

BOARD OF ADJUSTMENT

March 17, 2008

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, March 17, 2008 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) and Gary Jones. Mary De La Mare-Schaefer (Acting Director for Community and Economic Development and Team Member for the Planning Division Leadership Team), Esther Hunter (Senior Advisor to the Mayor), Ray Milliner (Principal Planner) and Nick Norris (Principal Planner) were also present. Board Members Rex Olsen and Edward Radford were 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

Report by the Planning Director

Ms. Hunter presented Board of Adjustment Members with an organizational chart for the Planning Division as foreseen by the new Mayor Ralph Becker. The re-organization of the Planning Division includes incorporating Community and Economic Development functions and a Transition Leadership Team. Members on the Leadership Team are Ms. De La Mare-Schaefer, Orion Goff (Building Official), Lyn Creswell (CAO) and Ms. Hunter. Mr. Goff would also oversee Zoning Enforcement, Neighborhood Preservation, Accela data base functions and the newly organized Buzz Center. The Buzz Center receives all public inquires and applications at one location. Mr. Creswell is in the process of recruiting the new Planning Director and Assistant Planning Director. Ms. De La Mare-Schaefer and Ms. Hunter are functioning as the Leadership Team for Planning on a day-to-day basis.

Ms. Hunter explained that one change that would significantly affect the Board is the review of administrative interpretations and other Zoning Administrator functions. Ms. Hunter noted that the Zoning Administrator position is a delegated title from the Planning Director and Ms. De La Mare-Schaefer has been granted signatory status for that function. The re-delegation of the Zoning Administrator duties is an attempt to closely review over-the-counter interpretations and decisions.

Ms. De La Mare-Schaefer noted that the Board was scheduled to review the Zoning Administrator List, but the Leadership Team would like more time to review it. The new organization of Planning also addressed clarity concerns by organizing an Ordinance and Process Review and Resolution Advisory Committee. The Committee will receive feedback from a variety of sources and begin to refine ordinances. The new Planning Organization also includes a Long-Range Planning and Complex Projects Team that would be the preface to ordinance changes. Ms. De La Mare-Schaefer asked Board Members for their assistance in reviewing processes. Ms. De La Mare-Schaefer added that Leadership Team concerns and focus are on ensuring consistent processes that meet the needs of the business and residential communities.

Ms. Hunter added that Board of Adjustment review would be valuable in determining actual intent of the Zoning Ordinance, City Council intent of the Zoning Ordinance and Board of Adjustment policy. Discussion may require additional time and/or meetings in that these items may not be adequately reviewed if interfaced with cases scheduled before the Board. Planning Staff, as indicated on the organizational chart, have been assigned the duty to focus on the various Boards and Commissions to address training, policies and procedures, and to document decisions and issues.

Ms. Hunter explained that the reorganization also includes an Internal Advisory Committee of which one Board of Adjustment Member will be asked to help review and implement policy and procedures. Chairperson Jones offered his services for the Advisory Committee.

It was noted that the results of the Planning Division audit requested by the City Council will be available in the next three to four weeks.

Review of the Zoning Administrator List.

This item has been postponed until further notice.

Approval of the minutes for the meeting held February 25, 2008.

Ms. Dunn moved for the Board to approve the minutes as written and Mr. Gary Jones seconded the motion. Ms. Dunn, Mr. Gary Jones and Chairperson Jones voted aye; Mr. Berggren abstained from voting; the motion passed with a 3-0 vote.

It is noted that Mr. Berggren abstained from voting because he was not present at the February meeting.

PUBLIC SESSION

Case 420-08-002 (Re-advertised) by Kimi Kasai at 1715 South 2300 East requesting a variance to legalize three existing accessory structures in the required front and side yards in an R-1/7000 zoning district. (Section 21A.36.020(B) (Staff - Nick Britton at 535-7932 or nick.britton@slcgov.com)

(This case was heard at 6:18 p.m.)

Kimi Kasai and Ben Johnson (Property Owners) and David Anderson (representing the Applicants) were present.

Substituting for Mr. Britton, Mr. Milliner explained that six accessory structures are located on the subject property of which three are located in the rear yard and have been determined to comply with the Zoning Ordinance. All the accessory structures appear to have been in existence since the early 1980s and therefore, review of the structures was based upon the Ordinance in effect at that time (1974). The three structures located in the side and front yard areas do not comply and the Applicant has requested a variance to allow them to remain.

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

Mr. Anderson noted the supplemental statement from Ms. Kasai and explained that in 1947, the subject property consisted of a garage and a work shed associated with the property located on the corner of 1700 South and 2300 East. In some point in time, the garage was converted to a cottage. The Applicants purchased the subject property in 1976 which included the concrete block shed in the rear yard which was constructed in 1970. The home is small consisting of 649 square feet and Mr. Johnson needed more living space. He came to the City to obtain information for a fence and location of a carport. Mr. Johnson believed that the City employee whom he had spoken with misunderstood that the structure in the rear yard was a garage. Mr. Johnson, at the time, understood that he could build the fence and a carport without building permits. Mr. Anderson then explained that the lot is standard in size, but the special circumstance attached to the property is the placement of the residence which is located 80 feet from the front property line and as a consequence, the rear yard is only 24 feet deep. Homes in the neighborhood are typically placed 20 to 25 feet from the front property line. Strict enforcement of the code with a small home and no back yard would have a damaging impact on the Applicants' life experiences if they are not allowed additional space to enjoy their outdoor living. Mr. Anderson further

explained that the façade of the carport is 60 feet from the street which would typically be at a rear house line of other homes in the neighborhood.

Daniel Andrus, 2378 East 1700 South, explained that he has enjoyed the amenities that the Applicants have provided for the neighborhood. He said that he believes the property is unique and he enjoys being a part of a neighborhood that features a variety of architectural styles and sizes. Mr. Andrus said that he applauds the Applicants' efforts in transforming a small space into a beautiful living space, and supports their efforts in legalizing the structures on the property.

Ronald L. Davis, 2023 East 1700 South, explained that he has known the Applicants for 30 years and he concurred with Mr. Andrus' comments. Mr. Davis said that the property is unique with a large amount of artistic sensibility that has been brought about from very meager beginnings. He added that he traveled the world and the subject property is one of the few places that he feels connected. Mr. Davis asked the Board to grant the variance explaining that the neighborhood needs more people doing these kinds of projects.

Mr. Anderson presented photographs showing the existing fence and the accessory structures that the Applicants would like to legalize. He noted that several carports located in front yards exist throughout the neighborhood and the proposal would not be unique in the standpoint of having a garage or carport in the front yard.

Ms. Kasai explained that their intention was to create a continuation of the cottage effect. The fence and the carport were constructed first and they were of the understanding that they were legal. They were shocked to find out 32 years later that the structures were illegal. Ms. Kasai then explained that the property is unusual in that the dwelling is actually in the back yard.

Mr. Johnson added that he believed he had an "open road" after speaking with the City employee 32 years ago. He constructed the carport that winter, then came back to the City the following spring and applied for a permit to extend the front of the house. The extension to the home was never done, but at the time, the carport was drawn in and he also asked about constructing decks in the rear yard. He constructed a 10-foot square deck and then added another longer one the following year. The original deck was 10-foot square and all series of construction are recorded up to the final deck and patio rock work. Everything was encompassed into one plan which took place over several years, and he did small amounts of work at a time by himself. Mr. Johnson said that he wants to legalize the two decks in the side yard and the carport as he has used them for over 30 years. He has no plans to construct anything else.

The meeting was closed to public comment and Chairperson Jones explained to the Applicants that granting variances requires the Board to make findings of satisfaction on five specific standards. The attractiveness of the proposal and the understandings at the time the structures were constructed are irrelevant to reviewing the standards.

The consensus of the Board was that they could find no unusual circumstance attached to the property that would allow the subject structures. Mr. Berggren and Mr. Gary Jones also reasoned that granting the variance would set an unfavorable precedence.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Ms. Dunn moved for the Board to deny the variance to legalize the existing accessory structures in the side and front yards on the property located at 1715 South 2300 East because:

1. Literal enforcement of the Ordinance does not cause an unreasonable hardship.
2. The Board is unable to identify a special circumstance attached to the property which relates to a development hardship.
3. Granting the variance is not essential to the enjoyment of a substantial property right.
4. The proposed addition would be contrary to the public interest.
5. The proposed plan does not meet the spirit and intent of the Zoning Ordinance.

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

It is noted that Ms. Dunn amended the motion to include the structure in the front yard and Mr. Berggren accepted the amendment.

Chairperson Jones explained that the Applicant is required to comply regarding the building materials and outside storage, and all non-structural roof materials such as tarps will need to be removed as identified in the notice from Housing/Zoning Enforcement.

Case 420-08-024 by William and Mary Andolsek at 1319 South Roxbury Road (2640-2660 East) requesting variances to reduce the rear yard setback and to exceed the building height for a flat-roof single-family dwelling and special exception for a grade change in excess of two feet in the required front and corner side yards and a wall in excess of two feet in an R-1/12000 zoning district. (Sections 21A.24.050(D) and Section 21A.36.020) (Staff - Nick Britton at 535-7932 or nick.britton@slcgov.com)

(This case was heard at 6:59 p.m.)

William and Mary Andolsek (Property Owners) and Robert Pinon (Architect) were present.

Mr. Milliner explained that the request for the grade change was reviewed under the Routine and Uncontested Matter process as a special exception and it has been administratively approved. He then explained that the variance request is to reduce the rear yard setback and exceed the height limit for the R-1/12000 zoning district. The R-1/12000 zoning district requires a rear yard setback of 25 feet and the Applicants are requesting to reduce the setback to 10 feet 3 inches to accommodate an attached garage. The height limit is 20 feet and the Applicants are requesting a building height of 22 feet 6 inches. The subject property is located on the northeast corner of Roxbury Road and Sherwood Drive, and the lot has a unique shape in that the angle of the intersection is approximately 127 degrees. The subject lot is considered a corner lot and Staff determined that the yard along the east property line is the rear yard area. Mr. Milliner then explained that Staff found the property meets the hardship standard for a reduction in the rear yard setback due to the unique configuration of the lot. Staff also recognized that the Applicant could construct a detached garage and it could be moved another 13 feet toward the adjacent property. Staff determined that an attached garage would have less of an impact on the neighboring property than would a detached garage. With regards to the height, the proposed structure would have a flat roof to accommodate construction of a LEED Platinum home. The Applicants reasoned that the proposed home is compatible with environmental issues in which the additional height is necessary. Staff found the argument less inclusive and seeks direction from the Board of Adjustment.

Mr. Pinon explained that the site is significantly steep with a grade change of approximately 12 feet, and they would like the east yard area considered as the side yard due to the uniqueness of the intersection and the fact that the proposed home would be the only home on the block that fronts Roxbury Road. The abutting property to the east fronts 1300 East. Mr. Pinon then explained that the Zoning Ordinance itself inherently presents difficulty for the proposal in that the 20-foot height limit for flat roofed structures allows for ceiling heights of only 8 feet with optimal framing conditions. In this case, an 8-foot ceiling would not be standard for a home at the proposed size and impose on the enjoyment of the home. He noted that the staff report identifies several flat roofed structures in the neighborhood that exceed the height limit.

As for the setback request, Mr. Pinon explained that attaching the garage to the home minimizes the impact on the neighbor to the east. The proposed location of the garage further provides a deck/sun area for the upper floor and it creates a more appealing design. Mr. Pinon noted that the staff report also recognized that the proposed location of the garage would not interfere with the cistern to be located in northeast portion of the yard.

The Applicants and Board Members discussed the proposal. The existing sandstone turret was part of the entrance to the College of St. Mary of the Wasatch and it has been incorporated into the design of the proposed home requiring some additional height for cantilevering beams. The home was also designed with joists that span a distance between the first and second floor and require a two-foot depth. The home will be provided with radiant heated floors and the floor structure will have 14-inch joists with a 3.5-inch concrete slab to accommodate radiant tubes. Mr. Pinon reiterated that the Ordinance does not provide adequate clearance for a two-story dwelling with 9-foot ceilings, and a home of this statute should have 9- to 10-foot ceilings. The Applicants acknowledged that the height limit could be met if the roof was sloped; however, the flat roof design is needed to capture sun energy. The site also has water drainage issues and they would rather not lower the home farther into the ground.

Mr. Andelsek added that the dwelling was placed at grade level so that the home would be handicapped accessible. They have designed the home for retirement including wider doors, an elevator and a ramp from the garage to access the house. Mrs. Andelsek noted that they also have friends that need accessibility into their home.

Mrs. Andelsek acknowledged that the request is unique, but the proposal is a great opportunity for the community to see that people are willing to participate in solving global warming and conserving energy. Part of the plan is to open the house for tours in an effort to educate the public, and they could think of no better location. The neighbors support the proposal and it would be a shame for the City if the request was denied.

Chairperson Jones noted that both Perry and Diane Bruno, 2663 East Sherwood Drive, filled out a Public Meeting Registration Form stating that they did not wish to speak, but wrote that they supported the proposed construction.

The meeting was closed to public comment and the Board discussed the proposal. Chairperson Jones and Ms. Dunn acknowledged that the proposal was thoughtful and pioneering; however, it would not meet the standards for granting a variance; specifically Standards 1 and 4, and granting a variance would set an unfavorable precedent. Literal enforcement would not cause a hardship in that the record reflects that design options are available and the garage could be relocated. Chairperson Jones also acknowledged that testimony in past hearings has reinforced that height limitations have been carefully reviewed in all neighborhoods of the City. Chairperson Jones advised the Applicants that the Ordinance does not provide for LEED principals and they may wish to take the matter up with the City for an Ordinance change.

Mr. Gary Jones reasoned that the standards for granting a variance were met in that the lot is unique with streets on both sides with topographical challenges. The shape and special circumstances are unique to the property and not from conditions that are general to the neighborhood. He also gave merit to architectural integrity in which it has been achieved with the proposed design. Mr. Gary Jones determined that the proposal is the highest use for the site which sets a standard in the community for environmental design and efficiency. Mr. Gary Jones moved to grant the variance and the motion failed because it was not seconded.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Ms. Dunn moved for the Board to deny the requests for the variances for a height allowance and the rear yard setback reduction to accommodate an attached garage for the property located at 1319 South Roxbury Road because:

1. Literal enforcement of the Ordinance does not cause an unreasonable hardship.
2. The Board is unable to identify a special circumstance attached to the property which relates to the development hardship.
3. Granting the variance is not essential to the enjoyment of a substantial property right.
4. The proposed height and setback requests are contrary to the public interest.
5. The proposed plan does not meet the spirit and intent of the Zoning Ordinance.

Chairperson Jones seconded the motion; Ms. Dunn and Chairperson Jones voted *aye*; Mr. Gary Jones voted *no*; the motion passed with a 2-1 majority vote. It is noted that Mr. Berggren left the meeting prior to consideration of this case and did not vote.

Case 420-08-011 by Craig Kitterman at 232 East Ensign Vista Drive (1010-1025 North) requesting a special exception to allow the construction of a single-family dwelling that would exceed the building height in an FR-3/12000 zoning district. (Section 21A.24.010(P)(2) (Staff - Nick Britton at 535-7932 or nick.britton@slcgov.com)

(This case was heard at 7:53 p.m.)

Denise Bruno (Property Owner) and Craig Kitterman (Architect) were present.

Mr. Milliner explained that the building height request is considered a special exception because a development pattern has been established along the block face. The Applicant is requesting a building height of 3 feet 6 inches on a gable located at the rear façade of the proposed home and 6 inches on a gable at the front entry. The gables are intended to add architectural interest. Mr. Milliner then explained that Staff determined that the request meets the minimum criteria for granting the special exception based primarily on the fact that the structure will be compatible with other existing structures on the block face. If the gable were lowered 6 inches, the architecture would be diminished; and therefore, diminish the streetscape and property values.

Chairperson Jones read the Transportation Engineer comment stating that the driveway must not exceed 30 feet in width.

Mr. Kitterman explained that Denise and Kevin Bruno purchased the lot about nine years ago and hired him to design a home for the lot. Mr. Kitterman designed several homes in Salt Lake City with the 28-foot height limit and the 25-foot eave limit and most have been constructed on steep lots. The subject lot is also steep with an anomaly in the area they are requesting the height exception. For the most part, the house has been designed in accord with the properties on the block. Mr. Kitterman then explained that the street is located to the north of the property and the garage and driveway have been placed on the north side. In order for the Owners to have reasonable enjoyment of the property, the garage has been placed at the same elevation as the street. The main body of the house has been dropped and stepped 5 feet from the street level in order to comply with the 28-foot height limit. It is difficult meeting the 25 feet on the front and rear gables because of the gully on the lot. Another step in the dwelling would be detrimental to the livability of the home. The majority of homes on the streetscape have involved architectural interest with gables that appear to encroach into the height limit and these homes are fairly new. The rear gable is visible from streets below and architectural interested was added to the back of the home for that purpose.

Mrs. Bruno reiterated that the swell at the rear of the lot is an anomaly on the property and the additional height is needed because of that. If the swell did not exist, they would not need to request a special exception. The rear gable provides an architectural advantage to the home rather than having a flat uninteresting roof. She added that all the neighbors have given their signatures of approval.

Chairperson Jones noted that no one from the public was present to speak to the issue. He then asked the Applicants whether or not the home could be constructed without the special exception. Mr. Kitterman acknowledged that the home could be constructed within the height limit, but Staff felt precedent has been set on the street for the gables. Mr. Kitterman noted that homes taller than what they are proposing exist on the block face.

The meeting was closed to public comment and the Board discussed the proposal. Mr. Gary Jones acknowledged the topographical challenge and reasoned that the proposal would present a minimal impact upon the neighborhood in that 6 inches for a front dormer would be a minor height addition. He

acknowledged that the home could be redesigned, but the proposed design is compatible with other homes along the block face, and granting the special exception would have no negative effect.

Chairperson Jones noted that the footprint of the proposed home is 4,327 square feet indicating that it is a very large home. Standard A which speaks to design questions whether or not a design better suited to the site could be achieved by strict compliance to the regulations, and he was not convinced the proposed design would be the best for the lot because of the size. He also reasoned that dormers are matters of architectural interest and the Board is being asked to accommodate matters of taste. Chairperson Jones further reasoned that Standard B(i)(i) is also not met in that the structure has not been designed with the topographical conditions existing on the lot because of the size.

Ms. Dunn explained that she appreciated the Applicants' sensitivity to the streetscape, but she is concerned about the massive appearance from the bottom of the hill, and she too believes that architectural interest is not an argument considered by the standards.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Ms. Dunn moved for the Board to deny the special exception to allow a new single-family dwelling located at 232 East Ensign Vista Drive that would exceed the maximum height limit in the FR-3 zoning district because the request is not in compliance with the specific standards for additional height in the Foothill Districts as stated in the Section 21A.4.010(P)(2) of the Salt Lake City Zoning Ordinance.

Chairperson Jones seconded the motion; Ms. Dunn and Chairperson Jones voted *aye*; Mr. Gary Jones voted *no*; the motion passed with a 2-1 majority vote.

It is noted that before Chairperson Jones seconded the motion, he requested that the words "the structure will have a material adverse effect upon the character of the area and the structure is not compatible with surrounding development" be deleted. Ms. Dunn amended the motion as such.

Case 420-08-014 by Young Electric Sign for Mark Miller Toyota at 730 South West Temple Street (100 West) requesting a variance to exceed the allowed height and square footage for two private directional signs in the D-2 zoning district. (Section 21A.46.110(B)(3) (Staff - Ray Milliner at 535-7645 or ray.milliner@slcgov.com)

(This case was heard at 8:16 p.m.)

Mark Miller (Owner) and Kirk Brimley (Young Electric Sign Company) were present.

Mr. Milliner explained that the request is for two directional signs located at 730 South West Temple. The signs would be located at the entrance to the service entry to the new Mark Miller Toyota structure that is currently under construction. The Applicant is requesting that the size of the sign be increased from 8 square feet to 11.5 square feet and to be 5 feet above established grade rather than 4 feet. Mr. Milliner further explained that Staff determined the signs should be constructed and located per Ordinance requirements because they would achieve the same effect as the proposed signs, and Staff has recommended the variance request to be denied.

Mr. Brimley explained that the sign on the main (west) entrance must be visible especially for safety reasons. The entrance leads from 700 South, and is flanked by the TRAX rails and a wrought iron fence surrounding the property. The sign at that location needs to be high enough to be seen over the fence and visible to traffic traveling on 700 South. 700 South is a congested street and travelers need to have adequate direction in order to make a safe entrance into the property. Mr. Brimley then explained that they are also concerned about the TRAX rail being in such close proximity to the property which they believe creates indecisive entrance. All other signs meet the criteria.

Mr. Miller explained that the project is the first LEED Certified dealership in Utah, and from that standpoint, he would normally argue smaller is better, but is unable to in this case. The TRAX line has a concrete barrier that customers coming from the north on West Temple would not be able to see. He

further believes that the TRAX line creates a difficulty in that a left turn can not be made into the dealership. Also the design of the signs comes from Toyota Image USA 2 and he does not have control over the sign package. Mr. Miller was informed that the signs are to be used by Toyota dealers across the Country and all his competitors will use signs the same size which he believes is also a hardship.

Carlos Martins, 766 South Jefferson Street, explained that the construction of the dealership has negatively affected his property and he is opposed to any new construction. Having a larger sign means digging a bigger hole causing further impact.

The meeting was closed to public comment and the Board discussed the proposal. The consensus of the Board was that the wrought iron fence surrounding the property is a self-imposed hardship in that it is owned by the dealership and it may be altered to accommodate visibility of the sign. They also reasoned by way of their own driving experience that TRAX barriers may be designed to not impede visibility because none of the Members have had problems with barriers throughout the City. Mr. Gary Jones added that the integrity of the sign Ordinance would be compromised if the request was accommodated.

THEREFORE, from the evidence and testimony presented, Mr. Gary Jones moved for the Board to deny the variance request because:

1. Literal enforcement of the Ordinance does not cause an unreasonable hardship.
2. The Board is unable to identify special circumstances attached to the property which relates to the hardship.
3. Granting the variance is not essential to the enjoyment of the property right of the owner.
4. The proposed increase in sign size and height will be contrary to the public interest.
5. The proposed plan does not meet the spirit and intent of the Zoning Ordinance.

Ms. Dunn seconded the motion; Mr. Gary Jones, Ms. Dunn and Chairperson Jones voted aye; the motion passed with a 3-0 vote.

The meeting was recessed from 8:34 p.m. to 8:46 p.m.

Case 420-08-013 by Soulasith Kiphibane at 740 South Goshen Street (aka 732 South Goshen Street) (1040 West) requesting a variance to reduce the required side yard setback in an R-1/5000 zoning district. (Section 21A.24.070Eb) (Staff - Ray Milliner at 535-7645 or ray.milliner@slcgov.com)

(This case was heard at 8:46 p.m.)

Tair and Soulasith Kiphibane (Property Owners) were present.

Mr. Milliner explained that the Applicant is proposing a single-family dwelling that encroaches into the required side yard setback by 9 inches. A building permit was obtained on July 14, 2006, and construction was underway when Building Services and Licensing received a request to verify the setbacks. The Applicant conducted a survey and discovered that the rear section on the north side encroached into the required side yard setback by 9 inches. The front portion of the home is compliant with the 4-foot side yard. The Applicant was issued a stop work order and the home has been sitting unfinished for resolution of the matter. Mr. Milliner further explained that Staff reviewed the application and made the findings that the mistake occurred based on inaccurate measuring when the foundation was originally poured. Staff recognized that the proposal is similar to the development pattern in the neighborhood, but found that the hardship is self-imposed and the proposal does not meeting the standards for granting the variance. Mr. Milliner noted that Staff has received a large amount of public input which is included in the packet presented to Board Members.

Mr. Kiphibane explained that the foundation was inspected and it passed and questioned why the encroachment was not found at the time. The first time Mr. Kiphibane measured, it was correct and the encroachment happened when the foundation was poured. He tried to negotiate some land from the

neighbor, LeRoy Abbott, but they have come to no agreement. Mr. Kiphibane sees Mr. Abbott as taking advantage of the situation. Mr. Kiphibane said that he did not intend to encroach into the required side yard, and it was the complaint from his neighbor that started his problems.

Mrs. Kiphibane added that the last offer from Mr. Abbott was \$2000 a couple weeks ago. They believe that if their neighbor really wanted to help them, he would be reasonable. Mrs. Kiphibane explained that they should be able to rely on the City because mistakes are made. They are asking for justice and to be able to move on with construction. She noted that all the neighbors would like to see the house finished.

Chairperson Jones advised the Applicants that the Board is not in the position to grant variances in order to forgive mistakes.

LeRoy Abbott, 726 South Goshen Street, was present to represent his mother, Helen Abbott, who owns the abutting property. Mr. Abbott explained that Mr. Kiphibane dug a 9-foot hole on the property line tearing down the Abbott fence. He believes the reason why the City became confused about the property line is because the fence was removed. He noted that a survey was required and it revealed that the fence which was constructed several years ago was right on mark. Mr. Abbott further explained that Mr. Kiphibane has upset his mother to no end including setting stakes on their property to try and convince his mother that the fence was on their property. Mr. Abbott then explained that Mr. Kiphibane contacted his mother by telephone and asked her to sign a piece paper stating that 9 inches would not matter and to allow the construction to continue. When Mr. Abbott learned about it, he instructed his mother not to sign because it would devalue her property and inhibit the plans they have for their property. Mr. Abbott acknowledged that the Kiphibanes and his family have dickered including purchasing the Abbott property and home for \$150,000. He also offered two feet of ground for \$20,000 because at one point he was very upset and threw figures out to get Mr. Kiphibane's attention. The last offer was \$2000 for the land and the Kiphibanes would need to go through the lot line adjustment process and hire a fence company to clean the fence line and replace the fence. Mr. Abbott said that the entire chain-link fence has been destroyed because of dirt and building materials stacked against it. Mr. Abbott would insist that a professional do the work because he does not trust Mr. Kiphibane's work.

Chairperson Jones noted for the record that Mr. Abbott submitted a letter captioned "Answered to Mr. Kiphibane's Board of Adjustment Form". He also noted that the land deal is between the two parties and testimony regarding offers is not binding.

Chairperson Jones then noted that the Board received an email dated March 17, 2008, from Charlie and Nancy Hobbs, requesting that the City approve the variance to allow construction to continue. The lot was vacant for many years and the new construct and the Kiphibane family would be a benefit to the street.

Dewayne Dorman, 725 South Goshen Street, explained that the lot was vacant for awhile and it would be in the interest of the area for the home to be completed. He said that he has no problem granting the variance and wants to see the structure completed.

Louise Leary, 735 South Goshen Street, did not wish to speak and wrote a comment on the Meeting Registration Form stating that the 9-inch encroachment is not a big deal to her and she is anxious for the house to be completed.

Ron Watson, 727 South 1000 West, explained that he believes a reasonable resolution is surfacing and he just wants to see the house completed. The completion of the home would be an asset to the community.

Carlene Claflin, 1366 East Blaine Avenue, did not wish to speak, but wrote that the issue in her opinion ought to be between the neighbor and the City since the builder has followed all the rules of the building inspector who gave the builder the "go ahead" to continue with the foundation as laid out. The inspector passed the foundation/footings as they were. Had he caught the 9-inch mistake, it could have been rectified at that time. Now that the roof is complete, the builder is either forced to tear down the house,

pay off a neighbor or be granted a variance by the City. Since the mistake was committed by the City inspector, the City has the burden to rectify the situation. Please grant the variance.

Quang Phu, 851 South Edison Street #A, explained that he was present in support and the Kiphibanes' can not afford a chunk of money to correct the problem.

Craig Malquist was also present in support and believes that the problem should be dealt with the inspectors if not at this meeting.

Diane Fox, 719 South Goshen Street, explained that she would like the problem resolved because they all live there. She also wants the Kiphibanes to have the home because she believes it is a beautiful home.

Daniel Matsui, 217 West 300 North, said that he was present to support granting the variance. He also explained that he has volunteered working on the project and has seen the Kiphibanes try to work out a deal for many months. The situation has affected the work because they are on a limited budget and he wants to see them move their family into the home.

Fujiko Rose Matsui, 217 West 300 North, explained that several homes in the neighborhood are close to property lines. In this case, the two homes have 30 feet between them and she believes that a 9-inch encroachment would not devalue the neighbor's property or prevent them from enjoying it. Ms. Matsui noted for the record that Mr. Abbott was the one who sold the property to the Kiphibanes and also seems to her that he is taking advantage of an opportunity.

Rodney Shields explained that he is in favor of granting the variance because it was approved by the City and because it is not uncommon for property lines to be encroached upon in the area.

Richard Wright said that he believes the situation could have been settled without a hearing. He explained that people make mistakes and the mistake was made by the City and it should be the City who fixes it. Mr. Wright also explained that sees a hardship in that the house is built up to the roof and it is opened to thieves. The Kiphibanes have lost tools and property, and wants a more fair and justice.

Thereasa Harst, 755 South Goshen, did not wish to speak and commented on the form stating that "Soulasith will be an asset to the area and he has put his life into the house; all his money, labor and time. It would be wrong to not make an allowance for a variance to reduce the side yard. It is only a matter of inches and the next door neighbor's house is quite a distance from his house. They made allowances for my house as far as how wide the property is and we would be grateful if you could do this for Soulasith Kiphibane."

Mrs. Kiphibane said in conclusion that Mr. Abbott did not give the full story and she does not want the decision made based on his testimony. She explained that they are aware they are responsible for the fence and they will replace it. Helen Abbott has asked them to not install the fence until the ground is dry.

Mr. Kiphibane said that he still believes Mr. Abbott is trying to take advantage otherwise he would have taken the original deal of \$1000 from the beginning. He added that the uncompleted house presents a health hazard.

The meeting was closed to public comment. Mr. Norris advised the Board that both lots must comply with the underlying zoning regulations such as lot width and size to qualify for the lot line adjustment process.

Chairperson Jones then noted additional written comments dated March 17, 2008, from Keri Keich (779 South Goshen Street), Cathy Castro (763 South Goshen Street), Greg L. Creller (773 South Goshen Street), Cecil B. Hendren (751 South Goshen Street) and Terry A. Long (720 South Goshen Street) who are all in favor of the house being built.

The consensus of the Board was that the situation may be regrettable, but a variance could not be granted based on the standards for granting a variance.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Gary Jones moved for the Board to deny the variance to increase the allowable size of the side yard and that the residents try to work out a solution because:

1. The literal enforcement does not cause an unreasonable hardship.
2. The Board is unable to identify special circumstances attached to the property which relate to a development hardship.
3. Granting the variance is not essential to the enjoyment of a substantial property right.
4. The proposed setback reduction is contrary to the public interest.
5. The proposed plan does not meet the spirit and intent of the Zoning Ordinance.

Ms. Dunn seconded the motion; Mr. Gary Jones, Ms. Dunn and Chairperson Jones voted aye; the motion passed with a 3-0 vote.

There being no further business, the meeting adjourned at 9:47 p.m.

Cecily Zuck, Recording Secretary

Deborah Martin, Transcribing Secretary

Rex Olsen, Vice Chairperson