

**Tooele City Board of Adjustments
September 15, 2008
Minutes**

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

Board Members Present:

Roy Niskala, Acting Chair
Kevin Shields
Cheri Zander

City Employee Present:

Cary Campbell, Public Works Director

Others Present:

Gary Gowans

Minutes prepared by Elisa Jenkins

The meeting was called to order by Acting Chairman Niskala at 5:30 p.m.

Mr. Shields moved to appoint Mr. Niskala as Chairman for the Board of Adjustments. Ms. Zander seconded the motion. All members present voted "Aye".

Ms. Zander moved to appoint Mr. Shields as Vice-Chairman for the Board of Adjustments. Mr. Niskala seconded the motion. All members present voted "Aye".

1. **Review and Approval of Minutes from April 14, 2008**

Ms. Zander moved to approve the minutes of April 14, 2008 as presented. Mr. Shields seconded the motion. All members present voted "Aye".

2. **Request for a variance to build an agricultural outbuilding 15' from property line instead of 30' as current zone requires. The property is located at 731 West 200 South, Zone RR-1, by Gary and Mollie Gowans.**

Mr. Campbell explained that Mr. Gowans home is in an RR-1 zone which are rural one acre lots. The City Ordinance states that you have to keep barns and other buildings 50' away from other homes, if there is no home on the property you must be 30' away. The home can approach within 20' of the property line, and the barn 30' which would then be 50' away. Agricultural areas are different than residential areas. He used an example if someone has a 500' lot and they put a barn 300' from the roadside it doesn't make sense to him to worry about the side yard. The only thing that would be that far back would be barns. Residents would have to put in fire hydrants as well as other things if they built a home that far back on the lot. Mr. Campbell feels that these lots should be different than

smaller lots. He stated in theory someone could build a home 20' away from where he is building his barn and the property line. That is why they are requiring him to stay 30' from the property line.

Ms. Zander agreed that it is unlikely that someone would build a home that far back because of the expense involved.

Mr. Gowans stated that the reason he would like to go closer to the property line is because he feels he would be a better neighbor if the building was situated the way he is proposing. The building would not have any outside access on the east side. The drainage of the stalls would follow the grade of the land into the center of the property, and the animals would be toward the center of his property and not on the property line.

Mr. Campbell mentioned that if there was a home on the adjoining property that was 50' away this would not be an issue.

Mr. Gowans said that the property to the east is identical as his. His property is number 10 on the map attached to the packet. To the west of his lot is about 40 acres that is undeveloped.

Mr. Campbell said that property is also zoned RR-1.

Mr. Gowans continued to say that they have 30' to the east, 30' to the back, and 30' to the west of their property that they can not develop, which leaves him about 90' of usable space in the middle of the property. The lot is a two acre parcel, he also owns three acres behind his property but since it has not been included as a common lot he also has to adhere to building 30' off of his own property line. He owns a total 5 ¼ acres, it isn't agricultural use; he pays greenbelt taxes on it. If a home is placed that far back on the property next to his there would have to be a road going into the property that a fire engine could turn around on and it would have to have a fire hydrant.

Mr. Campbell stated that would be up to the fire chief on the stipulations that would be placed.

Mr. Shields stated that as a Board of Adjustments they have a set of rules they have to abide by. They are attached to land not the zoning ordinance. He feels for Mr. Gowans because of the 30' setbacks it chops his land. One of the things that the Board has to abide by is this has to do with his land and not the adjoining property. If the zoning ordinance is bad he can appeal to the City Council and try to get the zoning ordinance changed. The five questions that they have to be able to answer to grant a variance are:

1. *Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.*
2. *There are special circumstances attached to the property that do not generally apply to other properties in the same district.*

3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;*
4. *The variance will not substantially affect the general plan and will not be contrary to the public interest; and*
5. *The spirit of the zoning ordinance is observed and substantial justice done.*

Mr. Shields stated that a lot of times they deal with properties that are a weird shape. He feels that Mr. Gowans could move the barn over 30' and it could fit on his property without any problems.

Ms. Zander stated that she is having a hard time with question number two. If there was already a home built on the adjoining property, he could put the barn where he is proposing.

Mr. Shields said that it is not up to the Board to amend the zoning ordinance. They have to abide by these five questions.

Ms. Zander said that she has been trying to figure out how they can make this work.

Mr. Shields asked Mr. Campbell asked why 50' is an issue here but in an R1-7 he can be 10' from other structures. He can also have a dog kennel.

Mr. Campbell said that a dog kennel would also have to be 50' away from a home on an adjoining property.

Mr. Shields asked even in an R1-7 zone.

Mr. Campbell said "yes", that is a kennel as opposed to livestock. What is the expectation of someone that lives in a residentially owned lot as compared to the expectation of someone who lives on an agricultural lot? It goes back to how well someone takes care of their pet. A dog kennel is supposed to be 50' away so not to be a nuisance of smell to their neighbor. The issue here is a barn. He doesn't know who came up with the 50' away, it was before his time.

Mr. Gowans asked how a trailer court could be built less than 30' away from the property line.

Mr. Campbell stated that in residential areas the setback from the rear property line is 20'. Mobile home subdivisions are a little different in respect to the zone they are in.

Mr. Gowans stated that he could build a six car garage and put it 3' from his property line and he would be within zoning. That would probably create more of a nuisance for his neighbor than what he is proposing.

Mr. Campbell explained that whatever the reason was for the ordinance was to help people help themselves. New subdivision homes can go in an R1-7 zone can go within

20' in the rear yard and 20' in the front. When there are two different zones that connect with one another and they each have their own requirements.

Mr. Shields asked what zones are next to him.

Mr. Campbell said that he is surrounded by RR-1.

Mr. Shields stated that he doesn't see the problem with this request, but it violates the zoning ordinance.

Ms. Zander agreed that what Mr. Gowans is proposing is logical and the best way but does not fit the zoning.

Mr. Shields continued to say that in this case the same thing that applies to Mr. Gowans apply to lots 7, 8 and 9. He is struggling with the question that asks that there are special circumstances attached to the property that do not generally apply to other properties in the same district. Every one of the other lots that are 168' wide is being chopped off by 30' so he has to put his barn in the middle of the lot.

Mr. Campbell mentioned that if there were a home on the next lot that was 50' away it wouldn't matter.

Mr. Gowans said that the zoning ordinances are protecting future land owners more than current land owners. He could live his whole life without a home being built next door.

Mr. Shields agreed and stated especially to have a home built that far back.

Mr. Gowans said that he could not build a barn and put 50 head of cattle and they could lean against the fence all the time. He is proposing a better use of the land than what it is currently zoned for. That would be pasture fencing and in an RR-1 there are not very many limitations on livestock animals.

Ms. Zander said that they need to come up with the special circumstance that is attached to the property that does not apply to other properties in the same district. They have to find something different than the other properties to grant the variance.

Mr. Campbell said that if Mr. Gowans wasn't on a time frame they could change the ordinance to address the minimum setbacks.

Mr. Shields commented that if Gary builds his barn 15' from the property line and stays there for many years and a neighbor comes to build a home, he would have to make sure that he is 50' away from Gary's barn.

Mr. Campbell said that his feelings are that an agricultural setting should be different than a non-rural setting, the setbacks ought to change. In a R1-7 and R1-8 zone there has to be a minimum of 6' side yard setbacks. When you get to the backyard setback it is

only 3'. On an agricultural lot once you get behind the home the rear setbacks should be different. Mr. Campbell believes that he would have support changing the ordinance to make it a better fit, but that would take too much time for Mr. Gowans.

Mr. Niskala read from the handbook "does the strict interpretation of the zoning ordinance create an undue hardship for user of the property". He feels that it does.

Mr. Shields said that he would encourage a zoning change.

Mr. Gowans said that the City Council won't entertain a zoning change until it is denied by the Board of Adjustments. He said that he applied for this variance in May of this year.

Mr. Shields asked if Mr. Gowans was trying to get this done before winter.

Mr. Gowans said that he would like to get it done before winter. He has been waiting a long time.

Mr. Shields asked how he would feel about a zoning change.

Mr. Gowans said that process would probably take a long time. He has done all he can do to be a responsible neighbor and it has been struck down from zoning laws. He can go the other direction and his neighbors won't like it. It won't be as good.

Mr. Campbell stated that whatever this Board decides should not have anything to do with whether they should change the zoning ordinance.

Mr. Gowans said he proposed changing the zoning ordinance when he applied for a conditional use permit.

Mr. Campbell said that is when it should have been changed.

Mr. Gowans said he was told by the City Council that he had to go through all of these steps before they would look at changing the zoning.

Mr. Campbell said that was not right.

Mr. Shields said that if the Board of Adjustments denies his variance his repercussion is to appeal to the City Council.

Mr. Campbell said that the City Council members do not necessarily know what the ordinances are at least to the viewpoint that the City does. He also said that he would have been happy to start the zoning change when he applied rather than wait until now. He doesn't want to see an ordinance change because the Board turned someone down. If you have an ordinance change because the rules do not make sense that is different.

Mr. Gowans said it is frustrating to him that most of those lots are non-compliant. There are several in the same district that has what he is asking for. He has noticed agricultural buildings next to lots that do not have a dwelling.

Mr. Campbell said that if it is in a R1-7 and they have two acres they can put the agricultural building three feet away (assuming there are no easements).

Mr. Gowans stated he was talking about lots that fit the same criteria as his.

Mr. Shields asked when the RR-1 30' setback ordinance was put into place.

Mr. Campbell stated that it was before his time. It doesn't really matter when the property was bought it matters when it was zoned. He will look at starting to change the zoning ordinance.

Mr. Niskala also read in his manual that the Board should suggest to the applicant to approach the Planning Commission to request an amendment to the ordinance. That is something that the Board could recommend.

Mr. Shields mentioned that whatever the decision is at this meeting he would recommend an amendment to the ordinance.

Mr. Campbell said that part of the recommendation that he would make to the Planning Commission to change the ordinance would be based upon the recommendation from the Board of Adjustments.

Mr. Niskala continued to read that "if granted would the variance conform with the spirit and intent of the zoning ordinance and the community general plan".

Mr. Shields understands being 50' away if someone has farm animals. Who is building first?

Mr. Campbell said that there are zoning ordinances for a reason.

Mr. Shields said that questions 1, 3, 4, and 5 are in compliance, he is struggling with question 2. He doesn't feel that there are special circumstances attached to this property.

Mr. Campbell stated that it comes back to the issue that the adjoining lot does not have a dwelling.

Mr. Shields asked Mr. Gowans if he has a stream going through his lot.

Mr. Gowans stated that he is in a flood zone.

Mr. Campbell stated that the flood zone goes right through the middle of Mr. Gowans property.

Mr. Gowans showed the board on the map where the creek bed goes on his property.

Mr. Campbell went to look for a map that shows the flood planes.

Mr. Niskala said that the creek bed could be the special circumstance.

Mr. Gowans stated that in RR-1 zones in Tooele probably 99% of them are developed there is not much open space left in that zone he said that is a special circumstance.

Mr. Shields said the special circumstance is defined as the unique to that parcel of land. If he has a creek or flood zone that could be a unique thing for Mr. Gowans that his neighbors would not have to deal with.

Ms. Zander stated that the special circumstance can not be self imposed.

Mr. Gowans said that almost all of three acre parcel that he has behind this lot is also in a flood zone.

Mr. Campbell returned and stated that he could not find a map.

Mr. Niskala stated that if Mr. Gowans property is in a flood zone it meets all the criteria to allow for a variance.

Mr. Shields made a motion to approve a variance for Gary and Mollie Gowans, 731 West 200 South, to build an agricultural outbuilding 15' from the property line and not closer than 150' from back of the home upon verification from staff that the property is in a flood zone and the center line of the creek bed goes through the property. Ms. Zander seconded the motion. All members present voted "Aye".

Mr. Shields also made a recommendation to the Planning Commission and the City Council to look into changing the zoning for side yard and rear setbacks in the RR-1 zone.

Mr. Campbell stated that they will look at that change as the Community Development department. The Planning Commission makes the recommendation to the City Council. He will find out where the flood plane is. Mr. Campbell will let the board know regarding the flood zone as soon as possible.

Mr. Shields moved to adjourn the meeting. Mr. Niskala seconded the motion. All members present voted "Aye". The meeting adjourned at 6:33 p.m.

Approved this 28th day of February 2011

Chairman Niskala

E-Mail from Cary Campbell sent Tuesday, September 16, 2008:

Members of the Board of Appeals; We have checked the floodplain map and indeed the drainage; therefore, the floodplain does pass through the piece of property Dr. Gowans requested the variance on. Therefore, your approval of the variance on the condition that the floodplain passed through the property has been substantiated and the variance is granted. Thank you for your time and efforts.

Elisa, please see that this email is attached to the minutes for the Board's approval.

Thank You, Cary