

**BOARD OF ADJUSTMENT MINUTES**  
**JULY 14,1992**

Present: K. D. Simpson, Acting Chairman; Francis Spencer, R. Kirk Heaton; Don Milligan, Planning Commission Representative; Blaine Gehring, Planning and Redevelopment Director; Jon Reed Boothe, Planning Director; Shirley Chevalier, Recording Secretary

Absent: Gene Bangerter

**Petition No. 92-2**

Permission to convert an existing home to a professional office with the following variances to the setbacks:

1. To keep the existing west side yard setback of 10 ft. 4 in., ordinance requires 20 ft.; 2. To keep the existing front yard setback of 22 ft., ordinance requires 30 ft.; 3. To allow a 6 ft. rear yard setback, ordinance requires 25 ft.

Property is located at 387 East 200 North, and is owned by Dick Dresher.

A public hearing was held June 9, 1992, in which the Board voted to table this Rem for further evaluation of the variance requests by Mr. Dresher, to see if he could find an alternate plan to develop his property that would be in compliance with zoning requirements. Two concerns were brought up at this meeting; 1 - to look at the building from a historical standpoint, and 2 - look at the non-conforming part of the ordinance.

A letter from Roger Roper, a preservation coordinator with the State Historical Society, stated that in 1986 a city wide architectural survey was made and this home was determined to be eligible for designation on the national register. However, Bountiful City does not have an ordinance that addresses buildings with historic significance. If cities do not have this, the designation on state or national historical registration does not limit the owner's ability to demolish the building or change it.

Regarding the nonconforming portion of the ordinance, the City Attorney was not sure whether the nonconforming use had anything to do with ft, since, as a permitted use, it is conforming. The building does not conform to setbacks which is why the petition was filed in order to save the old building.

K. D. Simpson informed the audience that the Board of Adjustment is not a judicial body and does not make or interpret the rules and regulations. The Board has three criteria which governs their decision making

and must be met by the petitioner:

1. Are there special circumstances attached to the property covered by the application which do not apply to other property in the same zone;
2. That because of said circumstances, property covered by the application is deprived of privileges possessed by other properties in the same zone, and the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
3. That the variance will not substantially affect the comprehensive plan of zoning in the city and that adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

Mr. Dresher addressed the Board referring to the three criteria. The existing building is the oldest building in the immediate neighborhood, is in good structural condition and should be preserved; the building is located an unusually large distance from the east property line (400 East Street) on a small corner lot; the setbacks have existed for years prior to the current ordinance; the deterioration of the site and building has also existed for years and is not typical of the neighborhood which has very well kept yards and homes.

Some special and unique circumstances are: the setback away from 4th E. St. on corner property was incurred many years ago when other parcels of land were built around ft, subsequently reducing the side and rear yards significantly. The existing building could not be used and would have to be removed to obtain required setbacks for any permitted use because it cannot conform to setback requirements. If the existing building cannot be used for the desired use, he is being deprived of privileges other property owners in the **area have**. Permitted uses, such as the proposed professional office and the existing duplex, must comply with more restrictive ordinance requirements (setbacks, etc.) than other nonpermitted (conditional) uses which are less appropriate to the neighborhood, but the Planning Commission can approve a zero side yard and a 10 ft. rear yard. Mr. Dresher said he felt he was being deprived of using an existing building as a permitted use that he desires. There are other businesses within a couple of blocks of this property, and he does not believe ft would adversely affect the Comprehensive Master Plan of the city.

As for hardships and difficulties, he is trying to keep the existing building. Strict adherence to the ordinance would require that he demolish ft, but it is a sound building, applicable for this use, and he feels the variances are warranted. The character of the neighborhood would not substantially change by his use being there. He would not change the outside appearance of the building other

than cleaning it up. He felt it was more hardship to try to save the building than tear it down and build a new one, however, there are advantages to a new building. The existing home does not have a basement and is not energy efficient.

Kirk Heaton asked Mr. Dresher if he claims there is no other use for this property. Mr. Dresher replied that there are two permitted uses that are probably permitted anywhere in the city; i.e., recreational property and agricultural uses, which, if you tear the building down, it could be farming, a swimming pool, or a skateboard track. The duplex use is still there, but as the property owner he hopes to have the right to decide if he can or can't use it. He can put a permitted office on the property, and that is the option he is looking at.

Mr. Heaton asked if the building could be preserved by being fixed up and rented out. Mr. Dresher replied he supposed it could to some extent. He is planning to spend 30 to 40 thousand dollars over and above what he paid for it, and for one bedroom apartments, he doesn't know if it could affordably be done. He has not looked into it because that's not the reason he bought the property.

Francis Spencer asked Mr. Dresher, as a member of the Planning Commission and having sat on this Board, did he look at all of this before he bought it. Mr. Dresher mentioned he had been looking for a couple of years at properties or existing buildings to move his office into something he could own and not lease space. Francis asked if he knew about all of these setbacks before he bought the building.

Mr. Dresher replied that before he bought the building he looked at that, and unfortunately there were some bad feelings and wrong judgments made at the last meeting, that supposedly he put the cart before the horse and didn't look at anything before purchasing the building. The first thing he looked at was how big the property was, not the house, and the zone it is in, and if the use is permitted. He had looked at numerous parcels between 400 East and 2nd West and the downtown area in general. From there he checked if the square footage was enough, which it is for an office but not for a duplex or some other uses. Initially he looked at the property for an office.

Francis asked if he realized when he bought the property he would have to have all these variances. Mr. Dresher replied yes, in order to keep the house. His other option is to tear the house down and build an office. Either way the use is permitted, and the more he looked at the home he felt there was a lot of

character. For a permitted use, he could go to the Planning Commission and say the building was going to be demolished and present a new proposal.

Mr. Milligan asked if a new building were to be put on the lot with the required setbacks, how wide could it be? Mr. Dresher said if it faced 200 North it would be a small building, 18 ft. by 44 ft., or around 700 sq. ft., and would be two or three stories. He is concerned that it wouldn't fit into the neighborhood which basically has all one story buildings. If it faced 400 East he could build a bigger building, approximately 1000 or 1100 ft., and again it would be multi-story, a "square box". The existing structure does have corners, porches, various jogs in the building, and is 1702 sq. ft. The only advantage to a new building would be a basement for storage.

Elmer Barlow, 392 East 200 North, stated that at the public hearing held June 9, 1992, he said he thought it was a traffic hazard with the school children, and he objects to the change in the aesthetics of the neighborhood. He does not feel there is any hardship for Dick Dresher because he could use it for a single family home, duplex, or he could resell it and never lose anything on what he paid for it. There's no way he could show any hardship. He told the Board he would now like them to look at it from his side.

He lives directly across the street. He said he was speaking for ten people, because this is in a family trust; his four children and their spouses, he and his wife, are in opposition to it, and they are the ones suffering the hardship. He contacted two different attorneys since the last meeting. The first attorney advised him to have a real estate company make an appraisal on his property, and then ask two questions: how much would this property bring if it was across the street or on 500 East where there's no apartments; and, if this office goes in will that change the value of his property in case he wanted to sell it. They told him if his property was on 500 East, he would be able to get \$10,000 more for his home. When he told them what was going on across the street, one appraiser said he would lose from two to five thousand dollars in property value, and the other real estate firm told him \$10,000. There were two appraisals, one \$72,000, one \$76,000, and both told him he would have a hard time getting \$62,000 out of his property if it was not sold right away.

Mr. Barlow said they have taken great pride in talking to people and telling them that his wife's father built that home. He said Dick Dresher approached him and told him the things he was going to do. He was going to sandblast the building; change where the cement is now around the porch - he would take that out and put in wood to make it like it was before, and also a wood railing which Mrs. Barlow's father put in. He said Dick didn't tell him he was going to knock out part of the wall in the front to put in a bigger window, or tear the wall out between the two apartments. That home was made into an apartment by filling up a door that led between the two rooms. All he would have to do is take the doorway where it was bricked up back out, and he wouldn't have to tear out the wall.

Mr. Barlow stated he is very upset and very concerned. For 42 years they got along well with the neighbors. All these people are here tonight and very much want this to go through. Mr. Barlow said he would recommend to this body that if they are going to turn this down, they turn it down because it does not fit the property, and forget everything he told them as far as how it impacts him, because it isn't worth it to have bad feelings with those surrounding him. He said, "I withdraw all objections to it if you are going to use any of that after seeing the strength of the neighborhood."

Ken Peterson, 245 North 400 East, lives north of the property. He said Dick has improved the premises, especially on his side. He feels the value of his property will be increased, and they are in favor of the proposed use.

Marlene Peterson read a letter from Mr. Ralph Hill addressed to the Board of Adjustment. Mr. Hill could not be present. He resides at 371 East 200 North, neighbor to the west. Mr. Hill wrote of the problems he had endured with the type of tenants who had lived in the duplex over the years. He tried to sell his home, but buyers backed out when they saw how bad the duplex property was and the tenants. Mr. and Mrs. Hill very much approve Mr. Dresher's plans for the property.

Mr. Dresher said the desire to keep the building is apparent from others as well as himself, and he would hope the Board took that into consideration. The desire to keep it as a duplex is not as desirable. He owns the property and would like to use it otherwise. Regarding nonconforming uses, they are allowed to stay in some circumstances. The intent of the nonconforming chapter is to eliminate nonconforming uses, and Mr. Dresher said he agrees with that. Section 14-200 Continuing Existing Uses, states "Except as hereinafter specified, any use, building, or structure lawfully existing at the time of the enactment or subsequent amendment of this Ordinance, may be continued", etc. The building is existing that is nonconforming as far as setbacks go. It is nonconforming for a duplex, or single residence, and could not be used without coming to the Board for the variances. Mr. Dresher said he is looking at continuing the building and putting a permitted use in ft. Chapter 17, Board Of Adjustment, 17-103, Powers of Board, "The Board of Adjustment shall have the following powers: 17-1032, To hear and decide special exceptions to the terms of this Ordinance."

Mr. Heaton said he is concerned about this petition, although it has a lot of merit to preserve the building. He thinks there are several uses Mr. Dresher could use the building for and not have to come here for an opinion. He could refurbish it, preserve ft, and use it for a single family residence, but he doesn't want to do that for his own personal reasons. He wants a business there and he can have a business if he wishes because it is a permitted use, but he may not get ft in the form he wants, and that is why he is here asking for the variances. Mr. Heaton said he thinks there are other ways to accomplish the goal Mr. Dresher is seeking. He thinks the property should be preserved but unfortunately he does not see that any of the criteria that apply were met in this situation. Based on these statements, Kirk Heaton made a motion to deny petition 92-2; Francis Spencer seconded the motion; opposed by Don Milligan, K. D. Simpson, and Francis Spencer. Don Milligan made a motion to approve the variances; seconded by Francis Spencer; those voting in favor: K. D. Simpson, Don Milligan, and Francis Spencer; Kirk Heaton voted nay; majority approved 3-1.

Board members were to elect a new Chairman and Vice Chairman this evening, but with Mr. Bangerter's absence this will be postponed to a later date when full membership is present.

Meeting adjourned at 8:45 PM.