yard was landscaped Fall 2007. The pillars were not addressed in the stipulation, but they are included in the special exception request as recommended by Mr. Walkingshaw. Mr. Justin Olsen noted that the application has been supplemented and the site plans have been revised to include the pillars. He then explained that the fence in the rear yard is 8 feet high that runs a length of 47 feet on the 60-foot rear property line between accessory structures located on abutting properties to the west and southwest. The abutting structures are older wooden garages and the fence, in part, was intended to provide additional fire barrier between those structures. Ms. Riddle's garage is located on the east portion of the subject property and another tall garage is constructed on the property to the south in which the fence also provides additional fire barrier between those two structures. At the time the fence was constructed, the home to the south had an elevated deck and the fence provided privacy. The abutting home has since been remodeled and the deck no longer exists. Mr. Justin Olsen continued to explain that the fence affects only Ms. Riddle's property and the properties to the south. He added that the subject property is located in the Yalecrest Compatibility Infill Overlay District which allows additional height for structures, and they believe the fence is not disproportionate with the Yalecrest area or the home and garage behind Ms. Riddle.

Mr. Justin Olsen noted that the staff report stated 6 pillars along the east side are 7 feet 8 inches to 8 feet high from the established grade. The measurements he took challenged the measurements taken by the City in that he measured the first pillar at 6 feet 9 inches with a 2-inch cement decorative cap. The second pillar is also in compliance with a 4-inch cap. Taking the cap size of 4 inches as indicated in the staff report actually makes 3 of the 6 pillars in compliance including the decorative cap, and all of the pillars are in compliance if the caps are not considered. Mr. Justin Olsen then explained that the pillars were constructed along the driveway and the driveway slopes downward into the garage. The pillars were constructed level with one another rather than sloping with the driveway. The pillars are constructed with brick and the decorative caps were intended to maintain the integrity of the pillar by providing a moisture barrier. The pillars are in compliance with diameter and spacing, and it was intended to install wrought-iron inserts between the pillars. Mr. Justin Olsen noted that one element for granting the special exception allows for ornamental and decorative features on top of the pillars, and only the decorative caps take the pillars above the height limit.

Mr. Justin Olsen reviewed the standards for granting the special exception and explained that he believed the height of the abutting garage and the need for additional fire barrier would be special circumstances for allowing the additional fence height in the rear. The additional height

would only affect the neighbors behind Ms. Riddle and not the neighbors to the east or west. The rear fence further is not visible from the street. Mr. Justin Olsen also believes that there would be no material adverse affect on adjacent property owners (Standard C) because the property owner behind Ms. Riddle and the previous owner of that property wanted the fence to stay. The fence has existed for 10 years, it is well built and attractive, and it serves the purpose of creating additional fire protection, privacy and safety.

It is noted that Mr. Justin Olsen addressed the letter submitted by Debra and Robert Hill (1876 East Herbert Avenue) earlier in his presentation. The letter opposed granting the special exception and made reference to the lawsuit between Ms. Riddle and the Hills. The lawsuit began June 2004 and involved a claim that Ms. Riddle encroached upon the Hill property. A stipulation requiring a lot line adjustment was reached in September 2005. The Hill letter stated that the litigation lasted for five years.

Ms. Riddle added that Suzanne and Thomas Grant have owned the home abutting to the rear of her property for three months and they expressed to her that the fence provides privacy and safety for their children.

Chairperson Jones noted for the record that Mrs. Hill was allowed to sit at the table with Board Members during the presentation by the City and Applicants because of her hearing impairment.

Mrs. Hill presented photographs of the pillars and fence explaining that they are opposed to them remaining because they are affected. The fence and pillars have existed for 10 years because Ms. Riddle resisted doing anything about it. Mrs. Hill said that she believes the argument for exceeding the height limit in order to make the pillars appear level is unreasonable because they could have been made shorter at the start. They chose to erect their own fence along side the pillars after settling the lawsuit and their fence was properly permitted and is in compliance. Mrs. Hill further explained that the neighborhood consists of small yards and homes close together with old wooden garages, and she questioned why Ms. Riddle would need a higher fence for privacy, safety and fire protection and all the other neighbors would not need it. Mrs. Hill added that they believe the fence and pillars are unattractive and negatively affect their property value. They also believe the fence and pillars are not in keeping with the neighborhood. Mrs. Hill noted that the letter had a typographical error in that the litigation lasted two years rather than five years.

Mr. Hill added that the pillars have created a discomfort for them because they see them from their back porch and they should be cut down to code. They further found no rational reason for the back fence to be 8 feet high and it can be easily cut down.

Chairperson Jones noted that Standard A may not be applicable to the pillars in that they are a part of an uncompleted fence with no fence plan submitted which actually makes them six stand alone structures. Furthermore, Staff had not received from the Applicant sufficient information to determine whether or not a fence consisting of those pillars would meet the special exception criteria.

Mr. Justin Olsen acknowledged that there are no fence plans for the pillars, but the intention was to insert wrought iron between them. He added that the existing fence along the rear replaced a wooden fence that was the same height.

The meeting was closed to public comment and Board Members discussed the issue. It was noted that the Ordinance would allow the pillars to exceed the height limit if they were

associated with a fence. Stand alone pillars would only be allowed in the buildable area of the lot and not in a required setback. It was also noted that a seventh pillar exists on the west side of the driveway.

The meeting was closed to public comment and Chairperson Jones restated his reasoning that the pillars would not meet Standard A in that there is no fence plan. Mr. Rex Olsen reasoned that the fence at the rear of the property does not meet Standard E because he could find no evidence of abnormal intrusion or offensive encroachments that would justify an over height fence or pillars.

THEREFORE, from the evidence and testimony presented, Mr. Rex Olsen moved for the Board to deny the special exception request for the over height fence in the rear yard because the request is not in compliance with the specific standards for additional height in an R-1/7000 zoning district as stated in Section 21.40.120 of the Zoning Ordinance; specifically, Standard E is not met in that no evidence was presented showing abnormal intrusion of offensive levels of noise, pollution, light or other encroachments on the rights to privacy, safety, security and aesthetics.

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

AND THEREFORE, from the evidence and testimony presented, Mr. Rex Olsen moved for the Board to deny the request for a special exception for the seven pillars which are part of an uncompleted fence. The record reflects there is no actual plan for a fence and they not are in compliance with the special standards for granting additional height. Furthermore, Standard E is not met in that no evidence was presented showing abnormal intrusion of offensive levels of noise, pollution, light or other encroachments on the rights to privacy, safety, security and aesthetics.

Mr. Gary Jones seconded the motion; Mr. Rex 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 recommended making two separate motions; one for the rear yard fence and one for the pillars. He also recommended specifying the standard that the fence did not meet (Standard E).

After Mr. Gary Jones seconded the motion, Chairperson Jones suggested amending the motion to state seven pillars rather than six pillars. Mr. Rex Olsen amended the motion to reflect seven pillars and Mr. Gary Jones accepted the amendment.

There being no further business, the meeting was adjourned at 7:37 p.m.

Deborah Martin, Secretary

Michael F. Jones, Chairperson