

BOARD OF ADJUSTMENT MINUTES
December 14, 1993

Present: Chairman K D. Simpson, Kirk Heaton, Frances Spencer; Blaine Gehring, Planning and Redevelopment Director, Shirley Chevalier, Recording Secretary

Absent: Gene Bangerter, Mick Johnson, Planning Commission Representative

The minutes of November 9, 1993 were unanimously approved as written.

Petition 93-8 Permission to build a single family residence with a reduced front yard setback of 15 ft.

Ordinance allows 20 ft. The property is lot 625, Chelsea Cove, Plat 6. Marion D. Carbiener, petitioner.

Mr. Carbiener explained that this property has three unique situations which makes it very hard to find a house plan that fits and meets the restrictive covenants of the subdivision. They are: 1 - A 55 ft. drainage easement that runs through the middle of the property; 2 - a ravine runs through the property; 3 - the property is pie-shaped tapering from front to back. The easement is a drainage easement for flood control. The driveway will be over the easement which is acceptable to the city.

Mr. Carbiener said he had talked to some of the neighbors about his plans, but had not been able to find anyone representing an architectural review committee. He felt that since this was an older subdivision with most of the lots built upon, the committee no longer exists. However, they have the covenants and followed all the rules regarding square footage. This design is the best they could do after three sets of plans and two builders.

Linda Irvine, 2860 So. Oakwood Drive, said she knew nothing about what was planned for building on this lot or the time schedule. She asked to look at the plans.

Chairman Simpson told the petitioner that if the variance is granted, he would like them to get with the neighbors to see if this is what they want.

Kirk Heaton made a motion to approve petition 93-8; seconded by Frances Spencer; voting was unanimous.

Petition 93- Permission to build a portion of a house on slopes greater than 30%. Ordinance does not allow building of any kind on slopes greater than 30%. The property is lot 50, Maple Hills No. 2, Plat B. Rodger Mitchell, petitioner.

Mr. Mitchell explained that he wanted to place the home down into the grade to keep the elevation lower, not to block the neighbor's view, and not to look out of place in the neighborhood. He designed the home around the trees, as he wants to save as much vegetation as possible. If he builds out of the 30% slope, he would have to destroy a number of trees, exposing the home. This would also place it next to his neighbors home.

Mr. Mitchell said he was told by people in the engineering and zoning departments that he was exempt from the 30% slope restriction, the reason being that it was platted prior to the hillside ordinance going into effect. He was later told by Mr. Balling that it was not exempt due to a City Council approval with the 30% slope one of the conditions of approval. Mr. Gehring explained that at the time the foothill ordinance was being drafted and considered, this particular subdivision was being approved. All the conditions in the foothill ordinance were placed as conditions of approval on the subdivision even though the ordinance was not in place. This means the 30% rule is applicable.

Mr. Mitchell said the property does have buildable area, but it is in the wrong portion. He feels this is a special circumstance to this lot. All lots do not have the buildable area right next to the neighbor and on the higher elevation, plus the vegetation is in the area of the flatter portion. There are other property owners who have enjoyed their property due to the fact that they built on 30% slope or greater, apparently approved without the knowledge of the Engineering Department. He feels this plan helps save the watershed and enhances the ordinance.

Mr. Gehring said he and City Engineer Jack Balling are concerned about the 30% slope. The reason the lot has sat for so long is that it is difficult to build on. A change has occurred in the last couple of months. With adoption of the new zoning ordinance, the City Council set a 15 ft. minimum side yard in the foothill area above Bountiful Boulevard, so there is no longer an 8 ft. side yard. This will be an even further separation from the neighbors house. If you draw a 5,000 sq. ft. building pad with a minimum width of 50 ft. as shown on the site plan, a majority of the pad sits in a non-30% slope area, providing about 3500 sq. ft. of space to build a house. Another concern is Mr. Balling sees a problem with the drainage ravine which is active. The back of the house sits within 5-6 feet of that ravine. A very heavy runoff will flood part of the deck area, and it needs to be moved from there. Staff is mostly concerned about the fact that there is a buildable area on this lot, and opposes the variance on the basis that it can be built on without violating the 30% restriction and setting a precedent.

Ted Skeen, 2629 Cave Hollow Way, is in favor of the variance. He feels it would help the neighborhood if it were not crowded up into the upper portion of the lot

Glen Dawson, 1220 E. Sunrise Place (Sunset Hollow Subdivision), said he did not want to speak to this specific case. He is most concerned, as a member of the Architectural Control Committee, of the precedent that might be set for his subdivision. Phase 2 will soon be going in above where the present homes are located. They are concerned about erosion and drainage and the application of the ordinance there.

Mr. Mitchell said he talked to the City Attorney about the 30% grade issue, and he feels it is important to make a distinction that he is not asking for a variance to the ordinance, rather for a variance to the condition put on this lot in this subdivision. The City Attorney sent a memo to Jack Balling in answer to his question as to whether the Board of Adjustment could grant a variance. The City Attorney said the Board does have a right to make a variance on the 30% slope. He read a copy of the memo to the Board.

Mr. Gehring said Mr. Balling's concern was that in this particular instance the condition was placed on it by the City Council not as an ordinance but as a condition of approval. He feels Mr. Mahan is saying it is still the ordinance the Board is ruling on, not a condition, and the fact that it is an ordinance being given a variance, will set a precedent. The people from Sunset Hollow recognize that same thing. There will be more lots with 30% slopes that are difficult to build on continually coming before the Board of Adjustment seeking a variance from the 30% unless there is a real established hardship. In this case he does not think there is one.

Mr. Mitchell said he felt there was a substantial hardship being ignored in this case. He has moved ahead in good faith, talked to the city, designed his plans, gone forward, and when he had the backhoe ready to go, could not get a building permit because suddenly this thing comes up and they argue among themselves whether it is exempt or not. He felt the building department became adversarial, and were not ready to discuss it or work it through.

In answer to a question on the city's liability, Mr. Gehring said that on all subdivision plats since the Foothill Ordinance was adopted, (this case is a special exception because this subdivision was granted with conditions), there has been a disclaimer put on those plats saying the city does not warrant that each one of these lots is buildable. If a lot has sat in a subdivision that is well over 10 years old and has not been built on, it should raise a red flag to somebody that there may be some problems with it and there should be some checking into why. That is the reason the city asks for a certified topography map from a licensed surveyor or engineer to make sure the topography is correct. Staff will then review it as to the 30% slope. If they are claiming that those things are not accurate, they need to have it resurveyed because the city has to go on what information is submitted by a licensed certified engineer or surveyor. The plan before the Board has a surveyor's stamp.

Mr. Heaton said the Board cannot make or change the laws. The law says the Board can grant a variance only in a situation where a piece of property is so unique that you cannot do what the other people in the neighborhood are doing, i.e., building homes and enjoying them. Unless the Board can see this is absolutely unique and different from other places - and it cannot be self-imposed uniqueness or personal preference uniqueness - we cannot grant a variance. He asked Mr Mitchell why this property is so unique that he is deprived of building a home in which he can live and enjoy it. Mr. Mitchell said the home he would like to build and enjoy is this home and he would like it to be in the trees. He is being told he has to build a home that sits up above the road.

Mr. Gehring was asked about the 5000 sq. ft. of buildable space, to which he replied that there has been an area outlined on the site plan that is 50 ft x 100 ft. Part of it does go into the 30%, however a good three-fourths of this lot is not in 30%. There is still 3500 sq. ft. that is at least 30-35 ft deep by 90 ft. without encroaching in the 30% that a home could be built

on. With the 15 ft. requirement, the Board could grant a variance of 7 ft. back to the original 8 ft. on the side yard, but the neighbors object to that. Mr. Gehring again said he feels they are going to set a precedent that we don't want to get into because you are going to have every questionable lot in here for a variance.

Mr. Heaton said he was not worried about precedent because no prior decision of the Board on a lot can affect the next lot since each lot has to be unique. Mr. Gehring said this lot is not unique. There is buildable space there that can be used that is not in the 30%.

Chairman Simpson said he has some concern about the relationship with the city officials that have helped Mr. Mitchell from the time he started this process. The interaction between all parties seems to be non

productive. He further stated he cannot support granting the variance because he is having a hard time looking at this as a unique piece of property. He can support a return to working with the city officials to see if there is something that can be done and come back to the Board in thirty days.

Chairman Simpson made a motion to table petition 93-9 until January 11, 1994 giving the petitioner and staff the opportunity to sit down and go over it again. He stated he was interested in the letter from the attorney. He does not understand it quite clearly enough. He asked Mr. Gehring to ask the attorney to address that specific legal question in more detail specifically for the Board. He asked Mr. Mitchell to sit down with the city engineer and if he has to come back for a variance, at least the Board would know that he had done everything possible. Frances Spencer seconded the motion; voting was unanimous.

Meeting adjourned at 8:25 PM.