BOARD OF ADJUSTMENT MINUTES
July 11, 2000

Present: Chairman Bud Neslen, Brent Wynn, Dean Holbrook, Kevin Murray, City Prosecutor J.C. Ynchausti, Planning Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Planning Commission Representative Mark Green, Vice-Chairman Ron Barlow and Leon Thurgood.

Bud Neslen welcomed all those present and had the Board Members introduce themselves. Dean Holbrook made a motion to approve the minutes for June 13, 2000 as written. Kevin Murray seconded the motion and voting was unanimous. The approval of the minutes for September 14, 1999 minutes was postponed until more members are present to vote.

1. Consider a variance to a required 15% maximum slope for a driveway at 744 N. Eagle Ridge Drive, Brandon and Julie Crossley, applicants.

The following is the memo that Blaine Gehring sent to the Board Members concerning this request:

BACKGROUND

Brandon and Julie Crossley have built a home at 744 N. Eagle Ridge Dr. In the process of construction, the driveway was built at a degree slope rather than a 15 percent slope. A fifteen degree slope calculates out to be around 27% slope. Portions of the driveway, as constructed, approach that 27% slope. Under the provisions of the Foothill Overlay Zone of the Bountiful City Zoning Ordinance driveways may not exceed 15% slope. The City Building Department will not issue an occupancy permit for the home until the problem is resolved by either a variance or by redoing the driveway to the proper slope.

ANALYSIS:

Under Section 10-9-707 of the Utah State Code (amended), anyone desiring a waiver of zoning requirements can apply for relief to the Board of Adjustment. The Board of Adjustment may grant such a waiver or variance to the zoning requirements *only if* the variance meets the requirements in Section 19-9-707. This is a review of those requirements and how this request meets or does not meet them.

First, the Board of Adjustment must find that '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." The statute then defines how the Board of Adjustment shall determine if there is unreasonable hardship. It states, "in determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship..., the Board of

Adjustment may not find hardship unless the alleged hardship: (A) is located on or associated with the property for which the variance is sought; and (B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.' And further, 'in determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship..., the board of adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic."

In this instance, a site plan was approved for the construction of the home showing the driveway at the 15% slope. The lot was sufficient to allow for such construction within the ordinance with no problems. (In fact, this lot was one of three granted a variance by the Board of Adjustment to allow for use of slopes over 30% towards the rear of the property. Also, that variance request was made by the City because we recognized the unique problems with the slopes directly under the "B" on the hill.) "In the fall of 1999, Staker Paving and Construction Company, Inc., graded and paved our driveway," state the applicants in their application. However, the driveway was constructed at 15 degrees (27% slopes) in error. And, as noted on the site plan for the variance, one section even reaches 29½ %. Thus, the hardship has been created by the property owners acting as their general contractor which is self-imposed. Further, which it will be expensive to redo the driveway, economic hardship under the statute may not be considered.

Second, "there are special circumstances attached to the property that do not generally apply to other properties in the same district." And, "in determining whether or not there are special circumstances attached to the property..., the Board of Adjustment may find that special circumstances exist only if the special circumstances: (i) relate to the hardship complained of; and (ii) deprive the property of privileges granted to other properties in the same district."

The applicants state in their application that the special circumstances peculiar to this property are that "the house sits higher than any other in the neighborhood and the lot is steeper." And with regards to privileges granted other properties in the same district, they write: "There will be no off-street level parking in the driveway if we have to change the slope. We don't want to have to pull out of the garage in the winter and make a direct sharp turn (going backwards) down the driveway if it is icy. It is much better to be able to back out of the garage onto a level surface (as it is constructed), turn the car around and head forward down the driveway. Between November and April (during winter conditions), if we park on the street, we will violate City Code. We would not use a driveway that was icy and steep all the way to the garage."

In the statute, the "district in which the property is located, not necessarily the adjacent neighborhood. In this case, the zone is an R-1-12(F) zone which is single family residential, 12,000 square foot minimum lot size and subject to the provisions of the Foothill Overlay Zone. Numerous homes throughout the city is this zone have been built on steeper slopes and higher on the lot than the Crossley's home with a driveway which does not have a level parking area in front of it. And, those driveways have met the zoning ordinance requirements not exceeding 15% grade. The zoning ordinance does not require a level surface in front of a garage. Thus, while the circumstances claimed by the applicants apply to the hardship they are complaining of, the applicants are not being deprived of privileges granted under the ordinance to other properties in the same zoning district throughout the city. And both provisions must be met for

the variance to be granted.

Third, “granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.” A “substantial property right” is a right granted under the zoning ordinance, not necessarily one created by precedence of design or construction being able to back out of a garage and turn around on level surface in front of that garage is not something required under the ordinance. It is something designed into a plan for convenience and in most cases, on lots that can allow for it. And, there is not a single driveway in Bountiful which even approaches a 27% slope.

Forth, “the variance will not substantially affect the general plan and will not be contrary to the public interest.” The general plan deals with land uses and this is a single family home in a single family zone. A driveway of 27% slope would be considered unsafe, especially in icy conditions, even if the vehicle was coming down it forwards. That steep of a slope combined with the weight of a vehicle would greatly increase the chances of the car sliding down and icy or snowy driveway and into the public street thus compromising the public interest and safety.

Fifth, “the spirit of the zoning ordinance is observed and substantial justice is done.” The spirit of the zoning ordinance is that a driveway of greater than 15% slope is not considered safe under most circumstances, especially in icy or winter conditions. To allow something 12% beyond that standard is not keeping with the spirit of the letter of the zoning ordinance. Substantial justice is done when the same standard is upheld for all property owners in the same circumstances. To do otherwise and allow to have something different simply because they did not follow their plans is not substantial justice.

Mr. Gehring recommends that the variance be denied on the grounds that it does not meet he criteria the Board of Adjustment must find as per State Law. The hardship being claimed has been self-imposed and it is not a hardship created by the circumstances peculiar to the property. There are also no special circumstances attached to this property that do not generally apply to other properties in the same zoning throughout the city.

Brandon and Julie Crossley, applicants, were present. Dave Curtis, neighbor and commercial developer representing the Crossleys, was present. Jerry Crawford, relative and Brad Wilson, neighbor, were also present.

Dave Curtis explained that this is a situation that the slope is steeper than allowed by code. The code is 15% grade and this driveway is steeper than the allowed. After Staker Paving put in the driveway they came and shot the driveway grades with a laser transit, which in Mr. Curtis’ opinion is the best instrument to be used to determine grades. Mr. Curtis presented a drawing, which Staker Paving provided, showing the percentage of the different grades along the driveway. Staker Paving used the laser transit to measure the grades by going across the driveway. The percentage of the grades range from 3½ % to 29½ %. Mr. Curtis mentioned that they are dealing with grades that exceed code but not that much and the section which is 29% will come out and be corrected.

Mr. Curtis explained that when looking at the top of the driveway the minimum grade for safety would have to be 7½ %. Julie Crossley mentioned that the 29½ % was done for erosion control and to prevent a bottle neck affect at the bottom of the driveway. Staker Paving stated in a letter that this is a safe usable driveway and Mr. Curtis agrees with them.

Brent Wynn asked if the final drawings were approved at 15% which Mr. Curtis replied "exactly", it was approved for the entire driveway to be at 15%. The Crossleys know that the driveway is not in compliance but it is real close and are they willing to change the section of 29 %. Brandon Crossley mentioned that Staker Paving put in the driveway at their own discretion feeling that this would be the safest.

The Crossleys were asked if they have been living in the home and when did they know that the driveway was not done correctly? The Board was told that they have not been living in the home and they found that it was not done correctly after the driveway was completed and the City came to do the final inspection.

Dave Curtis presented several pictures of other driveways in Bountiful that look steeper than what the Crossleys now have. Mr. Curtis was told that the Board of Adjustment makes their decisions on a case by case basis and the pictures presented did not apply to this case. The Board members were reminded that their decision cannot be based on the pictures.

Mr. Curtis feels that the driveway is not that far over the code and does not pose a problem. To change the driveway to a 15% grade will create a very dangerous situation. Safety is the factor and this driveway is safe. If the Crossleys have to change to 15% grade they will have to park on the street in the winter, which is against code.

Brad Wilson, residing at 761 N. Eagle Ridge Dr., lives across the street and has no problem with the driveway.

Jerry Crawford, relative, personally feels that a 15% grade will create a big problem at the top of the driveway and will be too dangerous.

Bud Neslen and Brent Wynn feel that this situation has been self imposed. There was a discussion that if the 29½ % is corrected there will be two sections at 17% remaining but the rest of the driveway will be in compliance. Brandon Crossely said that he would take out the 29½ % himself and replace with landscaping and if necessary, for drainage, Mr. Crossley will build up the curb or place some type of drain out the side.

J.C. Ynchausti reminded the Board members that the pictures presented and the neighbor's opinions have no bearing with the case and should not be considered when making their decision

Kevin Murray explained that he had a neighborhood meeting with the Crossleys in which he suggested to them to apply for a variance. After receiving his packet with Blaine's memo he decided to deny the variance. Now, after hearing the circumstances, he feels that there is enough of a reason to find a hardship to grant this. He feels that since last month a variance was

granted for a second garage in order to bring a RV off of the street that this variance should be the same. Mr. Murray struggles with the consistency of the Board's decision based on the willingness to grant a RV parking space to keep RV off street for safety reasons. He feels that with the construction of this lot there is enough of a hardship to use safety reasons for granting a variance based on correcting the 29% slope.

Brent Wynn mentioned that he came with the intent of denying the variance. It bothers Mr. Wynn to see some driveways, sideyards, etc. that do not meet code and get passed by. Staker Paving has made the error not the Crossleys.

J.C. Ynchausti mentioned that in the application section 10-9-707 #1 Describe the variance request: The Crossleys answer was "To have our driveway approved as it presently is constructed (greater than 15% at the beginning of the driveway), and an occupancy permit granted". This Board does not have the authority to grant an occupancy permit. The application needs to be amended to delete the occupancy permit.

Brent Wynn made a motion to grant a variance to a required 15% maximum slope for a driveway at 744 N. Eagle Ridge Drive provided that the 29% slope be fixed up and past by a final inspection. The final inspection will show that there will not be any erosion problems to wash out the driveway. Kevin Murray seconded the motion and voting was unanimous.

Meeting adjourned at 7:36 p.m.