

**Tooele City Board of Adjustments  
November 8, 2004  
Minutes**

**Board Attendees:** Roy Niskala (Vice Chairman), Kevin Shields, Cheri Zander, Jerry Houghton

**Board Members Excused:** James Ferguson, Jeff Shaw

**Staff Attendees:** Cary Campbell, Building Official

Minutes prepared by Andrea Cahoon

Meeting called to order at 5:06 p.m. by Cary Campbell

**1. Review and Approval of Minutes from October 18, 2004**

**Ms. Zander moved to table the minutes because a quorum was not present to approve them.** Acting Chairman Niskala seconded the motion. All members present voted, "Aye."

**2. Request Variance for Smaller Properties on a Couple of Lots in Order to Develop Land Locked Property by Joy Thomas, Located East of the Carr Fork Subdivision, Zoned R1-7**

Mr. Campbell explained that on the northeast end of the Carr Fork Subdivision there are two lots that are too narrow to use. The property owner is trying to subdivide the property. The applicant is asking the Board of Adjustments if they are willing to allow a variance for the two lots because they are not wide enough. They must be 60 feet wide. The northern lot is also not 7,000 square feet as is required in the R1-7 zone, and would need a variance for that as well. There are other issues dealing with this property, but in order to deal with those they must fight with the State of Utah. After the Board of Adjustments determines what they can do, the Staff will address the issues they can, and then it will be taken to the Planning Commission. There is a State preserve to the east and to the north. The land may be contaminated due to previous uses, and so the State made Shell Oil put the land in reserve. There are also a couple of engineering problems that they will have to solve. The road (970 North) is way too long and straight, and the City staff will recommend that it is dead ended. If that area ever gets out of reserve, there are other accesses to it.

Mr. Campbell reiterated that the Board of Adjustments needs to address variance requests for the width of the frontage and the square footage for the northern lot, and only the width of the frontage for the southern lot.

Mr. Houghton asked if the additional 33 feet (if the road was dead ended) was added into the square footage of the lots? Mr. Campbell answered, "No." Mr. Houghton said that the northern lot is currently 5,588 square feet, and if the extra 33-feet was added after the road was dead-ended, the lot would have 7,876 and would be in compliance as to square footage. If what is currently shown as a road is split right down the middle both lots will have enough space. Mr. Campbell said there may be a legal reason they can't do that, but that is what they are striving for. If they make the curve 35 feet long where the street ends, than the lots will meet the conditions. The applicants can't expand and that is a hardship

that is no fault of their own. There are a lot of issues that were not created by the applicants.

Mr. Houghton stated that in the R1-7 zone the Planning Commission didn't want to go below 7,000 square foot lots because they didn't want small lots. Such lots became a problem over by Copper Canyon Elementary. He stated he didn't have a problem with the width variance, but he had a problem with the lot being too small. The other lots in the area are in compliance with the R1-7 zoning. Mr. Campbell said they would still require the minimum setbacks, so if the house got larger it would have to be enlarged from the front to the back rather than from side to side.

Mr. Campbell said he hasn't asked the Fire Department about the street, but it becomes irrelevant if it is less than 150 feet long. The staff believes that the road will never go through because of the reserve.

Mr. Shields asked what the lot sizes are along 970 North? Mr. Campbell believed they were 70 feet by 100 feet. He was sure they were only 100 feet deep. If they were deeper than that they would not have a square footage problem with the proposed northern lot.

Mr. Houghton asked about the proposed road. Mr. Campbell said that property is already scheduled as a right of way. They would like the road closed off, but that must be addressed by the Planning Commission and the engineer.

Mr. Shields read through the five requirements that must be met for a variance to be granted by the Board of Adjustment. He informed the applicant that the requirements governing variances are set forth by State statute.

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.* Mr. Shields asked can they generally meet the requirement of a 7,000 square foot lot by allowing a 5,588 square foot lot? He asked if the same functions could be done on the lot as could be done on a 7,000 square foot lot? He didn't feel there was an issue on the southern lot because it has 8,700 square feet, and so a variance for a one foot adjustment would work. He had a problem with how small the northern lot would be. Mr. Niskala agreed.
2. *There are special circumstances attached to the property that do not generally apply to other properties in the same district.* Mr. Shields felt that was definitely true in that it was next to a State reserve and there were boundary disputes that would be difficult to address.
3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.* Mr. Shields said that was true as well because there are many lots that have been built on in the area.
4. *The Variance will not substantially affect the general plan and will not be contrary to the public interest.* Mr. Campbell said this use would be consistent with the general plan and the zoning (R1-7) in that it would be used for single family residential and still could be. Mr. Shields concurred.

5. *The spirit of the zoning ordinance is observed and substantial justice done.* Mr. Shields felt the spirit of the zoning ordinance was being observed and that justice was being done.

Mr. Shields felt they should discuss number 1 further, but all of the other requirements were met. Mr. Campbell said if it can't be a residential lot, then the lot can't be used. Do you make a part? Do you sell it to the adjoining neighbor? Mr. Shields said there are other ordinances that set a 35% maximum coverage for a lot and he wondered if an equitable home could be placed on that property? Mr. Campbell believed one (a home) could. Mr. Campbell said there are minimum lot sizes, minimum home sizes and minimum garage sizes that must be met. Homes can be bigger than that and still be within the restrictions. There are various tri-level and multi-level homes in that area. The home would have to be stretched front to back instead of increased in width, but it could be used for a home.

Mr. Shields asked if the extra land would bring the lot size in compliance? Mr. Houghton said it would. Mr. Campbell said that road (970 North) is too long and straight, and practicality says that the State doesn't have a tendency to turn over those things. He believed that the reserve won't be turned over.

Mr. Houghton said when a subdivision comes in there are water retention issues, and water rights issues. He asked how they would address those? Mr. Campbell agreed and said there are also impact fee issues. He thought those two lots wouldn't create any problem. If there is at least 20 feet of grass the water will not get to the property line.

Mr. Houghton said he was okay with the one foot variance for the lot width, but he didn't like the 5,588 square foot lot. As a member of the Planning Commission he has had citizens approach him about not creating any more small lots. Ms. Zander said she could see that you wouldn't want a big subdivision coming in with small lots, but just one small lot is not as big of an issue. Mr. Campbell said they could add into the motion what they wanted as a recommendation. The Planning Commission could then address it.

Mr. Niskala asked if the road did go through if they would have to put in a turn around? Mr. Campbell responded that if they have to leave that road as it is there will have to be a turn around, and the turn around must be 120 feet in diameter. That is for the Fire Department and the sanitation trucks. Mr. Shields said if it is less than 150 feet, then they can dead end it? Mr. Campbell said if it is less than 150 feet, it is not an issue. Mr. Shields estimated it was about 110 to 112 feet long.

**Mr. Shields moved to allow a variance equal to the difference between 60 feet and what the lot widths actually are on both lots. The existing minimum lot width is 58.16, and so a variance of up to two feet would be sufficient. This request meets all of the requirements for a variance as discussed and outlined previously.** Ms. Zander seconded the motion. All members present voted, "Aye."

Mr. Shields and Mr. Houghton stated they were struggling with the significant amount of square footage that would be required for a variance. They felt that if the square footage was closer to 7,000 square feet it wouldn't be such an issue, but it is a significant amount less than the required amount.

Mr. Houghton said if he made the motion, it would be to deny the variance, but he would recommend

that the road be dead ended and the property split up down the middle of the street. Then the lot would be big enough and it wouldn't be an issue anymore. Mrs. Thomas asked for the Board to repeat the information to her. Mr. Shields restated the information and informed her that the Board of Adjustment has no say as to what will happen with the road. They could just make a recommendation. Mrs. Thomas asked who would have the final say? Mr. Campbell said the staff would take it to the Planning Commission who would have the final say. The staff has to go through the legal issues pertaining to this. If that part (of the future road) is not dedicated, then it is easy. If it is dedicated, then it is more difficult. Mr. Houghton stated that it is not dedicated because he checked into that. Mr. Campbell said the staff would have to recommend that the road end at that point, and they were considering doing that anyway.

**Mr. Houghton moved to deny the square foot variance for the 5,588 square foot lot (the northern lot), with a recommendation to the Planning Commission that the road be dead ended. The additional property (that would have been the road) would be split in half and included with the adjacent lots. If it is denied by the Planning Commission, he would like to reserve the right of the Board of Adjustment to readdress the issue with the applicants at no additional fee (under the same application).** Mr. Niskala seconded the motion. All members present voted, "Aye."

### **3. Adjourn**

**Mr. Niskala moved to adjourn the meeting.** Mr. Shields seconded the motion. All members present voted, "Aye." The meeting adjourned at 5:45 p.m.

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Approved by Vice Chairman Roy Niskala

This \_\_\_\_ day of \_\_\_\_\_