

Tooele City Board of Adjustments
February 28, 2011
Minutes

Place: Community Development Conference Room
90 North Main Street, Tooele, Utah

Board Members Present:

Kevin Shields, Asst. Chairman
Steve West
Cheri Zander
Vincent Olcott

City Employees Present:

Rachelle Custer, City Planner

Others Present:

Mr. and Mrs. Martinez

Minutes prepared by Elisa Jenkins

The meeting was called to order by Mr. Shields at 5:30 p.m.

1. **Motion on variance request to reduce the side yard setback from 6 ft. to 3 ft to allow for a carport to be constructed at 783 South 690 West by Ralph Martinez.**

Mr. Shields asked Mr. and Mrs. Martinez to explain their variance request.

Mr. Martinez stated that they would like to place a carport on the south side of their home. They feel that it would increase the property value of their home. They would like a variance to reduce the side yard setback from 6ft to 3 ft.

Mr. Shields said that Mr. and Mrs. Martinez did a good job preparing all of the paperwork for this variance. Mr. Shield asked if Ordinance 2011-07, which vacates the easements on this property, has been recorded yet.

Ms. Custer stated that Ordinance 2011-07 was signed and recorded today.

Mr. Shields asked if they are going to build an enclosed garage or carport?

Mr. Martinez stated that they would like to build a carport so they have access to the back yard.

Mr. Shields opened the meeting to the board for comments.

Mr. West had a concern with the hardship. The law says the hardship cannot be self-imposed it has to be imposed by the property. He has studied the code and it said that one of the exceptions is not to deprive the owner privileges granted to other properties in the same zone. He noted that there are a lot of homes with less than a 6' setback. He does know if they followed the rules or if they built on their own.

Mr. Martinez stated that is why he took so many pictures of attached carports and garages that are less than the 6' setback.

Ms. Custer said that of all the pictures Mr. Martinez took she could not find permits in the files. She indicated that it does not mean that there were not permits issued in the 70's or 80's and they no longer have record of the permits.

Mrs. Martinez said that the subdivision was developed in 1983 without covered parking.

Mr. West would feel comfortable with that hardship.

Mr. Shields asked if some of the homes originally had carports and then they were enclosed into a garage.

Mr. Martinez said no. All the homes were built without carports when the subdivision was developed.

Mrs. Martinez said they wanted to go about this the correct way.

Ms. Zander stated that the question she is struggling with is "there are special circumstances attached to the property that do not generally apply to other properties in the same district."

Mr. Martinez stated that he does not understand what that means.

Mr. Shields gave the example if there is a hillside on the property and in order to put a garage on the house instead of digging into the hillside which would create a hazard they would provide an adjustment to move the garage. Another example he used which they were presented not too long ago is the property was limited on where they could build because there was flood zone going through the property. The board allowed them to shift over the building they were going to build because of the flood zone. It is things that are unique to the property. They would allow a variance if there was a hardship based on a situation that was unique to that property. It deals with the land more than the building on the land.

Mr. Martinez stated that he cannot build the carport on the north side of the property because the home to the north of him sits very far back.

Mr. Shields said that this deals with the land not the buildings.

Ms. Zander said that there was one property that had Settlement Canyon pipelines going through their property so the board had to allow them to move the situation of the house to avoid building over the pipelines.

Mr. Shields read the term unreasonable hardship “the property owner cannot create the hardship. An example would be a home built to close to the property line when the site plan showed a proper setback. If the hardship is common to several properties the variance cannot be granted. The hardship must result from the application of a land use ordinance.” He read this from the statutory code from the state, which is provided to them which they have to follow. He understands that others have built illegally.

Mr. Shields called for a recommendation from the board.

Ms. Zander moved to deny the variance request because it does not meet all five requirements, specifically it does not meet requirement number two which is there are special circumstances attached to the property that do not generally apply to other properties in the same district.

Mr. Shields gave an example from the state law for a definition of a hardship. “A *hardship is not a problem that the property owner creates. For instance if the house is built in such a manner that you cannot expand the living room without encroaching into a required yard, you will be creating the situation problem and the ordinance does not recognize that as a legitimate hardship. Likewise the fact that it might cost you less money to add an extension in the required front yard rather than adding to the house where the addition would be permitted is not a hardship.*” He said in this situation they would substitute carport for living room.

Mr. Martinez stated that there is not enough room on that side of the house. He does not understand the hardship.

Mr. Shields said that the hardship goes with the land.

Mr. West stated that current zoning requires a two car garage. He noted that this house would not meet current zoning requirements.

Ms. Custer said before the City went to a two garage requirement there had to be room for a one car garage or covered parking. That was still prior to this subdivision.

Mr. West stated that many times carports get filled in as garages.

Mr. Olcott asked if they cannot meet the existing code requirement does it have an effect on this situation.

Ms. Zander stated “no”. It would be grandfathered.

Ms. Custer said that it goes with the ordinance when it was built.

Mr. Olcott seconded the motion. The vote was as follows: Mr. Olcott, “Aye”, Ms. Zander, “Aye”, Mr. West, “Nay”, and Mr. Shields, “Aye”. The motion passed.

Mr. Shields stated that Mr. and Mrs. Martinez can still build a carport but need to allow for the full 6’ easement on the side.

Mr. West asked if they can petition the City Council to change the setback?

Ms. Custer stated that they can go to the City Council to decrease the side yard setback, but that would change it city wide.

Mr. Shields said unfortunately they have a lot of neighbors who did not follow city code.

2. **Review and Approval of Board of Adjustment minutes for meeting held September 15, 2008.**

Mrs. Zander moved to approve the minutes from the Board of Adjustment meeting held September 15, 2008 as presented. Mr. Shields seconded the motion. All present voted “Aye”.

3. **Review and Approval of Board of Adjustment minutes for meeting held March 2, 2009.**

Mr. Shields moved to approve the Board of Adjustment minutes from the meeting held March 2, 2009 as presented. Ms. Zander seconded the motion. All present voted “Aye”.

4. **Adjourn**

Ms. Zander moved to adjourn the meeting. Mr. Olcott seconded the motion. All present voted “Aye”. The meeting adjourned at 5:52 p.m.

Approved this 23rd day of May 2011

Kevin Shields, Asst. Chairman