

BOARD OF ADJUSTMENT

April 21, 2008

The regular meeting of the Board of Adjustment on Zoning for Salt Lake City, Utah, was held on Monday, April 21, 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, Gary Jones, Rex Olsen (Vice Chairperson) and Edward Radford. Ray Milliner (Principal Planner), Paul Nielson (Salt Lake City Land Use Attorney), Nick Norris (Principal Planner) and Casey Stewart (Principal Planner) were also present. Board of Adjustment Chairperson Michael Jones was unable to attend.

Vice Chairperson Olsen 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. Olsen 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 March 17, 2008

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

Report by the Planning Director

Mr. Norris explained that there was no report by the Planning Director at this time.

PUBLIC SESSION

Case 420-08-027 by JB and Hillary Taylor at 2260 East Parleys Terrace (2400-2480 South) requesting a special exception to allow the construction of a single-family dwelling that would exceed the building height in the R-1/12000 zoning district in Council District Seven. (Section 21A.24.050(D)(6) (Staff – Ray Milliner at 535-7645 or ray.milliner@slcgov.com)

(This case was heard at 5:51 p.m.)

JB and Hillary Taylor were present.

Vice Chairperson Olsen noted that no Transportation Engineer comment was submitted for the case.

Mr. Taylor explained that they would like to construct a single-family home and understood that the current building height limit was 28 feet. They also understood that they could request a special exception for height if they were able to demonstrate an existing development pattern on

the applicable block face. The Applicants obtained a survey and the survey indicated that four homes on the block face averaged 31.5 feet high. The Applicants are requesting a height of 30 feet for the proposed dwelling. Mr. Taylor noted that they received signatures of approval from all the neighbors within 450 feet of their property.

Mrs. Taylor added that the design of the dwelling has a traditional roof pitch and they have been working on the proposal for 1 ½ years including obtaining the survey. They have also worked with the Planning Division in applying for the special exception request.

Mr. Milliner explained that Staff reviewed the proposal based on the requirements of the Zoning Ordinance and determined that the proposal would be compatible with the block face and other homes in the neighborhood. The proposal would further be compliant with the general standards for granting the special exception request, and Staff recommended approval.

Responding to questions by Board Members regarding previous height regulations, Mr. Norris explained that the 28-foot height limit in the R-1/12000 zoning district was adopted in 2006. The previous ordinance allowed a maximum height of 35 feet measured to the midpoint of the roof.

William Connelly, 2400 South 2300 East, explained that he is an architect and he constructed his home under the previous height limit of 35 feet. He said that he did not understand the reason for decreasing the height limit in that most homes in the neighborhood have a higher roof projection, and the new infill limit would set an unfavorable precedent. Mr. Connelly explained that the subject lot is large and the proposed height would be in scale with the lot size. He said that he had no objections to the height request because it would be consistent with the neighborhood, and he asked the Board to carefully review for compatibility in that the area was developed under the previous height limitation.

The meeting was closed to public comment and Board Members reviewed the proposal with the standards for granting the special exception. Vice Chairperson Olsen noted that the Applicants have demonstrated a development pattern in which four existing homes on the block face exceed the current height limit of 28 feet.

Ms. Dunn expressed concern about height proposals not complying with current rules. Mr. Norris addressed her concern explaining that the compatible infill standards within the current Ordinance allow height encroachments recognizing that not every neighborhood has the same built characteristics. Thus, special exceptions for height were included if a development pattern could be established, and three homes on a block face constitute a development pattern.

THEREFORE, from the evidence and testimony presented and pursuant to the plans submitted, Mr. Radford moved for the Board to grant the special exception to allow a new single-family dwelling with a maximum height limit of 30 feet located at 2260 East Parleys Terrace in the R-1/12000 zoning district because:

1. The Applicant has provided an analysis of the development pattern of the block face indicating the additional height is consistent with the development pattern on the block face.
2. The request is in compliance with Ordinance and district purposes.
3. The request will not diminish neighboring property values.
4. The request will not have a material adverse effect upon the character of the area.
5. There are no significant features on the lot or any environmental hazards.

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

It is noted that Mr. Norris suggested that the motion reflect the approved height for the proposed dwelling. Mr. Radford agreed to amend the motion to include the approved height and Mr. Berggren seconded the amended motion.

It is also noted that prior to the vote, Mr. Gary Jones voiced concerns about consistency in that a previous height request (Case 420-08-011) heard at the March 17 meeting was denied. He supported allowing an encroachment of six inches for only two dormers and determined that that encroachment was less intrusive than the subject proposal with the main roof ridge encroaching two feet.

Mr. Milliner explained that the difference between the two cases was compatibility. For Case 420-08-011, Chairperson Jones reasoned that the design was not compatible with the neighborhood because of the footprint size and determined that a design better suited to the site could be achieved by complying with the regulations. Ms. Dunn further explained that the lot regarding Case 420-08-011 also was sloped and she found that the mass of the additional height would have a negative effect when viewed from the downside of the hill. Mr. Nielson added that analyzing past proposals places the subject application at an unfair advantage that is not contemplated by the law.

Mr. Gary Jones explained he understood that every situation should not be standardized, but he believed the approval needed more clarification, and he asked that the Board be sensitive to consistency in order to not confuse neighborhoods by ruling one way one month and the opposite way the next month.

Case 420-08-060 by Joseph and Annette Jarvis at 51 North Wolcott Street (1455 East) requesting a variance to reduce the required corner side yard setback for an existing accessory structure located in the R-1/5000 zoning district in Council District Three. (Section 21A.40.050(A) (Staff – Casey Stewart at 535-6260 or (casey.stewart@slcgov.com)

(This case was heard at 6:13 p.m.)

Dr. Joseph Jarvis (Property Owner) and Ira Rubinfeld (Attorney) were present.

Mr. Stewart explained that the variance request is to legalize an existing detached garage. The Applicants were going through a subdivision process to subdivide the subject property into two lots. During review of the subdivision application, Planning Staff found that the subject garage was constructed without a valid permit. The garage was also reviewed by the Board of Adjustment in 1979 and again in 1983. In both cases, the Board denied the request to allow the garage at its current location. Mr. Stewart further explained that previous ordinances required that accessory structures on a corner lot be at least 30 feet from the street. The current Zoning Ordinance requires accessory structures to be located at least 20 feet from the public sidewalk. The subject garage is located 10 feet 7 inches from the sidewalk along Wolcott Avenue. Mr. Stewart then explained that the Applicants contend that the topography of the lot is a property-related hardship with the lot descending toward the west; however, Staff determined that the topography is a common circumstance to the entire neighborhood. Staff found that the shape of the lot and it being bounded by two streets requiring more setback than a typical interior lot could be considered a unique circumstance. In this case, the lot size is sufficient in allowing the garage to be moved farther back into the property, but it would jeopardize the ability

to subdivide the property. Staff recommended denying the variance based on the consideration of the past two Board of Adjustment cases as well as not finding any special circumstance attached to the property. Mr. Stewart noted that some neighbors support granting the variance and others oppose it.

Vice Chairperson Olsen noted that no Transportation Engineer comment was submitted for the case.

Vice Chairperson Olsen noted that the Board received two letters dated April 21, 2008 and read them into the record. David Jonsson, representing Margaret Best at 1440 East Sigsbee Avenue, wrote that they have struggled with the inconvenience of the inappropriately placed garage at 51 North Wolcott for 30 years, and believe that now is a perfect opportunity for the situation to be corrected. Their position is that grandfathering the non-complying garage would not solve problems with obstruction of the alley right-of-way abutting to the west of the subject property. They believe that the property has available space so that the Applicant can solve the problem without recourse of a variance. The second letter from John and Lauri McCoy, 1465 East Sigsbee Avenue, also stated that they were opposed to granting the variance.

Mr. Rubinfeld explained that they believe the case has merit because of the steep slope behind the existing garage at its current location. Moving the garage farther back would require a great amount of fill and perhaps a one-story foundation to get the garage at street level. He noted that the staff report stated that the spirit of the Ordinance would be subverted by allowing the variance; however, he would argue that denying the variance would punish the wrong person. At the time the garage was constructed, the required setback was 30 feet and a variance was granted to reduce the setback to 20 feet. The owners at that time did not comply with the order to move it back, and then they sold the house in 1995 to the Smiths who sold it to the Jarvises in 1998. The Jarvises had no knowledge that a violation existed until they received a letter from Ray McCandless (the Staff Planner handling the subdivision application) in February 2008. Also, there was no indication of a violation on the title report, nothing recorded at the County Records Office, and no complaints from anybody. Now 25 years and three owners later, the Jarvises are paying the price. Mr. Rubinfeld noted that the violation was brought up toward the end of the subdivision review and it appeared that the subdivision would have been approved. Approval of the subdivision would have resulted in another lot that would have paralleled all the other lots running north and south on Sigsbee Avenue. Should the variance be denied and the garage required to be moved, it would prohibit the subdivision, and it could further force the owner to tear down the existing house and subdivide the property into three lots.

David Jonsson thanked the Board for acknowledging his letter, and added that he believes when property is purchased, it is purchased with its defects as well as its joys and benefits.

Thomas Huiskamp, 1437 East Sigsbee Avenue, said that he too opposes the granting of the variance.

The meeting was closed to public comment and the Board discussed the proposal. Mr. Radford reasoned that the topography of the lot would be a property-related hardship, and moving the garage back would result in a two-story visual mass from Sigsbee Avenue.

Board Members thoroughly reviewed the topographical changes on the site plan included with the application and determined that options are available to bring the property into compliance including relocating or redesigning the garage, or sloping the driveway. Mr. Berggren noted that

zoning violations are recorded on property deeds and the Applicants could seek restitution from the title company.

Ms. Dunn explained that she was familiar with the neighborhood and it is not unusual to have steps to access accessory structures and could find no compelling reason why the garage could not be moved back. She also noted that the owners have had 30 years enjoyment that was not permissible and it is not the burden of the Board or the City to solve the problem. Vice Chairperson Olsen reasoned that denying the variance would not deny the owner of a substantial property right because they could have a garage but not at its current location. Mr. Gary Jones agreed that the request does not meet the standards for granting a variance especially when it was previously denied twice.

THEREFORE, from the evidence and testimony presented, Mr. Gary Jones moved for the Board to deny the variance 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 relate to a developmental hardship.
3. Granting the variance is not essential to the enjoyment of a substantial property right.
4. The proposal 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 Mr. Berggren voted *aye*; Mr. Radford voted *no*; the motion passed with a 3-1 vote.

There being no further business, the meeting adjourned at 6:54 p.m.

Deborah Martin, Secretary

Rex Olsen, Vice Chairperson