

BOARD OF ADJUSTMENT MINUTES
December 13, 1994

Present: Chairman K. D. Simpson, Dean Thurgood, Syd Shurtliff, Mike Sant; Dick Dresher, Planning Commission Representative; Blaine Gehring, Planning and Redevelopment Director; Connie Feil, Recording Secretary.

Absent: Paul Summers and Verlon D Duncan.

The minutes of October 11, 1994 were approved as written by majority vote.

Consider appeal of staff interpretation of Section 14-13105 D. of the Bountiful City Zoning Ordinance, William Conover, applicant.

Mr. Simpson opened the meeting by introducing all the Board and Staff Members to Mr. and Mrs. Conover and Mr. Kohler. Mr. Simpson then turned the time over to Mr. Gehring to provide the Board with information regarding staff's interpretation of the Zoning Ordinance in relation to the appeal.

Mr. Gehring explained that Mr. Richard Kohler, architect for William Conover, has filed an appeal with their justifications and their interpretation of the Zoning Ordinance. Mr. Kohler's appeal is in reference to the definition of "building" in Section 14-13108. Mr. Gehring also mentioned the staff's rebuttal to this appeal and the interpretation of the ordinance is clear and correct. If the Board agrees with the Staff they vote yes, if not they vote no and uphold the appeal.

Mr. Simpson turned the time over to Mr. Kohler for his comments. Mr. Kohler gave all Board and Staff members a lengthy report on his interpretation of the Zoning Ordinance for his appeal and request for a variance for Lot #7 in the Ridges of Maple Hill Subdivision. Mr. Kohler wants to put a driveway on a 30% slope, which in his opinion, should be granted. Mr. Kohler is saying that the staff has asserted that the ordinance can control and determine where a driveway can be located. In his opinion the control is not there.

Mr. Kohler addressed the meeting with his interpretation of the meaning "building" in the ordinance. In his opinion the meaning or intent of building is to "limit the building" on a property. He feels that since the word "driveway" isn't mentioned in the ordinance it doesn't apply to this situation. Mr. Kohler believes that the intent of the ordinance would apply to patios, tennis courts, etc. In his opinion if the intentions were to limit driveways it would have been written in the ordinance. There would be something written to explain the size, location etc. but since nothing has been written the intention doesn't mean driveways.

Dick Dresher mentioned to Mr. Kohler that the Staff explains to all contractors, architects, owners etc. the conditions of the ordinance from the first time coming to the staff. The ordinance is very clear on the meaning of no building on a 30% slope. Mr. Dresher asked Mr. Gehring what response Rusty Mahan, City Attorney, had given to the meaning of the ordinance. Mr. Gehring responded that, Mr. Mahan has studied the ordinance

and it has been written with consistency and is clear on the meaning. Mr. Gehring explained that the staff feels the ordinance is complete and consistent. The interpretation that has been given is very clear and has been given since 1978.

Mr. Gehring mentioned the letters and phone calls in opposition for the Conovers to build this driveway. All of the surrounding property owners had to comply with the ordinance. It would have been less expensive for them to build if they hadn't been required to comply with the ordinance. All the homes have the same problem of the 30% grade. All owners have had to make adjustments on their homes to comply with the ordinance. Joe Featherstone, developer of Stone Ridge, called the City Engineer in opposition to this variance. As a developer he had to create larger lots to allow for the 30% of unbuildable land. If this variance is granted it will cause owners to appeal for variance after variance.

Mr. Simpson explained that one of two motions can be made. Motion to sustain the staff's decision or to overturn the staff's decision. Syd Shurtliff made a motion to sustain the staff's position, motion was seconded by Dick Drescher. The motion was unanimously approved.

2. Public hearing to consider a variance for permission to build of 30% or greater slopes at 1888 E Ridge Point Drive (Lot I& of the Ridges of Maple Hills Subdivision), William Conover, owner.

Mr. Kohler, architect for the Conovers, claims that the City staff's interpretation of prohibiting any construction on slopes over 30% is incorrect. Mr. Kohler would like a variance granted to build a driveway on a slope of 30%, but only the driveway not the house. At one time this lot had been regraded two or three times and fill has been brought in. In his opinion by building the driveway on the regraded slope, where there is no vegetation, and saving the remaining shrub oak, is not going against the ordinance.

Mr. Gehring explained to the Board members that during the construction of the surrounding homes the fill was dumped on this lot. The City made the contractors regrade and reestablish the slope. Mr. Gehring clarified, that the ordinance requires certain things and that is all the staff may approve. The staff may approve only those plans that meet the ordinance. The homes on this same street have the same type of lots with the 30% slope. Mr. Gehring and staff feel the lot is buildable with some changes on the design of the home.

A lengthy discussion was made between the Board members, staff, Mr. Kohler and Mr. and Mrs. Conover regarding if the variance will be granted. Mr. Simpson prefers that a variance not be given unless there is no other alternatives. Mr. Simpson explained that the Board has to look at everyone who comes before them to see if there is anyway possible to build before a decision is made. It has to be made clear that there is no other alternative before a variance can be granted. In this circumstance it seems that there is a way to build and comply with the ordinance.

All Board members made suggestions on where to move the driveway, bringing

the home closer to the street, redesigning the home to meet the ordinance. Some of the shrub oak may have to be removed but the driveway will be safer and the ordinance will be met. All the homes built have to meet the ordinance and sometimes the original plans have to be changed.

Mr. Kohler argues with the staff on the issue of modifying his plans. In his opinion the plan that has been submitted is the only way it can be done. The following are the requirements from the ordinance Mr. Kohler is saying that the Conover's qualify for.

The board of adjustment may grant a variance only if:

1. If the ordinance would cause an unreasonable hardship for the applicant.
2. If there is special circumstances attached to the property.
3. The spirit of the zoning ordinance is observed.

If the driveway has to be changed some of the oak will have to be removed. In Mr. Kohler opinion this is going against the ordinance by removing the natural vegetation. This also puts a hardship on the Conovers by having to change their plans to move the driveway and the garage. This will cause a great expense. Mr. Simpson asked Mr. Kohler if he knew what the staff wanted him to do. Mr. Kohler replied saying that the staff wants some variation of the plans to meet the ordinance. Mr. Kohler explained that the Board wants the same thing, to build the home on the lot with the approval of the staff, and the requirements of the ordinance met.

Mr. Simpson asked if there were any more comments before the hearing was closed. one of three options can be made, to deny the variance, to grant the variance or to put it on hold until some other arrangements can be made. Syd Shurtliff made a motion to turn down the request for the variance at 1888 E Ridge Point Drive. Motion was seconded by Dean Thurgood. The motion was unanimously approved.

Meeting adjourned at 8:40 PM