

BOARD OF ADJUSTMENT MINUTES
January 11, 1994

Present: Chairman K D. Simpson, Kirk Heaton, Frances Spencer, Paul Summers; Kathi Izatt, Planning Commission Representative; Blaine Gehring, Planning and RDA Director, Shirley Chevalier, Recording Secretary

The minutes of December 14, 1993 were approved as written by majority vote. Kathi Izatt was not present at this meeting, and could not vote on the minutes.

Board members elected Kirk Heaton, Chairman, and Frances Spencer, Vice-Chairwoman to serve a term of one year. K D. Simpson officiated this meeting.

Paul Summers was Introduced as the new Board of Adjustment member replacing Gene Bangerter who resigned due to business commitments.

Mayor John Cushing appeared briefly to thank the Board of Adjustment members for their service to the community.

Pettition No. 94-1 Dan Zumbo, 1373 East Canyon Creek Drive - Request to allow an existing driveway that was built at 20% grade; ordinance allows a maximum 15% grade.

When Mr. Zumbo presented his site plan while applying for the building permit, the driveway was shown at 13% slope which is in compliance with the Foothill Ordinance. However, during Inspections by the Building Inspector, It was noted that the driveway had been relocated, and the new location exceeded 15% slope, the maximum allowed by ordinance. This had been done without approval from the city. His house and driveway could not receive final approval because the driveway now had a 20% slope.

Mr. Zumbo stated that the reason they changed the alignment of the driveway was to keep It straighter without the downhill curve as shown on the approved plan. He was told during excavation by the contractor that the allowed slope was 15%, and he took his word for IL He feels that having a straight, level driveway Is a trade-off for a steeper curved one. He said during the whole building process no one ever questioned ft. He admitted he changed the plan thinking ft was OK to do so.

Mr. Gehring summarized this situation by referring to Mr. Zumbo's answers on his application:

1. There are no unique circumstances on this lot to make ft unbuildable. A driveway was designed and approved on the site plan which met the ordinance. If ft had been built that way there would be no problem.

2. There are other homes on the street with driveways In excess of 15%, a couple at 20%. The city has recently purchased an Instrument called a *smart level' which measures the per cent of slope of driveways and other Inclines, allowing the Inspectors to be more accurate. Prior to acquiring the smart level, they had to estimate slopes to the best of their ability which was the case with these other homes. This does not excuse Mr. Zumbo from the fact that he violated the ordinance.

3 - 4. The 15% slope was placed In the ordinance as a standard for safety. Driveways over 15% are considered unsafe due to conditions in the winter which make ft difficult to get up and down them and especially for easier access by fire trucks. City engineers do not agree that the 20% slope Is safer and more stable.

5. No error was made on the part of the city. It Is difficult to check on these situations earlier In the process because usually there Is a large amount of fill placed over the sidewalk and curb and gutter at the end of these driveways to allow large heavy equipment to access the site without breaking up the concrete. Final slope cannot be checked accurately until final grading is done.

Staff does not support the variance. The driveway was put in the wrong place, It was not approved, and does not meet the ordinance.

KJrk Heaton said the Board cannot grant a variance unless it meets all the criteria established by state statute. He asked Mr. Zumbo If there was a way to build a home on this property that would be In compliance, and Mr. Zumbo replied yes. AJso, a driveway could be built that meets the code. The reason he Is In this predicament Is not because of a natural

occurrence, but rather a human mistake.

Mr. Gehring stated that in checking with the City Engineer and Building Inspector, the driveway could still be put in to meet the ordinance.

Kirk Heaton made a motion to deny the petition because he feels there are no unusual circumstances as required by statute; seconded by Kathi Izatt; the motion passed unanimously.

Continuation of Petition 93- Rodger Mitchell, 2585 Cave Hollow Way - 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%.

Mr. Mitchell appeared before the Board on December 14, 1993 for a variance to allow him to build a large portion of his home on land that was greater than 30% slope which is not allowed by ordinance. The Board tabled the petition so that he could come back with a design that would fit within the buildable area.

The new design now fits the buildable area with only a few minor areas of 30% slope. Staff can support the new design and the minor variance that will need to be given. His only other option would be to build at the old setbacks which would place his home very close to his neighbor's existing home on the south defeating the purpose of the 15 ft. side yard for fire separation.

Frances Spencer made a motion to grant the variance on the 30% slope; seconded by Paul Summers; voting was unanimous.

Consider an appeal of a zoning decision for a lot at approximately 1705 East Mueller Park Road, Marvin Blosch, Own

Frances Spencer was excused from participating in this item.

Mr. Blosch owns a large parcel of land which runs from east of the drainage detention basin on Bountiful Boulevard up to the LDS Chapel. He would like to divide off a portion of this parcel for a building lot west of the chapel.

Mr. Blosch said when he purchased the property in 1989 it was approved for two lots, and he built his home about in the middle. He then requested the city allow him the second lot at the west end. It was denied based on the elevation. He then proceeded to create the second lot east (uphill) of his home. Staff agreed that due to a substantial amount of 30% slope in the middle of the property, such a lot would be unbuildable as proposed. Mr. Blosch claims that the 30% slope is not a natural slope but has been disturbed by the flood of 1983, thus causing the 30% slope. He further feels that the building pad and slope requirement of the Foothill Ordinance can be met if he is allowed to reslope part of the disturbed area. He is appealing this to the Board to determine if the lot is buildable, claiming the city's interpretation is in error.

The lot in question is part of another lot approved by the Planning Commission and City Council in April of 1985. The one requirement which was placed on the approval was that the defined drainage easement be deeded to the city which has not been done.

The proposed building pad does not meet current ordinance standards. The pad must meet a 20 ft. front yard (exception due to 10 ft. slope applies), and a 15 ft. minimum side yard. The pad as shown has a 27 ft. front yard and a 7 ft. side yard, and 25% of the lot lies on 30% or greater slopes. Manmade slopes of 30% or greater, such as cuts and fills, are not considered unbuildable when evaluating a site. Only the natural terrain is considered unbuildable when 30% or greater. The slope has been created by erosion, which is natural, and it becomes very questionable as to the stability of that area to support a home.

The ordinance does not allow any regrading or disturbance of any kind on unbuildable slopes. Many builders and homeowners would like to regrade or reslope some of their ground and have been told no. Therefore, staff stands by their interpretation that this lot is unbuildable as proposed by Mr. Blosch. It is consistent with decisions in similar situations and in compliance with the ordinance.

Kathi Izatt said had Mr. Blosch built upon the property on either lot 121 or lot 120, then he would have had the ability to sell the other piece as it was and the city would have had to work with the lot because it had already been approved. He is now resubdividing and that is another issue. Consequently, he is trying to come up with the reason, under the

guidelines that the code allows us, to allow him to break off a piece again when he had two pieces, knew what he was doing when he built across the line, and now want to break it into two pieces again. It is a different configuration and does not meet the ordinance.

Mr. Gehring stated for clarification - it was a natural cause, there was no manmade excavation there to create that slope. The lot with that slope was created in 1985, not 1983, so the lot as it was created and seen by the city was in 1985. The point being that when the lot was created, reviewed by staff, it was there. The exemption on the 30% slopes was in 1977 when the Foothill Ordinance was created. As Mr. Blossch wants to propose the lot, ordinance requires a 50 ft. x 100 ft. building pad on the lot for it to be approved. He is asking for a lot that has never been created, and we cannot create a lot that does not meet that ordinance, and staff is saying that 30% is a natural occurrence that should be there. Mr. Blossch is saying it is an unnatural occurrence that shouldn't be counted as 30%. That is where the interpretation difference is.

Mr. Blossch said he would argue that when building the church, it was not a natural event, and that it would have a real effect on the diversion of where the water actually exited in the floods. (The church was built prior to 1983 and the fact that the church was built there it diverted the flood waters such that it built this artificial slope.) He feels that if the church hadn't been built and the stream was back in its original channel, there is no way the damage to this lot would have been what it is today.

Kathi Izatt made a motion to deny the request by Mr. Blossch inasmuch as she does not find that it meets the criteria for a variance or an unreasonable hardship; Mr. Gehring said the motion is not to grant or deny a variance. It should be to either agree or disagree with the staff's interpretation. If the Board disagrees with staff, they allow Mr. Blossch to reslope the property. Kathi withdrew her motion, and made a new motion that the Board agrees with the interpretation of the ordinance as stated by staff in the report of January 5, 1994, and consequently denies an appeal. Kirk Heaton seconded the motion; the majority voted approval; Kirk Heaton voted nay; Frances Spencer abstained.

Consideration of Criteria for the Administrative Hearing Officer

State law now allows for an Administrative Hearing Officer to hear and grant minor variances to the zoning ordinance (Section 10-9-705, Utah Code Annotated, 1953, as amended). This law requires the Board of Adjustment to set the criteria for such variances.

The chapter that established the Administrative Hearing Officer for Bountiful City was adopted as part of the new zoning ordinance in August, 1993 (Chapter 2, Part 7). It states, among other things, "The Board of Adjustment shall make such review and authorization at the first meeting in January of each year.*" By ordinance, Mr. Gehring will be the Administrative Hearing Officer and he submitted the following for approval by the Board of Adjustment as criteria for variances to be heard and granted by him in that capacity:

1. No greater than one (1) foot for any and all required front, rear and side yard requirements;
2. No greater than fifty (50) square feet for all lot or parcel area requirements;
3. No greater than five (5) feet for any lot or parcel width requirements.

The procedure will be that when an item comes before Mr. Gehring, he will discuss it with the Board Chairman. If he feels it is not minor, he can overrule the hearing officer. If the chairman agrees, the hearing officer will hear it and grant it or forward it to the Board. If he determines he should not grant it, if someone disagrees with his decision, it automatically comes to the Board for a full hearing. If the neighbors or anyone affected by it does not agree with an approval, they have a right to appeal it to the Board.

Paul Summers made a motion to accept the criteria for variances as outlined above; seconded by Kathi Izatt; voting was unanimous.

Before adjourning, Chairman Simpson told Mr. Gehring how much he appreciated everything he has done in the last year by going out of his way to help the Board, and he represents the city well. He said it had been a pleasure to work with him.

Meeting adjourned at 8:30 PM.