

# Tooele City Board of Adjustments

April 7, 2003  
Minutes

**Board Attendees:** James Ferguson, Jerry Houghton, Roy Niskala, Kevin Shields, Cheri Zander

**Absent:** Barry Lewis

**Staff Attendees:** Cary Campbell, Community Development Director/Building Official  
Andrea Cahoon, Contract Secretary

Minutes prepared by Andrea Cahoon.

Jim Ferguson called the meeting to order at 5:14 P.M.

1. Approval of Minutes from November 4, 2002 and March 3, 2003

**Mr. Niskala moved to approve the minutes from November 4, 2002 as presented.** Mr. Houghton seconded the motion. Mr. Niskala and Mr. Houghton voted, "Aye," with the other members abstaining because they were not present at the meeting.

**Mr. Shields moved to approve the minutes for March 3, 2003 as presented.** Chairman Ferguson seconded the motion. All members present voted, "Aye."

2. Variance Request on Setbacks for a Detached Single Car Garage with a Personal Adjoining Hobby Shop that Will have One Sink and One Lavatory by Merrill Ray and Angie McDonald

Ms. Zander arrived at 5:16 p.m.

Mr. Ferguson asked the applicant if the maximum lot coverage is exceeded by neighbors in his area on the pictures provided to the Board? Mr. McDonald answered that he could not say without getting permission from the neighbors to go on their properties and take measurements. Mr. Ferguson said that there were no measurements of any kind on the pictures that were presented to the Board, so he couldn't make that determination. The issue that the Board was dealing with tonight was that the applicant's proposed building would exceed the maximum allowed lot coverage.

Jerry Henson said that the proposed building is only 3% over the maximum allowed lot coverage, and that didn't take into consideration the 15-foot City easement. Mr. Shields asked what type of easement it was? Mr. McDonald answered that he believed it was a utility easement.

Mr. Houghton said that if there is a 100-foot road right of way, the pavement may not go from one side to the other. The easement will be farther over than the road. Even though the owners are usually responsible for snow removal along the sidewalk, that property is actually in the road right of way.

Mr. Ferguson stated that if that wasn't on the property then it has nothing to do with the property. Mr. Henson said that if that area was considered, then they would be within the 35% allowed lot coverage. The total coverage once the proposed building is completed will be 38% of the total area of the legal description of the property. They need a variance of 3.8%.

Mr. Shields asked how many square feet the building would need to be reduced to be in compliance? The Board determined that it would need to be reduced by 287 square feet to be in compliance.

Mr. Shields explained to the applicants that one of the issues that the Board can consider is if the hardship is on the land. That hardship cannot be self imposed as is the case when someone wants to put a larger building on the lot than falls within the ordinance. The hardship must have something to do with the property (land) itself and must be unique to that lot. Mr. Ferguson said that the court has ruled on several occasions that if you are trying to build a structure in an area that exceeds the total allowed lot coverage, that is a self-imposed hardship because it has nothing to do with the land. In that case the court has ruled that the Board of Adjustments can't give a variance because it has nothing to do with the land. Mr. Shields explained that is why they wondered about the easement, but the easement isn't actually on the applicant's property and can't be considered in figuring the lot square footage. If it were on their property, they wouldn't exceed the coverage amount with this building.

Mr. Ferguson reiterated that the problem must be a hardship imposed by the lot, it must be unique to that lot, and must not be self imposed.

Mr. Houghton said that the problem isn't the proposed building, just the size of it.

Mr. Campbell said that the City could have created the hardship by changing the rules after the home was constructed. Mr. Henson asked how long it has been since the City imposed the 35% coverage? The Board did not know the answer to his question. Mr. Henson stated that in North Glen Colorado, they allow a 40% coverage on a lot.

Mr. Campbell said if someone wanted to approach the City to have the maximum amount allowed changed, they could do that and then perhaps this would be in compliance. Mr. Ferguson said that the courts say that the applicant can go to the Planning Commission and ask for that to be changed.

Mr. Ferguson explained that the applicant had the following options:

1. Reduce the size of the proposed building; or
2. Approach the Planning Commission to change the maximum amount of coverage allowed in the ordinance.

Mr. Houghton said the only other way the Board could allow this is if the applicant could prove that others in the area have more than 35% of their lot covered and the applicant should be entitled to enjoy the same right as those in the District.

Mr. Henson asked if they could get the land owners permission to get some measurements and bring them to the Board, if they would reconsider the issue? Mr. Ferguson answered if they got the measurements, the Board could consider it. Mr. Campbell stated that they needed to provide a reasonable number of instances in the District that exceed the allowed coverage of their lot, not just one in the neighborhood.

Mr. Campbell asked if the Board wanted to revisit this issue in two weeks? Mr. Ferguson said the Board could table this item and reconsider it on April 21, 2003.

**Mr. Ferguson moved to table the item.** Mr. Niskala seconded the motion. All members present voted, "Aye."

3. Adjournment

**Mr. Niskala moved to adjourn the meeting until April 21, 2003.** Mr. Shields seconded the motion. All members present voted, "Aye." The meeting adjourned at 6:38 p.m.

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_