

Tooele City Board of Adjustments
April 14, 2008
Minutes

Place: Tooele City Hall Conference Room
90 North Main Street, Tooele, Utah

Board Members Present:

Jerry Houghton, Acting Chair
Roy Niskala
Cheri Zander
Kevin Shields

City Employee Present:

Rachelle Custer, City Planner
Cary Campbell, Public Works Director

Others Present:

Ron Clements
Ron Clements Jr.
Jerry Hanson
Jedediah Hansen
Ed Hansen

Minutes prepared by Elisa Jenkins

The meeting was called to order by Acting Chairman Houghton at 5:03 p.m. He introduced all those in attendance at the meeting.

1. Review and Approval of Minutes from June 4, 2007

Mr. Shields moved to approve the minutes of June 4, 2007 as presented. Mr. Niskala seconded the motion. All members present voted "Aye", except for Ms. Zander who abstained because she was not in attendance at the meeting.

2. Requesting variance for a garage. There was an old garage in the corner of the lot of which was falling down so he took it down before it fell on someone. It did not meet current code. After working with the staff, he would like to place a double car garage on the back of his home. He will need a variance for the side yards, west side he needs 6' only has 5' 6", on the east side he needs 20' and has 9' 6". The property is located at 248 East Utah Avenue, Zone R1-7, requested by Ron Clements.

Mr. Shields asked Mr. Clements to describe his lot to the board.

Mr. Clements stated that his lot is 115' long and 40' deep, but the property line is a little larger than that because it is a corner lot. The problem he had is that his old garage only had about a 13' setback and he could not get his cars off the street. He decided that he wanted to attach his garage to his home. There is an alley that he would go on to get his cars into his garage. He has been told that in order to attach his garage it has to be attached to the existing foundation of the house. His garage would be the same width of the house and would have the same pitch of the home. He would then be able to get his cars off the street.

Mr. Houghton asked Mr. Clements if he his garage would be any wider than his existing house.

Mr. Clements stated that his garage would not be any wider than his existing house.

Mr. Houghton said that he was glad that Mr. Clements tore down the old garage.

Mr. Clements agreed it was in bad shape.

Mr. Niskala asked where the alley way is that Mr. Clements was referring to.

Mr. Houghton said that there are 10' alley ways on a lot of the plat C blocks. They are not paved they are just grass. It is just an access way.

Ms. Custer stated that the City looked at vacating that alley way but there are other people that use it to access their buildings.

Mr. Clements Jr. said that several people access the north and south alley way. The LDS church parking lot took up the east and west alley. The east end of the alley is open but because the alley is so narrow it does not allow for a vehicle to make the turn into a garage. The garage has to be accessed from the south.

Mr. Houghton pointed out that the old garage was right up to the alley fence line. This is giving Mr. Clements an additional 27' that wasn't there before.

Mr. Clements Jr. said that the property line for the house to the south according to the survey is over the fence about 3'-4'.

Mr. Houghton stated that he saw the survey stakes.

Mr. Clements said that he had his lot surveyed to see if he could take his garage over and do something a little different. He couldn't meet the standards that way so they decided to turn it the way he is proposing.

Mr. Houghton stated that looking at the plats that most of Mr. Clements adjoining property owners going west bought half lots so they could get from Utah Avenue back to their buildings in the back.

Mr. Shields asked if he will enter his garage the same way he did before.

Mr. Clements stated “yes”.

Mr. Houghton stated that the corner lot setbacks were mainly for cars coming around the corner. The garage will be in the back so that won't affect that at all.

Mr. Shields moved to approve the variance of 6' on the west side and for a 10' 6' variance on the east side of the home to replace the old garage. Mr. Niskala seconded the motion. All members present voted “Aye”.

Ms. Custer told Mr. Clements that they will attach the minutes to a building permit so he can get going and asked him to re-submit his drawings.

Mr. Shields made an amendment to his motion that this site meets all the requirements for the Board of Adjustments to qualify for a variance. Mr. Niskala seconded the amendment. All members present voted “Aye”.

3. **Requesting a variance for an addition to his home. The zone requires a min of 20' side yard setback; he is proposing a 13' to go with the existing structure. The existing neighbor's home is only 9' from property line, giving a total distance of 22' between homes instead of min. 40'. The property is located at 760 West McKellar.**

Mr. Shields asked Mr. Hansen what the overall size of his property is.

Mr. Hansen stated that the width of his property is 101ft.

Ms. Custer asked if his property was just over an acre.

Mr. Hansen stated that his lot is 2.2 acres and he has an acre next to him as well. He added to his lot.

Mr. Houghton stated that the width of the lot has remained the same.

Mr. Hansen stated that the added property is straight back on his lot. His home was built in the 1950's.

Mr. Houghton stated that Mr. Hansen needs a variance to add on where his house already sits.

Mr. Hansen said that where the house will sit on one side will be 556 ft and the other side will be 554 ft, with the new addition. The side will remain at a 13' setback all the way back

Mr. Niskala stated that Mr. Hansen is asking for a 6 ¾' variance on the side that is already that way.

Mr. Houghton said that he doesn't see a problem as long as Mr. Hansen doesn't go any closer.

Mr. Shields explained to the applicant that they must abide by the by-laws per state law.

Mr. Shields read "*Literal enforcement of the ordinance would result in an unnecessary hardship reasons must be serious, compelling and unique to the particular property. An example is a hardship is a problem that you create yourself. For instance if your house is built in such a manner that if you cannot expand the living room without encroaching into the required yard you will be creating a situation problems 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 outright is not a hardship. The important point is whether you are deprived of property rights and not desires*". This is the part of the law that he is struggling with. In another example it says "*even though you may not have owned the home when it was originally built, that does not apply to the existing proposal.*" He asked the board and the applicant to help him with that.

Ms. Zander said she is also struggling with that issue.

Mr. Houghton stated that no matter where the applicant adds on to his home he would be here for a variance because his existing home only has a 13' setback.

Mr. Campbell asked when the property was subdivided.

Mr. Houghton stated that the setback has been that way since the records have been there.

Mr. Campbell asked if the property was subdivided before the City's zoning code took affect and if it did what were the setbacks at that particular time in an RR-1 zone. He didn't know that information. Mr. Campbell feels that the applicant should be considered some latitude if the City changed the rules after the fact.

Mr. Houghton stated that the records at the courthouse say that the house was built in 1950. He asked when the house next door was built that only has a 9' setback.

Mr. Hansen did not know that information. He did say that the house next door was added onto about four years ago.

Mr. Campbell said that it would be fair to grant a variance if the property line had a 13' setback in 1950 or whenever it was built, and the rules changed after that. The applicant is entitled to some consideration.

Mr. Shields asked if that could have a grandfather clause.

Mr. Campbell stated that the applicant should be granted a variance if the City changed the rules after the fact.

Ms. Custer stated the only information she has at this time is when the latest update was made not when the setbacks were changed.

Mr. Campbell stated that if that allowable setback for that subdivision was 10' for example than the Board should be able to give him some consideration.

Mr. Houghton asked if there were setbacks back them.

Mr. Campbell stated there might not have been. If you go far enough back it didn't matter. Some older homes only have a 3' setback.

Mr. Shields asked Mr. Campbell since other residential zones have a 6' side yard setback if this variance would be considered a fire hazard.

Mr. Campbell said no. He also stated he would not let what the applicant's neighbor's setback is to influence this decision. This would not be a life safety issue. Building codes in residential today allow 3' setback. He said that building codes and zoning codes are different.

Mr. Houghton asked if the 20' setbacks in these areas are for esthetics.

Mr. Campbell said that his assumption would be it is for esthetics.

Ms. Custer said that in 1992 they addressed up to an RM-16 and that was a 10'. She doesn't know what that converts to in today's zoning ordinance.

Mr. Campbell said if that was a rural setting, then the 10' setback would likely be the setback back then. If they could show what the setback was when the house was built it would be reasonable to allow it to the applicant. He would be less in favor of allowing if it was lot after lot. If the City changed the rules after the home was built he believes that it is an option that the Board should consider.

Mr. Shields said that the Board has to be able to justify the variance by law.

Ms. Custer stated that they would have to verify what zone the applicant was in 1992. She can only locate the codes that tell them the zoning setbacks in the different zones, but she does not know which zone they were in when the home was built.

Mr. Shields said in the handbook it says "*the board cannot re-write the ordinance from one case. Consequently each case must be considered on its own merits and neighboring violations or previous variances do not set precedence*".

Mr. Houghton stated that the handbook also says that if there are other people that have been enjoying that and he is not able to enjoy it then they may grant a variance.

Mr. Campbell is not saying that anyone else has given them a variance, but it is cause for a variance if the City changed the rules after the fact. He also stated that if the Board decides to grant this it doesn't mean that the neighbor can come and ask for 9' and automatically get it. Each case is looked at individually.

Ed Hansen stated that they don't have any problems with the neighbors.

Mr. Houghton said that house next door has a 9' setback and it was built in the 1970's, which is newer than the applicants so the setback was probably smaller than 20'.

Mr. Campbell said that some people do build without permits.

Mr. Houghton does not feel that this variance would be a problem as long as the applicant does not go any closer because his house already has a 13' setback. He is not asking for more than what he already has.

Mr. Niskala said one of the questions they are supposed to ask is if the strict interpretation of the zoning ordinance creates a hardship for this property. Is the hardship unique to this property?

Mr. Shields does not feel that it is unique to this property

Mr. Niskala continued to ask if the hardship was caused by the action of the applicant or the previous owner.

Mr. Shields stated that the action today was caused by the previous owner.

Mr. Campbell stated that in the 1950's the setback could have been 10'.

Mr. Niskala asked if the variance would alter the essential character of the area? He believes that it would not alter the character of the area. He then asked if granted would the variance conform to the spirit and the intent of the zoning ordinance and the community's general plan? Mr. Niskala said that it would.

Mr. Shields asked the applicant which way his roofline would go.

Mr. Hansen replied that they would stay the same. The pitch goes front to back. He is tying in with the top pitch of his home. There will be a covered patio on the back and it meets the 20' required setback.

Mr. Shields asked the applicant if he thought about turning the addition to the back.

Mr. Hansen said that it would make a weird layout to his home. He is expanding his family and that is the only reason for the addition.

Mr. Houghton said that most of the addition you won't see from the road. He also suggested that the motion include a condition that this variance does not give a variance for any other buildings on the property.

Mr. Campbell said that accessory buildings can have 3' to 6' setbacks, depending on easements.

Mr. Hansen does not feel this should be considered a safety issue. If he builds a barn there would only be a 3' setback.

Mr. Campbell said it depends on what the particular zoning code says at a particular time.

Ms. Custer stated that anything that houses animals has different rules, there has to be 50' from the neighbor's home.

Mr. Campbell stated that if this property was a 100' wide and someone came in a built a new structure this variance wouldn't be considered it would have to be a 20' setback.

Mr. Shields said that he is not concerned about the safety, because there are homes a lot closer than these homes. If this does not pass here the applicant has two options, he can appeal to the City Council to change the ordinance or go to the District Court of Appeals and that has to be done within 30 days of this meeting.

Mr. Niskala moved to grant a 6 ¾' variance to match the existing house that the Board believes conformed to what the regulations were at the time the house was built. The variance will not substantially affect the general plan or be contrary to public interest and the spirit of the zoning ordinance observed and substantial justice it done.

Mr. Houghton said that he feels that this home will add to the neighborhood.

Ms. Zander seconded the motion. The vote was as follows:

Mr. Houghton, Aye

Mr. Niskala, Aye

Mr. Shields, Nay

Ms. Zander, Nay

The motion did not pass. The discussion continued.

Ms. Zander stated that if she knew for sure that the zoning was different when the home was originally built, she would give the applicant more leeway, otherwise she feels that the addition could be changed to comply.

Mr. Campbell suggested making that part of the motion and than staff could do the research to find out what the zoning was at the time the home was originally built.

Ms. Zander said if she could see that that the setback was correct at the time it was built and the City later came in and changed the zoning and the setback. She would be o.k. with making that part of the motion.

Mr. Houghton asked if that would be considered anytime from 1950 on.

Mr. Campbell said that it would be anytime from when the property was subdivided. That would be the first thing they would need to find out. Then there would have to be some research as to what the zoning laws were at that time.

Ms. Custer stated she will do her best to find that information.

Mr. Campbell said there might not have been any zoning laws at that time. They would try and find out when exactly the home was built and when it was subdivided. He then asked if the board would like to reconvene or if they would like the staff to research and get back to them.

Ms. Zander stated she would rely on the staff to do the research.

Mr. Niskala amended his motion to add that there will be some research done by staff to find out what the zoning was when the home was built or subdivided, and if it is found to be compliant with the zoning of that time then the motion is approved. Mr. Shields seconded the amendment. All members present voted "Aye".

Mr. Campbell said that they will let the board now as soon as possible.

Mr. Shields moved to adjourn the meeting. Ms. Zander seconded the motion. All members present voted "Aye". The meeting adjourned at 5:55 p.m.

Approved this day of

Acting Chair Jerry Houghton