

## BOARD OF ADJUSTMENT MINUTES

March 8, 1994

Present: Frances Spencer, Dean Thurgood, Verion Duncan; Kathi Izatt, Planning Commission Representative; Blaine Gehring; Planning and RDA Director; Shirley Chevalier, Recording Secretary

Excused: Paul Summers

Absent: Chairman Kirk Heaton, K D. Simpson

Frances Spencer chaired the meeting.

Approval of the minutes of January 11, 1994:

Mr. Gehring said the petitioner, Mr. Zumbo, through an attorney, has appealed this to the District Court and is now in a lawsuit. The minutes should not be adopted inasmuch as at least two of the other members who were present at that meeting are not here. The two alternate members sitting tonight have no knowledge of that meeting. He suggested these minutes not be adopted because of the circumstances surrounding the possible use of these minutes in that lawsuit.

Kathi Izatt made a motion to table the minutes of January 11, 1994 until the next meeting until all participating members are present; Verlan Duncan seconded the motion; voting was unanimous. Mr. Gehring stated that the attorney may want to call a special meeting to adopt those minutes.

**Petition 94-2** Dr. Candland Olsen, 776 South Woodmoor Circle - Permission to develop a flag lot with a driveway width of 16 ft. Ordinance requires 30 ft.

Dr. Olsen said that approximately two years ago this same request was submitted to the variance committee when he anticipated building a second home on a half acre of the property and dividing the property into two .6 acre lots. At that time flag lots were not allowed below 1300 East. The request was denied. Afterwards he was told there are other ways, under the (then) existing ordinances, which would not require a variance, namely a Planned Dwelling Group, with the understanding he could build both homes and could own both homes. At the termination of the construction, he could live in them or rent them or sell one of them, and although it was not the intent of the zone, that was the way to do it without a variance. Kathi Izatt asked Dr. Olsen was he told he could sell one? Dr. Olsen replied that they said after they were completed they were in a common ownership, but that one could be split off and there was nothing that could be done about it, that's just the way it would have to be done. Kathi said that would have been in violation of the ordinance and she doubts they would have told him he could do that. Dr. Olsen said he was just quoting Reed Booth (the Planning Director at the time), and the circumstances by which he could divide it off.

Dr. Olsen said he began to build the home to where it was 75% completed and attempted to get some financing to complete the project. The bank told him he needed to separate the lots. They would not loan on the whole package but they would on a separate home being built. The ordinances have changed since he made his original petition and flag lots are allowed throughout the city. He felt it would be best to reapply under the new flag lot provision. However, because of narrowing the flag lot stem from 30 ft. to 16 ft., it would require a variance.

Kathi Izatt said the first criteria the Board is directed to evaluate is unique circumstances. In the response to that particular question on the application, she is yet to understand what is unique about it. There are several properties in the city similar to this which have two homes in sole ownership. She asked Dr. Olsen if there is anything else he could tell her that is unique about his property. Dr. Olsen said he didn't think it was a unique property at all. He is sure there are many homes around the city that have more than one home on the lot. He guesses that the unique circumstance is that if he were to die or were not able to have a family in the home, he would not be able to sell it, or he can't borrow on it. He would like to clear that up so he has those options.

Mrs. Izatt told Dr. Olsen he was approved for a Planned Dwelling Group and was told that it must stay under single ownership. Dr. Olsen said he was told it had to remain under single ownership until it was completed, and at that time he could dispose of it however he wanted to or he could keep it. She asked if he was aware under the ordinance that it had to stay under one ownership? Dr. Olsen replied that under the ordinance, until it was completed, that is what he was directed to do.

Referring to Item #2 on the petition, Mrs. Izatt asked Dr. Olsen how is he deprived of privileges possessed by others in the neighborhood? Dr. Olsen said he doesn't know that he is deprived of any privileges, other than he is told he cannot

have separate ownership.

**Frances Spencer said her concern is the driveway** being 16 ft. as opposed to the 30 ft. required by ordinance to get emergency equipment in and out. The Board cannot go against the zoning ordinances.

Mr. Gehring said this is not in the Foothill Zone, but there are some provisions within the Uniform Fire Code which has been adopted statewide, which states that buildings beyond 150 ft. from the street would have to have at least a 20 ft. wide paved access. It does not specify a grade. The Fire Chief has to determine whether he has adequate access in and out of there. In this particular case, this would be determined at the time of the final inspection of the building. There is concern with the slope of the rocks within this short width, that adequate fire protection can be provided back to the rear house.

Layne Forbes, attorney representing 12 neighbors that all live within the area, provided the Board with a letter signed by 7 of the 12 neighbors who are in opposition. They did not oppose his prior applications or petition, but they strongly feel they must oppose this petition because if it were granted, it would be adverse to the welfare of the residential area. The history is that there have been three prior applications, this is the fourth. On the third application, Dr. Olsen was permitted to build under the concept of the Planned Dwelling Group, and one of the conditions of both the Planning Commission and City Council, was that it remain in single ownership. It is true that the Planned Dwelling Group provision in the zoning ordinance has since been repealed. A house is permitted to be built behind the house on the street, but there are no provisions with respect to minimum access, etc. To remedy that situation, the ordinance now permits flag lots in all zones of the city.

Mr. Forbes further stated that one of the strict requirements of the flag lot is the fact that the staff part must be a minimum of 30 ft., and the Fire Code requires the paved portion must be 20 ft. These are minimal requirements for safety reasons and they must not be tampered with. The petition must fail for various reasons. There is no legal frontage because the staff does not have 30 ft. and is too narrow. Vehicles must be able to go both ways, and if a vehicle is stalled, you could not get around it. The driveway to the back house starts and actually crosses over the driveway to the front house. In cases where there are two flag lots, the staffs have to be a minimum of 50 ft., 25 ft. for each. Respectfully, the Board of Adjustment is a creature of statute. The powers of the Board are derivative and not inherent. The Board has only the powers granted them by the State statute, and that statute says the variance can be granted only if all the requirements are met. The statute says the burden of proving is on the petitioner. After reviewing the criteria, Mr. Forbes addressed the Board saying they cannot grant the variance, they have no authority to do it because there are no facts here that justify it. His clients do not oppose the finishing of the house and someone in Dr. Olsen's family moving in. If the Board granted the variance, this then would be a property right possessed by other property and would, therefore, make it much easier for others to come in from that area and ask for a variance for the same reason, that they have met one of the requirements which is a property right possessed by other property. For all the above reasons, Mr. Forbes firmly submitted to the Board that Dr. Olsen has not met his burden and the variance should not be granted.

Richard Stringham, architect for the house Dr. Olson is building, said this is a wonderful site for a home among the trees and a natural setting. It was Dr. Olsen's understanding that it was legal to do so and that he would be able to sell his house when he completed the building. He proceeded on that basis at considerable expenditure. He did not intend to block the ordinance, he just wanted to use his property. Mr. Stringham said he did not know what detriment this would cause the property to the east since the house is already there, and well hidden from everything else around it. He feels this is a special condition, and the Board of Adjustment can approve a variance for special conditions. Mr. Stringham said he felt a variance was justified to allow Dr. Olsen to use this as a separate piece of property.

Kathi Izatt commented that Mr. Stringham was present at the Planning Commission meeting when Dr. Olsen received approval for the Planned Dwelling Group, and at that time it was made painfully clear that the entire lot was to remain in single ownership. She was on the Planning Commission and recalls seeing both gentlemen there. The minutes reflect that they were both present. She understands that the Planned Dwelling Group is no longer applicable, but Dr. Olsen received permission to commence construction of the second home on the basis of sole ownership for both structures.

Kathi Izatt made a motion to deny the application for the variance on the basis that the applicant has not substantiated unique circumstances to the property and it does not comply with the criteria the Board must evaluate for a variance; seconded by Dean Thurgood; voting was unanimous to deny the variance.

Meeting adjourned at 7:45 PM.