BOUNTIFUL CITY BOARD OF ADJUSTMENT
May 7, 2002

Present: Chairman Bud Neslen, Vice Chairman Ron Barlow, Dean Holbrook, Leon Thurgood, Newly appointed member Michael Allen, Planning Commission Representative Al Hess, City Engineer Paul Rowland, Planning Director Blaine Gehring, Recording Secretary Connie Feil.

Absent: Brent Wynn.

Bud Neslen welcomed all those present and introduced all Board Members. Leon Thurgood made a motion to approve the minutes for May 8, 2001 as written. Dean Holbrook seconded the motion and voting was unanimous.

Election for Chairman and Vice Chairman: At the last meeting Ron Barlow suggested that voting for new Chairman and Vice Chairman be done every July since the appointment dates for the members are the same month. It was decided to defer the voting until July of 2002.

1. Consider granting a variance to allow building on slopes greater than 30% at 278 E. Summerwood Dr., Boyer Co., applicant.

John Tebbs, Bonneville Builders, and Dick Moffatt, Boyer Co., were present. John Tebbs explained that this lot has the same problem as the surrounding lots in regards to the drainage ravine. With the completion of the subdivision and the drainage controlled this ravine does not create a problem because most of the ravine has been filled in east of this lot.

Blaine Gehring mentioned that there are two options on where to build on this piece of property. Building on the front of the property will encroach into the 30% or build in the back on the hill which will still need a variance to cross the 30% to reach the hill. Building into the hill will create more damage and impact to the area. It is being proposed to use the front section of the property for building of the home. The proposed site makes use of the east and west slope of the property by placing the driveway on the east side. This places the first floor elevation such that there is a gentle slope back to the street from the garage meeting the building code requirement for drainage to the street. The lower level then becomes a walkout level with minimum grading and fill in the drainage ravine (30% + slope area). This then provides drainage away from the back of the house again meeting the building code requirements.

John Tebbs and Dick Moffatt explained the location of the home and driveway. The fill from excavating will be rolled over to help fill in the ravine and level it out some. There was a brief discussion and the Public Hearing was opened for those with questions or concerns.

Steve Leavitt, property owner at 290 E. Summerwood Dr., was present. Mr. Leavitt was invited to view the site plan. After seeing the plan and some questions, Mr. Leavitt has no problems with granting the variance.
The Public Hearing was closed.

Al Hess feels that the findings meet the conditions required by State Law for the variance. Mr. Hess read the five conditions required as follows:

1. The Board 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."

2. The Board must find that "there are special circumstances attached to the property that do not generally apply to other properties in the same district."

3. The Board must find that the "granting (of) the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district."

4. The Board must find that "the variance will not substantially affect the general plan and will not be contrary to the public interest.

5. The Board must find that "the spirit of the zoning ordinance is observed and substantial justice is done."

Dean Holbrook said he cannot see an impact on the property or surrounding property with granting this proposal

Dean Holbrook made a motion to grant the variance to allow building on slopes greater than 30% at 278 E. Summerwood Dr. based on the five conditions. Ron Barlow seconded the motion and voting was unanimous.

2. Consider an appeal of an administrative decision regarding the slope of a driveway at 1790 E. Maple Hills Drive.

Pierre Van Damme, owner, Malcolm Campell, Architect, and Ed Casperson, Kimberly Construction, were present. Ed Casperson explained that the document that was given to him said that the maximum grade for access roads or driveways will be 15% as measured along the center line of the access road or driveway. Mr. Casperson explained the measurements of the slope of the driveway from a diagram which he handed out. When the house was built Mr. Casperson talked with someone from the Public Works Department and was advised to flatten the entrance of the driveway. There are two sections of the driveway that measure 18% and 21% which were measured by using a 24" long level. When the driveway was first graded, it was measured at 15%. Mr. Casperson moved the driveway further up hill trying to keep the slope below 15%, however, this created a steeper slope in the center.
Ed Casperson mentioned that he has never built in Bountiful but has throughout the state. He feels that this is a safe driveway and by replacing it would create a worse driveway than this one.

Paul Rowland mentioned that the City uses a “Smart Level” for measuring slopes and has used this devise for about five years. Mr. Rowland mentioned that the site plan, prepared by a licensed architect, was approved showing a driveway slope of 12.6%. The permit was issued based on some comments about grading in the rear yard and the need for additional permits for retaining walls if they were built. The slope of the driveway met the requirements of the Foothill Ordinance and was not questioned.

Early in the course of construction, visual inspection of the rough graded driveway showed it to be well over the proposed 12.6% and a verbal concern was issued to the contractor. This same concern was voiced by the City’s building inspector several times during the course of construction as he visited the site for other inspections. At the time of the final inspection, the driveway had been poured and was ready for a final inspection of the grade. The building inspector checked the grade using the 24" long level, “Smart Level.” The maximum slope along the centerline of the drive was measured at around 27%, with a length of more than 50 feet of the driveway exceeding the allowed 15%.

Paul Rowland suspects that the house has been built higher than the site plan shows which has created the problem. There was a lengthy discussion about how to rebuild the driveway to comply with the ordinance. Ed Casperson still has questions about the intent of the ordinance. Mr. Casperson feels that the literal interpretation of the ordinance means the average slope of the driveway is 15% not the maximum percentage.

A memo was presented from the City Attorney, Russell Mahan, urging the Board Members to support the Staff by upholding the interpretation of the ordinance. One rule of interpretation is that effect should be given to the plain meaning of the words used. Words or concepts should not be interjected which are not there. Thus, the words “maximum grade” should not be interpreted to mean “average”.

Another rule is that legislative intent should be given effect. This means that the intent of the legislature, the City Council, should govern. The City Council should be considered to have chosen its words wisely and to mean what the words say. In this case, what did the Council intend? Mr. Mahan suggests that it meant that no part of a driveway should exceed 15%. Had it intended to state this was only an average, it could easily and plainly have said so.

Blaine Gehring mentioned to the Board Members that the purpose for this meeting is to decide to uphold the Staff with their interpretation of the ordinance or to uphold the applicants? This is an appeal from the applicants, not how to make corrections on the driveway. Should the driveway stay as it exists and override the Staffs interpretation of the ordinance or should the ordinance be upheld and the driveway be corrected to meet the ordinance?

Leon Thurgood has some concerns with the contractor being told several times about the problem and not taking any action on it until the driveway was finished. He feels that this appeal should not be approved.

Ron Barlow made a motion to support the interpretation of Staff that the15% is not an average

but the maximum percentage. Leon Thurgood seconded the motion and voting was unanimous.

Blaine Gehring explained to the applicants that they need to meet with their engineers to revise the driveway. The Staff can meet with them to modify the driveway the best way possible to meet the ordinance. If the driveway can meet substantial compliance with the ordinance, the Staff can approve it. If there is not a way to comply, a formal variance will need to be applied for.

Meeting adjourned at 8:15