

BOARD OF ADJUSTMENT MINUTES
April 12, 1994

Present: Chairman Kirk Heaton, Paul Summers, Vedon Duncan; Kathi Izatt, Planning Commission Representative; Blaine Gehring, Planning and RDA Director; Shirley Chevalier, Recording Secretary (K. D. Simpson arrived at approximately 8:25 PM)

Excused: Frances Spencer

Approval of the minutes of January 11, 1994 were postponed until May 10, 1994.

The minutes of March 8, 1994 were approved by majority vote; Paul Summers was not present at this meeting.

Petition No. 94-3 Kyle H. Brewster, 3855 South Bridlewood Drive - Permission to construct a single family dwelling with a front yard setback of 26 ft. Ordinance requires 30 ft.

Mr. Brewster said his lot is different from every other lot in the area. They are all square, but his lot slopes down at an angle. This causes a 4 ft. corner of the home to protrude into the front setback line. He was asked if he considered making his house deeper instead of longer. He said it would be distracting. He was asked if he could build a home that meets the setback requirements and still have a nice home similar to those in the neighborhood. He replied that the architectural review committee would prefer a home this size which would be more compatible with existing homes in the area. They feel a smaller home would devalue their properties. The neighbor's house has a 15 ft. setback, and if he could match that it would comply.

The design of the house is causing the hardship, not the land. The Board has to know what undue hardship it will cause if the variance is denied. Mr. Brewster said the house would have to be smaller. The neighbors would prefer this size because it gives value to their property. It cannot be redesigned, according to Mr. Brewster, because this type of construction is a steel building with beams bolted in five places into the foundation. The Board said the people are concerned with the square footage, not how long or deep it is, and he could build a different style. Mr. Brewster said he did not know what the restrictive covenants are for his subdivision, but his engineer only designs this style.

When asked what his recommendation would be, Mr. Gehring said because of the shape of the lot and it was not an unreasonable size home for this area, he felt it could probably qualify as a unique circumstance.

Verlon Duncan said he does not know what the unnecessary hardship is if the variance is denied. The only hardship that would exist is that Mr. Brewster would have to build a slightly smaller home. The neighbors are saying they like the 3000 sq. ft. and there is a potential that they would be upset if it was 2800 sq. ft.

Verlon Duncan made a motion to grant the variance; Paul Summers seconded the motion; Kathi Izatt and Kirk Heaton opposed. The motion failed.

Kathi said she would like to see the restrictive covenants to know what the square footage requirement is, and some engineering data that says it cannot be shaped in any other fashion for steel construction. Mr. Brewster said there is no other design for this particular type of steel construction. Kathi said if he could get a letter from the designer that says steel structures have to be done in a rectangle and you cannot put a porch on the back like there is on the front, then come back before the Board.

Paul Summers made a motion to table this item to May 10, 1994; Vedon Duncan seconded the motion; Kathi Izatt voted aye; Kirk Heaton voted nay; motion passed by majority vote 3-1.

Petition No. 94-4 **Rupert** Gandy, 166 West 300 South - A special permit for structural expansion of a home as a nonconforming use in a commercial zone.

This home is located in a commercial zone, between the power plant and an office building, which makes it legally nonconforming as a residential use. The zoning ordinance provides for a special permit for expansion or structural alteration of a nonconforming use or building granted by the Board of Adjustment.

Mr. Gandy said they plan to build a carport to protect their car. The power plant's equipment gives off a lot of steam, and it would help cut down on the noise from the plant. In the winter there is ice buildup.

Mr. **Gehring explained that everything else** is in compliance. Technically the side yards in this particular zone are zero as long as they do not abut next to a single family residential district. The Board can grant the special exception, but the building code will determine how far back from property line it needs to sit.

Alden Higgs, 1862 South 900 East, was Mr. Gandy's neighbor for many years, and he feels this will help alleviate the noise and will enhance the area.

Paul Summers made a motion to approve the special exception; seconded by Verlon Duncan; the motion passed unanimously.

Petition No. 94-5 Glenn Carroll, 1890 South 900 East - Permission to construct an attached garage with a front yard setback of 18 ft. Ordinance requires 20 ft.

Mr. Carroll gave some background on his home. It was built with a one car basement garage accessed by a steep driveway. After the home was built, the city put in the street which is two to three feet higher. This property slopes both from south to north and from east to west. The main problem is the drain at the

bottom of the driveway with cement on both sides that acts as a funnel. When it rains, if there are leaves or other debris around, it fills the drain and floods the basement. In the winter months, the garage cannot be used since the driveway is so steep it is dangerous.

A small one car carport has been built on the south side of the home. Mr. Carroll has a large size van with 15" on both sides to move about in. When his family loads into the van, they have to stand in the rain or snow. He has three vehicles and has built a small concrete pad for parking one. To solve his problem he has to request either a side variance or a front setback variance. He wishes to build a two-car garage approximately 16 ft. 6 in., and get rid of the drain in the driveway. His intent is to remove the entire drive approach and part of the cement as well as the retaining wall on the far north, so he can raise the ground and stop flooding the basement. He feels he has unusual circumstances that do not allow him to use his property as the neighbors do.

Mr. Gehring explained that the slope of his property would probably allow him a 20 ft. setback. There is an automatic exception in the ordinance that says at the midpoint of the property measured 50 ft. back, if there is a rise or fall in elevation of 10 ft., it allows a reduced front yard setback of 20 ft. It used to be 15 ft., and a lot of the homes on that street were allowed that exception without a variance.

Chairman Heaton asked Mr. Carroll to explain to him how this variance is necessary for the essential enjoyment of his property. Mr. Carroll replied that he has a safety hazard and a loss of property value in that his vehicles are exposed to the elements. If he is allowed to do what his neighbors have done, he could have an enclosure for two of the three vehicles. His family could get in and out of the vehicle in a closed area without having to go out into the rain or snow.

Chairman Heaton said state law prevents the Board from granting a variance based on personal preference and conditions created by the owner. The property has been used and enjoyed for over 10 years, and they are now asking for a variance because they want to improve the home. Mr. Heaton said he needed help in defining the essential hardship after using the home for 10 years without a hardship. Mrs. Carroll said they have had that hardship the whole time they have been living there. They did not enjoy the flooded basement. Mr. Carroll said he doesn't see why he should be penalized for the next 20 years because they have put up with a bad situation for the last few years.

Alden Higgs, who lives nearby at 1862 South 900 East, said this is a very dangerous street. Cars travel over the hill well over the speed limit. To back a vehicle out into that street is a hazardous situation. Mr. Carroll's neighbors support the variance.

K D. Simpson arrived at this time but disqualified himself from this hearing.

Vedon Duncan said he felt they had demonstrated substantial hardship based on the garage they could not have, the safety hazard with the ice and snow, and the problems with the current garage and flooding. To deny it would deny them the proper use of their property. For a two foot variance that is not inconsistent with the neighborhood, and where there are so many letters of approval from the neighbors, he feels all of the justification is there to accept this petition.

Kathi Izatt disagreed. The hardship that the Board is given under the statute, indicates that the hardship must be a product of the property, not of the size of family, and not of economic circumstances. The fact that they have a large family doesn't, in her opinion, create a hardship.

Paul Summers said his feeling is that the hardship relates to the street and the associated safety factors. Chairman Heaton said there are two or three lots at the peak of the hill that have this problem. Mr. Summers said they are not asking for a variance. Mr. Heaton agreed and said by that token his property is no longer unique, because he has people across the street and on either side that have the same problems.

Paul Summers made a motion to approve the variance; seconded by Vedon Duncan; Kathi Izatt and Kirk Heaton opposed. The motion was deadlocked.

Mr. Carroll asked what options he has. Kathi Izatt said he could build a one car garage to protect the van and allow access for the family. It would not substantially change the way the property is used now.

Chairman Heaton said his and Mrs. Izatt's vote reflects that this request does not meet the legal standard required for granting a variance.

K D. Simpson mentioned to Mr. Carroll that the Board was not able to make a decision. There needs to be another vote until it is either denied or granted.

Chairman Heaton made a motion that the variance be denied. Kathi Izatt seconded the motion. Paul Summers and Verion Duncan voted against the motion. Again the vote was tied. Chairman Heaton then made a motion to postpone this petition until May 10, 1994; seconded by Kathi Izatt; motion unanimously approved.

Meeting adjourned at 9:00 P.M.